

Death Row Innocents: The Struggle against Humiliation, 1974-2010

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“He expected justice, but saw bloodshed; righteousness, but heard a cry!”
Isaiah, 5, v. 7

We Americans pride ourselves on the fairness of the judicial system. “Innocent until proven guilty” is an uplifting slogan. Tragically, such, however, is not the case. It comes as a surprise to learn how haphazardly the system actually works with regard to those prisoners destined for execution. “I do not have confidence in the criminal justice system as it currently operates to be the final arbiter when it comes to who lives and who dies for their crime,” declared Governor Bill Richardson as he signed New Mexico’s 2009 repeal of the death penalty in New Mexico. “If the State is going to undertake this awesome responsibility, the system to impose this ultimate penalty must be perfect and can never be wrong.”¹ It’s unclear from the start here what it is that is “broken.” The strongest argument against capital punishment is the destruction of those who are innocent of the offense but later exonerated. Had their sentences been carried out they would have joined untold numbers less lucky than they.

In this regard, Governor Richardson has set a high standard of judicial conduct. Yet, clearly the execution of those who actually are innocent drives home the obviously irreversible nature of this form of retribution. It terminated not only a life by state action but also inflicts on the party’s family a stigma of shame and degradation. It stains forever the memory and reputation of the executed victim of official error, intentional or not. The psychologist Evelin Lindner trenchantly observes that “humiliation is a story as ancient as human history and as fresh as tomorrow’s headlines. It is a thread that ties all intractable conflicts together.” In fact, she continues, its power can “destroy everyone and everything in its path.” It becomes “the nuclear bomb or the emotions.” Few studies exist on the topic. Lindner and William Ian Miller, among

not many others, offer, however, proof of its universal and unhappily ageless character as a tool for asserting brute force and overlordship.²

The case studies to follow will help to explain the role that humiliation plays. Under such circumstances, one must ask if capital punishment, the ultimate means of shaming by obliteration, is needed for modern society's protection. Moreover, does it deter others from taking another's life? The innocent prisoner's struggle against the trial of humiliation suggests an aspect of the situation not often understood or recognized. The argument regarding the role of humiliation that is presented here finds in the process of identifying, trying, and sentencing the alleged offender too many opportunities for mistakes and biases. They may be racial or otherwise. Yet, they all govern the outcome. What this examination reveals is that American criminal law and practice are hopelessly corrupt, incompetent, and unethical. Rather. In an imperfect world, gross injustice and does occur more frequently than we probably imagined. And the consequences of it reach beyond the death row experience.

Even some religiously inclined conservatives agree that the death penalty violates common sense and pure justice. The Richmond Times-Dispatch recently published the comments of Richard A. Viguerie and Brent Bozell, both prominent ideological leaders. They pressed their right-wing colleagues to recognize the practice as a needless expense, one that religion and modern technology made its implementation wrong and obsolete. Following the ideas of John Locke, the conservatives' intellectual guide, they declared that "Conservatives don't trust the government [that it] is always capable, competent, or fair with far lighter tasks." They were publicly disappointed when fellow Republican Governor Robert McDonnell refused to commute the sentence of Teresa Lewis. With two accomplices, she had murdered her husband for the insurance, and her collaborators received only life sentences, not death. Her low mental capacity of 73 IQ should have precluded the ultimate procedure. (The Supreme Court likewise had refused to

stay the execution, although the Court had set incompetence for trial at 72.) Unlike the flimsy facilities of Locke's day, modern maximum security prisons, Viguerie and Bozell continued, made the old barbarisms of punishment obsolete. Protesting McDonnell's decision, they declared, "Since we believe each person has a soul, and is capable of achieving salvation, life in prison is now an alternative to the death penalty."³

Professor James Liebman of Columbia University and his colleagues refer to this state of death-row prosecutions as a "broken system." He may exaggerate; one might argue that the low numbers of prisoners who are subject to capital punishment prove the fairness of the system with only rare exceptions. Some experts declare that far fewer murders occur when the death penalty is legitimized. Others claims that deterrence by such a prospect fails to affect the number of homicides.⁴ Nevertheless, death-penalty enthusiasts fail to discern that the obstacles toward achieving te justice are as formidable as they are. Nor do they take account of the psychological impact that the decision terminating lives has on more than just the alleged murderer. According to the Equal Justice Initiative in Montgomery, Alabama, "1185 men, women, children, and mentally ill people have been shot, hanged, asphyxiated, lethally injected, and electrocuted by States and the federal government." The application of law may overle all other considerations. For instance, the execution of a prison inmate in Alabama took place on schedule even though the death-row guards pleaded for the life of this murderer. His genuine remorse and good deeds for others in the cellblock had won their sympathy. To shame as well as annihilate has that kind of impassioned force.⁵

An examination of several major issues regarding the death penalty is the first order of business. We shall address individual cases with some care. This endeavor, I tst, will demonstrate the imperfections in the trial system. To be sure, there is no claim here that the entire judicial apparatus is bankrupt. Nevertheless, decisions of judges and juries have led to the death of

possibly innocent prisoners. Of course, by far the larger percentage selected for execution committed vile crimes. Whether they deserve the ultimate penalty is a matter for the general public to determine. The cases to be cited may be representative of others in the same situation. It is impossible, however, to know how many were sent to death for crimes they did not commit. In any event, every execution by formal state action is still a tragedy. That applies not just to the offender but also, as mentioned, to the humiliated families to whom the inmates belong.

A second purpose is hard to separate from the first. It illustrates the following: whereas most prosecutors conscientiously play by the rules, a few others overreach their authority for reasons of political gain or out of malice toward the accused. This has resulted in a distortion of justice. Although much progress has been made in the realm of human rights during the last half century, class, racial, and ethnic biases may still intensely color the attitudes of police, prosecutors, juries, judges, and general public.

A third intention is to treat not only the horrific conditions within the prison walls but also the effects they often have upon the emotional life of those released. The seemingly endless process of appeal adds a further psychological encumbrance. That is especially so when pleas for a new trial on the basis of newly found evidence proving innocence fail before an inattentive or deficient judge. Even when freed, the innocent victims in too many instances steadily progress toward a state of emotional collapse. Former death row inmates soon learn that journalistic interest in their release pales in comparison with the sensation of the original murder indictment, conviction, and sentence. Ordinary citizens look with mist on the released prisoner, businesses shy away from hiring them, and single women shrink from contact with someone once accused of murder. A return to ordinary life is, of course, welcome. Yet the effects of incarceration for years take their emotional toll.

The 1974 case of Ron Keine is the first of several to be elaborated. Like many others charged with crimes they did not commit, this death-row prisoner belonged to the bottom ng of society in terms of money, status, and occupation. The state too often chooses targets who are the most vulnerable. Keine certainly fits this category. He was once a tough punk, scarcely a respectable figure in the eyes of our world. He had joined up with the Vagos motorcycle club, an outfit just a little less shady than the dg-dealing Hell's Angels. He and four biker friends set out for Michigan, their home state, from El Monte, California, in Febary, 1974. Keine's father was abusive and alcoholic. Enduring an unhappy childhood, the young biker was strong and highly intelligent but exercised little control over his more reckless impulses. Although briefly an able student at a school in Cleveland, Ohio, he served time in a juvenile-offender prison and later at Jackson State Prison. The offenses did not suggest, though, that he was a monstrously violent criminal.⁶

While the gang was heading back to Michigan, Kerry Rodney Lee, the actual murderer, was getting dnk at Okie's bar. It was a student hangout near the University of New Mexico campus in Albuquerque. Lee was a dg-dealing bisexual. His good looks, he boasted, made his conquests of both women and men easy. He met up with one William Velten, an aggressive homosexual. The pair left the bar in a Thunderbird that belonged to Jan McCord, Lee's girl friend. She was a student at the university. The pair of men quarreled when they stopped at a desert arroyo. In a stggle over a .22 Ivor Johnson pistol, Lee seized it. The revolver belonged to Jan McCord's father. Both men were by now dangerously dnk and high on dgs. Lee shot William Velten in the head several times. Enraged, he then slashed the chest and castrated the dead body, stuffing the penis in Velton's mouth. He threw the gun away, went back to town, and fetched Jan McCord. On their return to the crime scene, with her watching, horrified, Lee hid Velten's body in the sagebsh. He came back later to bury the body, but he could make no progress in the frozen

ground. Distraught and half sick, he was unable to hide it more successfully. Lee returned a third time to find the gun he had thrown away, but he could not locate it.⁷

On that same February evening, the five bikers Who? Need some more context here.had reached Oklahoma. The police of the little town of Weatherford arrested them. Some disgruntled hitchhikers back in New Mexico had lodged a completely tmped-up complaint of armed robbery. And the police were on the lookout. (The hitchhikers had stolen some beer, and so the indignant crew had left them stranded on the side of the road.) The police transferred the five back to New Mexico. The arrested men had no clue why. There the toughs were charged with the murder of William Velten. State newspapers wrote frightening stories about them. Suspicious of motorcyclists with tattoos, beards, and grimy outfits, the public grew almost hysterical. The sheriff in charge happily basked in the compliments for putting these dangerous types behind bars.⁸

Judith Weyer, a maid at a motel, came forward to claim that the five had stayed there on the very night of the murder. Her honesty was questionable from the start since her various accounts were inconsistent. In fear of losing custody of her children, she had dreamed up this scenario to gain official and public favor against her husband. The young men were sent off to the state penitentiary.

Meantime, Brian Gross, the state's Assistant District Attorney, prepped Weyer's upcoming testimony. To the prosecution team's chagrin, she told Gross that she had lied. The interrogators convinced themselves that her recantation was the real lie. After two weeks of further intimidating interrogations, though, Weyer switched once again. She fingered the five in court with an elaborate story in which she claimed to have been serially raped at the motel by the gang and forced to witness them murder Velten.⁹ The prosecutor introduced other witnesses who claimed that the bikers were homosexuals. They were not. Successfully seeking a reduced

sentence, a notorious snitch in the state prison claimed to hear the young men boast of what they had done to Velten. He was not even on the same cellblock, but the judge permitted his testimony.

The defense had more believable witnesses than this collection of self-serving liars. They identified the bikers as being located far from the scene of the crime. Gas and restaurant receipts were produced to back the genuine account of their movements. The prosecutors argued that they had backtracked, but even that time line made no real sense. The jury deliberated for over fifteen hours. Yet they reached unanimity on the guilt of all five. They were sentenced to death on 1 August 1974.

Fortunately the *Detroit News*, the bikers' hometown paper, began to scutinize their plight. Two reporters, Stephen Cain and Douglas Glazier, had the inspired idea of locating Judy Weyer and found her in Minnesota. She had fled from Albuquerque out of fear of the state officials. Weyer told the pair how D.A. Brandenburg and Brian Gross, the prosecutors, had cajoled, manipulated, humiliated, and threatened her unless she identified the five as the murderers. The paper printed much of her lengthy interview. Despite Weyer's tearful confession of perjury and the statements of other credible defense witnesses, a pretrial hearing proved abortive. Overlooking the testimony presented, Judge William Riordan denied the plea for a new trial. One wonders if the judge bothered to read the record and think about it. Often it is the carelessness of judges, perhaps overworked, who simply accept the prosecution's case.

Then, an apparent miracle occurred. Kerry Lee found salvation. He confessed his murder of the homosexual to a Baptist minister in Charleston, South Carolina, and took the pastor's advice by going to the police. During his interrogation, Lee offered details about the murder that he alone could have known. One would expect that the prosecution would have realized the error. That did not happen. Although Lee had even drawn a precise map of the crime scene, the district attorney claimed he was lying. It was the same dismissive reaction that motel maid Judy Weyer's

recantation had elicited from Brian Gross. Brandenburg, the chief prosecutor, filed no indictment against Lee.

Fortunately in this case, though, a new trial hearing was allowed. Reviewing the evidence, Judge Vernon Payne justifiably led that the men deserved the opportunity to clear themselves at a retrial. Judge Philip Baiamonte was to preside, but after going over the facts, he quashed the convictions. The ballistics tests, Judge Baiamonte concluded, verified the connection of the recovered murder weapon to Lee and not to the bikers. His confession had to be te. The judge rendered his decision just nine days before the bikers' execution in December 1975, and he freed all five. Lee was later found guilty and sentenced to life imprisonment. On the Larry King Show in 2004, Keine offered his interpretation of how it all happened. "Basically, all throughout the trial, the evidence, what we could read in the papers, are coming up with all this false evidence that we knew, you know, any minute now, they're going to find out we didn't do this. They had the murder weapon in the sheriff's safe. It took a warrant to retrieve the weapon which proved who the actual killer was."¹⁰ Since his release, with rare spirit and resilience, Keine operates his own business, thrives, and often addresses the public on behalf of coalitions against the death penalty.¹¹

Keine and his friends represented more than just their own case. A somewhat similar 1984 case was that of Juan Roberto Melendez-Colon. Not only was he a lowly field hand but an unlettered Hispanic as well. That status could well arouse suspicions in the minds of police. At age eight Melendez had fled from Brooklyn, New York, to Puerto Rico to escape from a sadistic stepfather. When he was 17, he returned to the United States to work in crop harvesting, first in Delaware and later in Florida. In 1974, owing to dgs, immaturity, and sheer recklessness, he robbed a convenience store at gunpoint. He was arrested, convicted, and served a six-year sentence. His family had had a very serious quarrel with a schizophrenic David Luna Falcon, a circumstance that would affect Melendez quite acutely. It is not known what the trouble was.

Falcon was scarcely trustworthy. He was a police informant and cocaine addict. Before the murder took place, Falcon had sworn to several witnesses, who later spoke for the defense, that he wanted Melendez dead and was prepared to do it himself. After making a snitching deal with the prosecutors, a frequent practice in his checkered underworld career, Falcon had found an easier means of revenge. He was also looking for a large reward for identifying the perpetrator. The deadbeat swore to the authorities that on the evening of 23 September 1983 Melendez had murdered Delbart ("Mr. Del") Baker, who ran a beauty school for aspiring cosmetologists in Auburndale, Florida. The slaying included a slashed throat and multiple chest wounds. On the basis of Falcon's word, Harvey Pickard, chief prosecutor, and his staff thought they had a firm case. They set the indictment as a double crime, murder and armed robbery. The victim wore jewelry valued at \$10,000 and had a pile of cash, all of which had vanished, although none of it was found in the hands of Melendez.¹²

At the time of the killing, the field hand Melendez was actually staying some distance away with Dorothy Rivera, one of his many love partners. Four plausible witnesses testified that they saw the pair together at that time. One might guess that they were all Hispanics, like Melendez, and therefore less credible to the authorities, owing to widespread prejudice, than Caucasian witnesses would have seemed. Moreover, Terry Barber, a nearby resident, reported to the police that he had observed two men, one named Bobo and another, Vernon James, at Baker's shop on the night of the murder. Bobo was the nickname for Harold Landm. James and Landm were both police informers. Their n-ins with the police had been frequent, and James had been arrested for burglary and Landm for armed robbery. Both, however, had their cases dropped, no doubt for giving testimony in other cases. At first Landm and James swore that they did not see Melendez at the beauty place. In spite of these contrary facts, the police dismissed Barber's report about this dubious pair and did not follow up on the obvious lead that would eventually point to

them as the killers. Ten defense witnesses threw substantial doubt on the testimony of key prosecution witnesses. The prosecution instead took the word of the actual murderers Vernon James and Landrum. They also dragged in Melendez's friend John Berrien whom Falcon falsely claimed had been Melendez's driver. Berrien, an African American, was given the full interrogative treatment. Threatened repeatedly and thrown into jail for the murder, Berrien finally named Melendez the perpetrator. He was then coached intensely on what to say in the witness box. Of course, the three, Landm, Berrien, and James denied being at the scene. Like Falcon, they did as the state bid them to get reduced penalties for other offenses they had committed.¹³

The weakness of the prosecutors' case did not sway the jury members. They had no inkling about the offers of reduced punishment for the prevaricating witnesses. Melendez was found guilty and sentenced to death. His case went from a lower court to the Florida Supreme Court, but the justices denied the formal entreaty for a retrial. As in the Keine case, prosecutors had withheld exculpatory evidence from the defense lawyers. Days before the date of execution, Melendez's last public defender was mmaging through the files of Dwight Wells, a new and untried member of the initial defense team. He came upon the confession of Vernon James. James had been on the scene of the murder, had told the attorney about his presence, and had witnessed the crime itself. When called to testify, James, however, had pleaded his fifth-amendment rights against self-incrimination. The judge had then denied a defense motion to introduce Wells's taping of James's confession to the court. Melendez had been found guilty without physical evidence. Dubious testimony and the defense team's presentation of credible witnesses who placed him far from the crime scene were further indications of innocence. Although the skin color and language of the Hispanic were never mentioned as factors in his guilt, such could well have been one reason for his selection.

On the day before his execution in 2002, Melendez won release after seventeen years on death row. He owed his freedom to Judge Barbara Fleischer. Although delaying the appeal for two years, she eventually read the files. She discovered that Melendez's chief counsel, Roger Alcott, had not followed available leads, notably that of Vernon James's near confession to Wells, Alcott's young associate. The latter was justifiably convinced James's taped story was true. Yet he had lacked the resources to nail it down. Also, the judge noted that the counselor had tried hard to discover why Berrien, who like the other prosecution witnesses, had been arrested for minor crimes, was willing to witness against Melendez. The deal had been suppressed and only emerged later, Judge Fleischer noted, thus thwarting a chance for the defense to challenge the witness's credibility. On this score she had a point. In a number of instances, men accused of murder have falsely confess to the crime. In 1998 several released death-row inmates admitted that they had lied under police duress. Some were mentally unstable, others did so under police or prosecutor promises of lenience for admitting to the deed.¹⁴ Dr. Richard J. Ofshe, a social psychologist, was called as an expert witness. His specialty was the exposure of police misconduct in interrogations and coerced confessions. Dr. Ofshe testified that the authorities had sought a false admission from John Berrien that would implicate Melendez. Alcott rightly suspected that Berrien was actually deeply involved in the murder. But the prosecution had withheld transcripts of earlier interviews in which Berrien displayed serious inconsistencies in his accounts of events. Time after time, the trial court refused defense counsel from any cross-examination of prosecution witnesses. "As a result, the jury was not given an opportunity to fully assess the credibility of this [John Berrien] witness," wrote Judge Fleischer. She further explained that at a later hearing, "Berrien recanted much of his inculpatory testimony against Mr. Melendez." She could have reprimanded the original trial judge for his biased findings favoring the state. But she did not. "After a thorough cumulative analysis of all of the evidence, the Court," Fleischer, however, concluded, "cannot find

that these errors are harmless beyond a reasonable doubt.” Therefore, “the Defendant’s conviction and death sentence from September 20 and 21, 1984 must be set aside.” She ordered a new trial.¹⁵

To win a conviction in that event would have been nearly impossible. By then Falcon had been exposed for the liar he was. John Berrien, a key prosecution witness and also an accomplice in the murder and robbery, had died. (His brother George may well have had the missing jewelry.) Harold Landm did not die peacefully at home but was found with bullets in his head. Reluctantly, the state decided not to continue the pursuit of the Hispanic in light of Judge Fleischer’s ling.¹⁶ The state refused to concede entirely. Chip Thullbery, a Polk County justice administrator, explained: “Hardy Pickard is an honorable prosecutor. He would not intentionally have held back something if he thought someone was not guilty.” Thullbery claimed that Pickard believed the evidence, which included notes and transcripts of interviews with Vernon James, and none of the statements suggested that Melendez was not present and was innocent of the crime. No apologies came from the lips or pen of any of the Polk County authorities. “The office still believes Mr. Melendez is guilty,” Thullbery continued, “but we are not going forward because we simply do not have the evidence to do so.”¹⁷ Melendez was soon a free man. Two years after Melendez’s release, Vernon James, like Landm, was dead. He had been was shot by a police officer.¹⁸ Although Melendez would have reason for bitterness, he has shown a different spirit. He has since spoken forcefully to sympathetic groups in the hope that some day capital punishment will be prohibited. He works chiefly with troubled children in Puerto Rico.¹⁹

Like Melendez and Keine, Michael Ray Graham was yet another victim of false witnessing. He was a young man looking for work in Louisiana. In 1984 Delton Frost, an old black vegetable farmer of Downsville, Louisiana, and his invalid wife lost their lives in a robbery of all their life savings, which they had kept in a trunk under their bed. Sheriff Larry Averitt had no homicide experience and refused offers of official help. As it later became clear, he had feared discovery of

his embezzlement of county funds and mail fraud. Averitt was eventually caught. Disclosure of his guilt, however, came far too late for Graham's defense team. Graham was to spend fourteen years on death row. Janet Burrell, eager for revenge against her former husband, Albert Burrell, phoned Sheriff Averitt. She reported that she had overheard her ex-husband, holding a rifle, talking with Graham about robbing the Frosts. From the start, the credibility of her story was doubtful enough to prompt an assistant prosecutor to consider it fake. He so informed District Attorney Dan Grady, his boss. Grady, though, insisted that once Averitt had arrested Burrell and Graham for the crime it would never do to embarrass the freshman police officer just as he was starting his duties. An untastworthy snitch in the county jail claimed that his cellmate Burrell had boasted about his part in crime. In an arrangement with the prosecution, the petty criminal was placed in Graham's cell. He then claimed that Graham, too, had confessed to him about the murder and robbery.²⁰

On that basis, both Burrell and Graham were charged with capital murder, tried separately, convicted, and sentenced to death. Then, in a new trial on appeal, several prosecution witnesses admitted they had lied. Janet Burrell's conscience had bothered her for years. She finally recanted her testimony and admitted not knowing anything about Graham or the alleged complicity of her former husband. The prosecution, however, threatened her with loss of child custody. Nevertheless, she still refused to reassert her original story. Also helping Graham's case was the late discovery of the murder weapon which had no connection to Graham.²¹ Judge Cynthia Woodard pointed out the egregious missteps and violations of the protocols, and he was once more a freeman. If these and prior cases are any indication of a general problem, then we must conclude that prosecutors and police base their decisions less on the demonstrable evidence and more on their personal emotions and attitudes.

Such would certainly appear to be the case in perhaps the most flagrant miscarriage of justice, the indictment of Madison Hobley, an African American with a wife and very handsome baby boy in 1980. Hobley's parents, a civil engineer and nurse, were solid, well educated members of the Chicago middle class. Unfortunately, the young couple had taken a third floor apartment in a building, which, it turned out, was part of a territorial dispute between two dg gangs. Foolishly, Hobley had taken up with a young woman named Angela McDaniel. His wife Anita found out, and their relationship grew rocky. Yet they managed to live together in the apartment. At 2 a.m., a few days after Christmas, 1997, a fire enveloped the building. Hobley tried and failed to save his wife and his 15-month old son Philip and only barely escaped the flames and smoke himself. From the start, the police decided that the husband had murdered his family. Is this a sort of law of averages decision that law enforcement officials make? Are they basing judgments on what they have seen in the past? They assumed that Anita Hobley was about to refuse him a divorce. At the police station, Robert Dwyer, a detective, shouted at him, "You are a nigger, I'm a white man." All blacks hate whites, he insisted.²²

The officers in District Two refused Hobley access to an attorney. When the fire had epted, Hobley barely escaped without shoes and clad only in his underpants. Would a premeditating murderer not plan to have at least footwear and jeans before sloshing gasoline around his own door? Distraught and in mourning, Hobley was subjected to torture at the hands of Detective Dwyer and others in the police station. They threw him against a wall, beat him, and handed him a completely fabricated confession to sign. In addition, Dwyer, James Lotito, and Detective Daniel McWeeny suffocated him by forcing him under a plastic typewriter cover until he blacked out. They claimed he had signed a confession, but he had not. Despite the torment, he still refused to admit guilt.²³

Police misconduct was only the beginning of btality and misrepresentation under Jon Burge, the racist Commander How was that the case?of Area Two. Suspicion should actually have

fallen on Andre Council, leader of one of the dg gangs. He was known as “the Enforcer.” Already Council was a suspected arsonist responsible for an earlier fire set in the continuing gang war. Despite his clear complicity in that incident and yet another destctive act, the police favored him for reasons never fully disclosed. Commander Burge did not even have Council’s fingerprints taken to see if they matched others connected with the various recent arsons. Although witnesses had offered the authorities leads toward Council’s role in the blazes, they ignored them. Instead, they gave Council a reduced sentence for another crime if he were to testify against Hobley. Of course, he graciously obliged. He swore that he had seen Hobley buy the gas at a filling station and that he saw him fill his can.²⁴

Fully dedicated to saving her client, Judy Harmon, public defender, did her best. With the Chicago media siding with the establishment, however, Hobley was doomed. A prosecution witness made matters even worse. A so-called fire expert, who received a great sum for his testimony, claimed the fire started on the third floor, not the first. Another expert with greater scientific knowledge, accurately located its origin. The prosecutors mocked his testimony unmercifully. Even when a gasoline can turned out to be a piece of evidence from a different and earlier fire, Harmon’s plea for a retrial fell on deaf ears before Judge Christy Berkos, a former mayor of the notoriously racist Cicero, Illinois. The prosecution had jailed and manhandled Angela McDaniel, Hobley’s girl friend. She supplied an affidavit of police barbarity. Judge Berkos refused to countenance her narrative along with other reports of similarly racist behavior in District Two.²⁵

The jury itself was tainted. A Chicago suburban police officer assumed the role of foreman and convinced the others to convict in the face of a major fact: there was no evidence of Hobley’s fingerprints on the suspect gasoline can and no gasoline stains on his clothing. Although the defense team had expanded with the addition of first-rate *pro bono* attorneys, the Illinois Supreme

Court denied their appeal. Luckily before the order to execute could be carried out, however, Governor George Ryan pardoned Hobley along with some others on death row. A number of factors led to Ryan's decision. It had become clear that the police had known from the beginning that Hobley was not guilty. Also Judge William Porter's lings during two trials had been outrageously slanted, compounding the misjudgments of Judge Berkos, his predecessor. (Judge Berkos had retired and Porter took his place.) Finally, after Hobley was locked up, the Chicago Fire Department reported the continuation of neighborhood fires. They stated that these blazes had to have been set by the same individual. Belatedly Council was charged with starting them. These and other details had won the governor's pardon for Hobley.²⁶

Like Hobley, Larry Randall Padgett of Arab, Alabama, was carrying on an extramarital affair. His choice was with one Judy Bagwell, a coarse but seductive neighbor. Her husband, Tommy Smith, was outraged and swore revenge. Having by then left his devout Baptist wife Cathy and two children, Padgett took Judy on a vacation in Florida. The night before their departure, Cathy was found murdered. She had been stabbed over forty times. Suspicion at once fell on the feckless and love-smitten husband.. A DNA lab test indicated that semen found in the body and matched that of Padgett himself. A second test supplied the same result. The results of the blood comparison were not then supplied as well. Curiously, before trial, a half-literate, unsigned letter arrived at the police headquarters. The writer claimed that Padgett did not kill his wife and offered details that only the actual murderer would know. Convinced that Padgett was guilty, Judge William Jetton led against the admission of the letter. Not unexpectedly, the first trial resulted in a guilty verdict with Padgett headed for execution. Much of the prosecution's case rested on the DNA samples taken. But it turned out, the blood samples indicated his innocence, a material fact that the prosecution had not shared with the defense.²⁷

Alabama does not provide funds for indigent offenders to obtain a public defender. Padgett was forced to sell all he owned to pay for his defense. Richard Jaffe, a Birmingham attorney who grew convinced of his innocence, however, agreed to take the case *pro bono*. All signs pointed to Judy Bagwell as the killer. Defense attorney Richard Jaffe painted as the culprit the neighbor having the affair with Padgett. Padgett said his lover killed his wife and put his semen in her. After they had sex, Bagwell would go into the bathroom and presumably use the semen for the plan she had worked out.²⁸ The defense mounted a strong argument with an array of believable witnesses. Jaffe nearly won a confession from Bagwell herself on the witness stand. This time Judge Jetton realized his mistake. He agreed with the jury when the twelve reported their finding of not guilty. That closed Padgett's ordeal. Although he was Caucasian, his plight was just as dire as that of Hobley and Keine.

More recently, an African-American named James Fisher of Oklahoma won freedom after eighteen years on death row. He had been charged with murder in 1984. His quandary was the malfeasance, not of police nor of prosecutors, but his own counsel. Fisher's first defense attorney had severe drug and alcohol problems, nor had he established any relationship with his desperate client. Counsel was also unable to expose the easily discernable flaws in the prosecution's weak case. Fisher's conviction was largely based on the testimony of a criminal who had initially been arrested for the murder itself. For his first appeal, the Equal Justice Initiative supplied Brian Stevenson as his defense attorney. In 2002 Stevenson pointed out that a higher court had reversed the conviction but allowed the state to institute a second trial against Fisher. Once more the same felon served as chief witness, while his defense attorney, no less incompetent his first, slept and muddled his way throughout the proceedings. The state attorney had no physical evidence to connect Fisher to the crime. He was again sentenced to die. On March 24, 2008, the appeals court granted Fisher a new trial. But he was not released until 2010. Underpaid, overworked, and given

too small a stipend for research and discovery, defense attorneys are more to be respected than they often are. Some, though, like Fisher's state-appointed lawyer, are simply hopelessly inept.²⁹

We have no idea how many such cases have resulted in the annihilation of innocent prisoners. One can imagine that some of those on death row today are victims of gross injustice. In *Execution's Doorstep*, Leslie Lytle notes that from 1900 to 2008 "states executed twenty-three individuals who likely were innocent." That figure is too low. A more recent figure, as of April 9, 2009 the total was 138 exonerations in 26 states, Florida having the largest number of 23.³⁰ However, in the cases sketched, we find a pattern of systematic inhumanity and gratuitous humiliation that should not be tolerated in a civilized nation. The first issue is the actual arrest and initial incarceration. African Americans, like Hobley, are all too often treated as if they were snarling, vicious beasts. Maybe something on long history of race prejudice and the judicial system? David Oshinsky's *Worse than Slavery* book. Allegedly to assure their compliance, they are subject to beatings, filthy, roach infested cells, thin blankets, hard bunks, half-cooked meals, violent or demented cellmates, solitary confinement for minor infractions, and other misfortunes. Historians have long exposed the layers of racial prejudice in the American past.³¹ We would like to suppose that its disappearance is nigh. Such, however, does not appear to be the case.

In addition to these miseries, there are further signs of depravation or distortion, all of which increase a prisoner's sense of worthlessness. Attorney-defendant correspondence may be withheld or delivered too late to be of use. Newspapers and other reading material may or may not be allowed on death row. At trial, we can only guess the feelings of betrayal and shame of an accused African American experiences when facing an all-white jury. Some state attorneys train prosecutors how to prevent black citizens from jury selection without risking charges of racial discrimination. The African-American Madison Hobley recalled the sheer vindictiveness of the police, who from the start, had decided on his guilt. They "looked me in the eye and told me that

they hated me. . .and didn't care about the people who died in the fire, including my wife and child." The fire had been a good thing since "nothing but niggers' died."³²

One of the most serious problems is the prosecutorial suppression of exculpatory evidence.³³ According to Chief Justice Earl Warren's Supreme Court in *Brady v. Maryland* (1963), evidence of this kind is "material" if "there is a reasonable probability that his conviction or sentence would have been different had these materials been disclosed." The ling covers testifiers as well as physical evidence, along with such facts which, if known beforehand, would permit defense counsel to challenge the truthfulness of a prosecution witness.³⁴

Concerning our second theme, we turn to prosecutorial misconduct, although the individual cases demonstrate the point already. A major reason why such prosecutorial misconduct goes undetected or unpunished is the decision of the Supreme Court in 1976, *Imbler v. Pachtman*. In that ling, the court declared, "A state prosecuting attorney who, as here, acted within the scope of his duties in initiating and pursuing a criminal prosecution and in presenting the State's case, is absolutely immune from a civil suit for damages under §1983 for alleged deprivations of the accused's constitutional rights."³⁵ No matter how criminal, incompetent, or mentally unbalanced the prosecutor might be, he or she is untouchable by civil action. Official criminal indictment of wayward prosecutors presents them with far less trouble. As in most bureaucracies, there is an unacknowledged le to protect members of the same team.

In 1989, the Texas Court of Criminal Appeals in *Ex parte Adams* (768 S.W.2d 281) overturned a death sentence for Randall Dale Adams. The court found that Douglas D. Mulder, prosecutor in the Texas trial court, knew that Emily Miller, his chief witness, was committing perjury in her witness-box accusations against the defendant. Mulder had kept secret the original interview with Miller. In it, her wild inconsistencies cast high doubt on her believability. In late discovery, Adams' counsel demanded Emily Miller's appearance for cross-examination. The

prosecutor claimed not to know where she was, when he actually did know. (Later on, David Harris confessed to the murder and recanted his testimony against Adams that Mulder had extracted.) Harris swore that Adams had not fatally shot the police officer, a cause celebre at the time. The Texas Court of Criminal Appeals laid the blame directly where it belonged. The conviction “was unfair mainly because of prosecutor Doug Mulder.” Since there are no statutes devoted to prosecutorial accountability, no action against Mulder, apart from the Appeals Court reprimand, took place. He practices law in Dallas. (Errol Morris produced a classic documentary, *The Thin Blue Line* (1988) on the case, with frank interviews of the principals.)³⁶

Concerning our second purpose, prosecutorial misconduct has already appeared in a number of cases cited, but the reasons behind them require additional explication. Politics plays a role in the use of dubious or credibility illegal prosecutorial practices.³⁷ This may well induce a prosecutor to make generous deals with police informants. Their testimony should always be scrutinized thoroughly and prior records of their credibility taken into account. An example follows, showing how the drug addict or petty criminal may receive special consideration in sentencing for testifying against the prosecutor’s selected defendant. In California Edward Lloyd Fink entered an agreement with the Long Beach police to name Edward Goldstein as the perpetrator in a murder case. In exchange for a reduced sentence for selling heroin, Fink reported that his new cell mate Goldstein confessed to the crime. He repeated this maneuver ten times for the police, after being locked in the same space with the ten individuals accused. Needless to say, Fink always denied on the witness stand any collaboration with the authorities, thus assuring the jury of his disinterest and honesty--and winning lower sentences for his own crimes.³⁸

On that issue the U. S. Supreme Court agreed in May, 2010, to hear a challenge concerning prosecutorial misconduct alleged in a civil suit. The federal jury award of \$12 million charge in Louisiana for the wrongful death penalty conviction of a John Thompson. He had served twelve

years at Angola, but blood tests withheld from defense proved conclusively that he could not have been the killer. The Louisiana state attorney opposed the penalty on the grounds that the 1976 *Imbler v. Pachtman* Supreme Court decision applied to the case.³⁹ That line, as mentioned, gave immunity to state authorities involved in crime from civil suits. The case of May, 2010, has yet to be decided.

Whatever the outcome may be, the problem of police and prosecutorial overkill could possibly be more serious than we now can ascertain. In 2003, the Center for Public Integrity has reported that there were over 2,012 cases since 1970 in which prosecutors had been found guilty of misconduct. Police authorities, too, seek fast arrests and vigorous interrogations to expedite their work and show the public their competence in the quickest time possible. A case in point is the coerced confession of Eddie Lowery for rape in New York. The New York Times reported that Lowery explained how “he was just pressed beyond endurance by persistent interrogators.” DNA tests, fourteen years after his conviction, proved that another man raped the 75 year old woman. Some forty cases of similarly false confessions, the reporter noted, have been recently ascertained. Professor Brandon L. Garrett of the University of Virginia Law School, has found that “almost all of these confessions looked uncannily reliable, rich in telling detail that almost inevitably had to come from the police. I had known that in a couple of these cases, contamination could have occurred,” he told the New York *Times*. “I didn’t expect to see that almost all of those that he studied, “had been contaminated.” DNA testing has thus made a difference. Yet, the Supreme Court has led that death row inmates have no constitutional right to see the DNA results in their appeals.⁴⁰

State legislatures and governors have been reluctant to enter this politically perilous terrain. By and large prosecutors have free reign. But occasionally, when the desire for conviction and the humiliation of the prisoner are paramount, they violate the law. In July 2010, at Fort Collins,

Colorado, a police lieutenant was indicted for committing perjury. He had been the chief detective in a case that was to lead to the incarceration and near death of Tim Masters for murder. The prosecutors were also involved in the deception. They withheld exculpatory evidence of Master's innocence from his defense counsel.⁴¹ In East Texas, a similar case arose in 2004. Robert Farr, the actual murderer of young Richard Whitstead, was able to convince the authorities that it was Delma Banks who stole the lad's car and killed him. Only in a post-conviction hearing did the defense learn that Farr had struck a bargain with the prosecutors to save himself from being accused. In addition the prosecutor had coached Farr into lying on the witness stand.⁴² The frustrations and near setbacks that these miscarriages impose for defense teams and especially for their clients must be almost unimaginable.

The third and final issue is the accumulation of humiliations against which the innocent as well as the truly guilty have to confront daily in prison and, if released, afterwards. Other problems of humiliation with the system further burden the innocent. Unless carefully supervised, they can abuse prisoners on a whim, especially those on death row. Jails and penitentiaries are notoriously understaffed, often with poorly trained and underpaid guards. The cells may be six by nine feet, with a toilet, small basin, narrow bunk, and a window that admits little light. Food, minimal and tasteless, arrives through a slit in the door. Exercise outside, seldom more than once a week, may be allowed or denied at will. Showers are an occasional luxury. When leaving cells, convicts may have to undergo strip searches that diminish a prisoner's sense of dignity. Randall Padgett remembered the utter chaos and lack of privacy of prison life. "Just the feel of the place, people screaming, all kinds of commotion and those metal doors sliding and slamming, sliding and slamming."⁴³ Some give up entirely and refuse appeals. Dr. Stuart Grassian, a death-row expert, concludes, "The conditions of confinement are so oppressive, the helplessness endured in the

roller coaster of hope and despair so wrenching and exhausting, that ultimately the inmate can no longer bear it.”⁴⁴

When another prisoner chained and shackled, has to march with six guards toward his fatal destination, those awaiting their own fate salute him. In protest, they bang against the bars and doors. Yet inwardly they feel a heightened sense of shame and powerlessness. One of the most poignant aspects is how the suddenly released death-row inmate says goodbye to his friends whom he leaves behind to their certain fate. (Communication among prisoners is almost unstoppable unless they are thrown into solitary.) Gary Drinkard of Decatur, Alabama, was convicted of fatally mauling a junk dealer. After six years on death row, the State Supreme Court found him innocent on the day of his execution and released him in 2001 on the grounds of prosecutorial wrongdoing. In some ways Drinkard misses his old friends in prison. “People,” he has pointed out, “depict them as animals in a cage to be kept in chains. But they're human beings. They're decent human beings.” He admits, though, that many belong far from society. Juan Melendez was, of course, delirious, when word came of his exoneration. “I was happy but sad too, because I was leaving my friends.” “Don’t get in trouble out there,” one prisoner warned through the bars. “Take care of your mama,” said another. “He was crying,” writes Melendez. No doubt the inmate was mourning for the loss of a companion in misery, the hopelessness of his situation, and the isolation facing him. As Melendez took his leave, the prisoners then began to clap, but, upset, the guards tried to stop them. Nonetheless, they defied their keepers and continued clapping until Melendez disappeared from their view and began a new life.⁴⁵

Death row inmates have to endure a life of virtual solitariness. A number of states--Texas, New York, Idaho, Arizona, Connecticut, Tennessee, Wyoming, North Carolina, and others--deny them family visits. In Virginia family members can see their kinsman on death row, but the state is considering restrictions to add to those already in place. The plan was that after September 1, 2010,

prisoners could only be seen or converse on video cameras. Currently no physical contact but only hands or lips pressed against glass are allowed. Such prohibitions are supposed to enhance security but another, unspoken meaning is the humiliation of both the prisoner and his loved ones.⁴⁶ In some states defense attorneys also have too infrequent access to their clients. Kansas, however, is the only state with death penalty provisions to deny death row prisoners any contact with family visits. Such prohibitions of social and even law-related contacts further isolate the convict. Deprived of ordinary social interaction, they sometimes undergo varying degrees of mental deterioration. Most psychologically damaging is knowing the exact date and hour of execution or having to await official notification of that moment. Each day that draws the inmate closer to such an end increases the dread ever more intensely. Jennifer Fulwiler reports a conversation with a released death row prisoner that she saw on television. The former convict exclaimed how hard it would be to imagine what the situation is like. “When you’re on death row, it’s like you’re already dead. You try to play cards, but you hear that clock ticking in your head, knowing that the date of your extinction has already been set, and now it’s just a matter of days and minutes. You could read a book, watch some TV, but why? You’re gonna die soon and can’t take none of that stuff with you, so it doesn’t really matter anyway.” His recollection led to sobbing. “I got my whole life back when I got off of death row.”⁴⁷

It is hardly a wonder that the death row survivor may suffer from post-traumatic stress disorderGreat point., similar to a battle-scarred soldier’s reaction. Some think of suicide. To forensic psychologists, it is known as “death row syndrome.” A few others actually do so. The rate of suicides before the fatal injection or electric current strike the prisoner far exceeds the percentage in 100,000 of those outside the walls.⁴⁸ On this issue, Frank Coppola presents an informative case. He spent three years appealing his conviction for murder in Virginia. Coppola was incarcerated at the Mecklenburg Correctional Center, Virginia's maximum-security prison.

Conditions there were unspeakable. Suddenly in the spring of 1982, Coppola dismissed his very able defense attorneys so that he could proceed more directly to his death. A psychologist with particular knowledge about the state prison was certain the decision to withdraw from appeals was the result of the lengthy time Coppola had been confined to a solitary cell. On August 10, 1982, he sat in the electric chair. The execution was botched. A lawyer for the defense witnessed the scene: not one but two 55-second jolts of electricity ended his life amidst the sizzling sound of burning flesh. Coppola's head and leg were frying, and the chamber filled with smoke. The stench was overpowering.⁴⁹ Thanks to a restricted gallery, which had also excluded the press, members of Coppola's family were not there to witness the horror. That would have compounded their humiliation. Family members of those sentenced to death undergo terrible strain as neighbors shun them or openly blame them for the crimes their relatives have committed, as Elizabeth Beck and colleagues contend in their study, *In the Shadow of Death*.⁵⁰

In all fairness, it should be noted that others besides family members were not the only ones in severe emotional distress in the post-execution period. A few prison guards have taken the fatal event to heart. Ron McAndrew, a warden of a Florida state prison, confessed that he suffered deeply from depression over the process. The warden declared that some of his subordinates "turned to dgs and alcohol from the pain of knowing a man had died at their hands. And I've been haunted by the men I was asked to execute in the name of the state of Florida."⁵¹ Just as the emotional disturbance affected the guards, the innocent candidate for execution, freed at a ccial juncture, continues to feel the horrendous effects of incarceration. Like McAndrew, they are haunted by memories of humiliation and deprivation. They vividly recall how it was when their every move is meant to show complete subservience and consciousness of their shame. They had then regarded with dread the few moments of change from the routine boredom. They had known how momentarily their release from the fetid interior will be. That had been especially so when

they hear the barked command, "Yard in!" They were permitted to go a penned area outdoors, but the respite from tedium had been over in two hours or less. So they had then known that for another 22 hours there would be for them no fresh air, no natural daylight. "Yard in!" "Shit, man, we just got out here!" an inmate was likely to shout. The guards found the situation amusing. "C'mon fellas," recalls an inmate in a memoir, "yard in, yard in. Ya know we can't leave y'uns out here when it gits thunderin' and lightnin'." "Oh, why not?" another prisoner might have rejoined. "Y'll [af]'raid we gonna get ourself electrocuted?" This account comes from Mumia Abu-Jamal, a Black Panther inmate who was eventually found innocent of the murder charge.⁵²

On the other hand, those guilty of the crime with which they were charged at some level must inwardly acknowledge that they had brought the situation on themselves. Their sense of humiliation would be perhaps less than that of an innocent. There is something to Evelin Lindner's statement: "A slave who lives in a world where beating slaves is part of the divine order does not suffer the same emotional pain" as someone unused to that environment.⁵³ The greater the social distance between the Augean status of prisons and the world of freedom and promise, the more difficult it would be to endure the loss of freedom and respectability. Nonetheless, the slave and the prisoner, out of defiance of their loss of any dignity and manhood, might well turn to resentment and vengeance, regardless of their legal status.

In the years and days on death row, prisoners feel treated as if their every move is meant to show complete subservience and consciousness of their shame. They regard with dread the few moments of change from the routine boredom. They know how short their release from the fetid interior will be. That is especially so when they hear the barked command, "Yard in!" They are permitted to go a pen outdoors, but the respite from tedium is over in two hours. So they know that for another twenty-two hours there will be for them no fresh air, no natural daylight. "Yard in!" "Shit, man, we just got out here!" an inmate is likely to shout. The guards find the situation

amusing. “C'mon fellas,” recalls an inmate in a memoir, “yard in, yard in. Ya know we can't leave y'uns out here when it gits thunderin' and lightnin'.” “Oh, why not?” another prisoner may rejoin. “Y'll 'raid we gonna get ourself electrocuted?” This account comes from Mumia Abu-Jamal, a Black Panther inmate who was eventually found innocent of the murder charge.⁰

In a dissenting opinion in 1999, Justice Stephen Breyer wrote, “It is difficult to deny the suffering inherent in a prolonged wait for execution.” In Florida, a prisoner had been on death row for 25 years. Justice Clarence Thomas, though, blamed the court itself for such relays. Brewer responded that it was not a string of “frivolous appeals” but “constitutionally defective death penalty procedures” that contributed to the situation. In *Thompson v. McNeil* (2009) the Supreme Court declined to review the plea of William Thompson, a Floridian, who survived 32 years. He had spent most of them in solitary confinement for twenty-three hours of the day in a six by nine cell. Thomas and the other justices denied certiorari. Justice John Paul Stevens dissented. He labeled the lengthy incarceration as “dehumanizing.” Justice Stevens added that he could find no “penological justification” that, instead, the punishment simply resulted “in the gratuitous infliction of suffering.”⁵⁵ Justice Breyer also protested. A year later in the same state of Florida, Viva Leroy Nash, half-blind, mentally disturbed, and confined to a wheelchair, died before execution. He had been locked behind prison walls from age fifteen when he was convicted of first degree murder in 1983.⁵⁶ Surely such cases, and there are others, suggest a violation of the “cruel and unusual punishment” clause of the eighth amendment. In a Kansas case, Justice Antonin Scalia wrote a separate opinion on Monday to defend the death penalty and the court's ruling in the Kansas murder case. It was a very brutal crime, but the Kansas Supreme Court found the imposition of the death penalty violated the Eighth Amendment. In a 5-4 decision, the state court was overruled. “The American people,” declared Justice Scalia, “have determined that the good to be derived from capital punishment--in deterrence, and perhaps most of all in the meting out of

condign justice for horrible crimes--outweighs the risk of error. It is no proper part of the business of this court, or of its justices, to second-guess that judgment, much less to impugn it before the world.”⁵⁷ In another case, *Troy Davis v. Georgia*, Justices Scalia and Thomas dissented against the Court’s approval for a new hearing. Scalia wrote “this Court has *never* held that the Constitution forbids the execution of a convicted defendant who has had as full and fair trial but is later able to convince a habeas court that he is ‘actually innocent.’” In fact, he added, the Court’s earlier decisions cast “considerable doubt that any claim based on alleged ‘actual innocence’ is constitutionally cognizable.”⁰ With the highest court in the country determined to make deterrence the benchmark, it must be a further blow to the hopes of those unjustly incarcerated.

It is scarcely a surprise that, under these and other circumstances, an innocent prisoner’s sense of impotence and humiliation persists even after release. Adding to the feelings of post-trial desperation is the failure of police, judges, prosecutors, and sometimes jury foremen to admit error or tender an expression of regret. For instance, prosecutors Brandenburg and Gross refused to apologize to Ron Keine for their self-serving, flagrantly wrong assumption of his. But still worse signs of a world’s indifference greet the recently unshackled convict. Keine protested that ordinary criminals at least had parole officers to assist them upon their reentry into society. They might help them get into an industrial school program or a minimal wage job. Innocents, though, receive little or no state support. Moreover, after years behind bars, such prisoners may have already lost self-regard and resilience. Throughout their incarceration they have been denied educational and job programs available to other prisoners. With so little occurring in a barren life, an inmate loses a sense of purpose. “Someone else scheduled his every aspect of his day,” Ron Keine observes. “We used to get hard-boiled eggs on Sundays, but that ended when the assistant warden caught one in the back of the head. Nice hit. It was almost worth the prisoners’ excitement over the next few days. In our mundane routine of life on death row, the slightest deviation as

eventful,” Ron Keine mused.⁵⁹ The effect of years of undergoing the sheer sameness of life and the relentless boredom would be, even in freedom, enough to wear down the most sanguine soul. The feeling of insurmountable loss continues to overwhelm.

If we look forward to reforms of prison conditions and the abolition of the death penalty, what can we expect? In 2009 alone, 3,270 prisoners were assigned to death row, a great increase over the number executed in earlier years. In 1968, for instance, only 517 awaited the gas chamber, lethal injection, or electric chair. The expenses are enormous. In Florida, for example, the estimated cost of execution is 3.2 million dollars, whereas life imprisonment only comes to \$800,000.⁶⁰ In the currently weak economy such matters should assume greater attention. The issue of fairness and racial equity, however, should remain uppermost, not the waste of taxpayers’ money. Given the depth and complexity of the problem, however, it is unlikely that improvements will appear in the near future. As the prophet Isaiah wrote, these innocents of despicable crimes “expected justice, but saw bloodshed.” They looked in vain for “righteousness,” but instead heard “the cry” of others, who, like themselves, had been wrongfully imprisoned and destined for death.

Endnotes

1 Trip Jennings, "Richardson Abolishes N.M. Death Penalty: New Mexico Becomes the 15th State to Ban Capital Punishment," *New Mexico Independent*, 18 March 2009. For reasons of racial bias in too many instances, Governor Parris Glendening of Maryland placed a moratorium on applications of capital punishment. See Teresa Kraly, "Maryland Governor Declares Death Penalty Moratorium," *The Leadership Conference*, 20 May, 2002.

2 Evelin Lindner, *Making Enemies: Humiliation and International Conflict* (Westport, Conn., Praeger, 2010), xii, xvii; William Ian Miller, *Humiliation and Other Essays on Honor, Social Discomfort, and Violence* (Hilldale, N.J., Analytic Press, 1985); Norbert Elias, *The Civilizing Process* (New York: Urizen, 1978); J. G. Peristiany, ed., *Honour and Shame: The Values of Mediterranean Society* (Chicago: Chicago University Press, 1966).

3 Ashby Jones, "Teresa Lewis is Executed; What Made Her Case So Interesting?" Wall Street Journal, Law Blog, 24 September 2010; "Growing Conservative Sentiment Concludes Death Penalty Not Needed," and R. Viguerie and B. Bozell, "Viguerie and Bozell: Support Is Waning for Death Penalty," Richmond Times-Dispatch, 5 October 2010.

4 "Does Death Penalty Save Lives? A New Debate," New York Times, November 18, 2007. Economists, sociologists, and legal experts disagree about the deterrence against murder that the prospect of a death penalty offers and about the relative costs involved. Joanna M. Shepherd, "Deterrence Versus Brutalization: Capital Punishment's Differing Impacts among States," *Michigan Law Review* 104 (November 2005):203-55. Shepherd concludes: "My results have three important policy implications. First, if deterrence is the objective, then capital punishment generally succeeds in the few states with many executions. Second, the many states with numbers of executions below the threshold may be executing people needlessly. Indeed, instead of deterring crime, the executions may be inducing additional murders: a rough total estimate is that, in the many states where executions induce murders rather than deter them, executions cause an additional 250 murders per year. Third, to achieve deterrence, states must generally execute many people. If a state is unwilling to establish such a large execution program, it should consider abandoning capital punishment" (p. 248). During the 1960s 14 states had abolished the death penalty with only a small plurality in favor of it. In 1960 just 56 individuals were executed. By 1965 only 6 and none in 1968 were put to death; Nelson Lund, "Capital Punishment in America," in *Public Interest* (Fall 2002):122.

5 See <http://www.eji.org/eji/deathpenalty>; The Equal Justice Initiative points out that "Despite Appeal from Prison Guards for Clemency, Jeff Land is Executed," 12 August 12, 2010. "The State of Alabama executed Jeff Land today despite compelling evidence of his transformation into a

remorseful man who became a peacemaker and, according to prison guards, saved lives by helping to prevent violence and conflicts on death row.”

6 “Ron Keine: Condemned by the False Testimony of a Motel Maid Who Was Thrown in Jail When She Tried to Tell the Tth,” <http://www.executionsdoorstep.com/exonerated1.htm>. For more detail, see Leslie Lytle, *Execution's Doorstep: Te Stories of the Innocent and Near Damned* (Boston: University Press of New England 2008). I have also made use of this valuable study in four other cases that the author explains in meticulous detail.

7 “Keine: Condemned by the False Testimony;” Douglas Glazier, “Gun Identified in NM Murder,” Santa Fe *New Mexican*, 14 April 2005; Douglas Glazier, “New Biker Hearing Asked,” *ibid.*, 8 September 2005. See also <http://www.executionsdoorstep.com/exonerated1.htm>.

8 Ron Keine told the Larry King program, “Well, first of all, they put us on death row two weeks -- I'm sorry, four months before our trial. We were arrested and taken to death row. That kind of told us a story right there. But you know, it is an archaic system a little bit back then. We were dealing with the good 'ole boy network. . . We didn't know that they already knew who did it, that they were covering for a guy.” *CNN Larry King Live*, “Death Penalty on Trial, aired 21 December 21 2004; <http://www.ronkeine.org/CNN.html>.

9 “Ron Keine: From Death Row to Freedom,” *Witness to Innocence*. http://www.witnesstoinnocence.org/view_stories.php?Ron-Keine-24.

10 CNN Larry King Live “Death Penalty on Trial,” 21 December 2004.

11 “Exonerated Death Row Inmate Speaks at Centre College in Danville, Ky. Tonight,” *Kentucky Coalition to Abolish the Death Penalty*, http://www.witnesstoinnocence.org/view_stories.php?Ron-Keine-24.

12 *State of Florida v. Juan Roberto Melendez* Case No. CF-84-1016A2-XX; Lytle, *Execution's Doorstep*, 47-91.

13 Vickie Chachere, “Florida Death Row Inmate To Be Released After 17 Years,” *Associated Press*, 3 January 2002.

14 See Richard A. Leo and Richard J. Ofshe, “The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation,” 88 *Journal of Criminal Law and Criminology* (1998); Leigh B. Bienen in Austin Sarat ed., *The Killing State: Capital Punishment in Law, Politics, and Culture* (New York: Oxford University Press, 1999), 1.

15 Criminal Justice and Trial Division, *State of Florida Case no: CF-84-1016A2-XX v. Juan Roberto Melendez*, “Order Granting Amended Motion to Vacate Judgments of Conviction and Sentence and Granting New Trial.” See also, “After 17 Years on Death Row, Murder Conviction Overturned,” *Associated Press*, 5 December 2001. “The State’s position is, according to another ling, “factually erroneous.” Quoted from Supreme Court of Florida, Case No. 88,961, *Juan Roberto Melendez, Appellant, v. State of Florida*. “As Mr. Melendez’s Initial Brief explains, the jury was never informed about Mr. Berrien’s frequently contradictory pretrial statements to police or about his pretrial deposition. Next, the State argues that none of the matters about which Mr. Berrien said he testified falsely at trial is material (AB at 46-47). However, on direct examination, Mr. Berrien testified that the police gave him the following information that they wanted to use against Mr. Melendez: that Mr. Berrien and Mr. Melendez had planned the robbery and that Mr. Berrien expected to get a share of whatever was stolen (PC-R2. 137); the time and date on which he took Mr. Melendez to Mr. Baker’s beauty school (PC-R2. 138); and that he saw Mr. Melendez give George Berrien two rings, a watch, and a gun (PC-R2. 139).” All this identification of Melendez with the crime was false, as the defense counsel proposed it was.

16 http://www.voicesunited4justice.com/juan_bio.htm.

17 Julia Ferrante, “Death Row Inmate Released: Prosecutors Say They Don't Have Enough Evidence to Warrant a New Trial for Juan Roberto Melendez,” *Tampa Ledger*, 4 January 2002.

18 Juan Roberto Melendez, “Excerpts from Testimony before the Death Penalty Study Commission in Concord, New Hampshire,” n.d., also, “Wrongful-Convictions in U.S.,” 1 Febary 2007, <http://www.ccadp.org/juanmelendez.htm>.<http://wrongful-convictions.blogspot.com/2007/02/melendez-comes-to-ua-tells-story-of.html>.

19 Mark Weisenmiller, “Exonerated, Florida Death Row Inmate Tells His Tale,” *IPS*, Tampa, Florida, 3 August 2006; *State of Florida v. Juan Roberto Melendez*, CF-84-1016A2-XX, “Order Granting Amended Motion to Vacate Judgments of Conviction and Sentence and Granting New Trial,” <http://www.oranous.com/innocence/JuanMelendez/melendezorder.htm>.

20 Roy Warden, “Michael Ray Graham, Jr.: Double duty for Snitch in Double Murder,” Bluhm Legal Clinic, Northwestern University School of Law; <http://www.law.northwestern.edu/wrongfulconvictions/exonerations/laGrahamSummary.html> Lytle, *Execution’s Doorstep*, 102.

21 Cindy Banks, “Michael Ray Graham, Jr.,” in *Criminal Justice Ethics: Theory and Practice*, (Thousand Oaks, Calif.: Sage Publications, 2009), 126, <http://books.google.com/books?id=BFjId1iBmVAC&pg=PA126&lpg=PA126&dq=Michael+Ra>

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22 Lytle, *Execution's Doorstep*, 145. "Madison Hobley: Pardoned Based on Innocence in Concocted Confession," Center on Wrongful Convictions, Northwestern University, Bluhm Legal Center, n.d.

<http://www.law.northwestern.edu/wrongfulconvictions/exonerations/ilHobleySummary.html>

23 *State v. Hobley*, 696 N.E.2d 313, 331 (Ill. 1998); Death Penalty Information Center, <http://www.deathpenaltyinfo.org/innocence-cases-1994-2003>; "Madison Hobley," Northwestern Law, Bluhm Legal Center on Wrongful Convictions.

24 Steve Mills, "Man Freed from Death Row Sues City, Alleging Torture: Hobley Is First of 4 Pardoned to File Suit in Case," *Chicago Tribune* 30 May 2003).

25 The jury found no mitigating factors in the case and authorized the imposition of the death penalty. Berkos was only too gratified to comply. In 1994 the Illinois Supreme Court upheld the ling and the sentence of death. For the justices, the prosecution's evidence was not just air tight but "overwhelming." See *People v. Hobley*, 159 Ill. 2d 272 (1994).

26 John Conroy, "This Is A Magic [Gasoline] Can: It Grows. It Shrinks. It Leaps through Locked Doors. If You Believe That, You Won't Mind If the State Executes Madison Hobley," *Chicago Reader*, 25 May, 2000.

27 *Larry Randall Padgett v. State*, Court of Criminal Appeals of Alabama, 5 May 5, 1995.

28 After Padgett's conviction, blood at the scene of the murder that did not match Padgett's or Cathy's, the victim, was evidence withheld from the defense. In 1995, the Court of Criminal Appeals reversed the conviction. The Court led that the prosecutors gave the defense insufficient time to have the blood analyzed. The death row prisoner won acquittal on retrial two years later. See *Alabama Victims of the State*, <http://www.victimsofthestate.org/AL/>

29 S. Bright, "Counsel for the Poor: The Death Sentence Not for the Worst Crime, but for the Worst Lawyer," *Yale Law Journal*, 103 (1994):1835-83. <http://www.eji.org/eji/node/413>. "James Fisher Wins Release to EJI's Re-Entry Program After 27 Years on Death Row July 15, 2010," <http://www.eji.org/eji/node/413>.

30 Lytle, *Execution's Doorstep*, 235; *Death Penalty Information Center*, <http://www.deathpenaltyinfo.org/innocence-and-death-penalty#inn-st>. 73 of the 138 were black and 57 were white, and 12 were Hispanic.

31 Paul A. Cimballa and Robert F. Himmelberg, eds., *Historians and Race: Autobiography and the Writing of History* (Bloomington: Indiana University Press, 1997); Andrew M. Fearnley, "How Historians' Beliefs about Race Have Influenced Histories of Racial Thought," *Reviews in American History*, 37 (No. 3 September 2009):386-94; Dabvid M. Oshinsky, "*Worse than Slavery*": *Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Simon and Schuster, 1997.)

32 Lytle, *Execution's Doorstep*, 137.

33 "A Te-to-Life 'Law & Order:' Psychology Professor's Mitigation Work Helped Free Death Row Inmate," University of North Carolina, Asheville. The story concerns Professor of Psychology Pamela Laughon and her help to achieve release of Edward Chapman on the basis of the withholding of "exculpatory evidence" from the defense counsel;
<http://www2.unca.edu/featuresarchives/laughon.htm>.

34 *Brady v. State of Maryland*, 373 U.S. 83 & 83 S. Ct. 1194; 10 L. Ed. 2d 215 (1963); *Strickler v. Greene*, 527 U.S. 263, 296 (1999); *People v. Johnson*, 38 Cal. App.3d 228, 113 Cal. Rptr. 303 (1974); *Banks v. Dretke*, 540 U.S. 668 (2004). See also, Robert Hochman, "*Brady v Maryland and the Search for Truth in Criminal Trials*," *University of Chicago Law Review*, 63 (No. 4, 1996).

35 *Imbler v. Pachtman*, 424 U. S. 409 (1976) Certiorari to the United States Court of Appeals for the Ninth Circuit. The Rehnquist court stated, "Although such immunity leaves the genuinely wronged criminal defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, the alternative of qualifying a prosecutor's immunity would disserve the broader public interest in that it would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system and would often prejudice criminal defendants by skewing post-conviction judicial decisions that should be made with the sole purpose of insuring justice." In other words, the Court acknowledged that injustice may serve society better than justice.

36 Ex Parte Adams Case No. 8701A (1989), District Court, Bastrop County, Texas. Judge M. P. Duncan asserted that Mr. Adams might have been acquitted if the prosecutors had behaved properly. Miller's testimony suggested perjury. Texas Moratorium on Facebook, <http://www.facebook.com/pages/Randall-Dale-Adams/113217148691872>. See Roberto Suro, "Conviction Voided in Texas Murder," *New York Times*, 2 March 1989. In addition to the perjured testimony of Emily Miller, there was also a lengthy dispute over DNA extracted from the lips of two beer cans near the murder scene. The state claimed that the findings were irrelevant, whereas Adams's defense team argued that the tests proved his innocence. "Dangerous Predictions: The Case of Randall Dale Adams," *The Forensic Examiner*, 22 December 2004. Errol Morris' documentary, *The Thin Blue Line*, deals with the Adams case. It closes with the confession of the real murderer who was later executed for it. Ronnie D. Lankford, Jr., "The Thin Blue Line: A Review," <http://www.documentaryfilms.net/Reviews/ThinBlueLine/index.htm>. For an eloquent narrative see Helen Prejean, *Dead Man Walking* (New York: Random House, 1993).

37 Steve Weinberg. "How Prosecutors Work: Covering Crime and Justice," http://www.justicejournalism.org/crimeguide/chapter10/chapter10_pg03.html. See also William J. Stuntz, "The Pathological Politics of Criminal Law," *Michigan Law Review*, 100 (2001-2002):505-85; "The Politics Of Prosecutions," 31 December 2009, <http://news.peacefmonline.com/features/200912/35682.php>; Eric A. Tirschwell and Theodore Hertzberg, "Politics and Prosecution: A Historical Perspective: Shifting Federal Standards for Pursuing the Death Penalty in Death Penalty States," *Journal of Constitutional Law*, 12 (October 2009):57-98; George Winslow, "Capital Crimes: The Political Economy of Crime in America," *Monthly Review* 52 (No. 6, November 2000):38.

38 David Lockmiller, "Address to the California Commission on the Fair Administration of Justice," 8 March 2008,

<http://www.cpda.org/publicarea/CCFAJ/Fair-Administration-of-the-Death-Penalty/Lockmiller2.pdf>.

Reliance on such witnesses could, however, backfire. District Attorney James Brandenburg was harshly criticized for his handling of the Ron Keine and motorcyclist case in New Mexico. He lost his next election, and it virtually ended his political future. At a later public meeting Brandenburg refused to admit any mistakes. He claimed that the bikers were guilty, even though Kerry Lee confessed to the crime at his own trial. Lytle, *Execution's Doorstep*, 44.

39 Jacob Sullum, "Supreme Court Will Hear Another Prosecutorial Misconduct Case (and May Even Get to It This Time)" *Reason Hit and n*, March 23, 2010.

<http://reason.com/blog/2010/03/23/supreme-court-will-hear-another>.

40 Lynn Switzer, the prosecutor, whom the death row inmate Henry Skinner sued to obtain the DNA tests, argued before the Supreme Court that "If the court agrees with the convicted killer, it would undermine state law and create an expensive onslaught of inmate lawsuits demanding evidence," Brandi Grissom, "Supreme Court Hears Texas Death Penalty DNA Case," *Texas Tribune*, October 14, 2010. The Court agreed with the prosecutor on grounds of a state's right to judge such matters without federal interference. Robert Barnes, "Court Limits Access to DNA Evidence, Justices Let That Inmates Lack Constitutional Right to Testing," *Washington Post*, 19 June 19 2009; John Schwartz, "Confessing to Crime, but Innocent," *New York Times*, 13 September 2010.

41 *Timothy Masters v. the People of the state of Colorado*, Supreme Court, State of Colorado October 15, 2002. Kevin Vaughan, "Lawyer: Innocent Man Paid Price for Larimer Prosecutors' Blunders," *Rocky Mountain News*, 27 September 2007; Jenn Farrell, "Teen Murderer's Conviction Appealed: Timothy Masters Was 15 at the Time of 1987 Slaying," *The Coloradoan* November 6, 2007; Monte Whaley, "Cop in Tim Masters Case Indicted on Perjury Charges," *Denver Post*, 30 June 2010: "In their case against Masters, prosecutors Terry Gilmore and Jolene Blair, both now Larimer County judges, used a psychological theory in the absence of any physical evidence to persuade a jury to convict Masters."

42 “The Justice Project,” <http://www.thejusticeproject.org/>;
<http://www.thejusticeproject.org/home/in-the-news/#more-730>. Richard L. Wiener and Roni Reiter-Palmon,” “Prosecutorial Misconduct in Death Penalty Cases,” *Judicial Notebook* 35 (No. 6: June 2004):87.

43 Lytle, *Execution’s Doorstep*, 183.

44 Grassian quoted in *Time on Death Row*, p. 1,
<http://www.deathpenaltyinfo.org/time-death-row>.

45 Gary Drinkard in *Witness to Innocence*, www.witnesstoinnocence.org; Melendez, quoted in Lytle, *Execution’s Doorstep*, 87. Fred Lesley: “Freed Florida Death Row Inmate 'Very, Very Happy,' Doesn't Hold Gdge,” *Miami Herald*, 5 January 2002.

46 Nathan A. Helflick, “Sentenced to Die: Last Statements and Dying on Death Row,” *Omega Journal of Death and Dying*, 51 (No. 4 2005):323-36. Bce A. Arrigoa and Carol R. Fowler, “The Death Row Community: A Community Psychology Perspective,” *Deviant Behavior*, 22 (No. 1, January 2001):43-71.

47 Quoted by Jennifer Fulwiler, “Life on Death Row,” *Conversion Diary*
<http://www.conversiondiary.com/2009/02/life-on-death-row.html>.

48 C. Tartaro and D. Lester, “Suicide on Death Row,” *Journal of Forensic Sciences*, 47, (No. 5, September 2002). See also Psychology Program, The Richard Stockton College of New Jersey, NJ. Conditions on death row “can make inmates suicidal, delusional and insane. Some have referred to the living conditions on death row--the bleak isolation and years of uncertainty as to time of execution--as the ‘death row phenomenon’” or “the ‘death row syndrome.’” James Ridgeway and Jean Casella, “Georgia’s Response to Death Row Suicides: Restrict Family Visits,” *Solitary Watch* 13 Febary 13 2010;
<http://solitarywatch.com/2010/02/13/georgias-response-to-death-row-suicides-ban-family-visits/>;
Texas Department of Criminal Justice, <http://www.tdcj.state.tx.us/stat/drowfacts.htm>; Jennifer Mooney Piedra, “Killer Bleeds to Death on Death Row,” *Miami Herald*, 4 May 2008.

49 Austin Sarat, ed., *The Killing State: Capital Punishment in Law, Politics, and Culture* (New York: Oxford University Press, 1999), 150. Michael L. Radelet, “Some Examples of Post-Furman Botched Executions,” *Death Penalty Information Center*, September 16, 2009, <http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions>. See also Michael L. Radelet, et al., *In Spite Of Innocence, Erroneous Convictions in Capital Cases* (Boston: Northeastern University Press, 1992). See also, E. Blaauw, E. Arensman, V. Kraaij, F.W. Winkel, and R. Bout, “Traumatic Life Events and Suicides Among Jail Inmates: The Influence of Types of Events, Time Period, and Significant Others,” *Journal of Traumatic Stress*, 15 (Febary 2002): 9-16.

50 See Elizabeth Beck, Sarah Britto and Arlene Andrews, *In the Shadow of Death: Restorative Justice and Death Row Families* (New York: Oxford University Press, 2007) for the best and most innovative study of the effects upon family members of those sentenced to die for murder.

51 Ron McAndrew is quoted in “New Voices: Former Warden Calls Executions Traumatic for Prison Staff,” 18 August 2010, <http://www.deathpenaltyinfo.org/new-voices-former-warden-calls-executions-traumatic-prison-staff>.

52 Quotation from Review of Mumia Abu-Jamal, *Live From Death Row* (New York: Addison-Wesley Publishing Co., 1995), in *The Journal of Criminal Justice and Popular Culture* 4 (No. 2 1996): 42-47.

53 Lindner, *Making Enemies*, 21.

54 Quotation from review of Mumia Abu-Jamal, *Live from Death Row* (New York: Addison-Wesley, 1995), in the *Journal of Criminal Justice and Popular Culture* 4 (No, 2 1996):46-47.

55. Stevens quoted in *Thompson v. McNeil*, No. 08-7369, cert. denied March 9, 2009, *Time on Death Row*, p. 1, <http://www.deathpenaltyinfo.org/time-death-row>. Stevens also made these comments: “In *Baze v. Rees*, I suggested that the ‘time for a dispassionate, impartial comparison of the enormous costs that death penalty litigation imposes on society with the benefits that it produces has surely arrived.’ [O]ur experience during the past three decades has demonstrated that delays in state-sponsored killings are inescapable and that executing defendants after such delays is unacceptably cel. This inevitable celty, coupled with the diminished justification for carrying out an execution after the lapse of so much time, reinforces my opinion that contemporary decisions “to retain the death penalty as a part of our law are the product of habit and inattention rather than an acceptable deliberative process.”

56 Terence Neilan, “Oldest Death Row Inmate in US Dies at 94,” *AOLNews*, <http://www.aolnews.com/crime/article/oldest-death-row-inmate-in-u-s-dies-at-94/19357948>

57 Associated Press, “Alito Breaks Tie to Uphold Kansas Death Penalty Law,” 26 June 2006: <http://www.foxnews.com/story/0,2933,200970,00.html>. See Wilbert Rideau and Ron Wikberg, (1992). *Life Sentences: Rage and Survival Behind Bars* (New York: Times Books, 1992); John Edgar Wideman, *Brothers & Keepers* (New York: Henry Holt and Co., 1984).

58 Scalia quoted in William Baude, “Last Chance on Death Row,” *Wilson Quarterly* 34 (Autumn 2010):19; *Henry W. Skinner, petitioner, v. Lynn Switzer*, District Attorney for the 31st Judicial District of Texas, No. 09-9000. “Henry Skinner, convicted of capital murder and sentenced to death,[1] is appealing the dismissal of his complaint under 42 U.S.C. § 1983 in which he asserts

that the defendant district attorney's refusal to allow him access to biological evidence for purposes of forensic DNA testing violates his Fourteenth Amendment right to due process and his Eighth Amendment right to be free from cruel and unusual punishment. The district court adopted the report and recommendation of the magistrate judge and granted defendant's motion to dismiss. This court affirmed on the basis of binding circuit precedent Supreme Court of United States. May 24, 2010. Henry W. Skinner, Plaintiff-Appellant, v. Lynn N. Switzer, District Attorney for the 31st Judicial District of Texas, Defendant-Appellee; No. 10-70002. Summary Calendar. United States Court of Appeals, Fifth Circuit. Filed February 8, 2010. "Students from Northwestern University's Medill School of Journalism investigated Skinner's case and found evidence that pointed to Busby's uncle as the possible killer. She had left the New Year's Eve party after he had made 'crude sexual advances' to her. Skinner was seen dead drunk on a couch next to where she was killed." "News Coverage of the Skinner v. Switzer Oral Argument," *The StandDown Texas Project*, 14 October 2010. <http://standdown.typepad.com/weblog/2010/10/news-coverage-of-the-skinner-v-switzer-oral-argument.html>. See editorial "Death Row and DNA" *Washington Post*, 19 October 2010, p. A14 and letter to editor, Jennifer Thompson, "The Power of DNA Testing," *ibid*. On the Troy Davis case, see Lyle Denniston, "Innocence claim Rejected," 24 August 2010 *Scotusblog*. <http://www.scotusblog.com/2010/08/innocence-claim-rejected/>

59 Lytle, *Execution's Doorstep*, 1.

60 Lytle, *Execution's Doorstep*, ixn.