

SENTENCED TO DEATH

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On Jan. 19, 1735, less than two years after Gen. Oglethorpe first set his feet on the soil of Georgia, the colony's first known execution occurred. The condemned was a woman, Alice Ryley, an indentured servant, hanged in Savannah for the murder of her master. Another indentured servant involved in the murder, a man, was hanged the next day.

Since those two executions, Georgia has put to death an additional 1,151 persons. Between 1930 and 1964 Georgia conducted 367 executions, more than any other state. (By contrast, the execution figures for some of the more populated states during this period were: New York, 329 executions; Texas, 297; California, 292; North Carolina, 263; Ohio, 172; and Pennsylvania, 152.) Between 1924 and 1964 Georgia executed 66 persons for rape, more than any state except Texas. Since 1976, when the U. S. Supreme Court restored the validity of the death penalty, Georgia has executed 18 prisoners, more than any other state except Texas, Florida, Louisiana, and Virginia. There are now approximately 100 inmates on Georgia's death row.

Recent political campaigns, electoral results, and public opinion surveys demonstrate that the death penalty is enormously popular in Georgia. But there is widespread ignorance of the history of this state's use of capital punishment. If more Georgians were familiar with this historical background, support for the death penalty in this state probably would wane. The historical truths about Georgia's death penalty are just too ugly.

Limiting Death Penalty to Murder

A hundred years ago capital punishment was inflicted in Georgia not only for murder but also for numerous other crimes, including treason, rape, castration, feticide, arson, mutiny in a penitentiary, insurrection, and attempted insurrection. Since then, however, use of the death penalty for crimes other than murder has steadily declined. Of Georgia's 421 executions between 1924 and 1964, only 72, or 17%, were for crimes other than murder. Since Georgia's last execution for the crime of rape in August 1961, every Georgia execution has been for murder.

True, the current Georgia Criminal Code, in addition to murder, lists treason, rape, armed robbery, and kidnapping as capital offenses. But the crime of treason against the state has fallen into desuetude; no one has been prosecuted for the offense this century; and future prosecutions are only a remote possibility. Furthermore, under two 1977 U. S. Supreme Court decisions, *Coker v. Georgia* and *Eberheart v. Georgia*, as well as several Georgia Supreme Court decisions applying *Coker* and *Eberheart*, capital punishment for violent felonies (including rape, armed robbery, and kidnapping) is no longer constitutional unless the victim is killed, in which case murder charges could be brought anyway. In practice, the death penalty, which in the past could be and frequently was imposed in Georgia for many crimes, is now confined to only one crime--murder.

Ending Mandatory Capital Punishment

Until 1862 the Georgia death penalty for murder was mandatory. Everyone convicted of murder received a death sentence and was executed, unless the sentence was reversed by the courts or commuted by the governor. Then, in 1863, the Georgia Code of 1861 went into effect, including provisions making capital punishment for murder discretionary. A person convicted of murder could now receive a life sentence instead of a death sentence, but only if the jury so recommended. A century later, in 1969, the General Assembly again decreased the likelihood that convicted murderers would suffer capital punishment. It enacted that a death sentence could be imposed only if the jury so recommended; in all other cases the penalty would be life imprisonment.

In 1973 the General Assembly enacted the state's present death penalty statute, under which a death sentence for murder is permissible following a trial only if (1) in addition to proving the defendant guilty of murder, the state proves a statutory aggravating circumstance, and (2) the jury in its discretion recommends death.

There is no indication that Georgia will ever return to mandatory death penalty statutes. Even if Georgia wished to reinstate a system of mandatory capital punishment for murder, it could not do so. In 1976, in *Woodson v. North Carolina*, and in subsequent decisions, the U. S. Supreme Court has held that mandatory death penalty statutes violate the Constitution.

Changes in Carrying Out Death Sentences

Prior to 1859, Georgia executions were public. When hangings were scheduled, people commonly traveled many miles to witness them. Large, sometimes unruly crowds of spectators would gather to watch executions, which were often carried out in or near the courthouse square. Then, in 1859, the General Assembly enacted a statute giving judges authority to direct that an execution be in private if the judges thought it appropriate. The statute's preamble explains the legislature's motives: public execution was "believed by many to be demoralizing in its tendency and disgraceful to the character of our people for refinement and good taste, and not so well calculated to accomplish the object for which it was instituted: the prevention of crime ..."

The memorable hanging of the Tom Woolfolk in Perry on Oct. 29, 1890 was one of the last public executions in this state. Woolfolk, who was born and lived in Macon but spent part of his early childhood in Athens, murdered nine members of his family with an ax. At his afternoon execution near the Houston County courthouse, there were more than 10,000 spectators, some munching possum sandwiches. (For more on the Woolfolk murder case, see Wilkes, "Bloody Woolfolk," *The Athens Observer*, p. 20A (Nov. 21, 1990)). The last public execution in Georgia was on Sept. 28, 1893 when five black men were simultaneously hanged on one gallows in Mt. Vernon in Montgomery County. In December 1893 the General Assembly prohibited any more public executions.

Until 1924 Georgia executions were by hanging and took place in the county where the condemned person had been tried. In 1924 the General Assembly abolished hanging, replaced it with electrocution, and required that executions be conducted in the state prison. The first

execution in Georgia's electric chair was on September 13, 1924. The next to last Georgia hanging occurred on May 18, 1926 when one Mack Wooten died on the gallows in Fulton County. The last hanging in Georgia occurred on June 12, 1931 when one Arthur Meyers was hanged in Augusta in Richmond County. Since then all executions have been by electrocution, carried out at a state prison--the Old Prison Farm at Milledgeville in Baldwin County until 1937 (162 executions), at Reidsville State Prison in Tattnall County from 1938 until 1964 (253 executions), and at the Georgia Diagnostic and Classification Center in Jackson in Butts County since 1983 (18 executions).

Historical Unfairness of Death Penalty

Death penalty experts have repeatedly pointed out that throughout American history capital punishment has been, in the words of the 1967 Presidential Crime Commission Report, "disproportionately imposed and carried out on the poor ... and members of unpopular groups." Georgia has not been exempt from this historical unfairness in administering the death penalty. Even a cursory examination of Georgia history proves that typically those put to death here are the poor, the friendless, the drifters, the unemployed, the uneducated, the illiterate, the mentally deficient or disturbed, the physically unattractive, the victims of child abuse, and the members of minority groups.

The death penalty has been used to execute the retarded in Georgia. Within the last decade two retarded persons died in this state's electric chair--Ivon Ray Stanley in 1984, and Jerome Bowden in 1986. In the 1980's six other retarded persons had their Georgia death sentences overturned or commuted. There are no official records indicating how many retarded persons received death sentences in this state prior to the 1980's, but it appears probable that retarded persons occasionally were sentenced to death back then, and that some of them were in fact executed. As a result of an enlightened but nonretroactive 1988 law passed by the General Assembly, as well as a retroactive 1989 Georgia Supreme Court decision interpreting the Georgia Bill of Rights, executing the retarded is no longer permitted in this state.

Georgia death penalty statutes have been used to execute, or to attempt to execute, juveniles, i.e., persons under the age of 18 at the time of the crime. Of the 343 juveniles executed in American history 47, or 13%, were executed in Georgia. Between 1924 and 1964, Georgia executed 12 juveniles--nine 17-year olds and three 16-year olds. During this same period Georgia executed fourteen youths who were 18 at time of execution, some of whom may have been under 18 when the crime occurred.

In 1961 Preston Cobb, Jr. was given a one-day trial and sentenced to death in Jasper County for a murder committed when he was 15 years old. Because of racial discrimination in the jury selection at Cobb's trial, the federal courts granted him habeas corpus relief, and Cobb was never executed. As a result of the public criticism of Cobb's death sentence, the General Assembly in 1963 passed a statute prohibiting death sentences for crimes committed by persons under 17. Here in Athens-Clarke County as recently as 1988 the state attempted to seek the death penalty against Clinton Bankston, Jr., who was charged with five murders, two committed when he was 15, the others when he was 16. The Georgia Supreme Court, citing the 1963 statute, held that Bankston was ineligible for the death penalty, and he later pleaded guilty and received multiple

life sentences.

The last Georgia execution of someone under 18 at the time of the crime occurred in 1993 when a 33-year old man was executed for a crime committed when he was 17; the last Georgia execution of a person who at the time of the crime was 16 years old was in 1943. Georgia statutory law still permits execution of juveniles who were 17 at commission of the crime, and the U. S. Supreme Court in 1989 held it is constitutional to execute juveniles as long as they were at least 16 when the crime occurred. It thus remains possible that Georgia may again execute an offender who was only 17 when he committed the crime.

There is one extreme form of invidious discrimination in the use of the death penalty that the general public is almost entirely unaware of--discrimination based on the sex of the offender. That a particular capital offender is a male or a female is a wholly extralegal consideration which should have nothing to do with the justness of inflicting the death penalty. But history shows that there has been, in the words of William J. Bowers, Director of the Center for Applied Social Research at Northeastern University, a "gross disparity in executions between men and women [which] simply underscores the way in which social definitions, irrelevant to the facts of the case, enter the judicial process and affect the outcomes of capital cases."

Although females commit about one in five murders, only 20 females have been executed in the history of Georgia, compared to 1,133 males. Of the 421 persons executed in Georgia between 1924 and 1964, only one was a female. In discriminating against males in the way it administers capital punishment, Georgia has simply followed a national trend stretching back to colonial times. Of the 18,713 persons executed in American history, only 513 (3%) were females, and of the approximately 4,000 executions in this country since 1930 less than 40 were of females.

Race Discrimination and the Death Penalty

Racism is the vilest and most notorious aspect of the unfairness that has infected Georgia's death penalty throughout history. It is a tragic fact that traditionally capital punishment in Georgia has been used to perpetuate white supremacy.

Until the defeat of the Confederacy and the abolition of slavery in 1865, Georgia frequently adopted death penalty statutes that were overtly racist and expressly designed to protect the institution of human slavery by keeping black people in a state of subjection. Some of these statutes created capital crimes applicable only to blacks.

A draconian statute passed in 1755 authorized the death penalty in Georgia for any slave who killed a white person, grievously wounded, maimed or bruised a white person, was convicted for a third time of striking a white person, raised or attempted to raise an insurrection, or endeavored to entice a slave to run away and leave the colony. The 1755 law also made it a capital crime for a slave to steal slaves, to administer poison to anyone, to burn or destroy stacks of crops, to set fire to tar or turpentine barrels, or to attempt run away from his master out of the colony.

An 1816 Georgia statute made the following acts capital crimes, but only if committed by a slave or a "free person of color": poisoning or attempted poisoning; insurrection or attempted

insurrection; rape or attempted rape of a white female; assaulting a white person with a deadly weapon or with intent to murder; maiming a white person; and burglary.

In order to preserve slavery, antebellum Georgia sometimes adopted death penalty legislation aimed at punishing white persons. For example, under an 1829 statute white persons could be executed for introducing into Georgia, or circulating in Georgia, any publication for the purpose of inciting a revolt among the slaves. Under an 1863 statute white persons were subject to the death penalty if they excited an insurrection or revolt of slaves, or even attempted to do so.

After 1865 the Georgia death penalty statutes designed to protect slavery were repealed, as were the statutes that made certain acts capital offenses only when committed by blacks. Unfortunately, however, during the years after 1865 capital punishment in Georgia continued to be tainted by racism because of the racial discrimination that guided the enforcement of the death penalty in this state. Of course, Georgia is not unique insofar as its administration of the death penalty has involved racist practices; the death penalty has been enforced unfairly against black persons throughout America.

This discrimination has manifested itself in innumerable ways. For example, in Georgia, as in other states, blacks have been more likely than similarly situated whites to be charged with a capital crime; blacks have more frequently than whites been tried without receiving competent legal assistance; blacks sentenced to death have had fewer judicial appeals than whites; and blacks have been much less likely than whites to receive executive clemency.

Some of the most reliable statistical evidence of the racism that has bedeviled the administration of Georgia's death penalty since the Civil War may be found in the statistics on executions occurring in Georgia from 1924 to 1964. During this period 81% of the persons executed were black; 78% of the persons executed for murder were black; 93% of the persons executed for rape were black; the only persons executed for robbery were black; all 12 of the juveniles executed were black; and the only female executed was black.

Perhaps the single most unpleasant episode in the sad history of Georgia's unjust use of the death penalty occurred on Dec. 9, 1938 when six black males ranging in age from 18 to 31 died in the electric chair. It was the most electrocutions in one day in Georgia's history. According to newspaper accounts, the six doomed men spent their last hours on earth eating their favorite foods (including steak, chicken, and sweet potato pie), listening to hymns and spirituals sung by a prison quartet, and hearing words of comfort from preachers. The executions, which began around noon, took about 15 minutes each, so that all six men were corpses within an hour and a half.

There was supposed to be a seventh electrocution that day. A white man had been scheduled to be executed along with the six blacks. However, after denying clemency to the blacks, Gov. Rivers granted a last-minute reprieve to the white man, who had been convicted of strangling a three-day old baby he allegedly had fathered by his own daughter. The white man was never executed.

Total executions 1,153

Juveniles executed 47 (35 hanged, 12 electrocuted)

Females executed 20 (19 hanged, 1 electrocuted)

Executions from 1924 to 1964 421 (6 hangings, 415 electrocutions)

Executions by sex, 1924-1964 420 males (99%), 1 female (1%)

Executions by race, 1924-1964 340 blacks (81%), 81 whites (19%)

Executions for murder, 1924-1964 344

Executions for murder by race, 1924-1964 269 blacks (78%), 75 whites (22%)

Executions for rape, 1924-1964 66

Executions for rape by race, 1924-1964 63 blacks (93%), 3 whites (7%)

Executions for armed robbery, 1924-1964 6

Executions for armed robbery by race, 1924-1964 6 blacks (100%), 0 whites

Important Dates in the History of the Death Penalty in Georgia

Jan. 19, 1735 First recorded execution in colony of Georgia

Dec. 15, 1859 General Assembly, Act of Dec. 15, 1859, 1859 Ga. Laws 62, curtails public executions by giving courts discretionary power to decide whether any execution shall be public or private

Jan. 1, 1863 Georgia Code of 1861 comes into effect, under which mandatory capital punishment for murder is abolished

Oct. 29, 1890 Tom Woolfolk's public execution in Perry attracts a crowd of 10,000

Sept. 28, 1893 The last known public execution in Georgia occurs when five black men are hanged in Mt. Vernon in Montgomery County

Dec. 18, 1893 General Assembly requires that all executions be private

Aug. 16, 1924 General Assembly, Act of Aug. 16, 1924, 1924 Ga. Laws 195, changes method of execution from hanging by the local sheriff to electrocution, and requires that executions be carried out by state officials in the state prison rather than in the county of conviction

Sept. 13, 1924 First execution by electrocution in Georgia

May 18, 1926 Next to last execution by hanging in Georgia

June 12, 1931 Last execution by hanging in Georgia

Nov. 4, 1932 A father, William Hulsey, and his son, Fred Hulsey, both from Polk County, executed

Dec. 9, 1938 Six black males die in Georgia's electric chair

Aug. 20, 1943 Last execution of a person who was 16 years old at time of crime in Georgia

Mar. 5, 1945 First and only Georgia execution of a female by electrocution

Nov. 19, 1954 Next to last execution of a person who was 17 years old at time of crime in Georgia

Jan. 15, 1960 Last execution for armed robbery in Georgia

Aug. 11, 1961 Last execution for rape in Georgia

Mar. 14, 1963 General Assembly, Act of Mar. 14, 1963, 1963 Ga. Laws 122, prohibits execution of anyone under 17 at time of crime

Oct. 16, 1964 Last Georgia execution prior to U. S. Supreme Court's Furman decision temporarily abolishing capital punishment

Apr. 25, 1969 General Assembly, Act of Apr. 25, 1969, 1969 Ga. Laws 809, enacts that death sentence will be imposed only if jury so recommends

June 29, 1972 Because capital punishment was being imposed arbitrarily and discriminatorily, the U. S. Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972), invalidates the death penalty statutes of Georgia and other states retaining the death penalty

Mar. 28, 1973 General Assembly, Act of Mar. 28, 1973, 1973 Ga. Laws 159, enacts new death penalty legislation

July 2, 1976 In *Gregg v. Georgia*, 428 U.S. 153 (1976), the U. S. Supreme Court upholds the validity of Georgia's 1973 death penalty statute

June 29, 1977 In *Coker v. Georgia*, 433 U.S. 584 (1977), the U. S. Supreme Court reverses a death sentence for rape, holding that capital punishment may not be inflicted for this crime unless the victim was killed; in the companion case of *Eberheart v. Georgia*, 433 U.S. 917 (1977), the Court holds that the death penalty may not be imposed for the crime of kidnapping

unless the victim was killed

Dec. 15, 1983 First Georgia execution after U. S. Supreme Court's Gregg decision reinstating validity of capital punishment

June 25, 1986 Last execution of a retarded person in Georgia

Apr. 7, 1988 General Assembly, Act of Apr. 7, 1988, 1988 Ga. Laws 1003, prohibits execution of the retarded

Dec. 1, 1989 Ga. Supreme Court decides that execution of the retarded violates Georgia Constitution in *Fleming v. Zant*, 259 Ga. 687, 386 S.E.2d 339 (1989)

Dec. 7, 1993 Last execution in Georgia of a person who was 17 at time of crime

June 9, 1998 Last execution by electrocution in Georgia

Oct. 15, 2001 Ga. Supreme Court holds that execution by electrocution is unconstitutional under the state constitution in *Dawson v. State*, 274 Ga. 327, 554 S.E.2d 137 (2002)

Oct. 25, 2001 First execution by lethal injection in Georgia

July 12, 2005 Most recent execution in Georgia

Executions of Persons Convicted in Clarke County

Since Introduction of Electrocution in 1924

Aug. 6, 1936 John Henry Thomas, a black male convicted of murder and executed at age 21

Dec. 27, 1937 Willie Frank Daniels, a black male convicted of murder and executed at age 25

Oct. 22, 1946 Walter H. Yearwood, a white male convicted of murder and executed at age 23

May 8, 1953 Amos Patrick, a black male convicted of murder and executed at age 34