



## Cruel and Unusual Leniency

In 1976, John Harvey Adamson lured reporter Don Bolles (who was investigating organized crime in the Phoenix, Arizona, area) to a hotel, then attached a bomb to his car. The subsequent explosion severely injured Bolles, who died nine days later, after identifying Adamson. Adamson was arrested and initially plea-bargained a second-degree murder charge and a 20-year (plus two months) sentence. The agreement included a provision that the original first-degree murder charge could be reinstated should he breach the terms of the plea-bargain. Later, Adamson identified two individuals as participants in the Bolles murder. They were tried and convicted, but their convictions were overturned by the Arizona Supreme Court in 1980 and a new trial was ordered.

Adamson refused to testify at the retrial unless the state agreed to his new demands, which included his release from prison. Concluding that he had violated the plea-bargain, prosecutors reinstated the original murder charge and the Arizona Supreme Court agreed that he could be re-tried. A jury convicted him, the judge sentenced him to death, and the state Supreme Court upheld the sentence. But the 9th Circuit Court of Appeals reversed the sentence in 1986 on the grounds that Adamson had been unconstitutionally subjected to “double jeopardy.”

In 1987, the U.S. Supreme Court reversed the Circuit Court. But the lower court then struck down Adamson’s sentence on the grounds that the judge, not the jury, had imposed the death sentence. On June 27, 1990 the Supreme Court reversed that ruling (5 to 4) and upheld the constitutionality of the Arizona law. But the next day, the High Court voted (4 to 3) to bar Adamson’s execution (Justices Sandra Day O’Connor and Anthony M. Kennedy, who had voted with the majority a day earlier, did not take part in the latter decision). So, in what one prosecutor described as a real “fluke” of justice, the High Court barred the execution of a man under a law that it had a day earlier declared to be constitutional.

### **Illusory Punishment**

Such Jekyll-and-Hyde adjudication of death penalty cases has been the rule in recent decades. On June 29, 1972 the High Court banned capital punishment (*Furman v. Georgia*). On July 2, 1976 it re-legalized it (*Gregg v. Georgia*). On June 29, 1977, it banned it for the rape of adult women (*Coker v. Georgia*). And so on.

In 1981, then-Justice (now Chief Justice) William H. Rehnquist issued a dissenting opinion that blistered his colleagues for allowing what he described as a “stalemate” to develop over the issue. “The existence of the death penalty in this country is virtually an illusion,” he complained, since “virtually nothing happens except endlessly drawn out legal proceedings.” In September of last year, a committee established by Chief Justice Rehnquist and former Justice Lewis F. Powell, Jr. issued a report confirming that the average time between crime and execution in capital cases is nearly nine years, with perhaps 40 percent of the delay due to post-conviction proceedings in federal courts.

To its credit, the Court since then has on balance tended to tighten up death-penalty procedures. In August 1982 (for the first time) it vacated a stay of execution granted by a lower court, thereby directly intervening to authorize an execution. In October 1982 it gave officials in Texas the green light to carry out an execution even though the man technically still had an appeal pending in lower federal courts. In July 1983 it authorized federal judges to use special procedures to expedite appeals by death-row inmates, thereby embracing Justice Rehnquist’s 1981 view that the state has a legitimate interest in the reasonably swift execution of condemned felons.



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In June 1989 the Court ruled that indigent inmates on death row do not have a Constitutional right to a lawyer to assist them in a second round of state court appeals, and that the Constitution's ban on "cruel and unusual punishment" does not prohibit the execution of mentally retarded killers or of juveniles who were 16 or 17 years old when they committed murder. During its most recent term, the High Court held that criminal defendants may not retroactively benefit from favorable Supreme Court rulings issued after their convictions, and that family, friends, and other interested parties may not block the executions of convicted killers who prefer to die without delay.

In other recent decisions, the Court has made it more difficult for death-row inmates to base federal appeals on such issues as statistics (implying that the sentence was discriminatory) and the ineffective assistance of counsel. The latter decision may help curb the ploy of having a defendant's first attorney raise some, but not all, issues on appeal, then years later having some other lawyer argue for re-trial or a reduced sentence on the grounds that the first attorney was ignorant or negligent. It is a perversion of the legal system that, as one state attorney general put it, makes the best lawyer "a lawyer who screws up" in the early stages of one's defense. On balance, the High Court's recent trend has been to streamline procedures to reduce redundant and flippant appeals (and the enormous costs that accompany them) and shorten the time between conviction and execution.

### **Wrongful Execution?**

During the April 3, 1990 edition of the ABC News *Nightline* program, reporter Ted Koppel asserted: "What if the convicted murderer should prove later on, after his execution, to have been innocent? It's happened in this country, in this century, 23 times that we know of." Koppel's claim was apparently based on a lengthy (and highly publicized) study that appeared in the November 1987 *Stanford Law Review*. Authored by Hugo A. Bedau (professor of philosophy at Tufts University) and Michael L. Radelet (associate professor of sociology at the University of Florida), the study was based on an evaluation of 2,300 capital-crime convictions since 1900. The authors concluded that 350 persons had been erroneously convicted, of whom 23 had been wrongly executed.

Scrutiny of the 23 cases, however, confirms that in not a single instance is it actually proved that an innocent person was executed. Included on the list, for instance, are such notorious leftwing causes célèbres as Joe Hill (born Joel Hagglund in Sweden, changed to Joseph Hillstrom after his emigration to the U.S. in 1902, and later to Joe Hill), the International Workers of the World (Wobblies) organizer executed in Utah in 1915 for the murder of two storekeepers; Nicola Sacco and Bartolomeo Vanzetti, who were executed in 1927 in Massachusetts for murdering a paymaster and a guard during a robbery; and Bruno Richard Hauptmann, executed in 1936 in New Jersey for kidnapping and killing the baby boy of Charles A. and Anne Morrow Lindbergh. None of these men has been proved innocent. The record in each case impressively confirms their guilt.

Bedau and Radelet themselves state that the 23 cases are only those "we believe to be innocent defendants who were executed" and that "what we can report will satisfy only a few." (Emphasis added.) In "the notorious cases" (such as those of Hill, Sacco and Vanzetti, and Hauptman), "we have relied on the judgment of other scholars whose investigative work convinces us that error did indeed occur. Nothing we can say here will cause the controversy that still surrounds each of these cases to abate." Regarding "the more obscure cases, we have relied entirely on the opinions of officials whose views we believe deserve to be taken seriously. (Emphasis added.) In none of these cases, however, can we point to the implication of another person or to the confession of the true killer, much less to any official action admitting the execution of an innocent person." Indeed, "in none of the cases ... can we



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point to any state action indicating the belief that the person executed was innocent.”

### **Victim of Leniency**

One case cited by the authors involved a man executed four years before another person confessed to the crime. Maurice F. Mays (a black man) was convicted in 1919 of murdering a white woman in Tennessee and was sentenced to death. On appeal, the conviction was reversed because the judge, rather than the jury, had imposed the sentence. Mays was retried, reconvicted, and resentenced to death; the conviction was upheld on appeal; and he was executed in 1922. In 1926, a white woman claimed in a written statement that she had dressed up as a black man to kill the woman, with whom her husband was having an affair. The authorities did not accept the confession and the woman was not prosecuted.

Mays may have been innocent, but the belated confession of a woman who could have been unstable or had some other motive for falsely confessing is hardly proof that he was. In any event, Bedau and Radelet note that “Mays had been previously convicted in 1903 for killing a black man, but was pardoned for that crime.” As the record stands, the Mays case is actually an example of an innocent woman killed by someone who could not have done it had he been executed for an earlier murder.

Countless hundreds (perhaps thousands) of other innocent Americans have been killed over the years by murderers who either escaped or were paroled instead of being executed. Many of those who advocate abolition of the death penalty attempt to minimize that fact by claiming that the instances are too rare to be significant. At the same time, they argue that even the possibility of executing an innocent man is justification for abolishing capital punishment.

### **Exception Proves the Rule**

It would be difficult to name a single sphere of human activity that has not been marred on some occasion by a deplorable mishap, capital punishment not excepted. But, as G. Edward Griffin reminds us in *The Great Prison Break*: “If we design a legal system that will be so generous to the suspect that there is absolutely no possibility of unjustly convicting that one out of ten thousand defendants who, in spite of overwhelming evidence, is really innocent, then we have also designed a legal system that is utterly incapable of convicting the other 9999 about whose guilt there is no mistake.”

An August 3, 1966 study by the Legislative Reference Service (LRS) of the Library of Congress reported: “There have been no known cases of the execution of an innocent man in this country.” Yet, due to the fallible nature of our judicial system, it is likely that there have been a few instances when innocent persons have been executed wrongly. Bedau and Radelet cite one case from the last century that the LRS apparently overlooked. William Jackson Marion was hanged in Nebraska on March 25, 1887. “Four years after the execution,” the authors assert, “the supposed victim of Marion’s homicide was found to be alive.” Nevertheless, when it comes to concern for the innocent, there is simply no question that the number of persons killed by murderers who were not executed for earlier killings exceeds by far the number of as-yet-undisclosed legal executions of innocent persons in the United States. Judges and juries can make mistakes. So can psychiatrists and parole boards. Many “reformed” or “cured” killers have been sent back to society to kill again, and many a murderer has escaped to kill again, or simply killed guards or fellow inmates within prisons.

Critics of the death penalty would have us lose sleep worrying about the possibility that our system of justice may misfire and execute an innocent person once in a great while, but they shed few tears for the demonstrably large number of innocent people who have died due to judicial (and jury) leniency and



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erroneous psychiatric evaluation.

### **Murders That Could Have Been Averted By Capital Punishment**

- Some 80 years ago, Charles Fitzgerald killed a deputy sheriff and was given a 100-year prison sentence as a result. He was released after serving just 11 years, and in 1926 murdered a California policeman. He was given “life” for that killing, but was paroled in 1971.
- In 1931, “Gypsy” Bob Harper, who had been convicted of murder, escaped from a Michigan prison and killed two persons. After being recaptured, he then killed the prison warden and his deputy.
- In 1936, former FBI Director J. Edgar Hoover reported the case of a Florida prisoner who committed two murders, received clemency for each, and then murdered twice more. On March 17, 1971 Hoover told a congressional subcommittee that 19 of the killers responsible for the murder of policemen during the 1960s had been previously convicted of murder.
- In 1951, Joseph Taborsky was sentenced to death in Connecticut for murder, but was freed when the courts ruled that the chief witness against him (his brother) had been mentally incompetent to testify. In 1957, Taborsky was found guilty of another murder, for which he was electrocuted in May 1960. Before his execution, he confessed to the 1951 murder.
- In 1952, Allen Pruitt was arrested for the knife slaying of a newsstand operator and sentenced to life in prison. In 1965, he was charged with fatally stabbing a prison doctor and an assistant prison superintendent, but was found not guilty by reason of insanity. In 1968, his 1952 conviction was overturned on a technicality by the Virginia Supreme Court. He was re-tried, again found guilty, but given a 20-year sentence instead of life. Since he had already served 18 years, and had some time off for “good behavior,” he was released. On December 31, 1971 he was arrested and charged in the murder of two men in Spartanburg, South Carolina.
- In 1957, Richard Biegenwald murdered a store owner during a robbery in New Jersey. He was convicted, but given a life sentence rather than death. After serving 17 years, he was paroled. He violated his parole, was returned to prison, but was again paroled in 1980, after which he shot and killed an 18-year-old Asbury Park, New Jersey, girl. He also killed three other 17-year-old New Jersey girls and a 34-year-old man.
- A man convicted of murder in Oklahoma pleaded with the judge and jury to impose the death sentence, but was given life instead. He later killed a fellow inmate and was executed for the second killing in 1966.
- In 1972, Arthur James Julius was convicted of murder and sentenced to life in prison. In 1978, he was given a brief leave from prison, during which he raped and murdered a cousin. He was sentenced to death for that crime and was executed on November 17, 1989.
- In 1976, Jimmy Lee Gray (who was free on parole from an Arizona conviction for killing a 16-year-old high school girl) kidnapped, sodomized, and suffocated a three-year-old Mississippi girl. He was executed for that second killing on September 2, 1983.
- Also in 1976, Timothy Charles Palmes was on probation for an earlier manslaughter conviction when he and two accomplices robbed and brutally murdered a Florida furniture store owner. Palmes was executed for the killing on November 8, 1984. An accomplice, Ronald Straight, was executed on May 20, 1986. (The other accomplice, a woman, was granted immunity for testifying for the prosecution.)
- In 1978, Wayne Robert Felde, while being taken to jail in handcuffs, pulled a gun hidden in his pants



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and killed a policeman. At the time, he was a fugitive from a work release program in Maryland, where he had been convicted of manslaughter.

- In 1979, Donald Dillbeck was convicted and sentenced to 25 years in prison for murdering a Florida sheriff's deputy. In 1983, he tried to escape. In January of this year he was transferred to a minimum-security facility. On June 22, he walked away from a ten-inmate crew catering a school banquet. Two days later, he was arrested and charged with stabbing a woman to death at a Tallahassee shopping mall.
- In 1981, author Norman Mailer and many other New York literati embraced convicted killer Jack Henry Abbott (who had murdered a fellow prison inmate) and succeeded in having him released early from a Utah prison. On July 18, 1981 (six weeks after his release), Abbott stabbed actor Richard Adan to death in New York. He was convicted of manslaughter and received a 15-year-to-life sentence. Mrs. Adan sued Abbott for her husband's wrongful death and her pain and suffering. On June 15, 1990, a jury awarded her nearly \$7.6 million.
- On October 22, 1983 at the federal penitentiary in Marion, Illinois, two prison guards were murdered in two separate instances by inmates who were both serving life terms for previously murdering inmates. On November 9, 1983, Associate U.S. Attorney General D. Lowell Jensen told a Senate subcommittee that it is impossible to punish or even deter such prison murders because, without a death sentence, a violent life-termer has free rein "to continue to murder as opportunity and his perverse motives dictate."
- On December 7, 1984 Benny Lee Chaffin kidnapped, raped, and murdered a 9-year-old Springfield, Oregon girl. He had been convicted of murder once before in Texas, but not executed. Incredibly, the same jury that convicted him for killing the young girl refused to sentence him to death because two of the 12 jurors said they could not determine whether or not he would be a future threat to society!
- Thomas Eugene Creech, who had been convicted of three murders and had claimed a role in more than 40 killings in 13 states as a paid killer for a motorcycle gang, killed a fellow prison inmate in 1981 and was sentenced to death. In 1986 his execution was stayed by a federal judge and has yet to be carried out.
- When he was 14, Dalton Prejean killed a taxi driver. When he was 17, he gunned down a state trooper in Lafayette, Louisiana. Despite protests from the American Civil Liberties Union and other abolitionist groups, Prejean was executed for the second murder on May 18, 1990.



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