

GENDER BIAS IN NORTH CAROLINA'S DEATH PENALTY

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I. INTRODUCTION

Throughout American history, our legal system has struggled to provide equal criminal justice for all, regardless of race, religion, or gender. No component within that system has had greater difficulty accomplishing that goal than capital punishment. The administration of the death penalty¹ has remained constantly under fire for its perceived discriminations, incompetent defense attorneys, fatal flaws, and perceived barbarity.

In an attempt at fairness, the courts have identified a number of deficiencies in the system and have tried to correct them. Most notably, in 1972, the Supreme Court acknowledged the widespread racial disparity between the execution of blacks and the execution of whites for the same crimes. In an effort to end the “totally capricious selection of criminals for the punishment of death,”² the Court in *Furman v. Georgia* declared that “the imposition and the carrying out of the death penalty . . . constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”³ Ruling that the selective and arbitrary application of the death penalty was “cruel and unusual,”⁴ the Court suspended the death penalty.⁵

Furman, however, left the door open for a narrow application of the death penalty.⁶ In *Gregg v. Georgia*, the Supreme Court held that capital punishment did not always violate the Constitution and permitted the reintroduction of capital punishment, provided that states impose procedural safeguards.⁷ These safeguards include: (1) statutes “specifying the factors to be weighed and the procedures to be followed in deciding whether to impose a capital sentence,”⁸ and (2) a “bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of the sentence and provided with standards to guide its use of information.”⁹

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1. The terms “capital punishment” and “death penalty” will be used interchangeably throughout this note.

2. *Furman v. Georgia*, 408 U.S. 238, 295 (1972).

3. *Id.* at 239–40.

4. *Id.* at 245 (Douglas, J., concurring).

5. *Id.* at 241.

6. *Id.* at 311 (White, J., concurring).

7. *Gregg v. Georgia*, 428 U.S. 153, 169 (1976).

8. *Id.* at 180.

9. *Id.* at 195.

Despite these safeguards and the progress made in eliminating discrimination in the selection of those upon whom the death penalty is imposed, a glaring deficiency remains—that of “a system-wide apparent bias based on the gender of the offender.”¹⁰ Simply put, throughout the history of the American capital punishment system, there have been significantly fewer women both sentenced and executed for capital crimes than their male counterparts. Justice Marshall recognized the obvious discrepancy during the *Furman* debate, noting:

There is also overwhelming evidence that the death penalty is employed against men and not women. Only 32 women have been executed since 1930, while 3,827 men have met a similar fate. It is difficult to understand why women have received such favored treatment since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes.¹¹

Thirty-four years later, Justice Marshall’s blunt observation still rings true. Nationwide, between the years 1973 and 2002¹², of the 859 individuals executed,¹³ only ten, or 1.2%, were women.¹⁴ And as of 2002, of the 3,557 total prisoners on death row around the nation, only fifty-one, or 1.4%, are women.¹⁵

So where does this leave us? Why do women account for such a small percentage of those on death row and/or executed? Does our capital punishment system discriminate in favor of women? Or can these numbers be explained in some other fashion?

In an effort to answer these questions, this note will first explore the different theories advanced to explain why some women are sentenced to capital punishment while others are spared. The analysis will continue with a comparison of the women and the men in similar circumstances on North Carolina’s death row. This comparison will be used to ascertain whether any of the proffered theories may explain the women’s death sentences.

Between the years 1976 and 2002, women committed only 12.1%¹⁶ of the 512,599 homicides committed in the United States.¹⁷ Additionally, women perpetrated only 6.3% of all multiple victim homicides and 6.6% of all felony murders. However women committed 36.3% of all intimate homicides.¹⁸

10. Victor Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433, 433 (2002) [hereinafter *Gendering the Death Penalty*].

11. *Furman*, 408 U.S. at 365.

12. The time span between 1973 and the present will be denoted as the “modern era” to distinguish the application of modern capital punishment statutes from the pre-*Furman* statutes.

13. Bureau of Justice Statistics, *Capital Punishment, 2002*, NCJ 201848, Nov. 2003, at 10 [hereinafter *BJS Capital Punishment*].

14. Victor Streib, *Death Penalty for Female Offenders, January 1, 1973, through June 20, 2003*, <http://www.law.onu.edu/faculty/streib/femdeath.htm> (last modified July 1, 2003) [hereinafter *Female Offenders, 1973 to 2003*].

15. *Id.*

16. Bureau of Justice Statistics, *Homicide Trends in the U.S., Trends by Gender*, at <http://www.ojp.usdoj.gov/bjs/homicide/gender.htm> (last visited Mar. 5, 2005) [hereinafter *BJS Trends by Gender*].

17. Bureau of Justice Statistics, *Homicide Trends in the U.S., Intimate Homicide*, at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm> (last visited Mar. 5, 2005) [hereinafter *BJS Intimate Homicide*].

18. *Id.*

In a gender-neutral capital punishment system, the number of women sentenced to death row should be proportionate, based on their percentage of homicide commissions, to that of their male counterparts. Yet, as noted above, only 1.2% of all executions in the modern era have been women; this means that 98.8% of those executed are men.¹⁹ Superficially, it appears that gender bias and discrimination affect the application of the death penalty. However, as noted by Professor Elizabeth Rapaport, successful litigation asserting gender discrimination²⁰ in capital death sentencing seems highly unlikely in light of the U.S. Supreme Court's decision in *McCleskey v. Kemp*,²¹ and the standard it set forth.²²

In *McCleskey*, the Court addressed whether McCleskey, an African-American death row inmate, might challenge his death sentence under the Equal Protection Clause by demonstrating statistically that Georgia's capital punishment scheme was administered in a racially discriminatory manner.²³ Specifically, McCleskey attempted to prove that blacks convicted of murdering whites were more likely to be sentenced to death than whites convicted of murdering whites.²⁴ McCleskey offered as evidence for his claims a comprehensive study prepared by Professors David Baldus, Charles Pulaski, and George Woodworth ("The Baldus Study")²⁵ which utilized statistical methods to examine over 2000 Georgia murder cases to determine when it was most likely that an offender would be sentenced to death.²⁶

The Baldus Study determined that, at the time, an offender convicted of murdering a white person was 4.3 times more likely to be sentenced to death than one whose victim was of another race.²⁷ The Baldus Study additionally concluded that prosecutors asked for the death penalty in 70% of all cases in which black defendants killed white victims, and the death penalty was imposed in 22% of these situations.²⁸ Comparatively, the death penalty was requested in only 32% of those cases involving whites murdering whites, and imposed in only 8% of such cases.²⁹ Though the Supreme Court accepted the raw conclusions of the Baldus Study, the Court ultimately held: (1) under the Fourteenth Amendment, McCleskey failed to show that he had personally been the victim of intentional discrimination or that the system was intentionally dis-

19. See *Female Offenders 1973-2003*, *supra* note 14; *BJS Capital Punishment*, *supra* note 13.

20. The terms "gender bias" and "gender discrimination" will be used interchangeably throughout.

21. 481 U.S. 279 (1987).

22. Elizabeth Rapaport, *Some Questions About Gender and the Death Penalty*, 20 GOLDEN GATE U. L. REV. 501, 506-07 (1990) [hereinafter *Questions About Gender*].

23. *McCleskey*, 481 U.S. at 286.

24. *Id.* at 292-99.

25. David C. Baldus et. al., *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. CRIM. L. & CRIMINOLOGY 661 (1983).

26. *McCleskey*, 481 U.S. at 286.

27. *Id.* at 287.

28. *Id.* at 286-87.

29. *Id.*

criminary,³⁰ and (2) under the Eighth Amendment, the risk of discrimination demonstrated by the Baldus study did not rise to a substantial level.³¹

In applying the *McCleskey* standard of proof for racial discrimination in capital sentencing to a hypothetical claim of gender discrimination in capital sentencing, Rapaport writes that male offenders “could not expect to successfully challenge the death penalty on the grounds that males are disproportionately selected for death.”³² She posits that under the *McCleskey* standard, male offenders would have to prove purposeful discrimination—a virtually impossible task.³³ As Justice Powell wrote in *McCleskey*, “the claim that [McCleskey’s] sentence rests on the irrelevant factor of race easily could be extended to apply to claims based on unexplained discrepancies that correlate to membership in other minority groups, and even to gender.”³⁴ Rapaport ultimately concludes that litigation of gender discrimination in the application of capital sentencing is highly unlikely to succeed.³⁵

II. SOCIETY’S ATTITUDE TOWARD SENTENCING WOMEN TO DIE

Despite Rapaport’s understandable cynicism regarding the possibility of successful litigation of gender discrimination claims based upon statistical analysis, a number of gender bias theories based on the attitudes of those involved in the criminal justice system, whether conscious or subconscious, have been offered to explain the presence of so few women on death row throughout the nation.³⁶

A. Chivalry

A major hypothesis offered in explanation for the small percentage of women on death row is the chivalry, or paternalism, hypothesis. Proponents of the chivalry hypothesis suggest that Americans have a “chivalrous disinclination to sentence women to die.”³⁷ This theory suggests that because women are stereotyped as weak, passive, and requiring male protection,³⁸ “women are less responsible for their actions, hence less culpable, and perhaps also as posing less continuing danger to society.”³⁹ This attitude was recognized and further encouraged by judges in the 1970s who came to regard female offenders as more

30. *Id.* at 292–99.

31. *Id.* at 308–309.

32. *Questions about Gender*, *supra* note 22, at 507.

33. *Id.* at 508.

34. *Id.* at 507–08 (quoting Powell, J. in *McCleskey*, 481 U.S. at 315–317).

35. *See id.* at 508. Note that no Baldus-type study has been done to analyze the impact an offender’s gender has upon the offender’s sentence of death.

36. Victor Streib, *Death Penalty for Female Offenders*, 58 U. CIN. L. REV. 845, 874 (1989) [hereinafter *Death Penalty for Females*].

37. *Questions about Gender*, *supra* note 22, at 504.

38. Andrea Shapiro, *Unequal Before the Law: Men, Women, and the Death Penalty*, 8 AM. U. J. GENDER SOC. POL’Y & L. 427, 456 (2000) [hereinafter *Unequal Before the Law*].

39. *Questions about Gender*, *supra* note 22, at 512.

amenable to rehabilitation than men.⁴⁰ However, rehabilitation was, and normally still is, reserved for those women who “fit into the role society has made for them and who have conformed to gender stereotypes.”⁴¹

Perhaps one of the most commonly cited examples of the chivalry hypothesis in action is the execution of Ethel Spinelli of California. In 1941, thirty of her fellow San Quentin inmates petitioned the Governor of California in opposition of Ms. Spinelli's execution.⁴² Her fellow inmates claimed her execution would be dishonorable—“a blot on the reputation of the state and ‘repulsive to the people of California’ because of her sex and her status as a mother.”⁴³ The petitioners even offered to draw straws to be executed in her place should the governor refuse clemency.⁴⁴ The behavior and attitude of Ms. Spinelli's fellow inmates is merely one example of the difficulty American society has, as a result of the characteristics stereotypically attributed to women, in condemning female murderers to death regardless of the heinous nature of their crimes.⁴⁵

The chivalry hypothesis suggests that the death penalty is “perceived as the ultimate sanction for violating the social values and rights that society chooses to protect.”⁴⁶ However, the chivalry hypothesis does not preclude punishing women who reject stereotypical roles—it instead offers rewards and protection for those women whose crimes conform to gender stereotypes.

B. The “Evil Woman”

A second and related hypothesis focuses on the particular societal menace posed by women who defy traditional gender roles. Dubbed the “evil woman” theory, this theory finds that women who commit violent and serious offenses are sentenced more harshly than their male counterparts and are punished not only for their crimes, but for violating sex-role expectations.⁴⁷ Consistent with the chivalry theory, “[o]nce convicted of capital murder, some [women] are more likely to land on death row than others, not because they committed the worst crimes as defined by statutory law, but because they do not properly enact a feminine gender identity.”⁴⁸

Under the “evil woman” theory, a judge or jury has no choice but to sentence a woman to death when her crime so offends society due to its unspeakably heinous and “unladylike” nature. As such, when a female offender engages in behavior that is deemed to be “male” or “manly,” she loses the advantages

40. Melinda E. O'Neil, *The Gender Gap Argument: Exploring the Disparity of Sentencing Women to Death*, 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 213, 218 (1999) [hereinafter *The Gender Gap Argument*].

41. *Id.*

42. Elizabeth Rapaport, *Equality of the Damned: The Execution of Women on the Cusp of the 21st Century*, 26 OHIO N.U. L. REV. 581, 588 (2000) [hereinafter *Equality of the Damned*]. See also *Unequal Before the Law*, *supra* note 38 at 456–57.

43. *Id. Equality of the Damned*, *supra* note 42, at 588–89.

44. *Id.* at 589.

45. See *Unequal Before the Law*, *supra* note 38, at 457.

46. *Id.* at 456.

47. *Questions about Gender*, *supra* note 232, at 513.

48. *Id.*

and protections of her gender.⁴⁹ This woman must be punished more severely than other women because she committed a heinous and horrific crime and, more importantly, because she has violated and rejected the stereotype of the “gentler sex.”⁵⁰ Thus, when a woman chooses to reject this expectation, she is punished severely for not living up to society’s expectations⁵¹ or for stepping outside of her gender role.⁵² The legal system is thus *obligated* to rein her in and dispose of such an “evil” woman in order to maintain a protective, paternalistic society.⁵³ Under this hypothesis, women are most vulnerable to society’s rebuke when they “step outside the bounds of normative femininity.”⁵⁴ As a result of their crimes, these women are no longer perceived as the “gentler sex,” but are instead perceived as “crazed monsters” who deserve “nothing more than extermination.”⁵⁵

III. STATUTORY BIAS

A second major source of gender bias involves the statutory law itself.⁵⁶ In arguing for “gender equality,” many claim that capital punishment statutes are gender neutral, insuring that women who commit violent and serious offenses are treated no differently than their male counterparts.⁵⁷ However, there remains a noticeable difference between the number of women on death row and the number of men on death row. Though women account for approximately 12% of all homicides committed⁵⁸ and 10% of all murder arrests,⁵⁹ under this allegedly gender neutral statutory system, women comprise only 1.4% of the current death row population⁶⁰ and only 1.2% of those executed in the modern era.⁶¹

The most logical and seemingly apparent explanation for this disparity is that the current statutory capital punishment system is **not** gender-neutral. Current death penalty statutes provide specific aggravating and mitigating factors that may significantly affect the punishment inflicted upon the particular offender. Though the statutes do not explicitly include the gender of the defendant as a factor for consideration, such factors, as noted below, may tend to in-

49. As afforded to her under the chivalry hypothesis.

50. *The Gender Gap Argument*, *supra* note 410, at 221.

51. Claudia Dreifus, *Women on Death Row*, MS. MAGAZINE., Spring 2003, at 74, available at <http://www.ms magazine.com/mar03/dreifus.asp> (last visited March 5, 2005).

52. *Gender Gap Argument*, *supra* note 40, at 221.

53. *Unequal Before the Law*, *supra* note 398, at 459.

54. *Id.*

55. *Death Penalty for Females*, *supra* note 376, at 878.

56. *Id.* at 874.

57. *Questions about Gender*, *supra* note 232, at 509-10; see also Elizabeth Rapaport, *The Death Penalty and Gender Discrimination*, 25 LAW & SOC’Y REVIEW 367, 374 (1991) [hereinafter *Gender Discrimination*].

58. *BJS Trends by Gender*, *supra* note 16.

59. *Female Offenders, 1973 to 2003*, *supra* note 154 at 3.

60. *BJS Capital Punishment*, *supra* note 13.

61. *Female Offenders, 1973 to 2003*, *supra* note 154 at 3.

herently encourage capital punishment for male defendants.⁶² Thus, when coupled with the gender bias theories noted above,⁶³ the current statutory scheme makes it highly probable that most women, save the most heinous, unrepentant and “manly” of murderesses, will never see the inside of death row.

A. Aggravating Factors

To sentence an offender to death under the current capital punishment scheme, most states require that a jury: (1) conclude the defendant committed murder, (2) identify aggravating factors present, and (3) determine that the mitigating factors do not outweigh the aggravating factors present.⁶⁴

North Carolina's aggravating circumstances include the following: murder committed while in prison, murder committed by one previously convicted of another capital felony, murder committed for the purpose of avoiding or preventing arrest, murder committed during a felony, murder committed for pecuniary gain, murder of a law enforcement officer, murder which was part of a crime spree, and murder that was “especially heinous, atrocious, or cruel.”⁶⁵

Facially, these statutes appear to be gender neutral. Yet, during the modern era, men accounted for 93.3% of all felony murders and 93.5% of homicides involving multiple victims, two factors which play a prominent role in the statutory schemes noted above.⁶⁶ In contrast, women are rarely involved in the commission of felony murders and/or murder of multiple victims. They account for only 6.7% of felony murders and 6.5% of homicides involving multiple victims.⁶⁷ Moreover, women tend to have less significant prior criminal histories when compared to their male counterparts and are more likely to be first-time offenders.⁶⁸ Also, women tend to have committed fewer previous violent crimes than men.⁶⁹ Rapaport's research posits that three of the most influential factors in sentencing an offender to death are: (1) the offender's prior criminal record, (2) the seriousness of the offense, and (3) the offender's degree of culpability.⁷⁰ Given this theory, when analyzing Rapaport's influential factors and the above data together under North Carolina's death penalty statute, it becomes obvious that North Carolina's statute tends to discriminate *in favor* of women. According

62. See *infra* Part B(1); see also Elizabeth Rapaport, *Capital Murder and the Domestic Discount: A Study of Capital Domestic Murder in the Post-Furman Era*, 49 SMU L. REV. 1507, 1516 (1996) [hereinafter *Domestic Discount*].

63. See *infra* Part B.

64. *Gendering the Death Penalty*, *supra* note 110, at 459–460.

65. N.C. GEN. STAT. § 15A-2000 (2003).

66. *BJS Intimate Homicide*, *supra* note 187.

67. *Id.*

68. *Death Penalty for Females*, *supra* note 376, at 874–75.

69. *Id.* at 875. As of 1986, twenty percent of all males facing the death penalty had a prior conviction for a violent felony compared to five percent of similarly situated females. *Gender Discrimination*, *supra* note 57, at 372.

70. *Gender Discrimination*, *supra* note 587, at 375. See also MODEL PENAL CODE § 210.6(4)(a) (a mitigating circumstance to be considered during imposition of the death penalty is that the defendant has “no significant history of prior criminal activity”); N.C. GEN. STAT. § 15A-2000(f)(1) (stating that a mitigating circumstance to be considered includes the fact that the defendant had “no significant history of prior criminal activity”).

to the above-noted research,⁷¹ women rarely commit the types of crimes for which the North Carolina statute would find aggravating circumstances. As a result, fewer women are sentenced to death. Yet, when the small percentage of women that *do* meet Rapaport's factors come before a jury, the jury finds it much easier to determine that aggravating factors are present and to sentence the woman to death.

B. The "Domestic Discount"⁷²

According to Professor Rapaport, "three kinds of murders are stigmatized as sufficiently heinous to expose their perpetrators to the risk of capital sentencing in at least half of the thirty-four states that employ aggravating factors in their capital statutory schemes."⁷³ (1) "murder for gain or advantage," (2) "murder in the course of resisting law enforcement," and (3) murder with "exceptional cruelty, [multiple killings], or [the placing of] many at risk of death."⁷⁴ Yet, neither of these three types of murder, nor the aggravating factors enumerated above, take into consideration the rate at which females commit domestic murder or the murder of intimates. During the modern era, women committed 36.3% of all domestic/intimate murders.⁷⁵ One would assume that given such a high rate of commission in comparison to other murders, such as felony murder or multiple homicides, women who murder intimates would abound on death row. However, such an assumption does not take into consideration a couple of factors—namely that the circumstances involved in the commission of domestic murders which prevent such murders from being included in the list of aggravating factors and the effect that both the chivalry and "evil woman" theories have on the death sentences of women. Of the four women on North Carolina's death row, two were convicted of murdering their husband or boyfriend for pecuniary gain; no evidence was offered to show that these murders were justified responses to domestic abuse.⁷⁶

C. Mitigation

The North Carolina statute described above also requires that the sentencing authority recognize mitigating factors present in the commission of the murder.⁷⁷ If such factors are present, the jury must weigh them against the presence of any aggravating factors found; if the mitigating circumstances "outweigh" the aggravating factors, then the jury cannot impose the death penalty.⁷⁸

Consistent with the chivalry and "evil woman" theories, when juries deliberate regarding mitigation, it is often presumed that when a woman commits a

71. See *infra* Part B(1).

72. This title comes from Professor Elizabeth Rapaport's article, *Capital Murder and the Domestic Discount: A Study of Capital Domestic Murder in the Post-Furman Era*, 49 SMU L. REV. 1507 (1996).

73. *Questions About Gender*, *supra* note 232, at 557.

74. *Id.*

75. *BJS Trends by Gender*, *supra* note 16.

76. See *infra* Part C(2).

77. See N.C. GEN. STAT. §§15A-2000 (f)(2), (6), (5), and (9).

78. N.C. GEN. STAT. §15A-2000(b)(2).

homicide with a male co-defendant, the male is found to be the dominant actor in the relationship,⁷⁹ and the female is seen as under the control or domination of her male co-defendant.⁸⁰ This presumption explains why the majority of women who have been executed or are currently on death row committed their murders without a male co-defendant.⁸¹

Additionally, in the commission of domestic murders, women are more likely to be involved in sudden, unplanned acts.⁸² The law is therefore more inclined to treat domestic killings as “motivated by such emotions as deserving of some degree of mitigation of blame and punishment.”⁸³ Usually, a defendant in a classic domestic murder situation⁸⁴ offers in mitigation a heat of passion defense.⁸⁵ Examples of this defense are that of a man returning home who is unexpectedly confronted with the sight of his wife in the arms of another man and kills one or both, or a woman killing her batterer in response to abuse.⁸⁶ The killings are not then considered murder, but are instead reduced to manslaughter.⁸⁷

The availability of mitigating factors in capital punishment statutes also explains why women who murder their children, such as Susan Smith, are unlikely to be sentenced to death. In October of 1994, Susan Smith strapped her two young sons into their car seats and rolled her car into a lake, drowning the two boys.⁸⁸ At trial, the defense painted Susan as a victim of sexual abuse at the hands of her stepfather,⁸⁹ a woman with an unfaithful husband,⁹⁰ and a woman whose lover rejected her to avoid the complications associated with becoming a father-figure.⁹¹ After being sentenced to life in prison, the jurors stated that they believed “Susan was a really disturbed person, [and] [g]iving her the death pen-

79. *Gendering the Death Penalty*, *supra* note 10, at 462–63.

80. *Id.*

81. *Death Penalty for Females*, *supra* note 376, at 878. A notable exception is the case of Karla Faye Tucker. She and her boyfriend intended to intimidate and rob a man, as well as steal the man's motorcycle. After entering the man's apartment and finding him asleep, Tucker hit the man with a pickax while her boyfriend bludgeoned the man with a hammer. *Questions about Gender*, *supra* note 22, at 534–36. Rapaport writes:

Tucker is a paradigmatic example of at least one type of female murderer, male-like in her aggressiveness, drawn to violence, under no man's domination or control. At the same time, she is the female exemplar of the most feared kind of modern era violent criminal, for whom material motives if present are a thin coating over essentially sadistic crime.

Id. at 536.

82. *Death Penalty for Females*, *supra* note 376, at 876. Note, though, that those women on death row were sentenced for the predatory killings of intimates. *Domestic Discount*, *supra* note 63, at 1516.

83. *Domestic Discount*, *supra* note 632, at 1516.

84. The “classic domestic murder situation” spoken of here will refer to a murder for which the defendant is charged with manslaughter as a result of the mitigating factors cited above.

85. *Domestic Discount*, *supra* note 632, at 1516 .

86. *Id.*

87. *Id.*

88. *Gender Gap Argument*, *supra* note 410, at 230.

89. *Id.* at 229.

90. *Id.*

91. *See id.* at 230. In her lover's infamous break-up note, Susan is told that though he [her lover] “could really fall for her, there were ‘things about [her] that aren't suited to [him], and yes, [he is] speaking about [her] children.’” *Id.*

alty wouldn't serve justice."⁹² In Susan Smith's case, the chivalry hypothesis completely overshadowed the "evil woman" theory—a woman who murdered her children in hope of reuniting with her lover was instead seen as a victim and a loving mother with severe emotional issues.⁹³

D. Murder for Economic Gain

Aside from the cases in which women are found to have committed domestic murders under the influence of powerful emotion, there is a second type of domestic crime that transcends society's chivalrous inclinations against killing women and relies upon the "evil woman" theory in sentencing women who murder intimates. Rapaport defines "murder for gain or advantage" as a murder that involves the killing of an intimate for pecuniary gain.⁹⁴ Women who commit these crimes are not considered to be "domestic" murderers in the usual sense. They have not reacted instinctively during the "heat of passion;" they have not lashed out while under extreme emotional stress. Instead, these women have committed what are essentially premeditated "economic crimes with intimate victims."⁹⁵

Of the women on death row, nearly two-thirds murdered family members and sexual intimates for pecuniary gain, a motive rarely witnessed in male domestic murders.⁹⁶ In contrast, a majority of those men on death row for domestic murders are there for killing their wives and lovers "in retaliation for leaving a sexual relationship."⁹⁷ Additionally, female domestic murderers who kill intimates and who are on death row are more likely to have hired someone to kill their intimate partner.⁹⁸ In fact, as of June 2001, eight of the fifty-two women on death row had been convicted of hiring someone to kill their husbands.⁹⁹

Thus, the bulk of women's domestic death row cases cannot be classified under the traditional definition of "domestic violence." If their crimes did fall under this classic definition, the women who have been executed would still be alive today and those currently on death row most likely would not be awaiting death. These women's crimes differ inherently from the traditional domestic violence murder; these murders are not committed against intimates out of fear, but in a cold, calculated and premeditated manner. As a result, society punishes the "evil woman" for rejecting her role in society with the most severe punishment available.

The next section will focus on the four North Carolina women currently awaiting execution. The aggravating factors found in each woman's case will be analyzed and compared to case of men of the same county in North Carolina who were similarly convicted under the same aggravating factors. The applica-

92. *Id.* at 231.

93. *See id.* at 232.

94. *Questions about Gender*, *supra* note 22, at 557.

95. *Domestic Discount*, *supra* note 632, at 1518.

96. *Id.* at 1517.

97. *Id.*

98. *Gendering the Death Penalty*, *supra* note 10, at 460.

99. *Domestic Discount*, *supra* note 632, at 1517.

tion of these aggravating factors will then be analyzed under the various theories offered above.

IV. NORTH CAROLINA

A. Statutes

Under North Carolina law, once a defendant has been found guilty of a capital felony and the State has given notice of its intent to seek the death penalty, a separate sentencing proceeding is held to determine whether the defendant will be sentenced to death or life in prison.¹⁰⁰ The jury then hears evidence and deliberates to determine: (1) whether any sufficient aggravating circumstances exist; (2) whether sufficient mitigating circumstances exist that outweigh the aggravating circumstances; and (3) based on the first two conclusions, whether the defendant is to be sentenced to death or life in prison.¹⁰¹ If the jury unanimously recommends death, the jury must enumerate the statutory aggravating circumstances found and state its finding that the mitigating circumstance(s) were insufficient to outweigh the aggravating circumstances.¹⁰²

100. N.C. GEN. STAT. § 15A-2000 (a)(1) (2004).

101. *Id.* at (b)(1)–(3).

102. *Id.* at (e)–(f). The statutory aggravating circumstances under North Carolina law are as follows:

(1) The capital felony was committed by a person lawfully incarcerated. (2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult. (3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult. (4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody. (5) The capital felony was committed while the defendant was engaged, or was an aider or abettor, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any homicide, robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb. (6) The capital felony was committed for pecuniary gain. (7) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws. (8) The capital felony was committed against a law-enforcement officer, employee of the Department of Correction, jailer, fireman, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, or witness or former witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duty. (9) The capital felony was especially heinous, atrocious, or cruel. (10) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person. (11) The murder for which the defendant stands convicted was part of a course of conduct in which the defendant engaged and which included the commission by the defendant of other crimes of violence against another person or persons.

The mitigating factors available for juror consideration are the following:

(1) The defendant has no significant history of prior criminal activity. (2) The capital felony was committed while the defendant was under the influence of mental or emotional disturbance. (3) The victim was a voluntary participant in the defendant's homicidal conduct or consented to the homicidal act. (4) The defendant was an accomplice in or accessory to the capital felony committed by another person and his participation was relatively minor. (5) The defendant acted under duress or under the domination of another person.

B. The Women of Death Row

Currently, of the 191 offenders on North Carolina's death row, four are women—Christina Walters, Carlette Parker, Blanche Taylor Moore and Patricia Jennings.¹⁰³ Since the imposition of Jennings's and Moore's death sentences in November of 1990,¹⁰⁴ a total of 251 people have been sentenced to death in North Carolina (including the four women mentioned).¹⁰⁵ Of those, 243 are men and eight are women.¹⁰⁶ Fifty-one of the 243 men have subsequently been removed from death row (either via re-sentencing to life-in-prison or by order of a new trial)¹⁰⁷ and twelve have been executed.¹⁰⁸ Of the eight women sentenced to death since 1990, four have been removed from death row.¹⁰⁹

Below are profiles of the four women currently on North Carolina's death row. Their cases are outlined and the jury's finding of statutory aggravating and mitigating factors have been included for use in later analysis.

1. Patricia W. Jennings

On October 8, 1990, a Wilson County jury sentenced Patricia Jennings to death.¹¹⁰ At the time of her sentencing, Patricia Jennings was only the fifth woman sentenced to death in North Carolina during the modern era.¹¹¹

In June 1983, Jennings was working at a nursing home when she met William Henry Jennings, a retired businessman in his seventies who frequently counseled the home's alcoholic patients.¹¹² Four years later, the two married; Jennings was forty-four and her new husband was seventy-seven.¹¹³ A short time after their marriage, Mr. Jennings consulted his financial advisor and transferred half of his assets, totaling approximately \$150,000, to Jennings.¹¹⁴ At trial, several acquaintances of Mr. Jennings testified that Mrs. Jennings physically

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired. (7) The age of the defendant at the time of the crime. (8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of the felony. (9) Any other circumstance arising from the evidence which the jury deems to have mitigating value.

103. North Carolina Department of Correction, *Women on Death Row*, at <http://www.doc.state.nc.us/DOP/deathpenalty/women.htm> (last visited March 5, 2005).

104. *Id.*

105. *See id.*; *See also* North Carolina Department of Correction, *Persons Removed from Death Row since North Carolina's death penalty was reinstated in 1977*, at <http://www.doc.state.nc.us/DOP/deathpenalty/removed.htm> (last visited March 5, 2005) [hereinafter *Persons Removed from Death Row*].

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

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

111. *See Persons Removed from Death Row*, *supra* note 1065.

112. *Jennings*, 430 S.E.2d at 192.

113. *Id.*

114. *Id.*

abused her husband by beating him, dragging him across the room and stomping on him with cowboy boots.¹¹⁵

In September 1989, while staying at a hotel, Mrs. Jennings called the hotel desk to inform them she had a "code blue." The paramedics were called and Mrs. Jennings was found performing CPR on her husband's nude body.¹¹⁶ According to the paramedics, Mr. Jennings' body appeared cool and stiff and Mrs. Jennings was wearing brown cowboy boots.¹¹⁷ It was later determined that Mr. Jennings had been dead for approximately six to eight hours.¹¹⁸ An autopsy revealed that Mr. Jennings had been kicked or stomped in the abdomen and had been sexually assaulted and tortured.¹¹⁹

At trial, the defendant attempted to explain her husband's injuries by testifying that he had fallen in the bathroom earlier on the day of his death and, as a result of his depression, had been picking his rectum.¹²⁰ The jury, however, found Mrs. Jennings guilty of her husband's murder, finding three aggravating circumstances present in Mr. Jennings' death: (1) the murder was committed while the defendant was committing or attempting to commit a sex offense, (2) the murder was committed for pecuniary gain, and (3) the murder was especially heinous, atrocious or cruel.¹²¹ The jury also found that Mr. Jennings' murder was premeditated and deliberate.¹²²

On mandatory appeal, the North Carolina Supreme Court found no error in the jury's determination that Mrs. Jennings murdered her husband during a sex offense when she "penetrated [Mr.] Jennings' anus 'by force or threat of force . . . sufficient to overcome any resistance which the victim might make, and that the victim did not consent and it was against his will.'"¹²³ The Court also found that the evidence showed that Mr. Jennings suffered injuries to his body, including his anus and genitalia, in the day before his death and that a blunt object was inserted into the anus, causing the membrane to split (not a rectal thermometer, fingernails or constipation, as Mrs. Jennings had claimed).¹²⁴

Regarding the jury's finding that the murder was committed for pecuniary gain, the Court found sufficient evidence that Mrs. Jennings murdered her nearly eighty-year-old husband for the purpose of obtaining and controlling his wealth.¹²⁵ Citing Mr. Jennings' transfer of nearly \$150,000 to his wife at the beginning of their marriage, the consistent depletion of Mr. Jennings' remaining personal account up to the time of his death, and Mr. Jennings' request, prior to

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 193.

120. *Id.* at 194.

121. *Id.* at 206.

122. *Id.* at 213.

123. *Id.* at 208.

124. *Id.*

125. *Id.* at 210.

his death, that funds no longer be transferred to his wife, the Court found ample evidence that Mr. Jennings' murder was committed for pecuniary gain.¹²⁶

The Court also found that the "especially heinous, atrocious, or cruel" nature of the murder supported a sentence of death.¹²⁷ Evidence was presented that Mr. Jennings suffered severe blows to the abdomen (which did not result in death), the presence of multiple defensive injuries, a large amount of analgesic in his bloodstream, a large amount of blood spattered all over the hotel room and internal hemorrhaging that would have caused severe pain, eventual unconsciousness, and death.¹²⁸ The Court found this evidence sufficient to support a finding that the killing was "excessively brutal and physically agonizing, conscienceless, pitiless and unnecessarily torturous" to Mr. Jennings.¹²⁹

One statutory mitigating circumstance was offered: the defendant had no record of criminal conviction.¹³⁰ The defense additionally submitted twenty-one non-statutory mitigating circumstances.¹³¹ The jury, however, ultimately found the proffered statutory and non-statutory mitigating circumstances insufficient to outweigh the aggravating circumstances; the Supreme Court found no error.¹³² Mrs. Jennings's death sentence was upheld.¹³³

2. Blanche Taylor Moore

On November 16, 1990, a Forsyth County jury found Blanche Moore guilty of murdering her former boyfriend, Raymond Reid.¹³⁴ The diagnosis of Moore's then-husband, Reverend Dwight Moore, with arsenic poisoning had sparked an investigation which led to the eventual exhumation of the bodies of Moore's father, Moore's first husband and Reid.¹³⁵

126. *Id.* at 211.

127. *Id.* at 206.

128. *Id.* at 213.

129. *Id.*

130. *Id.* at 206.

131. *Id.* at 206. The non-statutory mitigating circumstances submitted were as follows:

the defendant had been a peaceful person in the community in which she lived; the defendant was a law-abiding citizen . . . ; the defendant was a recovering alcoholic; the defendant successfully raised three children; the defendant was the grandmother of three grandchildren; the defendant's parents were victims of alcoholism; the defendant had endured a bilateral mastectomy; the defendant had been active in community volunteer organizations; the defendant experienced the death of an infant daughter; the defendant saw the need to improve herself educationally; the defendant became a licensed cosmetologist, a licensed practical nurse, and a registered nurse; the defendant was currently a registered nurse who worked at three hospitals; the defendant had useful work skills; the defendant performed deeds of kindness during her lifetime; the defendant held the leadership position of lead and charge nurse; the defendant suffered an automobile accident in 1973; the defendant had no prior record for violent crimes; the defendant's childhood history, background and record show no indication of a habitually violent nature; the defendant had the support of her family; the defendant was gainfully employed as a nurse prior to her marriage; and any other circumstances the jury found to have mitigating value.

Id. at 206. These mitigating factors appear to have been offered in an attempt to appeal to the jury's sense that this woman had played the role of a good mother/grandmother and nurse.

132. *See id.* at 194, 212.

133. *Id.* at 192.

134. *State v. Blanche Taylor Moore*, 440 S.E.2d 797, 802 (N.C. 1994).

135. *Id.*

Moore met Reid while working at a Kroger supermarket in 1962; the two later began dating in 1979.¹³⁶ On New Year's Day 1986, Reid became ill after having spent New Year's Eve with Moore and eating Moore's homemade soup.¹³⁷ Reid, who had never missed a day of work prior to his illness, missed over a month of work in the ensuing months and was eventually admitted to the hospital with symptoms of nausea, vomiting and diarrhea.¹³⁸ Initially diagnosed with gastroenteritis, Reid's condition continued to deteriorate until it was "life threatening."¹³⁹ After his transfer to another hospital, Reid's lab report showed high levels of arsenic in his system; his doctor never saw the report.¹⁴⁰

During his hospitalization, Moore asked permission to bring food from home to Reid.¹⁴¹ Moore often brought iced tea, frozen yogurt, milk shakes and soup to Reid as he became progressively weaker and required mechanical ventilation.¹⁴² After approximately six months of hospitalization, Reid "coded" and the doctors were unable to revive him.¹⁴³ At the time, Moore insisted that no autopsy be performed on Reid's body.¹⁴⁴

Three years later, and after Moore's current husband was diagnosed with arsenic poisoning, investigators began looking into the suspicious deaths of Moore's father, her first husband, and Reid.¹⁴⁵ Investigators subsequently exhumed Reid's body.¹⁴⁶ An autopsy showed that the arsenic in Reid's liver was thirty times higher than normal, and the arsenic levels in his brain were sixty-seven times higher than normal.¹⁴⁷

Upon finding Moore guilty of first-degree murder, the jury found as aggravating circumstances: (1) the murder was committed for pecuniary gain and (2) the murder was especially heinous, atrocious, or cruel.¹⁴⁸ On mandatory appeal, the North Carolina Supreme Court found sufficient evidence that: (1) Reid gave Moore \$10,000 because she was unemployed, (2) Reid desired that Moore receive one-third of his estate upon his death, (3) Reid changed his will giving Moore power of attorney and a one-third share in his estate, and (4) Moore received \$45,000 from Reid's insurance proceeds in addition to one-third of her share in his estate.¹⁴⁹

136. *Id.* at 803.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 804.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 802.

146. *Id.*

147. *Id.* at 804-05.

148. *Id.* at 824.

149. *Id.* at 822. Reid's children later learned that Moore was not entitled to her alleged share of the insurance proceeds as Reid never added her as a beneficiary. Moore refused to return the portion of the insurance proceeds paid to her by Reid's sons.

The Court also found sufficient evidence that Reid's murder was "especially heinous, atrocious or cruel."¹⁵⁰ Noting that Moore slowly poisoned Reid over a period of ten months, causing him to suffer prolonged physical agony, including paralysis, skin splitting and multiple systems failure, the Court found no error in the jury's conclusion.¹⁵¹

Though the jury found that Moore "provided abundantly for the needs of her children while they were growing up," that Moore "peacefully submitted herself" when informed of the warrant for her arrest and that Moore "demonstrated concern and kindness for others in her community" as mitigating factors, these mitigating factors were insufficient to outweigh the above-mentioned aggravating circumstances, and Moore's sentence of death was upheld.¹⁵²

3. Carlette Parker

After finding Carlette Parker guilty of first-degree murder and first-degree kidnapping, a Wake County jury sentenced her to death on April 1, 1999.¹⁵³ At trial, the State presented evidence showing that on May 12, 1998, Parker encountered her eighty-six year old victim, Alice Covington, in a Kroger parking lot in Raleigh.¹⁵⁴ Parker knew her victim, as she had previously served as a home-health care worker for Covington's friend and neighbor.¹⁵⁵

Between nine and ten o'clock on the morning of May 12th, three witnesses saw Ms. Covington struggling with a "heavysset" black woman in the Kroger parking lot.¹⁵⁶ The witnesses stated that Ms. Covington attempted to flee by hitting the "heavysset" woman over the head with her purse.¹⁵⁷ Later that afternoon, Ms. Covington was driven against her will to a bank teller window.¹⁵⁸ A "heavysset" black woman gave the teller a withdrawal slip in the amount of \$2,500 and provided Ms. Covington's driver's license.¹⁵⁹ When the teller looked into the car, she saw Ms. Covington in the passenger seat—she was not moving and appeared to be napping.¹⁶⁰

After withdrawing the \$2,500 from Ms. Covington's bank account, Parker drove Ms. Covington back to the same Kroger parking lot from which she had been abducted.¹⁶¹ Parker then moved the very-much-alive Ms. Covington to Parker's car and drove the two to Parker's trailer.¹⁶² Parker then drowned Ms. Covington in the bathtub, and proceeded to undress her body, wash her clothing, redress Ms. Covington, then leave Ms. Covington's body in Parker's vehi-

150. *Id.* at 823.

151. *Id.*

152. *Id.* at 806.

153. *State v. Parker*, 553 S.E.2d 885, 890 (N.C. 2001).

154. *Id.*

155. *Id.*

156. *Id.* Carlette Parker had previously been described as a "heavysset black woman." *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

cle.¹⁶³ Parker then left in another vehicle to attend a family party, after which she drove around for several hours.¹⁶⁴

The next morning, Parker returned to the same Kroger parking lot and transferred Ms. Covington's body to the front seat of Ms. Covington's vehicle.¹⁶⁵ After driving around in Ms. Covington's car for several hours with Ms. Covington's dead body in the front seat, Parker left Ms. Covington's body in her car on a dirt road.¹⁶⁶ Parker then caught a ride to a gas station and took a cab back home.¹⁶⁷ Ms. Covington's body was discovered by a passerby the following day.¹⁶⁸

An autopsy revealed that Ms. Covington had been hit by a stun gun and that her death resulted from drowning, not cardiac arrhythmia as Parker claimed during the investigation.¹⁶⁹ At trial, the jury learned that three years prior to Ms. Covington's death, Parker pled guilty to sixteen felony counts of obtaining property by false pretenses from an elderly woman for whom Parker provided care.¹⁷⁰ The jury also learned that, prior to Ms. Covington's murder, Parker obtained approximately \$4,500 from Ms. Covington in order to pay restitution for Parker's previous crime and had attempted to obtain another \$600 for the same purposes.¹⁷¹

The jury found Parker guilty of both premeditated/deliberate murder and murder under the felony murder rule.¹⁷² The jury then found a single statutory aggravating factor—the murder of Ms. Covington was committed for pecuniary gain.¹⁷³ As the North Carolina Supreme Court noted, after establishing a relationship with Ms. Covington through her role as a health care provider, Parker gained Ms. Covington's trust, then kidnapped and eventually killed the elderly woman to steal money from her.¹⁷⁴ In all, Parker took \$7,000 from Ms. Covington, \$4,500 of which she claimed was given to her by Ms. Covington for Parker's doll-making business.¹⁷⁵

During their deliberations, the jury found only one statutory mitigating factor—the murder was committed while Parker was under the influence of mental or emotional disturbance.¹⁷⁶ The jury additionally found two non-statutory mitigating factors present: (1) Parker's mother died when Parker was 5 years old, an event which adversely affected Parker's emotional development and (2)

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 891.

168. *Id.*

169. *Id.* at 892–93.

170. *Id.* at 893.

171. *Id.*

172. *Id.* at 895. To be convicted under the felony murder rule in North Carolina, “an accused must be purposely resolved to commit the underlying crime in order to be held accountable for unlawful killing’s during the crimes’ commission.” *State v. Jones*, 538 S.E. 2d 917, 924 (2000).

173. *State v. Parker*, 553 S.E.2d 885, 903 (N.C. 2001).

174. *Id.* at 904.

175. *Id.* at 891, 893.

176. *Id.* at 903–04.

Parker suffered from a mental defect and/or impairment.¹⁷⁷ These mitigating factors, however, were outweighed by the malice and premeditation present in Parker's crime, the pecuniary motive, and the fact that Parker kidnapped and drowned a "defenseless, elderly woman."¹⁷⁸ Parker's sentence of death was thus upheld by the North Carolina Supreme Court.¹⁷⁹

4. Christina Walters

In October of 2001, a Cumberland County jury sentenced Christina Walters to death for the murder of two strangers.¹⁸⁰ At trial, evidence was presented to show that Walters and eight other "Crips" gang members met up on August 16, 1998.¹⁸¹ After determining that they needed money, the gang members decided to steal a car and drive it into a pawn shop window in order to steal the items from the pawn shop.¹⁸² After purchasing bullets from the local Wal-Mart, Walters instructed the other gang members to find and rob a victim, steal the victim's car, put the victim in the trunk, and then return to Walters' trailer.¹⁸³ After providing these instructions, Walters left for her trailer.¹⁸⁴ The gang members then spotted Debra Cheeseborough leaving a fast food restaurant at approximately 12:30 a.m. the next morning. After abducting Cheeseborough at gunpoint, they put her in the trunk of her car and drove to Walters' trailer.¹⁸⁵

Once the gang returned to Walters' trailer, Walters and other gang members drove Cheeseborough and her car out to a Fort Bragg lake.¹⁸⁶ Walters ordered Cheeseborough to get down on one knee and attempted to shoot Cheeseborough, but the gun jammed.¹⁸⁷ After unjamming the gun, Walters shot Cheeseborough in the side, then fired an additional seven times.¹⁸⁸ Cheeseborough pretended to be dead and was discovered alive the next morning by a passerby.¹⁸⁹

After leaving Cheeseborough for dead, the gang members returned to Walters' trailer where they decided they needed a second car.¹⁹⁰ After driving around for a while, Walters again ordered the other gang members to steal another car; they targeted a car driven by Susan Moore, in which Tracy Lambert was a passenger.¹⁹¹ Walters handed another gang member a gun and left; the other gang members then forced Moore and Lambert into the trunk at gunpoint,

177. *Id.* at 904.

178. *Id.*

179. *Id.* at 905.

180. *State v. Walters*, 588 S.E.2d 344, 349-50 (N.C. 2003).

181. *Id.* at 349.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 350.

191. *Id.*

and drove to Walters' trailer.¹⁹² At some point, the driver stopped the car and the gang members opened the trunk to rob the women of their jewelry.¹⁹³

After arriving at Walters' trailer, the gang surrounded the car.¹⁹⁴ As the women begged for mercy, the entire gang drove to another location and forced the women out of the trunk; the women were then executed by other gang members.¹⁹⁵ Walters was found guilty of the following: two counts each of first-degree murder, first-degree kidnapping, and robbery with a dangerous weapon; one count of conspiracy to commit first-degree murder, conspiracy to commit first-degree kidnapping and conspiracy to commit robbery with a dangerous weapon. In a second indictment, Walters was additionally charged with and found guilty of attempted first-degree murder, conspiracy to commit first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, first-degree kidnapping, and robbery with a dangerous weapon.¹⁹⁶

During sentencing, the jury found four aggravating factors in support of Walters' sentence of death: (1) the murders were committed while Walters was engaged in a capital felony, (2) the murders were committed for pecuniary gain, (3) the murders were especially heinous, atrocious or cruel, and (4) the murders were part of a course of conduct which included the commission of other crimes of violence against other persons.¹⁹⁷

On mandatory appeal, the Supreme Court found ample evidence to support the jury's finding of the four aggravating factors.¹⁹⁸ First, the Court found that Walters was convicted on two counts of first-degree murder under both the felony murder rule for kidnapping and robbery with a firearm and murder with premeditation and deliberation.¹⁹⁹ Second, the murder of the two victims was committed for pecuniary gain—not only did the gang members rob the women of their jewelry, but their ultimate goal was to use the stolen automobile to rob a pawn shop.²⁰⁰ Third, the Court found that the murders were especially heinous and cruel²⁰¹ given the following sequence of events: the two women were forced into the trunk at gunpoint; they attempted in vain to escape; they were driven around for an hour while begging for help and asking not to be hurt; they had their jewelry stolen; and they were forced to plead for their lives before they were shot to death.²⁰² Additionally, as another gang member held a knife to her throat, Moore was forced to watch as Lambert was shot in the head.²⁰³ Finally, Walters' murder of the two women was part of a "course of conduct in which [Walters] engaged and which included the commission by [Walters] of other

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 349.

197. *Id.* at 370.

198. *See id.*

199. *Id.* at 370–71.

200. *See id.* at 370, 349–50.

201. *Id.* at 362.

202. *Id.* at 362–63.

203. *Id.* at 363.

crimes of violence against other persons.”²⁰⁴ Prior to the two women’s murder, Walters had previously instructed members of her gang to steal Ms. Cheeseborough’s car and had personally shot Ms. Cheeseborough eight times, leaving her for dead.²⁰⁵ After finding that Walters’ death sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor,²⁰⁶ the Supreme Court found no error in Walters’ death sentence.²⁰⁷

C. Common Factors

Taken together, the four women were sentenced to death on the basis of the following aggravating factors: (1) murder during the commission of a capital felony, (2) murder for pecuniary gain, (3) murder that was especially heinous, atrocious or cruel and (4) murder during the commission of other crimes of violence against others.²⁰⁸ The single aggravating factor present in all four cases was that the murders were committed for pecuniary gain.²⁰⁹

The next section of this note will summarize the cases of the thirty-two men sentenced to death after 1990²¹⁰ who are either currently on North Carolina’s death row or have been executed by the State of North Carolina. These men have been selected for two reasons: (1) they were convicted by juries from the same counties as the four women and (2) each man was sentenced to death under at least one of the common aggravating factors involved in the women’s sentences.

D. The Men of North Carolina’s Death Row

As noted above, since 1990 the counties that sentenced the four women to death have sent thirty-two men to North Carolina’s death row based on a finding of at least one aggravating factor shared with one of the four women listed above.²¹¹ These men either currently await death on North Carolina’s death row or have been executed by the state.

Of these thirty-two men, the jury found commission of murder during the course of a felony as an aggravating factor in twenty-two cases. In nineteen cases, the jury handed down the death penalty in part because the murder was especially heinous, atrocious, or cruel. Four men were sentenced in part for commission of a murder for pecuniary gain, and thirteen men were found to have committed their murders during the course of a crime spree. In terms of mitigating circumstances, the jury found that eleven of the men were mentally or emotionally disturbed at the time of their crimes, and ten men lacked the ca-

204. *Id.* at 370.

205. *Id.* at 349–50.

206. *Id.* at 370.

207. *Id.* at 371.

208. *See* Walters, 588 S.E.2d at 370; Parker, 553 S.E.2d at 903; Moore, 440 S.E.2d at 824; Jennings, 430 S.E.2d at 206.

209. *Id.*

210. Jennings and Moore were sentenced to death in November 1990, therefore the men chosen for this analysis were sentenced after this date.

²¹¹ This number is current as of March 2004.

capacity to appreciate the criminality of their conduct at the time of their crimes. The age of three of the men was found to be mitigating factors in their cases, and a lack of a significant history of prior criminal acts was found in the cases of three others. Another three men were found to have other mitigating circumstances.²¹²

The crimes of six of the men on death row are described below. These men's stories are discussed to give the reader a sense of the aggravating and mitigating factors that have been applied by juries to the capital sentencing of males. Despite this small sampling, it must be noted that the analysis in the following section is performed using the circumstances of *all* thirty-two men who meet the enumerated criteria.

Elmer McNeill, Jr. was sentenced to death by a Wake County jury in April 1996 for the first-degree murders of Robert Truelove and John David Ray.²¹³ Police found the bodies of both men and approximately \$2,300 missing from the grocery store where the two worked.²¹⁴ The police found a palm print belonging to McNeill on the rear door of the grocery store, and the defendant's brother, an employee of the grocery store, later admitted that the defendant confessed to murdering both men.²¹⁵ The jury found three aggravating circumstances, two of which were that the murder was committed for pecuniary gain and that the murder was part of the defendant's course of conduct which included commission of crimes of violence against another person or persons.²¹⁶

Russell Tucker was sentenced to death by a Forsyth County jury in February of 1996 for the murder of Maurice Williams.²¹⁷ After walking out of a K-Mart wearing stolen merchandise, Tucker was stopped by Mr. Williams, a security guard, and two other K-Mart employees.²¹⁸ Tucker pulled out a gun, fired, missed, fired again, and killed Mr. Williams.²¹⁹ The jury found a total of four aggravating circumstances including: (1) Tucker committed the robbery for pecuniary gain and (2) Mr. Williams' murder was part of a course of the defendant's conduct which included the commission of crimes against others.²²⁰

Leroy Mann was sentenced to death by a Wake County jury in July 1997 for the death of Janet Houser.²²¹ Ms. Houser was a co-worker of Mann's; the day before her death, she notified him that he had been laid off from his job at Advanced Plastics, Inc. and need not report to work the following day.²²² The following day, Mann asked Ms. Houser to lunch to discuss his unemployment

212. Please see Appendix for a listing of all 32 men and the aggravating factors under which they were convicted.

213. *State v. McNeill*, 509 S.E.2d 415, 418 (N.C. 1998).

214. *Id.*

215. *Id.* at 419.

216. *Id.* at 427. The jury found that the murders were committed by McNeill to eliminate witnesses to the robbery and avoid arrest. The North Carolina Supreme Court found that this aggravating circumstance alone was enough to uphold the death sentence. *Id.* at 427-428.

217. *State v. Tucker*, 490 S.E.2d 559, 560 (N.C. 1997).

218. *Id.* at 561.

219. *Id.*

220. *Id.* at 564-65.

221. *State v. Mann*, 560 S.E.2d 776, 779 (N.C. 2002).

222. *Id.* at 780.

benefits, and the two agreed to meet across the street from Mann's apartment complex.²²³ Ms. Houser's husband reported her missing later that day when she failed to return home.²²⁴ Ms. Houser's body was found two days after her lunch appointment with a gunshot wound to the chest and several bruises and lacerations.²²⁵ Investigation of Mann's apartment showed blood spatter covered by new paint and Mann's car was found to contain a 9mm pistol and cleaning items.²²⁶ The jury convicted Mann of first-degree murder under the felony murder rule and found three aggravating circumstances: (1) the murder was committed during the commission of a robbery, (2) the murder was committed for pecuniary gain, and (3) the murder was especially heinous, atrocious, or cruel.²²⁷ No statutory mitigating factors were found.²²⁸

Timothy White was sentenced by a Forsyth County jury to death in August 2000 for the murder of his elderly great-aunt.²²⁹ White had taken four guns from his father's gun cabinet to play with when he put a .22-caliber handgun in his back pocket and walked next door.²³⁰ When his aunt opened the door, White shot her in the chest.²³¹ He stomped on her head "until he thought she was dead,"²³² then took \$100 from her wallet and drove to West Virginia in her Cadillac.²³³ The jury found three aggravating circumstances present, including that the murder was committed during the commission of robbery with a firearm and that the murder was committed for pecuniary gain.²³⁴ Though the jury found three statutory mitigating factors present—(1) the murder was committed while the defendant was under the influence of mental or emotional disturbance, (2) the defendant's capacity to appreciate the criminality of his conduct was impaired, and (3) the defendant was a young age at the time of the murder—the mitigating factors were found insufficient to outweigh the aggravating factors.²³⁵

V. ANALYSIS

Due to the small sample size of women on death row in North Carolina, it may appear difficult to draw definitive conclusions about the gender differences in capital sentencing. However, the fact that there are only a small number of women available for analysis lies at the very heart of this issue. The theoretical

223. *Id.*

224. *Id.*

225. *Id.* at 780–81.

226. *Id.* at 781. It was later determined that the pistol found in Mrs. Mann's car was the one that killed Ms. Hauser and Ms. Hauser's prints were found inside the trunk of Mrs. Mann's car. *Id.*

227. *Id.* at 790.

228. *Id.*

229. *State v. White*, 565 S.E.2d 55, 58 (N.C. 2002).

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* at 68.

235. *Id.* at 68–69; *see id.* at 58.

explanations presented in the first section of this note remain applicable in explaining the gender discrepancies for death sentences in North Carolina.

A. Gender-Biased Aggravating Factors?

Prior to analyzing whether the aggravating factors considered by North Carolina juries in death-eligible cases are gender-biased, it should be noted that none of the variables in the following analysis have been controlled. The four women whose cases have been analyzed above were chosen simply because they currently await their death.²³⁶ The men's cases were chosen for the following reasons: (1) they have been sentenced to death by a North Carolina jury after November 5, 1990—the date of Patricia Jennings' death sentence, (2) each man was convicted of murder and sentenced to death after a finding of one or more of the same aggravating factors found in each of the women's sentences, and (3) the men were sentenced in the same counties as the women.

1. Murder for Economic Gain

Consistent with Rapaport's conclusion that women who murder for economic gain are more likely to be sentenced to death than women who murder for other reasons,²³⁷ every woman currently on death row in North Carolina committed murder, at least in part, for the purposes of financial gain.²³⁸ Evidence was presented that Jennings managed to acquire nearly \$170,000 from her elderly husband before murdering him.²³⁹ Moore stood to gain nearly \$45,000 as a beneficiary of her boyfriend's insurance and one-third of his estate; she had additionally received \$10,000 from her boyfriend prior to poisoning him.²⁴⁰ It is unknown how much Walters gained as a result of the murder of her two victims; the amount did, however, include a car and the victims' jewelry.²⁴¹ Parker was found to have taken nearly \$7000 from her elderly victim both before and during the kidnapping.²⁴²

Of the four women, only Parker's sentence was based on the sole aggravating factor of murder for pecuniary gain.²⁴³ Jennings, Moore, and Walters were each additionally found to have committed murders that were "especially heinous, atrocious, and cruel."²⁴⁴ Jennings and Walters were also found to have

236. The four women were sentenced to death on the basis of the following four aggravating factors: (i) murder committed during a capital felony; (ii) murder committed for pecuniary or financial gain; (iii) murder that was especially heinous, atrocious, or cruel; and (iv) murder committed during the commission of violent crimes against another person. The single factor common to all four sentences was murder committed for financial gain. See Walters, 588 S.E.2d 344; Parker, 553 S.E.2d 885; Moore, 440 S.E.2d 797; Jennings, 430 S.E.2d 188.

237. *Gender Gap Argument*, *supra* note 40, at 226.

238. See Walters, 588 S.E.2d 344; Parker, 553 S.E.2d 885; Moore, 440 S.E.2d 797; Jennings, 430 S.E.2d 188.

239. Jennings, 430 S.E.2d at 210–11.

240. Moore, 440 S.E.2d at 822.

241. Walters, 588 S.E.2d at 349–50.

242. Parker, 553 S.E.2d at 891, 893.

243. See Walters, 588 S.E.2d at 370; Parker, 553 S.E.2d at 903; Moore, 440 S.E.2d at 824; Jennings, 430 S.E.2d at 206.

244. Walters, 588 S.E.2d at 370; Moore, 440 S.E.2d at 824; Jennings, 430 S.E.2d at 206.

committed murder during the commission of a felony.²⁴⁵ Finally, Walters was convicted on a fourth aggravating factor—murder that occurred during the commission of other crimes of violence.²⁴⁶

Given the aggravating factors noted above, it appears that the aggravating factors were *not* applied in a discriminatory fashion against the women on death row. First, regarding the pecuniary gain factor, in Jennings's, Moore's, and Walter's cases, each woman stood to gain a significant financial amount for her act(s) of murder²⁴⁷ and attempted to achieve that gain by committing a murder that was so heinous and cruel that their victims were forced to suffer either prolonged physical or psychological agony.²⁴⁸ It would thus appear that these women were sentenced based on both the magnitude of their anticipated financial gain and the methods they employed.

Superficially, it would appear that the pecuniary gain factor has rarely been applied to men. Of the thirty-two men listed above, only four, or thirteen percent, were sentenced to death upon a finding, in part, that they committed murder for financial gain.²⁴⁹ However, upon closer analysis and comparison to the three women who were sentenced at least in part for murder for pecuniary gain, one could plausibly argue that the men listed above were convicted on the basis of much lesser pecuniary gain than their female counterparts. Timothy White was sentenced to death for shooting his great-aunt in the chest, stomping on her body until he thought she was dead, then taking \$100 and her Cadillac as he escaped.²⁵⁰ Leroy Mann murdered his co-worker after she notified him that he had been fired, forcing her to help him withdraw approximately \$300 from her bank account prior to her death.²⁵¹ Russell Tucker murdered a K-Mart security guard after he was stopped for wearing stolen merchandise out of the store.²⁵² Elmer McNeill, Jr. murdered two grocery store employees after stealing \$2300 from the store safe.²⁵³ Thus, when comparing the amount each man stood to gain from their crimes and the methods employed to further that gain, the men's spoils paled in comparison to that of the women.²⁵⁴ Of the three women found to have committed both murder for pecuniary gain and at least one other statutory aggravating factor, each stood to gain at least ten times Tucker's or Mann's projected spoils.²⁵⁵

Further, unlike Carlette Parker, none of the men were sentenced to death

245. Walters, 588 S.E.2d at 370; Jennings, 430 S.E.2d at 206.

246. Walters, 588 S.E.2d at 370.

247. See *supra* notes 121, 148, and 197.

248. See Walters, 588 S.E.2d at 362–63; Moore, 440 S.E. 2d at 823; Jennings, 430 S.E.2d at 213, 206.

249. See White, 565 S.E.2d 55; Mann, 560 S.E.2d 776; McNeill, 509 S.E.2d 415; Tucker, 490 S.E.2d 559.

250. See White, 565 S.E.2d 55 at 68.

251. See Mann, 560 S.E.2d 776 at 790.

252. See Tucker, 490 S.E.2d 559 at 564.

253. See McNeill, 509 S.E.2d 415 at 427.

254. See Walters, 588 S.E.2d at 349–50; Parker, 553 S.E.2d at 891, 893; Moore, 440 S.E.2d at 822; Jennings, 430, S.E.2d at 210–11.

255. See Mann, 560 S.E.2d at 779–80; Tucker, 490 S.E.2d at 561. This is assuming that the amount Tucker was able to walk out of the K-Mart wearing could not have been more than the \$300 Mann stole from his co-worker.

based on the sole aggravating factor of murder for pecuniary gain.²⁵⁶ Mann was found to have committed a murder that was “especially heinous, atrocious or cruel” during the course of a felony.²⁵⁷ Of the other three, McNeill’s and Tucker’s financial gain occurred during the course of a crime spree,²⁵⁸ and White’s gain occurred during robbery with a firearm.²⁵⁹

As noted above, only Carlette Parker was sentenced to death based solely on the finding of murder for pecuniary gain as the aggravating circumstance.²⁶⁰ Her situation has been excluded from the above analysis because she appears to have been sentenced based solely under the “evil woman” theory.²⁶¹ Parker is a woman who completely violated her role as a home health care provider for the elderly when she took advantage of that position and approached Ms. Covington, the elderly friend of Parker’s former charge. Not only did Parker force Ms. Covington to withdraw \$2500 from her bank account, but she had taken an additional \$4500 from the victim earlier in order to pay restitution to another elderly victim.²⁶² Further, after Parker murdered Ms. Covington, she showed complete disregard for Ms. Covington’s body.²⁶³ The jury’s decision to give Parker the death penalty was likely influenced by how egregiously she violated society’s gender-based expectation, given that Parker’s death sentence is based on a single aggravating factor. Even the North Carolina Supreme Court, at Parker’s appeal, noted that Parker had taken advantage of her role as a home-health care provider to extract money from Ms. Covington.²⁶⁴

Parker’s situation aside, after taking into consideration the comparison of situations in which men and women were convicted under pecuniary gain, it appears that men who commit other crimes for which they stand to gain economically are sentenced to death for a much smaller economic gain than women. Given the prominence that the chivalry and “evil woman” theories play in the sentencing of females to death, the most likely conclusion from the above cases is that, if a woman and commits murder in part for economic gain, she must stand to gain quite a lot to have this factored into her death sentence; if a man is convicted in part for a murder involving economic gain, the slightest amount will put the proverbial “nail in the coffin.”²⁶⁵ This, however, is not the only conclusion that may be drawn, just the most obvious given the prevailing theories.

256. See White, 565 S.E.2d at 68; Mann, 560 S.E.2d at 790; McNeill, 509 S.E.2d at 427; Tucker, 490 S.E.2d at 564.

257. Mann, 560 S.E.2d at 790.

258. Tucker, 490 S.E.2d at 564; McNeill, 509 S.E.2d at 427.

259. White, 565 S.E.2d at 68.

260. Parker, 553 S.E.2d at 895.

261. *Questions about Gender*, *supra* note 22, at 513.

262. Parker, 553 S.E.2d at 890, 893.

263. *Id.* at 890–91.

264. *Id.* at 904.

265. It must be noted that other conclusions may be drawn from these results. A better comparison might lie in determining how many women were convicted of taking amounts comparable to the amounts of the men studied above to determine how their sentences were affected. Since women who took comparable amounts to that of the men are NOT to be found on death row, the conclusions drawn here seemed the most obvious.

2. Murder Committed During a Felony

It would appear that the aggravating factor of murder committed during the course of a felony was not used disproportionately in the women's sentencing decisions. As noted above, two out of the four women were sentenced to death in part for committing murder during the course of a felony.²⁶⁶ Of the men, seventeen, or fifty-five percent, were sentenced to death based on a finding of murder committed during a felony and at least one other aggravating factor.²⁶⁷ In other words, roughly the same percentage of women and men on death row were sentenced to death in part for murder during the commission of a felony.

However, when analyzing the use of murder during the course of a felony as an aggravating factor in men's sentencing, it might appear, using the men's population as a point of comparison, that juries have applied this factor unequally in favor of women. Of the thirty-two men, five were sentenced to death based solely on murder committed during a felony.²⁶⁸ One would expect a comparable percentage, approximately sixteen percent, of women who commit "manly" crimes to have been sentenced to death on this factor alone. However, no women in the North Carolina population studied were sentenced to death based on murder committed during a felony alone.²⁶⁹

The application of the chivalry theory might explain such disproportionality—society sentences women to death based on the same aggravating factors under which men are sentenced. Thus, when society contemplates sentencing a woman to death for murder committed during a felony, it must do so under a scheme designed with men in mind. As a result, society must compare a woman in the same situation to that of a man. But, as has been revealed by the chivalry theory, society has an inherent desire to protect women and therefore requires much more to sentence women to death. Thus, women who commit a crime which would normally subject a significant proportion of their male counterparts to death are, at least in the case of North Carolina, highly unlikely to be sentenced to death.²⁷⁰ Given the proffered data, it would appear that society has determined that women convicted solely on the basis of murder during a felony are more amenable to rehabilitation than men in the same situation.

Under this particular aggravating factor, the merging of the chivalry and "evil woman" theories is evidenced by the fact that, in the felony murder cases

266. Walters, 588 S.E.2d at 370; Jennings, 430 S.E.2d at 206.

267. See *State v. Williams*, 565 S.E.2d 609, 659–60 (N.C. 2002); *White*, 565 S.E.2d at 68; *Mann*, 560 S.E.2d at 790; *State v. Fair*, 557 S.E.2d 500, 527 (N.C. 2001); *State v. Meyer*, 540 S.E.2d 1, 16 (N.C. 2000); *State v. Golphin*, 533 S.E.2d 168, 246 (N.C. 2000); *State v. McNeil*, 518 S.E.2d 486, 511 (N.C. 1999); *State v. Morganherring*, 517 S.E.2d 622, 644 (N.C. 1999); *State v. Moses*, 517 S.E.2d 853, 873 (N.C. 1999); *State v. Frogge*, 528 S.E.2d 893, 900 (N.C. 1999); *McNeill*, 509 S.E.2d at 427; *State v. Woods*, 480 S.E.2d 647, 658 (N.C. 1997); *State v. Wilkinson*, 474 S.E.2d 375, 398; *State v. Leary*, 472 S.E.2d 753, 760 (N.C. 1996); *State v. Robinson*, 463 S.E.2d 218, 225 (N.C. 1995); *State v. Moseley*, 445 S.E.2d 906, 915 (N.C. 1994); and *State v. Sexton*, 444 S.E.2d 879, 906 (N.C. 1994).

268. See *State v. Robinson*, 561 S.E.2d 245, 260 (N.C. 2001); *State v. Cagle*, 488 S.E.2d 535, 545 (N.C. 1997); *State v. E. McNeill*, 485 S.E.2d 284, 289 (N.C. 1997); *State v. Larry*, 481 S.E.2d 907, 920 (N.C. 1997); *State v. Thomas*, 477 S.E.2d 450, 460 (N.C. 1996).

269. See *supra* notes 121, 148, 173, and 197.

270. See *supra* C1 and C2.

analyzed above, only Jennings was found to have a mitigating circumstance affecting her sentence, that of no prior record.²⁷¹ Yet, of the seventeen men sentenced in part under the felony murder rule, the jury found mitigating factors in the case of twelve: six were found to have their capacity to appreciate criminality impaired,²⁷² three were under the age of twenty-one,²⁷³ three were emotionally disturbed at the time of the murder,²⁷⁴ one had no prior record,²⁷⁵ and two were found to have other mitigating circumstances.²⁷⁶ Of these twelve, nine were found to have factors which affected their mental state at the time of the crime.²⁷⁷ Given this data, it would appear that the chivalry and “evil woman” theories played a large role in Jennings’ and Walters’ sentences: they committed crimes for which society was unable to find factors that would mitigate their crimes and bring them back under society’s protection. As for the nine men whose mental states were in question at the time of their crimes, the jury disregarded that factor and continued to uphold the theory that men who kill must be sentenced to death, regardless of mitigating circumstances.²⁷⁸

3. Murder that is Heinous, Atrocious or Cruel

Findings that a capitol felony was especially heinous, atrocious, or cruel appear to have been applied in a gender-neutral fashion. As noted above, three of the four women were found to have committed murder that was “especially heinous, atrocious or cruel.”²⁷⁹ Of the men, seventeen of the thirty-one were found to have committed an “especially heinous, atrocious or cruel” murder.²⁸⁰ Only four, though, were sentenced to death based solely on this factor.²⁸¹ Putting aside the offender’s gender in each case, each murder that the jury found to be “especially heinous, atrocious, or cruel” thoroughly and completely shocks the conscious. It must be noted, however, that the author does not know how many women committed murders that were “especially heinous, atrocious or cruel,” yet escaped the death penalty based on mitigating factors.

271. Jennings, 430 S.E.2d at 206.

272. Williams, 565 S.E.2d at 660; White, 565 S.E.2d at 68–69; Morganherring, 517 S.E.2d at 644; Larry, 481 S.E.2d at 913; Woods, 480 S.E.2d, at 658–59; Thomas, 477 S.E.2d at 458.

273. White, 565 S.E.2d at 68–69; Golphin, 533 S.E.2d at 246.

274. White, 565 S.E.2d at 68–69; Robinson, 463 S.E.2d at 227; L. McNeil, 518 S.E.2d at 511.

275. Meyer, 540 S.E.2d at 17.

276. Fair, 557 S.E.2d at 526–27; L. McNeil, 518 S.E.2d at 511.

277. Williams, 565 S.E.2d at 660; White, 565 S.E.2d at 68–69; Robinson, 463 S.E.2d at 227; Golphin, 533 S.E.2d at 246; L. McNeil, 518 S.E.2d at 511; Morganherring, 517 S.E.2d at 644; Larry, 481 S.E.2d at 913; Woods, 480 S.E.2d, at 658–59; and Thomas, 477 S.E.2d at 458.

278. See *infra* Part B(1).

279. *Supra* notes 121, 148, 197.

280. See *State v. Carroll*, 573 S.E.2d 899, 916 (N.C. 2002); Williams, 565 S.E.2d at 659–60; Mann, 560 S.E.2d at 790; Fair, 557 S.E.2d at 527; *State v. Hooks*, 548 S.E.2d 501, 506 (N.C. 2001); Robinson, 463 S.E.2d at 225; *State v. Holman*, 540 S.E.2d 18, 23 (N.C. 2000); Meyer, 540 S.E.2d at 16; Golphin, 533 S.E.2d at 246; *State v. Thibodeaux*, 532 S.E.2d 797, 807 (N.C. 2000); McNeil, 518 S.E.2d at 511; Frogge, 528 S.E.2d at 900; *State v. Flippen*, 506 S.E.2d 702, 705 (N.C. 1998); Woods, 480 S.E.2d at 658; Wilkinson, 474 S.E.2d at 398; Moseley, 445 S.E.2d at 915; and Sexton, 444 S.E.2d at 906 .

281. Hooks, 548 S.E.2d at 506; Holman, 540 S.E.2d at 23; Thibodeaux, 532 S.E.2d at 807; and Flippen, 506 S.E.2d at 705.

4. Murder Committed During Crime Spree

According to the statistics of the given time period, in North Carolina only one woman, Walters, was sentenced, in part based on a finding of murder committed during the commission of a crime spree,²⁸² while one man was sentenced to death based solely on a crime spree²⁸³ and twelve other men were sentenced to death based in part on murder committed during a crime spree.²⁸⁴ Given these facts, one might surmise that juries are highly unlikely to sentence women to death for murder committed during crime sprees alone, unless they violate societal stereotypes.

It is also interesting to note the impact mitigating factors under this factor for both men and women. Though it is unknown how many women committed murders as part of a crime spree yet escaped death as a result of a finding of mitigating factors, of the thirteen men sentenced under as a result of their crime sprees, seven were found to have mitigating factors present.²⁸⁵ Moreover, of those seven men, four were determined to have been suffering from some combination of having been under the influence of mental or emotional disturbance and of an inability to appreciate the criminality of their conduct.²⁸⁶ What explains this discrepancy? Though we only have one woman from which to draw a conclusion, the answer most likely lies in the application of the chivalry theory when women are convicted of murders during crime sprees. If the jury is able to find at least one mitigating factor that can spare that woman death, they will do so. The same cannot be said for men who committed crime sprees. Substantial mitigating factors were present in a number of the analyzed cases, yet each man was sentenced to death.²⁸⁷

5. Mitigating Factors

When determining three out of the four women's sentences, juries did not find that there were any statutory mitigating factors related to their mental states.²⁸⁸ In the case of fourteen men who were sentenced to death in North Carolina since 1990, juries did examine statutory mitigating factors related to the mental state of the perpetrator at the time of the murder,²⁸⁹ but decided these fac-

282. Walters, 588 S.E.2d at 370.

283. State v. Nicholson, 558 S.E.2d 109, 153-54 (N.C. 2002).

284. Williams, 565 S.E.2d at 659-60; State v. Mitchell, 543 S.E.2d 830, 843 (N.C. 2001); Meyer, 540 S.E.2d at 16; Golphin, 533 S.E.2d at 246; Morganherring, 517 S.E.2d at 644; Moses, 517 S.E.2d at 873; Frogge, 528 S.E.2d at 900; McNeill, 509 S.E.2d at 427; Tucker, 490 S.E.2d at 564; State v. Page, 488 S.E.2d 225, 299 (N.C. 1997); Wilkinson, 474 S.E.2d at 398; and Leary, 472 S.E.2d at 760.

285. Nicholson, 558 S.E.2d at 153-54; Mitchell, 543 S.E.2d at 843; Meyer, 540 S.E.2d at 16; Morganherring, 517 S.E.2d at 644; and Page, 488 S.E.2d at 299.

286. Nicholson, 558 S.E.2d at 153; Mitchell, 543 S.E.2d at 843; Morganherring, 517 S.E.2d at 644; Page, 488 S.E.2d at 299.

287. *Id.*

288. See Walters, 588 S.E.2d at 344; Parker, 553 S.E.2d at 903-04; and Moore, 440 S.E.2d at 825. It should be noted that the jury in Jennings' case found as a statutory mitigating factor that she had no significant history of prior criminal conduct. Jennings, 430 S.E.2d at 206.

289. See Carroll, 573 S.E.2d at 916; White, 565 S.E.2d at 68-69; Williams, 565 S.E.2d at 660; Nicholson, 558 S.E.2d at 153-54; Fair, 557 S.E.2d at 526-27; Hooks, 548 S.E.2d at 511-12; Mitchell, 543 S.E.2d at 843; Robinson, 561 S.E.2d at 260; Holman, 540 S.E.2d at 26; Golphin, 533 S.E.2d at 246; McNeil, 518

tors were insufficient to outweigh the aggravating factors present.²⁹⁰ Of all those men and women analyzed above, only Jennings, Flippen, and Meyer were found to have no significant history of prior criminal conduct.²⁹¹ Each however was found to have committed an “especially heinous, atrocious, or cruel” murder.²⁹² It would thus appear that neither of the two men was treated any differently than Jennings.

6. Conclusions Regarding Application of Aggravating Factors

Based on the above analysis, it is clear that the aggravating factors enumerated by the state disproportionately sentence men to death while their female counterparts receive a lesser sentence. One would expect at least some disproportionality given that the aggravating factors considered by are based on what society believes aggravates murder committed by men.²⁹³ However, when this inherent bias in the system is taken together with society's disinclination to sentence women to die, fewer and fewer women are sentenced under this scheme while more and more men await their deaths.

The cases analyzed above illustrate this disturbing reality. When a murder is committed in part for pecuniary gain, it appears that it takes a much less significant pecuniary gain to sentence a man under this factor than to sentence a woman.²⁹⁴ Additionally, the proportion of both men and women sentenced in part under a finding of murder committed during a felony is roughly equal. However, a significant number of men were sentenced to death despite having obvious mitigating factors related to their mental and emotional states at the time of their crimes,²⁹⁵ whereas Parker was the only woman to be sentenced to death despite a mitigating factor related to her mental state at the time of the murder.²⁹⁶ Further, of the crime sprees committed by men, a majority were found to have some mitigating factor present that affected their crimes, yet were still sentenced to death.²⁹⁷ Only one woman was convicted in part due to her participation in a crime spree and the jury was unable to find any redeeming qualities in order to “save her” from the death penalty.²⁹⁸ In short, when a man commits a murder, it appears to take relatively little for a jury to sentence him to death. When a woman commits murder, she must violate, and violate egregiously,

S.E.2d at 511; Morganherring, 517 S.E.2d at 643–44; Page, 488 S.E.2d at 229; Larry, 481 S.E.2d at 913; Woods, 480 S.E.2d at 659; Thomas, 477 S.E.2d at 458.

290. N.C. GEN. STAT. §15A-2000(a)(1)(2004).

291. Meyer, 540 S.E.2d at 17; Flippen, 506 S.E.2d at 705; and Jennings, 430 S.E.2d at 206.

292. *Id.*

293. See *infra* Part B(1); see also *Domestic Discount*, *supra* note 63, at 1515–17.

294. *Supra* notes 250–254.

295. See Carroll, 573 S.E.2d at 916; White, 565 S.E.2d at 58, 68–69; Williams, 565 S.E.2d at 660; Nicholson, 558 S.E.2d at 153; Fair, 557 S.E.2d at 527; Hooks, 548 S.E.2d at 511–12; Mitchell, 543 S.E.2d at 843; Robinson, 561 S.E.2d at 260; Holman, 540 S.E.2d at 26; Golphin, 533 S.E.2d at 246; McNeil, 518 S.E.2d at 491; Morganherring, 517 S.E.2d at 643–44; Page, 488 S.E.2d at 229; Larry, 481 S.E.2d at 913; Woods, 480 S.E.2d at 659; and Thomas, 477 S.E.2d at 460.

296. Walters, 588 S.E.2d at 370; Parker, 553 S.E.2d at 903–04; Moore, 440 S.E.2d at 806, 822; and Jennings, 430 S.E.2d at 206.

297. Nicholson, 558 S.E.2d at 153–54; Mitchell, 543 S.E.2d at 843; Meyer, 540 S.E.2d at 16; Morganherring, 517 S.E.2d at 644; and Page, 488 S.E.2d at 299.

298. Walters, 588 S.E.2d at 370.

giously, society's gender stereotypes in order to be put to death; otherwise, society's chivalrous nature will find a way to spare her from the ultimate penalty.

B. A Better Explanation

If the aggravating and mitigating factors present in North Carolina's statutory scheme tend to favor *preventing* the imposition of death for female murderers,²⁹⁹ what explains the presence of these four women on death row? After reviewing the mandatory appeals of the four women³⁰⁰ and thirty-two men,³⁰¹ these women's presence on death row can most easily be explained by the gender theories noted above.³⁰² In fact, these four women's sentences are entirely consistent with Rapaport's conclusions regarding the sentencing of women on death row³⁰³ and the "evil woman" theory.³⁰⁴

As a result of her research, Rapaport concluded that there are three types of murder heinous enough to require a jury or other sentencing authority to sentence a woman to death; they are "murder for gain or advantage," "murder in the course of resisting law enforcement," and murder involving exceptional cruelty or multiple victims.³⁰⁵ Rapaport's conclusion appears to explain why the four women on North Carolina's death row were sentenced to death. All four women were found guilty of having committed murder for pecuniary gain.³⁰⁶ Walters, in addition to committing murder for financial gain, also was involved in the murder of multiple victims.³⁰⁷ Moore was suspected of having murdered her first husband and her father and was convicted of the murder of her boyfriend, for which she was sentenced to death.³⁰⁸ Further, Jennings, Moore and Walters were all found to have committed "especially heinous, atrocious or cruel" murders.³⁰⁹

Professor Rapaport has additionally concluded that three of the most influential factors involved in sentencing a woman to death are the following: (1) her prior criminal records, (2) the seriousness of her offense, and (3) her degree of culpability.³¹⁰ Again, such a conclusion would explain the presence of all four women on death row. In three of the four cases, the defendant committed the murders by her own hand;³¹¹ Walters, on the other hand, ordered other members

299. See *infra* Part E.

300. See *infra* Part D.

301. See *infra* Part D.

302. See *infra* Parts A and B.

303. See *infra* Part C.

304. See *infra* Part B.

305. *The Gender Gap Argument*, *supra* note 41, at 226.

306. See Walters, 588 S.E.2d at 370; Parker, 553 S.E.2d at 891, 893; Moore, 440 S.E.2d at 822; and Jennings, 430 S.E.2d at 208. Each jury found present as an aggravating factor that the murder was committed for pecuniary gain, *N.C. Gen. Stat. §15A-2000(e)(6)*.

307. See Walters, 588 S.E.2d at 370.

308. Moore, 440 S.E.2d at 802.

309. Walters, 588 S.E.2d at 370; Moore, 440 S.E.2d at 824; and Jennings, 430 S.E.2d at 206.

310. *Death Penalty and Gender Discrimination*, *supra* note 69, at 372.

311. See Parker, 553 S.E.2d at 890; Moore, 440 S.E.2d at 804-805, 823; and Jennings, 430 S.E.2d at 193.

of her gang to shoot her two victims.³¹² Additionally, of the four women, only Jennings had no prior criminal record;³¹³ Moore was convicted under suspicion that she had poisoned her first husband, her second husband, and her father;³¹⁴ Parker had a prior conviction for forging checks;³¹⁵ and evidence was submitted at Walters' trial that she had previously stabbed a boyfriend with a box cutter.³¹⁶ And in terms of the seriousness of their offenses, three of the four women were sentenced after a finding of multiple aggravating factors.³¹⁷

Further, the murders committed by Jennings and Moore fit squarely within Rapaport's distinction of murder as an "economic crime with intimate victims."³¹⁸ Jennings murdered her elderly husband after he transferred \$150,000 to her and she subsequently consistently and almost completely depleted her husband's individual account by obtaining his power of attorney.³¹⁹ After obtaining her boyfriend's power of attorney and convincing him to include her in his will and designation as the beneficiary of his insurance policy, Moore slowly poisoned her boyfriend to death.³²⁰ The purpose of these two murders was pure financial gain and the targets were an unsuspecting and trusting husband and boyfriend.

Moreover, when Rapaport's categorizations and distinctions are coupled with the "evil woman" theory and the chivalrous inclinations of society, it is no surprise that a jury sentenced these women to death. In three of the four cases—Jennings, Moore, and Parker—the women who killed were sentenced to death not simply for the heinousness of their crimes, but because they rejected the stereotype of the "gentler sex."³²¹ Both Jennings and Parker were health care providers for the elderly who violated the implicit trust society places in health care providers and took advantage of elderly victims.³²² On appeal, even the members of the North Carolina Supreme Court fell victim to their chivalrous inclinations when they commented that Parker had taken advantage of her role as a home health care provider to extract money from Ms. Covington.³²³ Additionally, Jennings and Moore violated the trust held between spouses/intimates by murdering their partners in a cold, premeditated, and cruel manner.³²⁴ The murder committed by Walters was most definitely "unladylike"³²⁵—she ordered two men to murder their victims after she determined, twice, the victim from whom her gang should steal a car.³²⁶ Moreover, three of the four women,

312. See Walters, 588 S.E.2d at 349–50.

313. Jennings, 430 S.E.2d at 206.

314. Moore, 440 S.E.2d at 802.

315. Parker, 553, S.E.2d at 893.

316. Walters, 588 S.E.2d at 353.

317. Walters, 588 S.E.2d at 370; Moore, 440 S.E.2d at 824; and Jennings, 430 S.E.2d at 206;.

318. *Domestic Discount*, *supra* note 632, at 1519.

319. Jennings, 430 S.E.2d at 211.

320. Moore, 440 S.E.2d at 806, 803–806.

321. See Dreifus, *supra* note 521.

322. See Parker, 553 S.E.2d at 890; Jennings, 430 S.E.2d at 589–90.

323. Parker, 553 S.E.2d at 904.

324. See Moore, 440 S.E.2d at 803–05; Jennings, 430 S.E.2d at 590–91.

325. See *Unequal Before the Law*, *supra* note 398, at 459.

326. Walters, 588 S.E.2d at 349–50.

Jennings, Parker, and Moore had no co-defendants;³²⁷ there was thus no male co-defendant to whom the jury could attribute the woman's submission.³²⁸ And perhaps most importantly, each of the four women killed for relatively significant pecuniary gain.³²⁹

It is also important to note that, of the four women, only Parker was found to have been mentally or emotionally disturbed at the time she committed murder.³³⁰ However, given the gravity and heinousness of her crime, it was impossible for the jury to find such a factor outweighed the need to sentence her to death. And for the other three women, for whom no mitigating factors were found to have impaired their emotional state or their capacity to appreciate the criminality of their conduct, it must have been incredibly easy for their juries to sentence these women to death.³³¹ These women no longer deserved society's protection; society could find no redeeming factors that would allow these women to be drawn back into society's arms as women who needed to be protected or shielded. These women committed cold and violent crimes much like men and therefore deserved to be treated like men.

Again, the most likely conclusion that can be drawn from these women's presence on death row is that they "stepped outside the bounds of normative femininity"³³² and no longer conformed to society's gender stereotypes.³³³

VI. CONCLUSION

Analyzing the sentences of the four women and comparing their sentences to that of the surveyed shows that these women's presence on death row can be explained most easily under the auspices of gender theories. Given this conclusion, it appears that the Supreme Court's goal in *Furman* and its progeny to remove the selective and arbitrary application of the death penalty has failed. Though every state and the federal government now have a facially non-discriminatory sentencing scheme, this scheme remains decidedly balanced in favor of keeping women off death row, despite the heinousness of their crimes. Men, on the other hand, appear to suffer disproportionately at the hand of these schemes.³³⁴

What can be done to remedy this disproportionate application of the death penalty? Given society's overwhelming chivalrous inclinations and the fact that aggravating factors are based on how men are more likely kill, it would seem highly improbable that procedural change would result in a more balanced ap-

327. Parker, 553 S.E.2d at 890-92; Moore, 440 S.E.2d at 802-05; Jennings, 430 S.E.2d at 191-94. I have not counted Walters as acting alone because two others actually pulled the trigger for the murders. I am presuming that those men were also tried in criminal court for their roles.

328. See *Gendering the Death Penalty*, *supra* note 10, at 462-63; *Death Penalty for Females*, *supra* note 376, at 878.

329. See Walters, 588 S.E.2d at 370; Parker, 553 S.E.2d at 903; Moore, 440 S.E.2d at 824; and Jennings, 430 S.E.2d at 206.

330. Parker, 553 S.E.2d at 903-04.

331. See Walters, 588 S.E.2d at 370; Moore, 440 S.E.2d at 806; and Jennings, 430 S.E.2d at 206.

332. *Unequal Before the Law*, *supra* note 38, at 459.

333. *The Gender Gap Argument*, *supra* note 40 at 218.

334. See *infra* Parts C and D.

plication of the death penalty across gender lines, unless it involved amending statutory aggravating factors to include conduct such as the murder of intimates. The most obvious, and most difficult, remedy would be to change society's chivalrous attitude to reflect a more balanced view regarding those who commit murder. This, of course, will be extremely difficult to do, given the history and overwhelming prevalence of a "disinclination to sentence women to die."³³⁵

One solution might be to require jury instructions that the defendant's gender cannot play any role in their determination of aggravation or mitigation. Another solution might be to allow only judges to determine sentencing. Such a solution, however, still cannot insure that a judge's inherent disinclination to sentence women to death will not interfere. The most fair and gender-blind solution would be to have a separate jury, which is not told the defendant's gender, decide a defendant's fate—the second jury would receive testimony and facts of a particular case with all references to gender removed.

It is true that men commit a significantly greater number of death-eligible crimes. However, when women commit similar crimes, we should not withhold capital punishment simply because the murderer is a mother, sister, daughter, or wife. As Justice Marshall noted during the *Furman* debate, "[i]t is difficult to understand why women have received such favored treatment since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes."³³⁶ To avoid the pitfalls *Furman* and its progeny intended to rectify, the American judicial system *must* equalize the capital punishment system so that all, regardless of gender, are punished in the manner society and the legal system has deemed appropriate to impose on those who callously take the lives of others.

335. *Questions about Gender*, *supra* note 21, at 502.

336. *Furman v. Georgia*, 408 U.S. 238, 365 (1972).

APPENDIX

CURRENT DEATH ROW INMATES AND THE AGGRAVATING FACTORS UNDER WHICH THEY WERE CHARGED

Below is a listing of each offender currently on death row,³³⁷ along with the statutory aggravating and mitigating factors found in each case.³³⁸

- State v. Jennings*, 430 S.E.2d 188 (N.C. 1993)—murder during capital felony; heinous, atrocious, or cruel; pecuniary gain; no significant history of prior criminal acts.
- State v. Moore*, 440 S.E.2d 797, 802 (N.C. 1994)—heinous, atrocious, or cruel; pecuniary gain.
- State v. Parker*, 553 S.E.2d 885, 890 (N.C. 2001)—pecuniary gain, mentally/emotionally disturbed.
- State v. Walters*, 588 S.E.2d 344, 349-50 (N.C. 2003)—murder during capital felony; heinous, atrocious, or cruel, murder during crime spree.
- State v. Sexton*, 444 S.E.2d 879, 885 (N.C. 1994)—murder during capital felony; heinous, atrocious, or cruel.
- State v. Marcus Robinson*, 463 S.E.2d 218, 221 (N.C. 1995)—murder during capital felony; heinous, atrocious, or cruel.
- State v. Moseley*, 445 S.E.2d 906, 909 (N.C. 1994)—murder during capital felony; heinous, atrocious, or cruel.
- State v. Thomas*, 477 S.E.2d 450, 453 (N.C. 1996)—murder during capital felony; mentally/emotionally disturbed; capacity to appreciate impaired.
- State v. Larry*, 481 S.E.2d 907, 913 (N.C. 1997)—murder during capital felony; mentally/emotionally disturbed; capacity to appreciate impaired.
- State v. Woods*, 480 S.E.2d 647, 649 (N.C. 1997)—murder during capital felony; heinous, atrocious, or cruel; capacity to appreciate impaired.
- State v. John Davis McNeill*, 485 S.E.2d 284, 286 (N.C. 1997)—murder during capital felony.
- State v. Cagle*, 488 S.E.2d 535, 540 (N.C. 1997)—murder during capital felony.
- State v. Page*, 488 S.E.2d 225, 228 (N.C. 1997)—murder during crime spree; mentally/emotionally disturbed; capacity to appreciate impaired.
- State v. Morganherring*, 517 S.E.2d 622, 626 (N.C. 1999)—murder during capital felony; heinous, atrocious, or cruel; mentally/emotionally disturbed; capacity to appreciate impaired.
- State v. Elmer McNeill*, 509 S.E.2d 415, 418 (N.C. 1998)—pecuniary gain; murder during crime spree.

³³⁷ The listing of offenders on North Carolina's death row is current as of March 2004.

³³⁸ Please see Part IV (A) and note 102 for North Carolina's aggravating and mitigating factors.

- State v. Flippen*, 506 S.E.2d 702, 704 (N.C. 1998)—heinous, atrocious or cruel; no significant history of prior bad acts.
- State v. Tucker*, 490 S.E.2d 559, 560 (N.C. 1997)—pecuniary gain; murder during crime spree.
- State v. Leroy McNeil*, 518 S.E.2d 486, 491 (N.C. 1999)—murder during capital felony; heinous, atrocious, or cruel; mentally/emotionally disturbed; other mitigating factors.
- State v. Moses*, 517 S.E.2d 853, 857 (N.C. 1999)—murder during capital felony; murder during crime spree.
- State v. Frogge*, 528 S.E.2d 893, 895 (N.C. 1999)—murder during capital felony; heinous, atrocious, or cruel; murder during crime spree.
- State v. Golphin and Golphin*, 533 S.E.2d 168, 183-85 (N.C. 2000)—murder during capital felony; heinous, atrocious, or cruel; murder during crime spree; age.
- State v. Thibodeaux*, 532 S.E.2d 797, 800 (N.C. 2000)—heinous, atrocious, or cruel.
- State v. Meyer*, 540 S.E.2d 1, 4 (N.C. 2000)—murder during capital felony; heinous, atrocious, or cruel; murder during crime spree; no significant history of prior criminal acts.
- State v. Holman*, 540 S.E.2d 18, 20 (N.C. 2000)—heinous, atrocious, or cruel; mentally/emotionally disturbed.
- State v. Mitchell*, 543 S.E.2d 830, 833 (N.C. 2001)—murder during crime spree; capacity to appreciate impaired.
- State v. Fair*, 557 S.E.2d 500, 507 (N.C. 2001)—murder during capital felony; heinous, atrocious, or cruel; other mitigating factors.
- State v. Nicholson*, 558 S.E.2d 109, 119 (N.C. 2002)—murder during crime spree; mentally/emotionally disturbed.
- State v. Hooks*, 548 S.E.2d 501, 503 (N.C. 2001)—heinous, atrocious, or cruel; capacity to appreciate impaired; no significant history of prior criminal acts.
- State v. Terry Robinson*, 561 S.E.2d 245, 249 (N.C. 2001)—murder during capital felony; mentally/emotionally disturbed.
- State v. Mann*, 560 S.E.2d 776, 779 (N.C. 2002)—murder during capital felony; heinous, atrocious, or cruel; pecuniary gain.
- State v. White*, 565 S.E.2d 55, 58 (N.C. 2002)—murder during capital felony; pecuniary gain; mentally/emotionally disturbed; capacity to appreciate impaired; age.
- State v. Williams*, 565 S.E.2d 609, 620 (2002)—murder during capital felony; heinous, atrocious, or cruel; murder during crime spree; mentally/emotionally disturbed; capacity to appreciate impaired.
- State v. Carroll*, 573 S.E.2d 899, 903 (N.C. 2002)—heinous, atrocious, or cruel; mentally/emotionally disturbed; capacity to appreciate impaired.
- State v. Leary*, 472 S.E.2d 753, 755 (N.C. 1996)—murder during capital felony; murder during crime spree.

State v. Wilkinson, 474 S.E.2d 375, 379 (N.C. 1996)—murder during capital felony; heinous, atrocious, or cruel; murder during crime spree.