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FINAL HOURS: THE EXECUTION OF VELMA BARFIELD

*Joseph B. Ingle**

I. PROLOGUE

The terrain of eastern North Carolina is Kansas flat. Agriculture reigns king in the geographic area known by cartographers as the coastal plain. The sandy loam soil is fertile, and a drive to the North Carolina shore in the summer finds one surrounded by legions of corn, battalions of soy beans, and an army of tobacco.

As a native of eastern North Carolina, this section of the state etched itself on my soul. Its laws of segregation, torpid summers, bountiful harvests and the conflicting miasma of family relationships were well known to me.

It was only when I attended St. Andrews Presbyterian College, in Laurinburg, that I saw eastern North Carolina from a distance that provided perspective on the region. In the turbulent years from 1964 to 1968, St. Andrews provided a maturation period, a time to explore myself and my state. As I stretched my wings to sky into adulthood, I entered the social realities of civil rights, the Vietnam War and poverty. As I struggled for manhood amid the vicissitudes of the era, a woman in an adjacent county struggled to survive with the memories of sexual abuse, and the all too common violence which afflicts poverty-stricken families trying to survive in a prosperous country. Unknown to me at the time, the life of the woman, Velma Barfield, was inextricably bound to mine.

II. INTRODUCTION

It was in the slow paced environs of Robeson County, North Carolina that Velma Barfield came to trial for the murder of Stewart Taylor. Although not on trial for three other murders, she freely confessed responsibility for killing Dolly Taylor Edwards, John Henry Lee, and her mother, Lillian McMillan Bullard.

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The murders occurred over a seven year period of time. Velma Barfield was a well known member of the community and not suspected. Indeed, the murders were presumed to be death by natural causes until the suspicious family of Stewart Taylor provoked an autopsy, revealing his death by arsenic poisoning. Evidently, Velma Barfield bought rat poison and placed it into the food or drink of her intended victim. Gradually, the arsenic accumulated in the person's body until death occurred.

The shock of the accusation and trial of Velma Barfield reverberated throughout the county in 1978. It was difficult to envision the matronly woman who shopped at the A&P market and worked spinning yarn, as a killer. After all, the woman was a grandmother!

Velma Barfield had a court-appointed lawyer who had never defended anyone in a capital case. The perfunctory defense was no match for the prosecutor's portrait of Velma Barfield as a cold-blooded murderer who enjoyed watching her victims die. On December 2, 1978, the trial judge sentenced Barfield to death by asphyxiation.¹

In the fall of 1979, Velma Barfield's conviction was upheld by the North Carolina Supreme Court.² Her court-appointed lawyer was eager to drop the case, and those who had come to know the quality of her representation were equally anxious to locate another lawyer to represent her.³

III. THE PARADOX OF VELMA BARFIELD

In December, 1979, Mr. Richard Burr of the Southern Prisoners' Defense Committee journeyed to the Women's Prison in Raleigh, North Carolina. He discussed with Mrs. Barfield the possibility of becoming her lawyer. He recalled the conversation:⁴

We spent three or four hours talking the first time we met.

We both liked each other a great deal. We left the interview feeling that we were glad we had run into each other.

After meeting Velma, I thought that if she had committed

1. The jury had recommended that Barfield be sentenced to death based on three aggravating circumstances. The jury found that the murder of Stewart Taylor was: (1) committed for pecuniary gain; (2) committed to hinder the enforcement of the law; and (3) especially heinous, atrocious or cruel. *Barfield v. Woodard*, 748 F.2d 844, 845 (4th Cir. 1984).

2. *State v. Barfield*, 298 N.C. 306, 259 S.E.2d 510 (1979), *cert. denied*, 448 U.S. 907 (1980).

3. In 1980, 714 prisoners were under a sentence of death. Only 8 of 714, or 1.1%, of the 714 prisoners were female. D. LESTER, *THE DEATH PENALTY ISSUES AND ANSWERS* 9-10 (1987). Therefore, Velma Barfield's death sentence was highly unusual.

4. All remarks by Richard Burr in this article are excerpted from an interview held at his home in West Palm Beach, Florida on May 27, 1985.

those crimes, they were committed under circumstances in which her mental and emotional states were seriously altered from the way they were when we were together. The person I saw was kind, sensitive and loving. There was no hidden agenda with Velma. Whenever you were with her, she was who she was. From what I understand, that's how she lived her life in prison. So, from the very beginning, I believed that when she committed those crimes it was not the Velma Barfield, mentally and emotionally, that I was seeing and getting to know.

Richard Burr had experienced the loving, kind, doughty grandmother that many people knew and loved. This Velma Barfield was inconsistent with the person who killed four people. The problem became one of trying to overcome the trial record, which portrayed Mrs. Barfield as being a cold-blooded murderess, and replacing it with an accurate personality portrait of the woman who committed these crimes, along with an explanation of why she did so. Burr discussed the approach he took:

I knew she had been evaluated before trial by two court-appointed psychiatrists. I was also aware that testimony had been given by her own psychiatrist, who treated her for depression for several years. As I became more familiar with the trial record, read the psychiatric evaluations and received medical records made during her hospitalizations, I began to feel that the pre-trial evaluations were inadequate.

Basically, the pre-trial evaluations concluded that she suffered from functional depressions and personality disorders. I felt that there had to be more because there was a long history of prescription drug abuse.

Furthermore, as I became acquainted with Velma, I learned more about her childhood and the difficulties she suffered as a child. Tragically, she and the other children in her family were victims of violence and sexual abuse.

As time passed and a relationship of trust grew between Dick Burr and Velma Barfield, Mrs. Barfield alluded to the history of child abuse. Unfortunately, none of this was on the court record. The appellate courts were looking at a record fashioned primarily by the prosecutor who portrayed Velma Barfield as a murdering witch. In order to begin presenting an alternate view of the woman he represented, Burr turned to psychiatrist Selwyn Rose. Dr. Rose evaluated Mrs. Barfield in September of 1980 and presented his findings to the state superior court in late

November of the same year.⁵

In the appellate process, one opportunity is eventually given in either state court or federal court for a full evidentiary hearing.⁶ In this context, Dr. Rose testified in the state court. Burr commented on Dr. Rose's diagnosis:

5. See *infra* note 6 for a discussion of how the psychiatric findings presented by Dr. Rose fit into the procedural history of Velma Barfield's case.

6. The Fourth Circuit in *Barfield v. Woodard*, 748 F.2d 844 (1984), traced the procedural history of Velma Barfield's case as follows: After the trial judge entered the sentence, Barfield appealed directly to the North Carolina Supreme Court. *Id.* at 845. During the pendency of the appeal, the North Carolina Supreme Court stayed Barfield's execution in order to allow her to pursue automatic appellate review of her conviction and sentence. *Id.* at 846. The North Carolina Supreme Court found no error in the trial or the sentence. *Id.*

On November 13, 1979, Barfield filed a motion for stay of execution in the North Carolina Supreme Court pending her petition to the United States Supreme Court for writ of certiorari. A stay of execution was entered. *Id.* The United States Supreme Court denied certiorari. *Id.* Accordingly, the stay of execution was lifted. *Id.*

On October 3, 1980, Barfield filed a motion for relief in state superior court under North Carolina's post-conviction procedures. *Id.* An evidentiary hearing was held during the week of November 17, 1980. *Id.* at 847. The judge denied Barfield's motion for relief. *Id.*

On May 15, 1981, Barfield filed a petition for certiorari with the North Carolina Supreme Court. The petition was subsequently denied in July of that year. *Id.*

On September 8, 1981, Barfield filed a petition for writ of certiorari in the United States Supreme Court seeking review of the decisions of the state courts in the post-conviction proceedings. *Id.* On October 19, 1981, the United States Supreme Court denied Barfield's second petition for writ of certiorari. *Id.*

In November, 1981, Barfield filed a petition for rehearing. The United States Supreme Court denied rehearing in December. *Id.*

Thirteen days before her scheduled execution, on March 9, 1982, Barfield filed a petition for writ of habeas corpus. A hearing was held before the United States District Court for the Eastern District of North Carolina. *Id.* at 847-48. In May, 1982, Barfield's petition for writ of habeas corpus was denied. *Id.* at 848.

Barfield gave notice of appeal. Judge Dupree of the United States District Court for the Eastern District of North Carolina issued a certificate of probable cause to appeal to the Fourth Circuit Court of Appeals. *Id.* The Fourth Circuit affirmed the district court's denial of the petition for writ of habeas corpus. *Id.*

In March, 1984, Barfield filed another petition for writ of certiorari in the United States Supreme Court. Again, the Supreme Court entered an order denying the petition for writ of certiorari. *Id.* at 849. She again filed a petition for rehearing that was denied. *Id.*

On October 29, 1984, only four days before her scheduled execution date, Barfield filed a second motion for relief under the state's post-conviction procedures. She claimed that she was incompetent to proceed at the time of trial, because she was suffering the effects of withdrawal from prescription drugs. *Id.* A state superior court judge dismissed the motion without hearing the evidence. *Id.* at 850. She then petitioned the North Carolina Supreme Court to issue a writ of certiorari to review the dismissal of her motion in the lower court. The North Carolina Supreme Court denied the motion. *Id.*

Barfield then filed a second petition of habeas corpus in federal court under 28 U.S.C. § 2254 (1966). She raised the same issues raised and rejected in state court. *Id.* The federal judge denied relief but granted a certificate of probable cause to appeal. *Id.* On appeal the Fourth Circuit denied Barfield relief. *Id.* at 852.

Dr. Rose felt that he never quite understood Velma. Basically, he believed that she suffered from three disorders. The first was a multiple prescription drug abuse disorder which had been present for more than ten years by the time of the homicide. It was coupled with, as he put it, an underlying personality disorder which allowed her to put poison in a person's food or beverage without feeling any appreciation for the consequences of what she was doing. The third disorder was depression.

Dr. Rose thought that she suffered from an organic-based depression; a depression caused by some chemical or other physiological dysfunction in her brain. This dysfunction, as he explained in court, could be psychotic in proportion. It is like the depressive side of the manic-depressive disorder. Dr. Rose did not see the manic side, but there was depression. This depression had been diagnosed by her treating physician as well. Despite identifying these disorders, Dr. Rose never felt as if he had put together a complete picture of Velma Barfield.

The week-long post-conviction hearing held in late November, 1980, proved critical to Velma Barfield's appeal. The one opportunity to present a portrait contrary to the prosecutor's portrayal was now a part of the court record. Reflecting on the hearing, Dick Burr shared his frustrations:

I was not experienced, at the time, in putting together mental health histories. I did not know nearly as much about the interrelated incidents in people's lives, or symptoms and emotional states, which I later might have been able to come up with to help Dr. Rose piece it together. So, I didn't know where to go with Dr. Rose because he seemed to be at a dead end. Certainly, at that point, I didn't know how to help him get out of it. I felt the evaluation was incomplete—but I did not know what to do about it.

Burr's reference to "incomplete" incisively described my own relationship with Velma Barfield. My visits with her in the Women's Prison in Raleigh were invariably delightful. She was witty and a caring grandmother. She knitted, doted on her grandchildren and enjoyed family visits every weekend. After spending several hours in a visit with Velma Barfield, I always left the prison feeling that she cared for me. I realized that I was coming to regard her with the love that I have for members of my own family. Yet, she was undeniably a murderess. I frankly did not know if we would ever discover why she committed those crimes. With-

out that knowledge, I feared we would not be able to persuade the courts or the Governor to spare her life.

As Velma Barfield's appeal continued, the reality of the death penalty in the South shifted dramatically. In 1981, there had been one execution in the United States.⁷ In 1982 there were two executions, and in 1983 there were five executions.⁸ In the spring of 1984, James Hutchins was the first person in North Carolina to be executed in approximately twenty years.⁹ The death machinery was functioning with increasing efficiency, and it was primed to obliterate Velma Barfield. Yet the question that remained unanswered was how this woman, who was known and loved by many, both inside and outside the prison, could have poisoned four people. It did not seem to bother Velma Barfield as it did those of us who knew her. Dick Burr commented:

Velma always seemed to have a hopeful attitude about things. She balanced her hope with what we realistically expected from a particular proceeding in the courts. She was always better able than Jimmy Little, a local lawyer recruited to assist in the case, or I to sustain a real sense of hopefulness and optimism about the outcome of her case. She felt that with Jimmy and I representing her, she was represented by good lawyers and that it would make a difference. She had not been represented by good lawyers at the trial and she had the fairly simple belief that was all it would take. Right up until we had no more legal proceedings to pursue, she never gave up her sense of hopefulness about her life.

I think her sense of optimism was rooted in more than hopefulness about the outcome of her case. I think she had some real resolution in her life, so she was able to maintain hope without ever being overwhelmed by despair. It was as if she believed that if she didn't succeed in the courts, that it was not the end for her anyway.

Dick Burr was fighting to keep his client alive with all the tools the law provided. He had come to love Velma deeply in the four years he represented her, and although he did not share her profound Christian faith, he admired the strength it provided for Velma. Yet for Dick Burr, any notion of the after-life meant Velma Barfield was being killed by the

7. AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA, THE DEATH PENALTY App. 4 at 195 (1987).

8. *Id.*

9. AMNESTY INTERNATIONAL, *supra* note 7, at App. 5 at 203, App. 6 at 209.

state of North Carolina—an unacceptable final solution which he sought desperately to avoid.

IV. A PLEA FOR CLEMENCY

A. *Unravelling the Mystery of Velma Barfield*

Burr described the next step in the effort to save Velma Barfield:

We felt that all of our efforts should be put into the clemency plea.¹⁰ I did a lot of strategy planning with Jimmy Little and Lao Rubert, Director of the Southern Coalition on Jails and Prisons, North Carolina office. Jimmy and Lao really put a massive effort into clemency from March until September, 1984. We put together a huge clemency presentation involving people who cared a great deal about Velma. It included people who had known her a long time, or who had come to know her since she was in prison. These people spoke about Velma's many qualities that deserved life, and about how much she had meant in their lives.

The most moving and impassioned of the pleas were from people at the Women's Prison. Velma had touched each of these people, including the Warden. Velma grew where she was planted, and she sank deep roots in that prison and touched a lot of lives. Women at that prison loved her like a mother or sister. She was not a convict at that prison, but a part of everybody's life in a very important way.

One of my favorite stories about Velma and the prison, from when I first met her, was the way she referred to the guards. She called them "the help." The term struck me profoundly because I had been used to, in all my death penalty cases and prison cases, a sharp antagonism between the guards and prisoners. For a prisoner to call guards "the help," showed a remarkable inversion of power relationships. In fact, there was nothing affected about Velma, I mean, that statement was as genuine as anything else Velma ever said. You know, she knew these folks were there to make a living and to do their job. She treated them with dignity and respect and received it

10. Most state constitutions give the executive authorities the power to grant clemency in capital cases by commuting death sentences to life imprisonment. AMNESTY INTERNATIONAL, *supra* note 7, at 100. The North Carolina Constitution gives the governor the power to grant clemency. N.C. CONST. art. III, § 5(6).

in return. I never heard a bad word from Velma about any of the guards at that prison.

In preparing the clemency presentation for Governor Hunt, Burr determined that another psychiatric evaluation was appropriate. He sought an explanation for the anomalous behavior of this charming grandmother who had killed four people. In the three years that had passed since Dr. Selwyn Rose's evaluation, Burr had learned a great deal about evaluating condemned people. A key in the learning process was working with Dr. Dorothy O. Lewis. Dr. Lewis, on the faculty at New York University and Yale University, combined brilliance with a gift for diagnosis that provided an invaluable framework for understanding violent behavior. In the summer of 1984, Dr. Lewis and Mr. Burr spent the day at the North Carolina Prison for Women in Raleigh evaluating Velma Barfield. Burr recalled the dynamics of the interview:

Dr. Lewis is, I think, a gifted interviewer. I've seen her interview a number of our clients on death row. She is able to establish rapport with her patients better than anyone I have ever seen. She takes time, and lets people talk. She directs the interview, but people begin to trust her and begin to believe that she really has their interest at heart. When that happens, people open up. It comes out real slowly and hesitantly, and Dr. Lewis always says "[n]ow, you know, if you don't want to talk about this you don't have to. But my experience has shown that when people talk about the hardest things to talk about, they feel better afterwards." As a result, people begin to talk about things that they never talked about before.

I witnessed this same process with Velma. The most difficult experience for her to talk about, an experience that she had never talked about before, was the extent to which she was a victim of sexual abuse by the male members of her family. She began to talk about her life in detail, particularly about the time after the onset of her depression, which she dated approximately twelve to fifteen years before the homicide.

Dr. Lewis began to pick up patterns in Velma's earlier life—patterns of manic episodes. Dr. Lewis recognized that they were not major manic episodes, but were known in the psychiatric literature to be associated with the development of a manic-depressive disorder—eating binges, buying sprees, outpourings of emotion, outpourings of rage. For the first time, Dr. Lewis began to make sense of a person's life that previously had not made complete sense to anybody.

Seeing Velma as a person suffering from a bipolar mood disorder or a manic-depressive disorder, made a tremendous amount of sense to me. It explained how she could fluctuate between behaving like a normal person and behaving like a psychotic person. However, that is the character of a manic-depressive disorder. You are usually somewhere in between the poles, but you do have those sharp poles, either of which can be the psychotic state. It was during the course of that discussion when Velma said she was glad that this had finally come to an end, because she was afraid that she was going to poison her grandchildren. She didn't know why she did it, but she did it, and it was not something she could stop.

That statement fit in sensibly with the bipolar disorder. As a result, Dr. Lewis' evaluation became a part of the clemency effort, and ultimately led to a revival of legal issues that we tried litigating in the second round of post-conviction and federal habeas corpus proceedings.

When I read the psychiatric report in which Dr. Lewis recorded her diagnosis and evaluation of Velma Barfield, it struck me as a revelation. For the first time in the five years I had known this delightful woman, my understanding of her tragic behavior was complete. Dr. Lewis provided the missing piece of the puzzle; the entire picture of Velma's personality became clear. Dr. Lewis' report became part of the clemency package presented to Governor Hunt.

B. The Politics of Death

In late September, 1984, Velma Barfield's lawyers, Dick Burr and Jimmy Little, met with Governor Hunt for over an hour to discuss the case. This meeting occurred six weeks before the election for the United States Senate in which Governor Hunt challenged the powerful incumbent, Jesse Helms. Jesse Helms had spent \$20,000,000 to maintain his seat, and the large lead once enjoyed by Governor Hunt had been lost. In fact, the polls indicated that he was trailing Senator Helms. In this context, Dick Burr recalled the discussion with Governor Hunt concerning Velma Barfield:

We sat in the outer part of his office for approximately an hour and a half. We were supposed to have two hours with him but I think we ended up having only a little more than an hour. He impressed me as somebody who was very well organized. He was familiar with many of the details of the case. The Governor had obviously spent a good part of that week seeing

family members, friends and interested parties from both sides of the case.

The Governor was very cool, detached and formal in dealing with us. He asked some incisive questions and we did talk about Dr. Lewis' report.¹¹ My sense was that he just thought it was another opinion and that it had not made the impression on him that it had made on us. But nothing, in fact, made a real impression on him. I did not get a sense that anything had.

I was hopeful that the whole process had made an impact because the Governor had heard some powerful pleas. He saw the Warden at the Women's Prison who had made a tearful plea. He also heard powerful statements from women at the prison in support of Velma's life.

Although the pleas focused on the goodness of Velma's life in prison, the Governor kept saying that it was not enough. He seemed to believe that for someone to have lived a good life after they had committed a murder was not a reason to grant clemency. This astounded us. But it all became clear once he made his statement denying clemency.

The Governor said something to the effect that nothing warranted overturning the verdict of the jury and the sentence of the judge. Furthermore, he concluded that nothing suggested that either of those decisions were wrong. It was clear that he focused on the need for new evidence in her case; the need to show that something was wrong with the legal process.¹² He did not focus on what we actually put forward as the heart of the clemency, which was that she was a decent human being who deserved to live because her life had meaning for a number of people. He did not see that as a reason for granting clemency.

After the matter-of-fact interview with Governor Hunt, it came as no surprise that he denied clemency to Velma Barfield on September 27, 1984. The trial judge had previously set the execution date for November 2, 1984. Rather than taking the high road and refusing to decide

11. At a clemency hearing the Governor may consider medical and psychiatric information, as well as non-expert information. Note, *A Matter of Life and Death: Due Process Protection in Capital Clemency Proceedings*, 90 YALE L.J. 889, 899 (1981).

12. Amnesty International has found that state authorities tend to take a very narrow view of the role of executive clemency. State authorities tend to believe that the decisions of the courts should stand unless there are irregularities or errors in the legal process. AMNESTY INTERNATIONAL, *supra* note 7, at 107.

Velma Barfield's fate until after the political race of his life, Governor Hunt practiced the politics of death when he speedily decided the fate of Velma Barfield.

Velma Barfield never had a chance. Apparently, she would become the first woman executed since the historic 1976 Supreme Court decisions.¹³ Suddenly, the vortex of death loomed before all who cared for Velma Barfield and sucked us all toward a November 2 killing.

V. THE FINAL EFFORT TO SPARE VELMA BARFIELD

A. *The Issue of Competency*

After the denial of clemency, one faint hope remained for keeping Velma Barfield from the executioner. If a legal issue could be uncovered that had not yet been litigated because it had only recently been discovered, then a habeas corpus petition could be sought to stay the execution.

This maneuver was effective in the past because trial lawyers often did not know the proper issues to raise. In Velma Barfield's case, the issue that arose was whether she was competent at the trial.¹⁴ Lao Rubert, the Southern Coalition on Jails and Prisons North Carolina project director, found that the issue of her competency at trial had not been litigated. Significantly, medical information indicated that the prescription drugs to which Velma Barfield was addicted had a prolonged withdrawal period. This indicated that Velma was in acute withdrawal at the time of trial. This could explain some bizarre behavior on her part. For instance, she laughed at the prosecutor, wore inappropriate clothing while hospitalized, and had erratic mood shifts upon arrival at the Women's Prison. Thus, the decision became whether or not to raise this newly discovered issue after the clemency denial.

After Governor Hunt denied clemency, Velma's children strongly felt that the end was near. They simply did not believe they could endure another round of litigation with raised expectations, only to lose once again. They had persuaded Jimmy Little, the local counsel, to oppose any further legal action. On the other hand, I felt strongly that the competency issue deserved litigation and might result in a stay of execution.

13. See *Jurek v. Texas*, 428 U.S. 262 (1976); *Proffitt v. Florida*, 428 U.S. 242 (1976); *Gregg v. Georgia*, 428 U.S. 153 (1976) (all three cases upheld death penalty statutes passed in response to the United States Supreme Court's decision four years earlier in *Furman v. Georgia*, 408 U.S. 238 (1972), which invalidated all then-existing death penalty laws).

14. The doctrine of competency to stand trial requires the court to determine whether the defendant has a present ability to assist in his defense and whether he understands the proceedings against him. T. GRISSO, *EVALUATING COMPETENCIES, FORENSIC ASSESSMENTS AND INSTRUMENTS* 3 (1986).

Clearly, it was Velma's decision. Dick Burr flew to North Carolina to discuss the legal situation with Velma Barfield. Burr recalled their discussion:

I went back to North Carolina to see Velma on October 22 to go over the potential issues with her. I had talked with a psychiatrist in Atlanta who was going to provide very helpful corroboration of the effect of her withdrawal and its relationship to competency to stand trial. We were documenting the evolution of the medical knowledge in order to show that information relevant to her competency to stand trial simply was not known at the time of her trial, or even at the time of her first state and federal collateral proceedings.

At that long afternoon meeting, Velma seemed as though she wanted to pursue the issue. Jimmy Little cautioned her to think about it overnight and talk with her children because their position had been that unless there was nearly a guarantee, they did not want her to litigate the issue.

The next morning we returned to the prison and she was just as serene as could be. She said, "I want to do it. I couldn't live with myself or die with myself if I knew I had given up, and I'm not ready to give up. I think I owe it to everybody on death row not to give up, and I don't want the state to have the last word in this case." Velma was fired up and ready to go.

I think Velma's children felt badly about her decision because they didn't get the guarantees they wanted. Velma, however, did not feel badly about it at all. You know, she really separated herself at that critical point from her children and decided what she had to do. It was just a beautiful, beautiful time with her that morning. She was just on fire.

We started early Monday morning, October 29, in the state trial court. We wrangled a hearing there the next morning. We lost there and took it to the North Carolina Supreme Court. We didn't get an argument there, so it was hard to get any sense of that court. Then, on Wednesday, we had a hearing with Judge Dupree in the Federal Court for the Eastern District of North Carolina in Raleigh. The hearing began in the afternoon. We argued for a stay of execution in order to conduct an evidentiary hearing on Velma's competency to stand trial. We finished about 5:00 p.m. and waited for word.¹⁵

15. This last effort to save Velma Barfield was brought under a North Carolina post-con-

I entered into this last ditch drama to save Velma Barfield in the late afternoon of October 30. Arriving at the federal district courtroom, I observed Dick Burr present his arguments before Judge Dupree. After Burr completed his arguments he left the courtroom for a nearby law office. While we waited for Judge Dupree's ruling, we ordered food and made plans for the journey north on Highway 1 to Richmond, Virginia, the home of the Fourth Circuit Court of Appeals.

At 7:30 p.m. we were summoned back to the courthouse for a copy of Judge Dupree's order. As expected, Judge Dupree ruled against Velma Barfield. However, he granted a certificate of probable cause indicating his belief the appeal had merit. It was time to drive to Richmond, Virginia.

B. *The Fate of Velma Barfield*

At 8:30 a.m., November 1, 1984, the oral arguments in *Barfield v. Woodard*¹⁶ began. Velma Barfield's execution was set for 2:00 a.m., on November 2, 1984. Given that only seventeen hours remained before the scheduled execution, coupled with the conservative posture of the United States Supreme Court regarding the death penalty, the three judge panel of the Fourth Circuit Court of Appeals would probably decide the fate of Velma Barfield.

After the state completed its argument, Dick Burr stood and walked to the podium for his argument. He began to set the stage, describing the convoluted history which brought Velma Barfield's case before the court at the last hour. But before he even finished chronicling the development of the competency issue, one judge commenced an ad hominem assault on Dick Burr that totally shocked me. The judge was utterly disrespectful of Burr's position as he harassed him from the bench. My astonishment soon gave way to anger. I knew the judge's outburst meant Velma Barfield was doomed.

Another judge finally interjected and began a soliloquy that saddened me as much as the first judge angered me. Basically, the second judge stated in a five minute peroration from the bench that he would like to do something, but the Supreme Court had tied his hands. Listen-

viction act. N.C. GEN. STAT. § 15A-141 (1988). The state trial judge found the motion to be "procedurally barred, abusive of the post-conviction act, and unlikely to be meritorious." *Barfield v. Woodard*, 748 F.2d 844, 850 (1984). The judge dismissed the motion without hearing evidence. *Id.* The North Carolina Supreme Court would not review the trial court's denial. Richard Burr then filed a habeas corpus proceeding in federal district court on Velma Barfield's behalf. Burr was seeking a full evidentiary hearing on the issue of competency.

16. 748 F.2d 844, 845 (1984).

ing to him, a man I knew and respected, sign his conscience over to the state because of his oath to uphold the law, drained my anger and gloom descended upon me. I sat through the remainder of the hearing, aghast and depressed. Velma Barfield was truly going to be killed even though she was no more responsible for her crimes than any other psychotic. Richard Burr recounted the events in court:

The judge hastily said: "The Supreme Court has tied our hands." I think my response was, "it doesn't have to come out that way in this case because we have presented an issue that at the very least requires a full evidentiary inquiry, but Judge Dupree did not let us have it." I seem to remember the Judge not making any response to that. I felt really disappointed with the argument in the court that day. I don't think there was any doubt in our minds what they were going to do.

After the hearing the clerk informed us of the decision against Velma. A written order would be forthcoming, so we adjourned to Bob Brewbaker's law office. Brewbaker was a close college friend who once again came through in an emergency situation by providing us with an office and telephone for the remainder of the day.

Upon arriving at Brewbaker's office, we called Jimmy Little and Mary Ann Talley, attorneys in Raleigh, who were communicating the latest development in the courts to Velma Barfield, who remained on death watch at Central Prison.¹⁷ They agreed to take the news to the prison and share it with Velma personally. Mary Ann also agreed to counsel Velma to file a petition for certiorari to the United States Supreme Court. Dick Burr, Adam Stein and I began seeking issues to frame for the Supreme Court.

As the afternoon progressed, we awaited a written opinion from the Fourth Circuit panel in a forlorn hope it would give us yet another opportunity to appeal to the Supreme Court. At 4:30 p.m., we moved to the conference room adjacent the clerk's office in the Fourth Circuit, because the appeal was to be delivered to us there. Shortly after 5:00 p.m. the order was delivered. We read it. There was nothing to appeal. Our last gasp of hope was gone. Velma Barfield had nine hours to live.

17. A prisoner is placed on death watch when execution is imminent. A condemned prisoner is moved from the general death row population to an isolated cell adjacent the death chamber. Most or all of the prisoner's personal possessions are removed at this time and he or she is placed under special observation. AMNESTY INTERNATIONAL, *supra* note 7, at 109-10.

C. The Gateway to Heaven

Due to the length of time it took to prepare the order, Dick Burr opted to ride back on the state plane with the Attorney General's staff in order to visit Velma one last time. Adam Stein and I would drive back and join the hundreds of people gathering in protest outside of Central Prison.

After returning to Raleigh, Dick Burr went directly to the prison for a final contact visit with Velma Barfield, who seemed unafraid and serene. He commented:

I guess it wasn't in Velma's character to be angry. Nevertheless, I wish I'd had the strength to say to her, "Velma, it's wrong. I think it's wrong. I think you ought to claw and kick and scratch and scream." You know, that would have been the Velma who said, "I don't want the state to have the last word in this case." That would have been the Velma who said go ahead and go back to court. But, Velma had been convinced that the doors to the execution chamber were the gateway to heaven. So, instead, Velma kept talking about that.

People, however, have to face their death in their own way and nobody faces it the same. They are not dying, you know. They are being killed. They are not coming to the end of a natural process, they are being murdered. They don't scream because their soul is in anguish, they scream because what is happening to them is wrong. That bothered me a lot. The whole serenity of the night bothered me a lot.

Later, Dick Burr joined Velma's children in one of the associate wardens' offices to wait for the execution. As they looked out from Central Prison, they beheld hundreds of people gathered in silence with candles illuminating the darkness. The protesters were gathered on a grassy knoll across a creek bed from the prison, a mere three hundred yards away. A visible witness against the barbarity perpetrated on Velma Barfield was made with a simultaneous affirmation of the worth of Velma's life, regardless of what the State of North Carolina decided.

As someone who had joined the throng about 10:00 p.m., I felt honored to bear a candle in tribute to a woman I held so dear. The anger I felt at the entire scenario ebbed and flowed as the night progressed toward the inevitable denouement at 2:00 a.m. I alternated between pacing the hillside alone and talking with friends.

As 2:00 a.m. neared, I sought out Lao Rubert, who had worked so long and hard to keep Velma alive. I just wanted to hug her, to let her

know in words destined to be inadequate for the horror of the occasion, how much she had meant to me over the years. I found her in the crowd and embraced her, sharing tears and sorrow inexpressible by mere words.

The people gathered across the street in support of Velma Barfield's killing burst into a chant as the time neared 2:00 a.m. "Kill the bitch! Kill the bitch!" The refrain shattered the night air with its hatefulness. I noticed one of Velma's brothers separate himself from those gathered at the hilltop, and walk to the curb of the street that separated the protesters and celebrators. He peered into the night like a watchman in a lighthouse, absorbing all around him as the chant for his sister's death repeated itself again and again. It was as if he were trying to comprehend the hate, the spite these strangers felt for a woman they had never met. Finally, he shook his head and returned to the crowd on the hill.

After the execution, I went to Jimmy Little's apartment to meet Dick Burr as we had planned. He arrived with Mary Ann Talley. The three of us talked, shared events of the night, and sought each other out to affirm our own liveliness amidst the macabre machinery of deliberate death. As the clock neared 4:30 a.m., exhaustion overtook us.

VI. EPILOGUE

In reflecting on the events and years with Velma Barfield that led up to the dreadful night of November 2, 1984, it is difficult to comprehend the bizarre and insane process of a state killing its own citizens. The process that we dignify with a euphemism by calling it the death penalty reminds me of Fyodor Dostoyevski's incisive remark: "You can judge the degree of civilization of a society by entering its prisons." If Dostoyevski were alive today, he would be, as we all should be, weeping.