A sad reflection

While John Spenkelink was being prepared for execution last Friday, he reportedly expressed the hope that "some good" would come of his death.

But if Spenkelink's hope was for early abolition of capital punishment, then it was a wish which apparently will not be fulfilled.

Whatever outcry may have been raised by the press over Spenkelink's death will soon be forgotten, it seems, and whatever revulsion may have been felt by the general public will soon pass. The vivid, horrifying phrases of the news accounts and the well-turned arguments of editorials leave no lasting impressions. And as for public outrage, the protestors in Raiford, Fla., where Spenkelink was electrocuted, never numbered over a few hundred, and now have faded again into anonymity and silence. None of the public-opinion samplers seem to have produced any figures on the number of Americans who were convinced of the evil of capital punishment by Spenkelink's death. It does seem likely, though, that the majority which last year favored the death penalty for certain crimes will continue, at least for a time, to be a majority.

Meanwhile, the bureaucratic wheels which dispatch the John Spenkelinks of the nation continue to roll in their almost imperceptible fashion, toward still more sentencings, still more death-watches, still more executions.

More than 500 men and women now wait on death rows across the United States, and they are joined by some 100 additional prisoners doomed to death each year. There is even evidence of a nationwide trend toward increased employment of capital punishment. Oregon, which many years ago abolished it, adopted it once again last December following a voter initiative. South Dakota and New Mexico also enacted new laws this year. In California, voters last November overwhelmingly approved an initiative to expand the number of crimes punishable by death. Maine, Ohio and Colorado seem likely to reinstate the death sentence this year. Efforts in Nebraska, New York, Massachusetts and New Jersey may well add those states to the list, which already includes 35 states. According to opponents of the death sentence, the trend is very definitely toward re-establishment, and their great fear is that the Spenkelink execution has broken the psychological barrier against more executions.

That may be an overly simple view. What appears to have come upon us is the culmination of nearly a decade of redefinition of capital punishment. The effective moratorium on executions which lasted from 1967 until 1977 found its genesis in the nation's strong doubts about the propriety and fairness of capital punishment. But those doubts were resolved by the Supreme Court in a series of decisions beginning in 1972; and now, the painfully slow wheels of bureaucracy have at last brought us to the point foreshadowed by the court's decisions: an era in which a large number of states have both constitutional death penalties and working death chambers.

It is difficult to imagine how a reasonable person can conclude that the possible deterrent effect of ritualized killings by the state can justify the fearful prices involved—in both lives and in the public spirit. It is especially difficult to imagine how a reasonable person can reconcile capital punishment with this nation's ideals of freedom and justice. There is indeed a kind of logic to the penalty of death for killers—but in a place and time in which more positive remedies are possible, why must the terrible penalties of such barbarism be paid?

Some good may yet come of John Spenkelink's death. Many opponents of capital punishment feel that the nation will sicken in time of the spectacle of such carnage. But it is a sad reflection that more—probably many more—must die before that time arrives.

Decade of conflict

By ELLIOTT WARNOCK

Officials at both the Department of Health, Education and Welfare and the University of North Carolina are awaiting U.S. District Judge Franklin Dupree's ruling on a suit filed by the University in April.

UNC requested in the suit that HEW be enjoined from proceeding with plans to cut federal funds designated for the University. The University has also requested that UNC be declared by Dupree to be in compliance with Title VI of the Civil Rights Act of 1964.

HEW maintains UNC is in violation of the act, which declares that no federal funds may be used for programs that further racial segregation.

Should Dupree refuse UNC's request for a preliminary injuction against HEW, the Department could proceed with administrative action, started in April, to cut federal aid to the University. The cut could amount to $89 million.

Joseph Califano

Dupree is expected to decide the case by June 11. He has already extended a temporary restraining order against HEW actions and refused a change of venue request by HEW to have the proceedings moved to Washington D.C.

Some speculation has been offered by both UNC and HEW lawyers that Dupree may think the UNC suit is premature. The speculation is based on some cautious wording near the end of Dupree's denial of the HEW change of venue motion.

"Our discussion...raises serious questions concerning the court's jurisdiction and what, if any, injuctive relief the plaintiffs (UNC) should receive," Dupree wrote in his ruling last week.

Attorneys for UNC state in their brief that the court has jurisdiction in the case since it is an action arising under the First, Fifth and 10th Amendments to the constitution, as well as sections of the United States Code. UNC claims HEW's actions are interfering with the right of North Carolina to form and preserve its educational system.

The University maintains in its suit that if HEW should terminate funds it would "irreparably and substantially injure" the UNC system. "The loss of programs or faculty members or both" would result, the brief stated.

UNC also asserts the University has spent "millions of dollars and thousands of hours in successfully overcoming the effects of a formerly segregated system of higher education."

N.C. Gov. Jim Hunt proposed in April that $40 million of state funds be spent to upgrade the state's five predominantly black campuses. HEW accepted this proposal but still holds that duplication of programs at white and black schools in the UNC system preserves segregation.

In the suit pending before Dupree, UNC maintains that HEW never defined "educationally unnecessary program duplication." UNC also states that HEW never issued any standard by which to measure the success of desegregation other than having " 'enough' blacks attending the white schools and 'enough' whites attending the black schools."

On Aug. 11, 1977, HEW published the *Amended De Jure Criteria*, which says state systems must "provide an equal educational opportunity...open and accessible to all students."

Attorneys for UNC claim this is contradicted by HEW director of the Office of Civil Rights David Tatel's statement on Dec. 10, 1978 that the "whole purpose of these plans is to protect black institutions...to preserve the identity of a black institution and have it integrated."

Peter Hamilton, Deputy General Counsel for HEW, told University officials at a meeting March 8, 1979, in Washington that the Department could not decide "case by case" and "program by program" what would be required of UNC for HEW to consider the University in compliance with Title VI. He described to UNC officials what the University's brief calls "contours of an enhancement plan."

Attorneys for the University say they have requested copies of transparencies of the "contours" from HEW but have not received them yet.

The Office of Civil Rights issued its first guidelines for Title VI compliance by colleges on Jan. 28, 1970. They were 1) recruitment of black students; 2) recruitment of black faculty members at white colleges; 3) more financial aid for blacks; 4) preparation of remedial programs for disadvantaged students; and 5) clear statements of nondiscrimination in employment.

The Office of Civil Rights accepted UNC President William Friday's proposals for compliance with those guidelines in July 1970.

HEW was spurred onto further action by a suit filed in October 1970 in Washington D.C. by the NAACP against HEW. The suit alleged HEW had failed in its obligation to enforce Title VI.

William Friday

U.S. District Judge John H. Pratt ruled three years later in Washington that HEW must expidite enforcement of Title VI. In March 1979 the NAACP requested the enforcement proceedings be applied specifically against North Carolina.

No other state university system was named in the suit.

Depending on Dupree's forthcoming decision, HEW secretary Joseph Califano might be held in contempt of court by Pratt. If Dupree were to deny UNC's request for an injuction against HEW, Califano would be compelled by Pratt's order to proceed with action to cut funds to UNC or face the possible contempt citation.

Were Dupree to grant UNC's request, the ruling whether it or Pratt's order held precedence would have to be decided by a higher court.

Elliott Warnock, a senior journalism major from Chapel Hill, is associate editor of the Summer Tar Heel