"It doesn't take much evidence to convict a Negro"[1]:
Capital punishment, race, and rape in mid-20th-century Florida

Thirty men were executed for rape in Florida between 1940 and 1964, in a state undergoing rapid population growth, Sunbelt economic change, and black freedom struggle protest and activism. No white man was sentenced to death for the rape of a "Negro" girl or woman, and all 29 African American men and one white man had been convicted of assaulting white girls or women. This essay focuses on these 30 capital cases and the compelling statistical evidence of selective execution by race to examine which acts of sexual violence were considered so heinous as to warrant the death penalty: gang rape, serial offending, and the invasion of the white family home by the burglar-turned-rapist. As in other southern states, Florida courtrooms were important sites of civil rights protest, as black defendants and their lawyers sought to challenge racial inequities in the prosecution of interracial sexual violence and the lack of due process afforded non-white offenders, although success was limited.

A white army sergeant's wife reported that she had been assaulted in her bedroom by an armed black intruder during the early hours of November 11, 1941, while her husband was on night duty at nearby MacDill Field, Tampa, Florida. Despite a description of the alleged African American attacker and searches by civilian and military police, there was no swift arrest. Edgar Flowers, age 20, was a waiter at the Post Exchange restaurant at the base, where the woman's husband ate most of his meals and was served regularly by Flowers. Flowers was arrested at the restaurant on April 23, 1942, by Tampa police detectives who did not initially tell him the nature of the charge. Two weeks earlier, the sergeant's wife had remarked to her husband on the similarity of the waiter to her attacker, but he had dismissed her. She subsequently identified Flowers as her attacker from a police line-up. Flowers was convicted in Hillsborough County of capital rape on June 5, 1942, but his lawyers challenged many aspects of this, including the validity of the arrest, and the process of identification of Flowers as a suspect. They also censured Flowers' "voluntary" confession to Tampa police, after he had been handcuffed and questioned for 24 hours,

[1] *Ocala Star-Banner*, 7 October 1959, 8.

falsely told that his fingerprints and shoe had been taken from the woman's apartment, and his pregnant wife had also been arrested.[2] The appeal failed, so on June 26, Flowers "went to his death quietly" in the electric chair.[3]

Edgar Flowers was one of 30 men executed for rape in Florida between 1940 and 1964: eighteen in the 1940s, ten in the 1950s and two in the early 1960s, in one of the most active execution states in the southern region, and where there was compelling statistical evidence of selective execution by race.[4] Between January 1, 1940 and December 31, 1964, 54 men were convicted of capital rape; 48 of whom were African American, and 29 died in the electric chair. Of the six white men given death sentences for rape, five received commutations to life imprisonment, and one was executed. All 30 who were executed had been convicted of assaulting white girls or women. No white man had been sentenced to death for the rape of a "Negro" girl or woman in Florida, and none of the three black men who had been sentenced to death for attacks on two black women and one child respectively, were executed.[5] Consequently, "the accusation of rape by a white woman against a black man carried a special burden that could not be readily dismissed" by local communities and criminal justice personnel.[6] Indeed, 90 percent of those executed for rape under civil authority in the United States between 1930 and 1964 were African American.[7]

This essay focuses on capital rape in mid-twentieth-century Florida to examine which acts of sexual violence were considered by white police, jurors and judges to be so heinous as to warrant the death penalty. Using two gang rape cases from the 1940s, it further

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[2] Brief of Bryan and Bryan, Tampa, Florida for Appellant, to Florida Supreme Court, 10 June 1944, p. 1-12, in Papers of the National Association for the Advancement of Colored People, Part 8, Series B, Discrimination in the Criminal Justice System, 1910-1955, Legal Department and Central Office Records, 1940-1955, microfilm reel 32, frames 210-22; *Flowers v. State*, 152 Fla.649 (1943); *Flowers v. State*, 12 So.2d 772 (1943); *Palm Beach Post*, 31 March 1943, 10; *St. Petersburg Times*, 19 October 1943, 20.

[3] *Tampa Morning Tribune,* 27 June 1944, 10.

[4] Florida Department of Corrections, "Execution List, 1924-1964," at: http://www.dc.state.fl.us/oth/deathrow/execlist2.html

[5] *St. Petersburg Times*, 14 August 1965, 3A. This pattern was repeated in every southern state, see for example, Partington (1965, p. 47), Paternoster and Kazyaka (1988, p. 255-262); Marquart, Ekland-Olson, and Sorensen (1998); Rise (1992, p. 482).

[6] Lawson, Colburn, and Paulson, (1986, p. 25)

[7] See U.S. Department of Justice, Bureau of Prisons, "National Prisoner Statistics: Executions, 1930-1965," NPS Bulletin No. 39 (June 1966), p. 3; Florida, "Report of the Special Commission for the Study of Abolition of Death Penalty in Capital Cases, 1963-1965," p. 8, 12; Wolfgang and Riedel (1973, p. 127); Cahalan (1986, p. 10-15).

examines the explanations offered by offenders for their actions and the ways in which stereotypes of black male behaviour could shape juror decisions to convict. The combination of black male offender and white female victim remained a powerful predictor of execution for rape in 1940s and 1950s Florida. Executions functioned symbolically and practically to police interracial social and sexual behaviour, and to reinforce gender, race, and class boundaries. Nevertheless, specific aggravating factors increased the likelihood of a death sentence being carried out. Extant archival materials underline the common features of capital rape cases: immobilisation and emasculation of a white boyfriend or husband; the targeting of a lone, vulnerable, white women in a manner that threatened the freedom of movement of others; two or more offenders acting in concert; serial offenders; and the invasion of white family homes, particularly bedrooms. All men convicted of capital rape had used a weapon, usually a gun, knife or ice pick, to subdue, threaten or coerce their victim(s). For example, in July 1953, a 12-year-old white girl in Jacksonville was assaulted by a young black male, later identified as Charlie Copeland, holding an ice pick to her throat, and as her mother slept in a different room.[8]

Despite the introduction of greater procedural safeguards in the 1930s and 1940s, post-war Florida rape investigations continued to rely on questionable forensic and witness evidence.[9] In 1948, one victim who was unable to physically identify her attacker merely stated that he "talked and smelled like a Negro."[10] In many of the cases discussed below, confessions were obtained after hours of continuous interrogation, bullying tactics, and sleep deprivation. Defendants were "railroaded to the electric chair" after hasty trials conducted in racially and emotionally charged communities. In June 1959, Lake County jurors deliberated for six minutes before convicting 19-year-old "near illiterate" Sam Wiley Odum for the rape of a 62-year-old white woman at Leesburg, in a case which the court-appointed attorney described as "more or less a reaction of mob violence."[11] Most defendants were convicted by all-white juries; all were sentenced by white male judges. The novel inclusion of one black juror in Felix Combs' rape trial in October 1948, and the

[8] *Fort Pierce News Tribune*, 19 July 1953, 10.

[9] These include: *Powell v. Alabama* 287 U.S. 45 (1932); *Norris v. Alabama* 294 U.S. 587(1935); Brown v. Mississippi, 297 U.S. 278 (1936); *Chambers v. Florida* 309 U.S. 227 (1940).

[10] *St. Petersburg Times*, 5 October 1948, 17.

[11] Klarman (2004, p. 117-121); Rise (1992, p. 462); *Tallahassee Democrat*, 17 June 1959, 10.

presence in the "Negro gallery" of three "well-dressed colored men" from "a northern interracial organization" were highlighted in local news reports.[12]

David Garland notes that "the American polity devolves decision-making about punishment (and much else) to the local level, thereby empowering local political actors in ways that have had major consequences for the history of the death penalty."[13] County courtrooms in post-war Florida were important sites of local civil rights protest, and defence lawyers increasingly challenged the lack of due process afforded lower-class black male defendants, but success was limited. Henry Sparks's attorney argued that Palm Beach County Commissioners had deliberately excluded African Americans from grand and petit jury venires in 1944 and thus deprived his client of a fair trial, but to no avail.[14] Charlie Copeland's (black) lawyers Ernest Jackson and Releford McGriff asserted repeatedly in 1955-56 that punishing one category of interracial sexual violence by execution was discriminatory and a denial of due process.[15] Nevertheless, long-held certainties about justice in the state interventions were contested by both local Florida and NAACP lawyers, in a period of gubernatorial and legislative unease over the administration of capital punishment, although no governor would take decisive action before 1965.

This study draws on death penalty case files, appellate decisions, grand jury reports, governors' correspondence, and other archival materials to consider differing political, judicial, and popular narratives of sexual violence in wartime and post-war Florida. Not all the legal paperwork is complete or available for every capital rape case. Some death penalty files contain complete trial transcripts and witness testimony; others contain only a summary of proceedings. Similarly, several superior court appeals include lengthy descriptions of the case and grounds for appeal; others stretch to one sentence affirming the capital conviction.[16] Additional information on incidents of rape and sexual violence in Florida counties was gathered from local news reports aimed at a predominantly white

[12] *St. Petersburg Evening Independent*, 4 October 1948, 1.
[13] Garland (2010, p. 38).
[14] *Palm Beach Post*, 8 December 1944, 6; 12 December 1944, 3. The appearance of the first women jurors at rape trials also warranted comment. See *Palm Beach Post*, 30 August 1950, 4.
[15] *Fort Pierce News Tribune*, 14 December 1955, 1; *Palm Beach Post*, 18 February 1965, 63.
[16] See for example, *James v. State*, 55 So.2d 582 (1952); *Beard v. State*, 69 So.2d 770 (1954).

readership, items published in northern African American newspapers, and syndicated news reports which appeared in titles across the US.

Earlier Florida death penalty studies have often focused on the 1949 Groveland case, where the rape accusation of a local white woman led to the capital conviction of two black army veterans (one of whom was later murdered by the local sheriff), a lengthy sentence for a 16-year-old defendant, and the posse murder of another, even though there was undeniable evidence that all four accused men were entirely innocent.[17] The 1959 Tallahassee case, where four lower-class young white men kidnapped a much more respectable 19-year-old black middle-class female college student and drove here at knifepoint to the edge of the city where she was brutally gang-raped, also evoked national condemnation and mobilised black community action in defence of black female "bodily integrity and personal dignity."[18] By contrast, this essay examines many of the lower profile rape cases in these decades, to reconstruct the stories of the victims and defendants, and explore their impact on legal and popular understandings of sexual violence.

Interracial rape prosecutions, death sentences and executions were declining throughout the United States by the 1950s. In the 1940s, 161 black men were executed for rape; 81 in the 1950s.[19] In her recent historical synthesis, Estelle Freedman argues that, after World War II, new efforts and strategies to reform the prosecution of sexual assault, the actions of organisations such as the International Labor Defense, the Civil Rights Congress which publicised cases of southern black men accused of rape and provided attorneys, and National Association for the Advancement of Colored People (NAACP) focus on rape prosecutions, along with more "widespread embrace of sexual liberalism," were some of the key factors contributing to greater questioning of white women's accusations of interracial rape and more attention to black defendants' treatment by police and in court.[20] Historian Lisa Lindquist Dorr also found that most black-on-white rape cases in twentieth-century Virginia did not end with execution, and generally "proceeded quietly and smoothly through the legal system, without mob action, without the intervention of the NAACP or the

[17] Lawson, Colburn, and Paulson (1986, p. 1-26); King (2012); *Irvin v. State*, 66 So. 2d 289 (1953).
[18] *Tallahassee Democrat*, 22 June 1959, 1 & 2; McGuire (2004, p. 906-931); McGuire (2010, p. xx, 33-34, 149); Dorr (2004, p. 235, 242).
[19] Dorr (2004, p. 205-237); Campbell (2013, p. 166)
[20] Freedman (2013, p. 271-274).

Communist Party, without appellate decisions, and without news coverage beyond the local community."[21]

Many interracial rape complaints did proceed relatively quietly through Florida's post-war criminal justice and appellate systems, while others generated intense media and political scrutiny. Rape accusations also continued to fuel community outrage and class conflict between the small town, small farmer, and angry white advocates of "rough justice" and middle-class supporters of due process (a category that included the growing number of black lawyers practicing in southern jurisdictions) in the 1940s and 1950s.[22] The only recorded US lynching for 1945 involved the abduction and shooting of a black male prisoner, under indictment for the rape of a 5-year-old white girl, by "persons unknown" from an unguarded jail in Madison County, Florida.[23] Further, the moral codes of socially and politically conservative white jurors in local Florida courthouses were referenced by white supremacy, religion (particularly the dominant Baptist and Methodist denominations), and respectability. Fundamentalist beliefs, invocation of scripture, and religious language remained important parts of political and social discourse. Consequently, tolerance of liberal sexual mores was often very limited.[24] Finally, state state supreme court justices remained unsympathetic to appeals based on racial bias.[25] Local and state histories are essential cognitive pieces in the construction of broader, regional and national, frameworks for understanding crime, law, punishment and culture, but this study of Florida's capital rape history also complicates Freedman's more progressive view.

It is impossible to determine what percentage of the total number of rapes in Florida in the 1940s, 1950s, and early 1960s were reported to police or sheriffs, and how many complaints were summarily dismissed. Some defendants were indicted on a capital rape charge which was later withdrawn: 19-year-old white defendant Kenneth Lee Holcomb was released in September 1958 after spending three months in the Pinellas County jail because the complainant was reluctant to proceed.[26] The propriety of the complainant often

[21] Dorr (2000, p. 722)
[22] Pfeifer (2004)
[23] *Atlanta Constitution*, 30 December 1945, 7A; Davis (1990, p. 277-298)
[24] Newman (2001); Harvey, in Feldman (ed), (2005, p. 101-124)
[25] See *State Ex Rel. Copeland v. Mayo,* 87 So.2d 501 (1956); Manley II and Brown, Jr. (2006, p. 283).
[26] *Ocala Star-Banner*, 4 September 1958, 4.

informed police and state attorney decisions to pursue a case or curtail the investigation.[27] In the 30 execution cases between 1940 and 1964, the victims included children, virginal teenagers, army wives, young mothers, middle-aged housewives and grandmothers. Traditionally, "confident, articulate, white women" of respectable status and with family support were better able have their claims taken seriously.[28] It is noteworthy that one third of the Florida complainants were army wives, and the site of the attacks was often the home on or near to one of the state's many military bases. These types of attack could therefore stoke national fears over public safety in a state whose income depended on military spending and tourism, and undermine national military investment in Florida. Any suggestion that local police, jurors, and courts were not competent to protect military personnel and their families had to be resisted.[29]

Voluntary teams of law students identified 285 rape convictions in Florida between 1940 and 1964: of 132 white males (46 percent), 152 black males (54 percent), and one Native American.[30] In the cases of the 132 white men, there were 125 white female victims, including 34 children under the age of 14 years, and seven African American female victims. In the cases of the 152 black men, there were 68 African American female victims, including 26 children under the age of 14 years, and 84 white female victims. The Native American defendant had also been convicted of raping a white woman. Of the six white men sentenced to death for rape, four had been convicted of attacks on white children, and only one had been executed. Three black men had been sentenced to death for attacks on two black women and one child respectively, but none were executed.[31]

The 285 cases do not include an additional thirteen from Brevard and Hillsborough Counties where the race of defendants and victims was not identified, but were most likely

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[27] For discussion of the treatment of African American rape victims and their complaints in late nineteenth- and early twentieth-centuries, see Miller, (2000, p. 175-216). For black rape victim experiences at mid-20th century, see Flood, (2005, p. 38-61).

[28] Bourke (2007, p. 394-395).

[29] Generally, military wives were from other states, often living in poor quality housing and without family support, reliant on friendship networks with other wives, surviving on low wages from unskilled jobs in the "small out-of-the-way towns" near to southern training bases, and confronted with bewildering southern racial mores. See Leder (2006, p. 78-83).

[30] This type of local data collection was part of the national LDF strategy to gather state-by-state evidence for a major constitutional death penalty challenge in the mid-1960s. See Meltsner (1973, p. 1111-1139); Tauber (1998, p. 191-219); Foerster (2012).

[31] *St. Petersburg Times,* 14 August 1965, 3A.

to be white intra-racial rape offences. Generally, these did not result in a capital conviction or execution. James H. Raulerson and Fritz H. Clark of Duval County were "the only white men ever sentenced to death for the rape of a white adult" in 1956, but their convictions were later reversed by the state supreme court.[32] In December 1955, they and two other armed men attacked a couple parked on a secluded road near Jacksonville, robbed the man, ordered him into the trunk of the car, and then assaulted his female companion.[33] White intra-racial felony-homicides which news reporters routinely described as "rape-slayings" did end in execution, as in the case of George Lowell Everett. He was electrocuted in June 1958 for the murder of a military wife near Tyndall Air Force (close to Panama City), but had first raped the young mother while she and her toddler son were at home. There was no jury recommendation of mercy, and appeals were unsuccessful.[34]

The legal definition of rape was narrow: it was gender-specific; the male perpetrator could not be married to the victim; and use of force, penetrative sexual intercourse and female resistance were key elements. Ejaculation and sperm residue on the victim were not required, but in practice, this could determine whether a case was prosecuted as rape or attempted rape.[35] In August 1948, one attorney told Clearwater jurors that a victim had "not put up enough resistance" and hinted that sexual relations between her and the defendant were consensual, but the judge confirmed that "if the state could show that the victim was so terrified by the attack that it made her speechless, it is not necessary to show resistance."[36] The onus was on the complainant to prove beyond a reasonable doubt that relations with the alleged attacker had not been consensual. If was contended in Flowers's appeal that his victim had "tacitly consented" to sexual relations with her attacker because she had not demonstrated sufficient resistance and there were no marks on her body. Lawyers Bryan and Bryan drew on previous "experience and observation" to argue that "the

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[32] Ibid.

[33] *Raulerson v. State* 102 So. 2d 281 (1958), at 284-285. Following a successful severance motion, James H. Raulerson and Fritz H. Clark were tried together but separately from the other two defendants.

[34] *Washington Post*, 29 May 1955, A3.

[35] Section 794.01, Florida Statutes. The definition of rape was also outlined in for example, "Charge to the Jury," 25 September 1947, in *State vs. Lonnie Lee Talley*, Death Warrants, Series 12, Box 31, FF 7: Lonnie Lee Talley, Duval County, 1948, Florida State Archives, Tallahassee.

[36] *St. Petersburg Times*, 5 October 1948, 17.

average woman" who awoke to find a stranger in her bedroom would "scream and call for help," thus the complainant's "calm" demeanour suggested than no rape had taken placed.[37]

Further, as McGuire notes, "Unsubstantiated charges of the rape of white women by black men had been part of the southern political culture for decades."[38] William Henry Anderson was executed in July 1945, even though his lawyer had presented the governor and state pardon board with persuasive evidence that Anderson and the white woman he had been convicted of raping "were intimate since August 1944." She usually visited him in the "colored section" of Fort Lauderdale, but the rape charge stemmed from his visit to her home in one of the segregated white residential districts.[39] Even where there was persuasive medical and forensic evidence that a rape had occurred, juries chose the lesser and non-capital offence of assault with intent to commit rape. In February 1946, Samuel Jiminez, Diego Hernandez, and Raymond Rodriquez picked up a young Anglo woman in Tampa, who was waiting for a female friend to get off work at midnight. She seemed to have willingly got into their car and visited a tavern with them, but when they drove her to an out-of-town dirt road, she refused to have sex with them. They tried to beat consent from her and when she refused, she was assaulted in the back of the car. Jiminez and Hernandez were each sentenced to five years' imprisonment and Rodriquez to three years.[40]

There were also striking differences in the disposition of rape cases within Florida. Those executed for rape between 1940 and 1964 were convicted in only ten of Florida's 67 counties: Duval (5), Alachua (5), Pinellas (4), Broward (4), Dade (4), Hillsborough (3), Leon (2), Lake (1), Palm Beach (1) and Columbia (1).[41] During these decades, Florida was

[37] Brief of Bryan and Bryan, Tampa, Florida for Appellant, to Florida Supreme Court, 10 June 1944, p. 12, in Papers of the National Association for the Advancement of Colored People, Part 8, Series B, Discrimination in the Criminal Justice System, 1910-1955, Legal Department and Central Office Records, 1940-1955, microfilm reel 32, frame 219.
[38] McGuire (2010, p. 24).
[39] Quoted in Vandiver (1992-1993, p. 336).
[40] The Supreme Court mandate underlines that justices thought there was evidence to support the charge of rape rather than attempted rape, see *Jiminez v State*, 158 Fla.719 (1947).
[41] In terms of all 196 executions between 1924 and 196, the geography of capital murder, rape and kidnapping is equally skewed: 38 of the 196 men were convicted in Duval County, 24 in Dade, 15 in Hillsborough, 11 in Pinellas, and 10 in Alachua 10. Driggs notes that 28 of

undergoing considerable social, economic and political transformation as military personnel, wartime migration and post-war immigration fuelled a population boom, increasing total state population from 1.9 million in 1940 to 2.8 million in 1950 and five million in 1960. Southern and coastal counties such as Dade and Pinellas experienced the most dramatic growth. By the early 1960s, Dade and Hillsborough, dominated by the cities of Miami and Tampa, provided 25 percent of all commitments for all types of offences to the state prison system. Duval, Broward and Pinellas counties together accounted for 18 percent.[42] Racial segregation and discrimination were under sustained attack, for example during the 1956-1957 Tallahassee bus boycott to successfully end segregated public transport in the state capital, and during the sit-ins, boycotts and mass demonstrations at St. Augustine in 1963-1964, even as defenders of white supremacy and black disfranchisement resorted to increasingly strident and violent resistance.[43] Further, older agriculture and extractive industries in the northern and central sections of the state were being eclipsed by a Sunbelt economy based on technological and defence-space-military investment, and leisure-tourism.[44] Race, class and labour tensions were just as evident in Florida's resort cities and modernising, more pluralistic, southern counties in the 1940s and 1950s, as in the rural, small town, conservative Democrat-dominated northern panhandle counties, but this does not fully explain why capital rape jurors in some counties were more punitive than in others.

As soon as a white woman reported an interracial sexual assault, local African American men were rounded up and questioned by city police and local sheriffs, until a suspect was identified. Black communities were plagued by police violence in this period.[45] The *Palm Beach Post* made light of the "zoot suit round up" of over a hundred local black men during a "6-day manhunt" in the West Palm Beach resort area in October 1944 that ended with the arrest of Henry Sparks.[46] Former "carnival roustabout" Felix Combs was the "57th man questioned" in Clearwater over two home invasion assaults in 1948, of a white

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Florida's 67 counties did not execute anyone during this 40-year period. See Driggs (1992-1993, p. 1208-1209).

[42] Florida, Division of Corrections, Third Report, July 1, 1960 -June 30, 1962, p. 72.

[43] Rabby (1999); *Orlando Sentinel*, December 18, 1994 [online edition]; Colburn (1985, 1991); Warren (2008); *Washington Post*, December 29, 1951, 8; Bartley, N., (1969); McMillen (1994).

[44] Shell-Weiss (2005, p. 79-99); Mormino (2006); Stronge (2008)

[45] Rose (2007, p. 39-69); Dunn (2016, p. 133-9).

[46] *Palm Beach Post*, 3 October 1944, 1.

"bride-to-be" on August 5, and the 30-year-old wife of a city police officer on August 24, as "a wave of terror" swept through Pinellas County. Local white vigilantes intimidated African Americans by burning a 6-foot cross near their homes.[47] A silver dollar stolen during the second assault was recovered from a local tavern, and the proprietor "identified Combs as the one who spent it." Combs initially claimed he had won the items in a crap game, but confessions to two robberies and two violent sexual assaults were quickly obtained by Clearwater police officers and the Pinellas County sheriff.[48]

The majority of Florida rape complaints involved one offender and one victim, but gang rapes – which Susan Brownmiller defined as two or more men assaulting one woman – resulted in twelve executions between 1940 and 1964.[49] Scholarship on the history of the twentieth-century southern region is punctuated by cases of gang rape, with a recurring pattern of abduction by force and with a weapon, multiple assaults, and abandonment of the victim in a remote location, often without clothing; actions which underlined the disposability of the female victim and the perpetrators' lack of fear of consequences.[50] James C. Williams, Freddie Lee Lane, and James Davis were electrocuted in quick succession on the morning of October 9, 1944, for the rape of a 22-year-old army wife. The Gadsden County courthouse was surrounded by 250 sheriff's deputies, state road patrol officers and state guardsmen on August 24 when their trial was to begin. However, the sheriff and other deputies guarding the convoy of cars from Alachua County, where the men had been held for safekeeping, had been halted by armed "persons unknown." The threat of lynching, and the judge's decision that the defendants were "too odious to the inhabitants" of Gadsden

[47] *Sarasota Herald-Tribune*, 29 August 1948, 1; *St. Petersburg Evening Independent*, 31 August 1948, 1; *Sarasota Herald-Tribune*, 15 September 1948, 6, 29 August 1948, 1.
[48] *St. Petersburg Evening Independent*, 28 August 1948, 1, 24 January 1949, 1; *Palm Beach Post*, 29 August 1948, 25, 5 October 1948, 1; *St. Petersburg Times*, 5 October 1948, 17. At trial, Combs' lawyer successfully persuaded the court to disallow his client's confession, but Combs then told jurors that he had in effect committed the two rapes that he had confessed to, see *St. Petersburg Times*, 14 September 1948, 15.
[49] Brownmiller (1975, p. 187).
[50] See Carter (1969); Kinshasa (1997); Goodman (1994) for discussion of the 1931 Scottsboro case. See also Stevenson (2009), Dorr (2004, p. 241); McGuire (2010, p. 61, 64, 142).

County to ensure an impartial jury, led to a change of venue. All three defendants pled guilty at their trial in Alachua County.[51]

In order to determine the most appropriate penalty, of life imprisonment or death, the victim was called to give her account in camera. She stated that around 9pm on Saturday 29 July, she was driving alone when another car with three armed black males sped past and blocked her route. She was forced to stop, two men got into her car, and she was wedged between then in the front seat as they drove off. Shortly after, they crashed into a ditch, she was then repeatedly raped at gunpoint, and driven through the Chattahoochee area before being raped again in nearby woods. She was then shot in the side of the forehead (her scars were visible in court), deliberately covered with brush and leaves, and left for dead. After a period of unconsciousness, she stumbled to the roadside and summoned help from a passing motorist early on the morning of 30 July. Within hours, Williams, Lane and Davis had been arrested in a stolen car in Suwannee County by state patrolmen and military police. Confessions were obtained from all three defendants at the state prison on the morning of July 31.[52] By the 1940s, black rape defendants were often removed to other counties to stymie lynching threats. Occassionally, a sheriff might rescue an African American "suspect" from a white mob, especially if the wrong person was targeted.[53] However, the removal of a black suspect to a different county was also part of the terror tactics of local police, as illustrated in the Flowers case. During the car journey in the company of white police officers, the fear and vulnerability of black defendants increased, particularly if they did not know where they were going, how long the journey would take, and as police often took circuitous routes to deliberately pursue a confession.[54]

Criminologist James Messerschmidt notes that gang rape is typically associated with youthful offenders, often marginal boys and men lacking wealth and status, and with extreme forms of violence. Thus, "group rape helps maintain and reinforce an alliance

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[51] Transcript of Record, Circuit Court, Alachua County, Summer Term, 1944, Death Warrants, Series 12, Box 29, FF1: James C. Williams, Freddie Lee Lane, and James Davis, Alachua County, 1944.
[52] Ibid.
[53] *New York Times*, 2 August 1949, 14.
[54] Brief of Bryan and Bryan, Tampa, Florida for Appellant, to Florida Supreme Court, 10 June 1944, p. 79, in Papers of the National Association for the Advancement of Colored People, Part 8, Series B, Discrimination in the Criminal Justice System, 1910-1955, Legal Department and Central Office Records, 1940-1955, microfilm reel 32, frame 287.

among the boys by humiliating and devaluating women thereby strengthening the fiction of masculine power," and because "the immediate sensation of masculine power was seductive for these boys, group rape became a resource for accomplishing gender and constructing a….collective, publicly aggressive form of masculinity."[55] The written confessions of Williams, Lane and Davis reveal much about the performance of young, lower-class masculinity, petty crime, and opportunistic sexual violence. Williams and Davis had never met before late July 1944, but 16-year-old Davis was invited by Lane to accompany him and Williams on a trip "north." For three to four days prior to the rape attack, they stole or hijacked several cars, and drove back and forth along the rural backroads of north Florida and southern Georgia, alternatively sleeping in the woods or the cars. The confessions detail their visits to relatives' homes, gas stations and "colored stations" or roadside stands selling food, all funded by selling stolen cars or robbing dime stores, thus their alliance was maintained largely through petit and grand larceny.[56] When they spotted the lone white woman in the Ford sedan, the "plan" was armed robbery and carjacking, and thus the rape was characterised as an opportunistic after-thought.

Obtaining confessions by physical force had recently been declared unconstitutional by the US Supreme Court, and the legality of Williams, Lane and Davis's confessions were addressed at length in the Transcript of Record, but it was significant that the most cooperative defendant was the youngest, and possibly most vulnerable to police persuasion. Davies was one of five defendants between the ages of 16 and 20 years who were executed for rape 1940-1964, when the age of majority in Florida was still 21 years.[57] The 1940s also witnessed growing anxieties over bandits and juvenile delinquency. FBI director J. Edgar Hoover frequently voiced his concern over "the creeping rot of moral disintegration," murder and rape committed by male youth offenders, and drunkenness and prostitution among girls.[58] In the Transcript of Record, Williams, Lane and Davis come across as shiftless, dishonest, and unpitying figures, and conformed to long-held white views about

[55] Messerschmidt (1993, p. 114).
[56] Transcript of Record, Circuit Court, Alachua County, Summer Term, 1944, Death Warrants, Box 29, FF1: James C. Williams, Freddie Lee Lane, and James Davis, Alachua County, 1944.
[57] Driggs (1992, p. 1199-1202).
[58] For example, *Washington Post*, 9 July 1943, 1, W*ashington Post*, 23 July 1950, M13; *Atlanta Constitution*, 27 June 1943, A5.

African Americans being naturally predisposed to crime and natural predators of white women.[59]

The black sexual predator archetype appeared in many post-war newspaper descriptions: one suspect was described as a "lust-mad, hulking, sullen thick-lipped Negro self-confessed rapist" by a Fort Lauderdale paper in February 1945.[60] Complaints of predatory black rapists emasculating white men and assaulting white women in public and tourist spaces were vigorously pursued by local law enforcement, as swift arrests and punishment were important to placate anxieties over public safety and to maintain racial control. Around 11pm on March 26, 1946, a white divorcee with three young children and her date were sitting under the stars on a beach near Hollywood, when they were threatened by two black men with knives. One sat on the male date and robbed him of money, including two silver dollars, and a watch, while the other assaulted the woman; they then switched places and she was assaulted again. The couple immediately alerted police, and James Andrew Maxwell (age 29) and Joe Ferguson (age 41) were arrested at their homes in the early hours of March 27. An emerald ring belonging to the divorcee and two silver dollars were found in the defendants' possession.[61] Maxwell and Ferguson were moved to neighbouring Dade County's more secure multi-story jail because of the threat of mob violence, and were transferred back and forth under armed guard, but a change of venue petition was denied.[62] There had been strong forensic and circumstantial evidence linking Maxwell and Ferguson to the crimes of armed robbery and rape, but their lawyers mounted a robust defence which laid the ground for subsequent appellate challenges based on violation of the 4th amendment's search and seizure provisions, the complainants' identification of the defendants, and judicial errors regarding the admission of evidence and charges to the jury, although ultimately without success.

In their testimony to the Broward County court, Maxwell and Ferguson told jurors that on the evening of March 26, they had not gone to the beach but had visited several jook joints, pool halls and gambling parlours in Fort Lauderdale's segregated African

[59] Nelson (2015); LeFlouria (2015, p. 246).
[60] Quoted in Vandiver (2006, p. 25).
[61] Transcript of Testimony & Proceedings, 23 & 24 May 1946, Death Warrants, Series 12, Box 31, FF1: James Andrew Maxwell and Joe Ferguson, Broward County, 1947, Florida State Library and Archives, Tallahassee, Florida.
[62] Ibid.

American section, and claimed a female friend had "pawned" the emerald ring to Maxwell for $30.[63] However, their testimony also demonstrated that both men were unfaithful husbands, and often engaged in casual sexual relations with several black women, and thus conformed to long-held white views about lax black male sexual mores and sexual incontinence. It further reinforced popular beliefs that African Americans and whites adhered to different standards of sexual propriety. Neither Maxwell nor Ferguson was in regular employment, and both appeared to be living off their wives' earnings. Ferguson's wife worked long hours and coul not account for his whereabouts at the time of the rape as she was asleep.[64]

As a result, the effort by defence lawyers to make jurors sympathetic to their clients, by questioning the evidence and the victims' accounts, and by offereing alibis for the time period in which the robberies and rapes had occurred, may have backfired. The alternative narratives provided by both defendants may have reinforced juror suspicions rather than provided reasonable doubt as to their guilt. Jurors refused to doubt the veracity of the white victims' complaints. In both the Hollywood and Gadsden County cases, the attacks by two or three generally unsympathetic offenders on respectable women, the multiple offences of abduction, armed robbery and assault, the confessions in the Gadsden County case, the emasculation of the white male robbery victim in the Hollywood case, and the special burden of interracial rape accusations, all increased the likelihood of capital conviction. Maxwell and Ferguson were executed in August 1947.

The likelihood of execution also increased if a black serial sexual predator was identified. Lonnie Lee Talley was executed in October 1948 for an attack on a young mother in her rural home near Jacksonville on July 22, 1947.[65] At trial, five additional women waived their anonymity to testify that they had also been assaulted by Talley that same week.[66] Twenty-four-year-old Talley was a married war veteran who worked as a truck driver for a local Jacksonville firm. He offered an alibi for the afternoon of July 22, but the testimony of the women, their identification of Talley in police line-ups, his distinctive truck, and forensic evidence therein persuaded jurors, the judge and later supreme court justices that Talley

[63] Ibid.
[64] Ibid.
[65] *Sarasota Herald-Tribune*, 18 June 1948, 1; *Florida Times Union*, 6 October 1948, 3.
[66] "Admissibility of Separate Offenses Motion," filed 17 November 1947, Lonnie Lee Talley, Duval County, 1948, Series 12, Box 31, FF7.

was a serial rapist who posed a serious and continuing threat to the white women of Duval County. It was reported that he approached a lone woman to "'ask her for a glass of water, or request information about the road, or ask for pliers or some other tool feigned to be needed in the adjustment of the motor or truck, with the usual question, 'Is your husband at home?'" Talley's white lawyer Albert W. Graessle, Jr, a future president of the Florida Bar Association, and from 1956 the circuit judge for Clay, Duval and Nassau Counties, challenged (unsuccessfully), the inclusion of the collateral and ultimately damning testimony of the other rape victims because Talley was on trial for one offence only.[67]

One reported interracial assault could heighten local white anxieties and stoke racial tensions, but a series of attacks generated white panic and prolonged disruption to black residents as police dragnets and interrogations continued for days. "A single thumbprint on a pane of glass" led to the arrest of 21-year-old Willie George City in June 1959. The Sheriff of Pinellas County announced that City had confessed to assaulting five women, ages 55 to 72 years, in their bedrooms, and the attempted rape of a sixth, over a period of 22 months. White residents' anxieties had increased with each reported assault in southwest Largo, and over a hundred men were questioned, including "every Negro deliveryman and yard worker who frequented the area." City was charged with one assault, of a 61-year-old woman on October 17, 1958, who had given police the best description of the so-called "nude rapist" who removed all his clothes before entering the victim's home.[68]

City had arrived in Largo in 1956 and had a legitimate job in a downtown Clearwater hotel. Pinellas was a flourishing coastal county, with a popular resort area and booming technological industries. Educated and highly-skilled professionals took up technological posts, while lower-skilled white and black workers serviced new housing developments and hotels.[69] City had been picked up by police on at least three occasions prior to summer 1959, on suspicion of rape and assault, but had been released each time due to lack of evidence. He pled guilty without contest and the state pardon board refused clemency on October 6.[70] City was executed on the same day in November 1959 as John Edward Paul, another African American convicted of interracial rape in Pinellas County. In fact, the last

[67] *Talley v State*, 160 Fla.593 (1948).
[68] *St. Petersburg Times*, 20 June 1958, 1B.
[69] Kerstein (1993, p. 614-630); Mormino (2002, p. 3-21).
[70] *Ocala Star-Banner*, 13 November 1959, 1.

three black men to be convicted of rape of white women in Florida were all from Pinellas, where suspicion over growing numbers of non-white workers and residents, anxieties over public safety, the sanctity of the white home, and tourism, and white community anger framed the prosecution of interracial rape complaints.

In April 1960, white defendant Robert Wesley Davis pled guilty to raping an 11-year old girl, an act that he had forced two young boys to watch by threatening them with an ice pick. In May 1960, white civil rights activist Jefferson Poland wrote to Governor LeRoy Collins of his brief acquaintance with "Wes" in Leon County jail, and criticised the state's desire "to exterminate" Davis, "a confirmed criminal, an admitted homosexual, [and] a social outcast."[71] Homosexuality was illegal in Florida, and gay men and women endured physical harassment, economic sanction and social disgrace.[72] Defence lawyers also highlighted Davis's troubled childhood, introduced evidence that he had been sexually abused by his sex worker mother's many husbands, and raised mental health concerns. Davis had spent fifteen of his twenty-nine years in state orphanages and prisons, and many contended that state officials had systematically failed to provide material and psychiatric help to a vulnerable and neglected young person.[73] The now former governor told Poland that the appeals process and pardon board still offered hope.[74]

State supreme court justices acknowledged Davis's "underprivileged upbringing" and other "handicaps," but also characterised him as an incorrigible sexual offender who had rejected treatments to "cure" his homosexuality, was incapable of rehabilitation, and remained "a menace to any human being exposed to him." Further, Davis had showed no remorse for his actions or sympathy for his victim. Thus, of all the post-war critiques of capital rape defendants, the justices' assessment of Davis was the most damning: "The events of the assault constitute a most hideous perpetration of child abuse by vicious

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[71] Jefferson Poland to Governor Collins, May 1, 1960, in Record Group 102: Governors 1921-1971, Series 776 LeRoy Collins Administrative Correspondence, 1955-1960, Carton 53: Capital Punishment, Florida State Library and Archives, Tallahassee, Florida.
Poland, a former Florida State University student, Congress for Racial Equality (CORE) and ACLU activist, had been arrested for participating in a lunch-counter sit-in in Tallahassee in 1960. See Rabby (1999, p. 133-134).

[72] Bertwell (2005, p. 410-431).

[73] Driggs (1992, p. 1203).

[74] Governor to Mr. Jefferson Poland, May 6, 1960, in Record Group 102: Governors 1921-1971, Series 776 LeRoy Collins Administrative Correspondence, 1955-1960, Carton 53: Capital Punishment, Florida State Library and Archives, Tallahassee, Florida.

indulgence in the most abominable and detestible [sic] of lusts. Guilt of rape in its most vile form is manifest."[75] Davis was executed on August 7, 1961, the only white man to be executed for rape in 20th century Florida. It is not clear whether jurors and justices considered this attack on a white female child by an "incurable" male homosexual more aggravating than a similar attack by a white male heterosexual offender, but Davis's sexuality, so-called incorrigibility, and cold-heartedness rendered him unworthy of mercy, thus neither the supreme court nor the governor would intervene to halt the execution. In his last statement from the electric chair, Davis complained, "They knew what I would turn out to be and they never gave me no help."[76] It was not necessarily clear at the time, but this was the last execution for rape in Florida.

There was growing gubernatorial and legislative unease over the administration of capital punishment in Florida by the early 1960s. Every governor had robustly defended capital punishment until January 1959 when Collins announced his support for abolition on religious and moral grounds. He urged Florida legislators to repeal the death penalty, yet continued to sign death warrants.[77] Nationally, many Americans, including US Supreme Court jurist Arthur Goldberg, were troubled by racial bias in the prosecution and punishment of rape, and debated whether death was a proportionate penalty for non-lethal rape.[78] Florida legislators did support the creation of a fifteen-member special investigative commission to consider the abolition of capital punishment in Florida, which met in 1963 and confirmed what many citizens, commentators, lawyers and politicians already suspected: the death penalty for rape was not administered impartially. Nevertheless, commissioners did not favour removing rape from the list of capital offences.[79] Thus, neither legislative unease nor evidence of discriminatory application was enough to deliver even partial death penalty abolition.

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[75] *Davis v. State*, 123 So. 2d 703 (1960) at n16.
[76] *Palm Beach Post-Times*, 30 October 1977, 23.
[77] Dyckman (2006, p. 197).
[78] *Palm Beach Post*, 18 February 1965, 63; *Washington Post*, 10 May 1963, A18; *Rudolph v. Alabama*, 375 U.S. 889 (1963); *Washington Post*, October 22, 1963, A1; Banner (2002, p. 248); Garland (2010, p. 217-219)
[79] Florida Laws, 1963, Chapter 63-362.The proposal to change rape from a capital to a non-capital offence was defeated 9 to 4. A proposal to completely abolish capital punishment was defeated 10-3. See Commission Report, 42.

In August 1965, Tobias Simon, a Miami-based lawyer for the American Civil Liberties Union (ACLU), took a leading role in the national "prodefendant, problack, civil rights reform" strategy being coordinated by the ACLU-NAACP Legal Defense Fund (LDF) comprehensive constitutional attack on the death penalty. Simon informed Florida Chief Justice Glenn Terrell: "The death penalty for rape is a tool of the racists and bigots – and its purpose is to impose punishment upon Negroes where the methods of the lynch mob and the Ku Klux Klan have failed or have fallen into disrepute."[80] Six months earlier, Governor Haydon Burns, former mayor of Jacksonville, self-proclaimed white "moderate" and an avowed supporter of capital punishment, announced that he would not sign death warrants for any men convicted of rape until Simon's class action appeal alleging racial bias in the administration of capital punishment had been addressed by the state supreme court.[81] Many Floridians were outraged and wrote to Burns to denounce his callous removal of protections for white women. Constituents like Mrs. Justine V. Prince argued that rape was the "most heinous crime of all" and continued to warrant the severest punishment.[82] In reality, there were no executions in Florida at all after Burns' announcement. Nationally, executions were halted by judicial stays issued in 1967 and 1968, and a national death penalty moratorium continued until 1977.[83]

Even as the age of death penalty abolition slowly dawned in the United States, widespread reluctance to abandon the death penalty and executions was evident in many states, including Florida. Executive and legislative unease over selective execution by race, particularly in capital rape cases, was not shared by many local constituents or law enforcement, particularly if an African American serial rapist was believed to be at large, or a gang rape was reported. An April 1950 editorial in the *St. Petersburg Times* began "'Rape

[80] *St. Petersburg Times,* 14 August 1965, 3A.
[81] *Miami Herald*, 1 March 1965, 1.
[82] Governor to Mrs Justine V. Prince, May 4, 1965, Record Group 102: Governors 1921-1971, Series 131, Haydon Burns Correspondence, 1965-1967, Box 8, Capital Punishment – 1965, Florida State Library and Archives, Tallahassee, Florida.
[83] *New York Times,* 4 April 1967, 37; Meltsner (1973, p. 127); *Adderly v. Wainwright*, 46 F.R.D. 97 (M.D. Fla. 1968); *Adderly v. Wainwright*, 272 F.Supp. 530 (M.D. Fla. 1967). The last two executions in Florida in the pre-*Furman* period took place in May 1964; they did not resume until May 1979. For an incisive examination of the restoration period, see Von Drehle (1995).

by Negroes' is a phrase calculated to inspire swift and flaming mass hatred in the South."[84] Ten years later, interracial black defendant-white victim rape accusations could still generate intense community reaction and juror retribution. Some commentators believed that the convictions of four white male rapists for their premeditated attack on a young black woman in Tallahassee in 1959, and a handful of similar white male convictions in other states, signified that popular and official attitudes toward rape were changing in important ways in the southern states during the late 1950s. However, the life or lengthy sentences handed down to these offenders did not equate to the death sentences that black male defendants could still routinely expect, particularly if they had been convicted of an assault on a white girl or woman.

Simon's assertion that legal execution for rape was a functional replacement for the older "methods of the lynch mob and the Ku Klux Klan," was borne out in several cases in late 1950s and early 1960s Florida, including that of Sam Wiley Odom, the only rape defendant from Lake County to be executed, in June 1959, saved from mob violence but convicted after six minutes of juror deliberation.[85] Further, "the protection of white women" continued to serve "as the ultimate symbol of white male power and the foundation of white supremacy" in much of the southern region. The protection of white women in their bedrooms, on Florida's golden beaches, and on the county roads and state highways remained important factors in the disposition of Florida rape complaints in the local courts, appellate courts, and state pardon board offices in the post-war decades.[86] At the same time, white women's accusations of interracial rape were under greater popular and judicial scrutiny, and certain "types" of rape were much more likely to be prosecuted as capital offences than others. It is also clear that due process reform, black civil rights protest, and changing sexual attitudes did have an impact on deliberations in local county courthouses, but popular, political and judicial narratives about sexual violence were shifting much more slowly and tentatively than in other states or regions. It is worth remembering that executions for rape in Florida were not halted in response to popular protest or a groundswell of abolitionist sentiment, but by direct executive intervention.

[84] "Rape, Justice, and Florida's Reputation!" *St. Petersburg Times*, April 7, 1950, 13.
[85] *St. Petersburg Times,* 14 August 1965, 3A; *Tallahassee Democrat*, 17 June 1959, 10.
[86] McGuire (2010, p. 169)

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