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Leslie Lytle. *Execution's Doorstep: True Stories of the Innocent and Near Damned.* Boston: Northeastern University Press, 2008. xviii + 278 pp. $29.95 (cloth), ISBN 978-1-55553-678-7.

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Death Row Innocents: The Struggle against Humiliation

We Americans pride ourselves on the fairness of the judicial system. "Innocent until proven guilty" is an uplifting slogan. Its constant repetition reassures us that justice will always be amply served. Tragically, such, however, is not the case. It comes as a surprise to learn how poorly the system actually works. Professor James Liebman and colleagues at Columbia University have found that 68 percent of all capital cases between 1973 and 1995 contained at least one crucial "reversible error."[1] The problem is greater than one might imagine. California now has currently 700 prisoners on death row. That figure outpaces the death-loving state of Texas with only 331 and Florida with some 391. In 2008 an anti-death advocacy group declared that "More than 200 men and women have been wrongfully convicted of serious crimes in California, six of whom were sentenced to death."[2] The total figure of those currently under death sentences comes to 3279. In 1976 the Supreme Court allowed the return of the lethal punishment. 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."[3]

In *Execution's Doorstep*, Leslie Lytle deals compellingly with the fate of just five men. They were all wrongly convicted of murder and sentenced to die because of the heinousness of the crimes. None of those she selected was a victim of some "honest mistake." Most especially in the years before the introduction of DNA testings, however, that sort of error was also a contributor to the distortions of our system of justice. The incarcerated five were all deliberately dragged through a nightmarish gaggle of liars, frightened and often threatened false prosecution witnesses, incompetent or politically ambitious prosecutors, corrupt police officials, brain-dead judges, inattentive or biased juries, and an indifferent or fearful public. Their stories are told in serviceable but scarcely inspired prose. Yet, the author's account reveals the terrors of prisons and particularly the unspeakable conditions of those incarcerated on the various states' death rows.

Since 2008, when *Execution's Doorstep* was published, some 128 men have been exonerated from murders they supposedly committed. Most recently Jerry Hobbs, who was sentenced to death for the murder of his own daughter (age eight) and her friend (age nine), was finally released. Fortunately a DNA test in 2010 proved him not guilty.[4] Every so often, a case of official malfeasance in handling capital or major offenses appears in the news. For instance, most recently, Michael Green, an African American, had been sentenced in Texas to seventy-five years for raping a white woman. DNA tests proved his innocence, but he had languished in prison for twenty-seven years.The rape victim had misidentified her attacker, thanks in part to police collusion.[5] Lytle offers similar and even more inexcusable miscarriages of justice. She provides meticulous information which enables the reader to appreciate the severity of the problem even if these five might be erroneously seen as rare exceptions to otherwise proper applications of the law.

What emerges from a close reading of this quintet, slowly crushed under the wheels of justice, is the issue of psychological humiliation. All five prisoners experienced unimaginable torment while awaiting the rendevous with their demise. 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 author shows, innocent victims 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. With reduced inves-

tigative staffs, newspapers no longer pursue stories as once they did. As a result, ordinary citizens look with mistrust on the released prisoner, businesses shy away from hiring them, and single women shrink from contact with someone once accused of murder.

It would spoil the narrative to retell the fate of each of the five in detail. Only one case will be given fuller attention than the expositions of the others. After summarizing the five examples, I discuss the humiliations during the trial and even more important in the years after release from the agony of lengthy incarceration. Ron Keine, Lytle's first victim of injustice, was a tough punk, scarcely a respectable figure in the eyes of our world. He belonged to the Vagos biker club, an outfit just a little less shady than the drug-dealing Hell's Angels. He and four biker friends set out for Michigan, their home state, from El Monte, California, in February, 1974. Keine's father was abusive and alcoholic. Enduring an unhappy childhood, Ron Keine was strong and brainy 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.

Meantime, one Kerry Lee, the true murderer, got drunk at a bar in Albuquerque, New Mexico. He quarreled with one William Velten, an aggressive homosexual. In a struggle over a .22 Ivor Johnson pistol, Lee was the winner. He shot William Velten in the head several times in an arroyo outside the city. Enraged, he then slashed the chest and castrated the dead body, threw the gun away, and returned to town to get his girlfriend, Jan McCord. WLee returned and, with her watching, Lee hid the body in the sage brush. On that February evening, the five bikers were roaring down the road far from Albuquerque. The police of Weatherford, Oklahoma, arrested them. Some disgruntled hitchhikers back in New Mexico had lodged a completely trumped-up complaint of armed robbery. The five were then transferred back to that state. They had no clue as to why. They were then charged with the murder of William Velten. State newspapers wrote frightening stories about them, and the public, suspicious of bikers with tattoos, beards, and ugly outfits, grew almost hysterical. The sheriff in charge happily basked in the compliments for putting these dangerous types behind bars.

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.

Meanwhile, 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 bikers in court. 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 have heard the bikers boast of what they had done to Velten. He was not even on the same cell block, but the judge permitted his testimony.

The defense had more believable witnesses than this collection of self-serving liars. They identified the bikers as having been 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 August 1, 1974.

Fortunately the *Detroit News*, the bikers' hometown paper, began to scrutinize their plight. Two reporters had the expertise to locate Judy Weyer in Minnesota. She had fled from Albuquerque out of fear of the state officials. She told Stephen Cain and Douglas Glazier how the prosecutors, D.A. Brandenburg and Brian Gross, had cajoled, manipulated, humiliated, and threatened her unless she identified the bikers as the murderers. The paper printed much of her ninety-minute 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. Then, an apparent miracle occurred.Kerry Lee found salvation. He confessed to a Baptist minister in 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. Nine days before execution, Judge Vernon Payne ruled that the men deserved a new trial. In December 1975 the indictments for murder were quashed at the hands of district judge Philip Baiamonte. The five were free at last.

The other four accounts disclose similar stories in

which a miscarriage of justice had led nearly to the final moment for innocent prisoners. Juan Roberto Melendez, the only Hispanic in the group, was a legal immigrant working as a crop picker in the Florida fields in 1984. He had the misfortune to have a drug-addicted enemy who maliciously reported to the police that Melendez was the murderer of a black cosmetologist in Auburndale, Florida. 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 useful evidence from the defense team. On the day before his execution in 2002, he won release after seventeen years on death row. He owed his freedom to Judge Barbara Fleischer. She discovered that his counsel had not followed available leads, but, far worse, the prosecution had flagrantly violated what are known as the Brady rules. They had overlooked the obvious guilt of one Vernon James who had admitted being on the murder scene. Melendez was soon a free man.

Like Melendez and Keine, Michael Ray Graham was victim of false witnessing. In 1984 Delton Frost, an old black vegetable farmer of Downsville, Louisiana, and his invalid wife lost their lives in a robbery of all his life savings, kept in a trunk under their bed. Sheriff Larry Averitt had no homicide experience and refused offers of official help. He feared discovery of his embezzlement of county funds and mail fraud. Averitt was eventually caught, but exposure of his guilt came far too late for Graham's defense team. Graham spent fourteen years on death row.Then, in a new trial on appeal, several prosecution witnesses admitted they had lied. Also helping Graham's case was the late discovery of the murder weapon which had no connection to Graham. Judge Cynthia Woodard pointed out the egregious missteps and violations of the protocols, and Graham was once more a free man.

Perhaps the most flagrant miscarriage was the 1980s case of Madison Hobley, an African American with a wife and very handsome baby boy. Hobley's parents, a civil engineer and a 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 drug gangs. Foolishly, Hobley had taken up with a young woman named Angela McDaniel. His wife 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 child and only barely escaped the flames himself. From the start, the police decided that the husband had murdered his family. They assumed that his wife 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" (p. 145). All blacks hate whites, he insisted. The officers refused him access to an attorney. Dwyer's misconduct was only the beginning of police brutality and misrepresentation under Jon Burge, the racist Commander of Area Two district. Suspicion should actually have fallen on Andre Council, leader of one of the drug gangs. He was known as "the Enforcer." Already Council was a suspected arsonist responsible for an earlier fire set in the ongoing gang war. Despite his clear complicity in that incident and yet another destructive act, the police favored him for reasons never fully disclosed. Although witnesses had presented the authorities with leads toward Council, these were ignored. Instead, they offered Council a reduced sentence for another crime if he were to testify against Hobley. Of course, he graciously complied.

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. Prosecution experts also made matters even direr. A so-called fire expert who received $30,000 for his testimony, claimed the fire had started on the third floor, not the first. Another expert with greater scientific knowledge, accurately located its origin, but 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 the judge. The prosecution jailed and manhandled Angela McDaniel, Hobley's girl friend. She supplied an affidavit of police barbarity. The court refused to countenance her narrative along with other reports of similar behavior.

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 rulings during two trials had been outrageously biased. Finally, after Hobley was locked up, the Chicago Fire Department reported the continuation of neighbor-

hood 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 won the governor's pardon for Hobley.

Like Hobley, Larry Randal Padgett of Arab, Alabama, was carrying on an extramarital affair with one Judy Bagwell, a coarse but seductive neighbor. Her husband, Tommy Smith, was outraged and swore revenge. Having by then left his wife and two children, Padgett took Judy on a vacation in Florida. The night before their departure, Cathy Padgett was found murdered.She had been stabbed over forty times. Suspicion at once fell on the feckless and love-smitten Padgett. A DNA lab test indicated that semen found in the body and in Padgett's blood sample were the same. A second test supplied the same result. 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 ruled against the admission of the letter. Not unexpectedly, the first trial resulted in a guilty verdict, with Padgett headed for the gas chamber.

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 without charge. All signs pointed to Judy Bagwell as the killer. The defense mounted a strong argument with an array of believable witnesses. Jaffe nearly wrung a confession from Bagwell 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.

We have no idea how many such cases have resulted in the annihilation of innocents. One can imagine that some of those on death row were victims of gross injustice. Lytle notes that from 1900 to 2008 "states executed twenty-three individuals who likely were innocent" (p. 235). Surely that figure is too low. However, in these five instances we find a pattern of systematic inhumanity that should not be tolerated. The first issue is the actual arrest and initial incarceration. African Americans, like Hobley, are all too often treated as if they were caged and dangerous beasts. Allegedly to assure their compliance, they require beatings, filthy, roach-infested cells, thin blankets, hard beds, half-cooked meals, violent or demented cell mates, solitary confinement for minor infractions, and other misfortunes.

In addition to these miseries, other matters of depravation or distortion increase a prisoner's humiliation and troubles. 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 an accused African American experiences when facing an all-white jury. Some state attorneys train prosecutors in how to prevent black citizens from jury selection without risking charges of racial discrimination. The African American Madison Hobley recalled, the police who "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" (p. 137).

One of the most serious problems is the prosecutorial suppression of exculpatory evidence. That issue appeared in several of the cases that Lytle recounts. One reason that such conduct goes undetected or unpunished is the decision of the Supreme Court in 1976, *Imbler v. Pachtman*. In that ruling, 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."[6] In other words, no matter how criminal the prosecutor might be, he or she is untouchable by civil action. As Lytle points out, politics plays a role Ambitious state attorneys want easy victories if seeking higher positions. Courtroom successes of this sort, she writes, "expedite political aspirations" to the detriment of true justice (p. 238).

Jails and penitentiaries are notoriously understaffed, often with poorly trained and underpaid guards. Unless carefully supervised, they can abuse prisoners on a whim, especially those on death row. 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. Randal 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" (p. 183). 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."[7]

When another prisoner chained and shackles, 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. 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 many states defense attorneys also have no access to their clients. 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. It is hardly a wonder that the death row survivor may suffer from post-traumatic stress disorder, similar to a battle-scarred soldier's reaction. 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 twenty-five years. Justice Clarence Thomas, though, blamed the court itself for such delays. Breyer 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 Florida death-row inmate, who has survived thirty-two 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 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" for whatthat, instead, simply resulted "in the gratuitous infliction of suffering."[8]

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 since 1983, when at the age of fifteen he was convicted of first-degree murder.[9] Surely such cases, and there are others, suggest a violation of the "cruel and unusual punishment" clause of the eighth amendment.

A 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 guilt. 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 minimum-wage job. Innocents, though, receive little or no state support. Moreover, after years behind bars, such prisoners 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 (p. 1). The effect of years undergoing the sheer sameness of life and the relentless boredom would be, even in freedom, enough to wear down the most sanguine of souls. The feeling of insurmountable loss continues to overwhelm. According to his remarks in the *New York Times*, Michael Green feels that way, finding that insomnia often grips him.

Between 1976 and 2008 124 death row candidates were freed on grounds of their innocence. Only a handful have regained their emotional bearings. Many of them suffered or still suffer from nervous breakdowns, chronic depression, abusive family relations, fits of anger, and alcohol and drug addictions. Some turn to crime, renewing old habits and contacts with lawless associates. They might need the wherewithal to satisfy an addiction or simply to pay grocery bills and rent when unemployed. A few give up on life itself and kill themselves. Nothing can restore the wasted and meaningless years, the isolation from family and old friends, the missed opportunity for work and advancement, the virtual absence of comforting events.

Lytle's book handsomely conveys insights into many of these haunting factors. 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. In 1968 only 517 awaited the gas chamber or electric chair. The costs are enormous. Lytle writes that in Florida, for example, the estimated cost of execution is 3.2 million dollars, whereas life imprisonment only comes to $800,000 (ixn). 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 most unlikely that improvements will appear in the near future. Yet, the long-boasted state of American justice and its procedures cannot be reasserted with confidence until there are the kinds of necessary change that Lytle's book helps us to understand and act upon.

Notes

[1]. James S. Liebman, Jeffrey Fagan, and Valerie West, "A Broken System: Error Rates in Capital Cases, 1973-1995," Columbia Law School, Public Law Research Paper no. 15 (June 2000). Cited in Lytle, *Execution's Doorstep*, 1.

[2]. Death Penalty Focus, http://www.deathpenalty.org/article.php?id=407; "California Death Row Reaches 700," ibid., http://www.deathpenalty.org/downloads/700%20on%20death%20row%20in%20CA%20Release%20DPF.pdf.

[3]. See http://www.eji.org/eji/deathpenalty.

[4]. *Chicago Tribune*, August 5, 2010; Reporters Lisa Black and Dan Hinkel in *Chicago Sun-Times*, August 5, 2010.

[5]. James C. McKinley, Jr., "Cleared, and Pondering the Value of 27 Years," *New York Times*, August 12, 2010, A12 and 14. http://www.nytimes.com/2010/08/13/us/13exonerate.html?_r=1&emc=eta1. Green is contemplating a law suit against the Texas constabulary and prosecutors involved, but the Supreme Court has ruled against such civil actions. He has been offered 3.2 million compensation so long as he does not actually file a law suit. See endnote 6.

[6]. *Imbler v. Pachtman*, 424 U. S. 409 (1976); Lytle, *Execution's Doorstep*, 238.

[7]. Grassian quoted in "Time on Death Row," 1, http://www.deathpenaltyinfo.org/time-death-row.

[8]. Stevens quoted in *Thompson v. McNeil*, No. 08-7369, cert. denied March 9, 2009, "Time on Death Row," 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 cruel. This inevitable cruelty, 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.'"

[9]. Ibid., 4.

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