

In Defense of Life: Enforcing the Bill of Rights on Behalf of Poor, Minority and Disadvantaged Persons Facing the Death Penalty

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Since 1982, Bright has been the Director of the Center, the mission of which is to represent persons facing the death penalty and prisoners challenging unconstitutional conditions in prisons and jails throughout the South. The Center has a staff of seven lawyers and three support personnel, all of whom receive the same amount of salary.

The president of the American Bar Association, Talbot D'Alemberte, wrote about the Center in *The Heroism of Steve Bright*. A.B.A. J., Sept. 1991, at 8. President D'Alemberte noted that he wanted to use his column in the *ABA Journal* to bring to the attention of the Bar what he referred to as unsung heroes in the legal profession. Bright was the first person about whom he wrote, and President D'Alemberte noted, "Steve and his underpaid and overworked staff are having an impact through their heroic defense of individual rights and the rule of law." *Id.*

Bright has given testimony before numerous bodies and has written articles on the death penalty and the adequacy of legal representation. He has received awards for his work from the American Bar Association Section on Litigation, from the American Civil Liberties Union, from the Cascade United Methodist Church, and from the Durfee Foundation in California.

I am grateful to have the opportunity to be here, to meet with distinguished members of the legal profession and law students and to talk with you about how well the legal system and our profession are responding to the challenge of deciding who dies.

This year is the twentieth anniversary of the United States Supreme Court's decision in *Furman v. Georgia*,¹ in which the death penalty as it had existed for 200 years in our country's history was found to be unconstitutionally applied. We have now had about nineteen years of experience with the new death penalty statutes passed after *Furman*. We are in a position to examine whether the constitutional deficiencies identified in *Furman*—discrimination against minorities and the poor and arbitrariness and capriciousness²—have been eliminated from the process of imposing death.

We have also just completed the year in which we celebrated the 200th anniversary of the Bill of Rights. I know that those of you here today recognize that the Bill of Rights is not a collection of technicalities. The Bill of Rights is one of the most fundamental and important documents of our national existence. It is one of our nation's great exports. It is something that people around the world admire about our country.

It is thus appropriate for us to examine here today how well the Bill of Rights is being enforced in these cases, cases involving human life; how well our profession, the legal profession, has fulfilled its responsibility to make the protections of the Bill of Rights available to those facing the death penalty; and, finally, whether the Bill of Rights is serving its purpose of protecting the poorest and most powerless people of our society.

Those are the people that I represent. They are people whose only protection against the power of the government is the guarantees of the Bill of Rights. They cannot write their representative or senator seeking legislation to overturn a Supreme Court decision with which they do not agree. They cannot afford to hire a former high government official or a high-powered law firm to lobby for them in Congress to get the laws changed or at least get the regulators to lay off. They cannot even afford counsel to defend them in

1. 408 U.S. 238 (1972).

2. The five justices that made up the majority in *Furman* concluded that the death penalty was being imposed so discriminatorily, *Furman*, 408 U.S. at 249-52 (Douglas, J., concurring), *id.* at 310 (Stewart, J., concurring), *id.* at 364-66 (Marshall, J., concurring), so arbitrarily, *id.* at 291-95 (Brennan, J., concurring), *id.* at 306 (Stewart, J., concurring), and so infrequently, *id.* at 310 (White, J., concurring), that any given death sentence was cruel and unusual. Justice Brennan also concluded that because "the deliberate extinguishment of human life by the State is uniquely degrading to human dignity" it is inconsistent with "the evolving standards of decency that mark the progress of a maturing society." *Id.* at 270, 291.

cases where their lives are at stake. They must take the lawyers assigned to them. When these persons face society's ultimate punishment, does the process include the fundamental procedural safeguards which ensure that the issues of guilt and punishment are fairly and reliably determined?³

It is appropriate as well to address these questions at a lecture made possible by Mortimer A. Rosecan, one of the distinguished alumni of this law school and someone who represents the best of the legal profession: an outstanding litigator, a tremendously accomplished lawyer, but one who always responded when the court or the priest called upon him to help those unable to afford legal representation.

On one such occasion many years ago, Morty was asked by Father Dismas Clark to take the case of a person facing the death penalty. The priest said he had prayed on it, and the Lord had told him to come to Morty to ask him to provide representation for a person just hours away from execution. Of course no money was involved, but Morty took the case, obtained a stay of execution and later a commutation of the death sentence to life imprisonment.⁴

To answer the questions I have raised, we need to examine how the death penalty has been inflicted in the past and the reality of its use today. As I

3. The fundamental procedural safeguards, protected by the Bill of Rights, include the Fifth Amendment right against compulsory self-incrimination, the Sixth Amendment rights to counsel and a fair and impartial jury, the Eighth Amendment protection against the imposition of an arbitrary, capricious or excessive sentence, and the Fourteenth Amendment right to be indicted and tried by juries from which persons were not excluded on the basis of race. Most fundamental of all these safeguards is the right to counsel for without adequate legal representation an accused is helpless to avail himself of the other protections.

4. The person he represented was Marcus Goodwin, who was scheduled to be executed on February 23, 1962. *State v. Goodwin*, 352 S.W.2d 614 (Mo.), *cert. denied*, 371 U.S. 915 (1962). After taking the case, Morty Rosecan obtained a stay of execution on February 21 from Missouri Governor John Dalton. On March 27, 1962, the Governor commuted the sentence to life imprisonment. The contention that Goodwin was denied effective assistance of counsel and was insane at the time of the crime and at the time statements were obtained from him was rejected by the Missouri courts, *In re Goodwin*, 359 S.W.2d 601 (Mo.), *cert. denied*, 371 U.S. 915 (1962), but Goodwin later obtained federal habeas corpus relief. *Goodwin v. Swenson*, 287 F. Supp. 166 (W.D. Mo. 1968). He was represented in federal court by Professor Edward H. Hunvald, Jr., of this law school, who has made immense contributions to the development of the criminal law and improvement of criminal lawyers in this state.

said, the death penalty was struck down twenty years ago. Almost immediately Georgia, Texas, Florida and other states enacted new death penalty statutes. In 1976, the Supreme Court upheld some of those statutes.⁵ Thirty-six states, the United States, and the military now have death penalty laws.⁶ The rest of the world is moving away from capital punishment. Most of the European countries have done away with it.⁷ South Africa has even suspended the death penalty.⁸ Apart from the states in this country that favor the death penalty, it has its greatest popularity in China and Iran.⁹

Just over twenty-five of the states in the United States use the death penalty with some frequency. Two states, New Hampshire and South Dakota, have it on the books but have never imposed it.¹⁰ Other states, like Colorado, have imposed death infrequently and have only a few persons under death sentence. Other states have death rows with hundreds waiting to be gassed, electrocuted, hanged, shot or injected. Twenty-five hundred people are on death row in our country today; 161 people have been executed, the most recent, last Monday night in Texas.¹¹ Today, as was the case before *Furman*, the death penalty has its greatest popularity south of the Mason-

5. The Court upheld the statutes enacted by Florida, *Proffitt v. Florida*, 428 U.S. 242 (1976), Georgia, *Gregg v. Georgia*, 428 U.S. 153 (1976), and Texas, *Jurek v. Texas*, 428 U.S. 262, (1976), and struck down the statutes adopted by North Carolina, *Woodson v. North Carolina*, 428 U.S. 280 (1976), and Louisiana, *Roberts v. Louisiana*, 428 U.S. 325 (1976). The first execution after the Supreme Court allowed the resumption of capital punishment was in 1977, when Gary Gilmore was killed by a firing squad in Utah.

6. NAACP Legal Defense & Educational Fund, *Death Row USA*, Spring 1992, at 1.

7. Amnesty Int'l, *The Death Penalty; List of Abolitionist and Retentionist Countries*, Dec. 1991 (issued February 1992 by International Secretariat of Amnesty International, 1 Easton Street, London WC1X 8DJ, United Kingdom). The death penalty has been abolished in England, France, Germany, Denmark, Sweden, Norway, the Netherlands, Finland, Luxembourg, Romania, Spain and Switzerland. *Id.*

8. Amnesty Int'l, *Death Penalty News*, Feb. 1992, at 4.

9. These two countries alone accounted for 89% of all executions recorded in 1991 by Amnesty International. The organization reported 2,086 prisoners known to have been executed in 32 countries. It recorded 1,084 executions in China and 775 in Iran, but the true figures are believed to be much higher. Amnesty Int'l, *Death Penalty News*, Apr. 1992, at 3.

10. NAACP Legal Defense & Educational Fund, *supra* note 6, at 1.

11. Johnny Frank Garrett was executed in Texas on February 11, 1992.

Dixon line. It is the Southern states which have the largest death rows and have carried out most of the executions.

Missouri has the death penalty. Your state has seventy-three persons under death sentence. It has carried out five executions. Missouri is perhaps best known in national capital punishment jurisprudence for *Wilkins v. Missouri*,¹² in which the Supreme Court upheld the constitutionality of executing juveniles. This is perhaps not one of the things which causes Missourians to swell with pride. Even Libya does not allow the execution of juveniles, but Missouri does, and some other states do as well.

It is remarkable how much the modern history of the death penalty in these last nineteen years reflects the same characteristics of the first 200 hundred years of its use. It is important for us to be in touch with our history and see how that history has an impact on what is going on today in our courts.

Throughout our nation's history, the death penalty has been most popular in the South. When *Furman* came down twenty years ago, Florida had the most people on death row. Texas, which has a long history of use of the death penalty, has recently overtaken Florida for the dubious distinction of having the largest death row. Texas has 349 under sentence of death; Florida's death row of 315 is now second largest.¹³ Since 1976, several Southern states with less than twenty percent of the country's population have carried out over ninety percent of the executions. By the time of *Furman*, Georgia was known as the nation's executioner, the state which carried out the most executions. Between 1924 and the *Furman* decision in 1972, Georgia executed 337 black people and only seventy-five white people.¹⁴ Under its new death penalty law, Georgia has carried out fifteen executions, eleven of African Americans, only four of white persons—almost the same pattern that we saw before.¹⁵ Nearby, Alabama has carried out eight executions. Six of the eight people who have been executed were African Americans.¹⁶

History is also reflected in the role that the race and class of the victims of crime play in the use of the death penalty. Although African Americans

12. The case was consolidated with *Stanford v. Kentucky*, 492 U.S. 361 (1989).

13. NAACP Legal Defense & Educational Fund, *supra* note 6, at 14, 31.

14. Prentice Palmer & Jim Galloway, *Georgia Electric Chair Spans 5 Decades*, ATLANTA J., Dec. 15, 1983, at 15A. After adopting electrocution as a means of execution in 1924, Georgia put more people to death than any state and "set national records for executions over a 20-year period in the 1940s and 1950s." *Id.*

15. NAACP Legal Defense & Educational Fund, *supra* note 6, at 5-8.

16. *Id.*

make up only twelve percent of the total population, black citizens have been the victims in about half of the total homicides in this country in the last twenty-five years.¹⁷ In the death belt states of the South, African Americans are the victims of over sixty percent of all the murders. Yet eighty-four percent of the cases, in which the death penalty has been carried out, have involved white victims.¹⁸

In Georgia, for example, although African Americans were the victims of 63.5 percent of the murders between 1976 and 1980, eighty-five percent of the cases, in which death was imposed during that period, involved murders of whites.¹⁹ Two sophisticated statistical studies of over 2,000 murder cases that occurred in Georgia during the 1970s found that prosecutors are more likely to seek the death penalty where the victim is white and juries are more likely to impose the death penalty in such cases.²⁰ This pattern is not limited to Georgia.²¹ An analysis by the United States General Accounting Office of twenty-eight studies of the death penalty in Georgia and elsewhere found that murders of white persons are more likely to be punished by death than murders of black persons.²²

17. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 382, table 3.124 (1990). Black persons were the victims of 49% of the murders in 1989, the most recent of the 26 years listed, and white persons were the victims in 48%. *Id.*

18. NAACP Legal Defense & Educational Fund, *supra* note 6, at 4.

19. SAMUEL R. GROSS & ROBERT MAURO, DEATH AND DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING 43-44 (1989).

20. *McCleskey v. Kemp*, 481 U.S. 279, 286-87 (1987). Defendants charged with murders of white persons received the death penalty in 11% of the cases, while defendants charged with murders of blacks received the death penalty in only one percent of the cases. *Id.* at 286. The studies concluded that defendants charged with killing white victims were 4.3 times more likely to receive death sentences than defendants charged with killing blacks. *Id.* at 287. *See also* DAVID C. BALDUS ET AL., EQUAL JUSTICE AND THE DEATH PENALTY; A LEGAL AND EMPIRICAL ANALYSIS (1990).

21. *See, e.g.*, GROSS & MAURO, *supra* note 19, at 88-94 (in Florida, those who kill whites are almost eight times as likely to be sentenced to death as those who kill blacks; in Illinois the ratio is six to one; in Mississippi 5.5 to one; and in North Carolina four to one).

22. The General Accounting Office reported:

In 82 percent of the studies, race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who

What we see in these patterns is a continuation of the influence that race has had on the severity of punishment throughout our history. Georgia and other states for many years had laws which punished crimes differently based upon the race of the victim and the race of the defendant. For example, the crime of rape was automatically punished by death if it involved a black defendant and a white victim, but the same crime by a white person against a black was often punished by a fine or imprisonment.²³ Those laws are no longer on the books, but we still see in practice that white lives are valued over black lives as was once mandated by law.

Other historic practices and purposes of capital punishment are also still with us today. Many of you are familiar with the case of the "Scottsboro boys," which resulted in the Supreme Court's decision in *Powell v. Alabama*,²⁴ which established the right of an indigent defendant to be represented by counsel in a capital case. But there is much more you should know about the prosecution of those nine black youths for the alleged rape of two white girls, which is set out in an excellent book, *Scottsboro: A Tragedy of the American South*.²⁵ It describes not only many injustices of the prosecution of those cases, but also how in the 1930s, when the South was getting such a bad press for lynching people, the perfunctory death penalty trial emerged as a substitute for lynching. Instead of lynching people on the courthouse square, which happened even as late as the 1940s and 1950s in the South, the accused was taken to the court and given a quick, perfunctory trial where everyone knew that the sentence would be death. This ensured the desired result, but avoided the unseemly exercise of lynching people without trials.²⁶

murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.

U.S. GEN. ACCOUNTING OFFICE, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES 5 (Feb. 1990).

23. This history is recounted in Justice Brennan's dissenting opinion in *McCleskey v. Kemp*, 481 U.S. 279, 329-30 (1987). See also A. HIGGINBOTHAM, *IN THE MATTER OF COLOR: RACE IN THE AMERICAN LEGAL PROCESS* 253-56 (1978).

24. 287 U.S. 45 (1932).

25. DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* (rev. ed. 1979).

26. See also RICHARD C. CORTNER, A "SCOTTSBORO" CASE IN MISSISSIPPI: THE SUPREME COURT AND *BROWN V. MISSISSIPPI* (1986); GEORGE C. WRIGHT, *RACIAL VIOLENCE IN KENTUCKY, 1865-1940: LYNCHINGS, MOB RULE AND "LEGAL LYNCHINGS"* (1990) (describing how "legal lynchings" achieved through perfunctory capital trials replaced mob lynching in

The perfunctory capital trial is not ancient history. The capital trial of David Peek started at 9:00 a.m. on July 28, 1976, in Greene County, Georgia, and ended seventeen hours later with a sentence of death. Jury deliberations on the issue of guilt started at 10:30 p.m. At half past midnight, the foreman of the jury asked the judge to remove the one juror who was holding out for a verdict of "not guilty." The court-appointed lawyer for the accused *agreed* to substitution of another juror. Just *three minutes* after the new juror entered the jury room, the jury returned a verdict of "guilty." Despite the hour, the separate penalty phase of the trial then started. By 2 a.m., David Peek had been sentenced to death.²⁷ Many post-*Furman* capital trials have taken as little as one, two or three days.

Nor has invidious discrimination on the basis of race been eradicated from modern death penalty practice. In Chambers County, Alabama, the prosecutor divided up the prospective jurors for a capital trial into four different lists: "strong," "medium," "weak" and "black." He then used all his jury strikes to eliminate all the black citizens from jury service. As a result, Albert Jefferson, a mentally retarded African American accused of a crime against a white person, was tried by three all-white juries.²⁸ The prosecutor used a total of twenty-six jury strikes against African Americans to obtain that result. Albert Jefferson is under death sentence today.

Joseph Briley, a prosecutor in Georgia, has tried thirty-one death penalty cases in his tenure as District Attorney. Of those thirty-one cases, twenty-four had African American defendants. In the cases in which the defendants were black and the victims were white, he used ninety-four percent of his jury challenges—96 out of 103—against black citizens.²⁹ Once, he instructed

Kentucky).

27. Peek's conviction was originally reversed due to the juror substitution by a panel of the Court of Appeals for the Eleventh Circuit. *Peek v. Kemp*, 746 F.2d 672 (11th Cir. 1984). However, the panel opinion was vacated and the court, sitting en banc, upheld Peek's conviction and sentence. *Peek v. Kemp*, 784 F.2d 1479 (11th Cir.) (en banc), *cert. denied*, 479 U.S. 939 (1986). The facts set out in the text are taken from the panel opinion, *Peek I*, 746 F.2d at 673-76, and Judge Frank Johnson's dissent from the en banc opinion, *Peek II*, 784 F.2d at 1504-05 (Johnson, J., dissenting).

28. The first trial was held in 1983 to determine Jefferson's mental competency to stand trial. The second was his guilt and penalty trial in 1983, and the third was a resentencing trial in 1984. *State v. Jefferson*, Cir. Ct. of Chambers Co., Ala., No. CC-81-77.

29. *Horton v. Zant*, 941 F.2d 1449, 1458 (11th Cir. 1991), *cert. denied*, 112 S. Ct. 1516 (1992).

jury commissioners in one county to underrepresent black citizens on the master jury lists from which grand and trial juries were selected.³⁰

Quite often the number of minority jurors in a venire for a capital trial is less than the number of peremptory jury strikes allowed the prosecutor. When a prosecutor uses the overwhelming majority of his jury strikes against a small racial minority, that minority is prohibited from participating in the process. A jury does not represent "the conscience of the community on the ultimate question of life or death,"³¹ when one fourth or more of the community is not represented on it.

As a result of these and other discriminatory practices, the capital trials we see in the South today look much like the trials that we saw before *Furman*. Often the only African American participating in the process is the person who is on trial. Everyone else—the prosecutor, the judge, the defense lawyers, the jurors—is white. Much of this history and much of the reality of how the death penalty is used today is unknown, forgotten or denied by most citizens and members of the legal profession.

The reality became known to me for the first time thirteen years ago when I was asked to prepare a petition for certiorari to the United States Supreme Court for an eighteen-year old black youth who had been sentenced to death in Georgia. At the time, I was the director of a law school clinical program in Washington, D.C. I will never forget the record of that case that came to me. It was a little over an inch thick. That included everything—the motions, the voir dire, the trial, and the sentencing phase. I called the person who had asked me to take the case and said, "Surely this cannot be the record of a capital trial."

Like most people in the country, I had assumed that the imposition of the death penalty was surrounded by elaborate procedural protections; that no one could be sentenced to death in some perfunctory process; and that those facing the ultimate penalty received the best legal representation and the most careful trial procedure.

I read that record that night. It only took a short time. I commented to a colleague the next day that the law students in our clinic tried shoplifting cases better than this capital case had been tried; however, I did not know everything then. I did not know from the record that my new client was schizophrenic, and that he was out of touch with reality during his trial. The jury that sentenced him to die was never told that he was afflicted with this major mental illness. It was never told about other things we learned later,

30. *Amadeo v. Zant*, 486 U.S. 214 (1988).

31. *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968).

such as the abuse he had suffered growing up disabled in a dysfunctional family of alcoholics.³²

The court-appointed defense lawyer in that case did a terrible job. He gave no opening statement, he did not ask many questions, he did not make many objections, and he did not put on evidence to seek to avoid the death penalty. The jury that sentenced that youth to die was not even told that he suffered from schizophrenia. But, as I look back on what I have seen since, I realize that poor persons facing the death penalty often receive far worse representation.

A woman, who was tried in Alabama for the murder of a man who had abused her and her children for fifteen years, was represented by two court-appointed lawyers. One came to court during trial so intoxicated that the judge had to stop the trial for a day and send the lawyer to jail. The next morning, both the defendant and the defense lawyer were produced from jail and the trial resumed. A few days later she was sentenced to death.³³ The jury never knew the full story of the abuse she had suffered because the lawyer did not find before trial medical records that would have corroborated her testimony and the testimony of her daughter about the broken bones they had suffered at the hands of the husband.

Another young man sentenced to death in Alabama grew up in the kind of poverty we try to pretend does not exist in America today. His father was mentally retarded. His mother died when he was four. He and eight brothers and sisters grew up in a two-room shack with no electricity or running water. When it rained at night, the children had to put plastic over the beds because rain came right through the ceiling. They would all get in beds together and huddle up under the plastic while it rained.

This young man is mentally retarded. His IQ is only fifty-eight. He is the only person I have known who flunked the first grade twice. But nothing about his limitations or deprivation was presented to the judge who sentenced him to die. His lawyer even got him to waive a jury sentencing and let the judge sentence him to death.³⁴

Another mentally retarded offender, Horace Dunkins, was executed in 1989 in Alabama. A person who had served as a juror at his trial, upon reading about Dunkins' retardation immediately before he was to be executed,

32. Ultimately, the death sentence was set aside on federal habeas corpus review because of the failure of the lawyer to put on any evidence in mitigation. *Thomas v. Kemp*, 796 F.2d 1322 (11th Cir.), *cert. denied*, 479 U.S. 996 (1986).

33. Record, *State v. Haney*, Ala. Ct. Crim. App. No. 7 Div. 148, at 846-49.

34. Motion for New Trial and Appendices, *Luke v. Thigpen*, No. 84-T-1567-E, (M.D. Ala. Oct. 10, 1989).

attempted to contact the governor of Alabama, saying she would never have voted for the death penalty if she had known of his mental limitations.³⁵

In another case tried in Mississippi, a person was represented at a capital trial by a public defender and a third year law student. Over half of the witnesses at that trial were examined by the third year law student, who told the judge at one point that she needed some time, because she had never been in court before.³⁶ There have been other cases in which the lawyer's first trial after law school was a capital trial.³⁷

A lawyer, who has tried a number of death penalty cases in Georgia, was testifying not long ago and was asked about some of the leading Georgia capital cases, including *Furman*, which struck down Georgia's death penalty law, and *Gregg v. Georgia*,³⁸ which upheld the new statute.³⁹ He was not familiar with either one. He was asked to name any criminal law decisions from any court—the Supreme Court of the United States, the Georgia Supreme Court, any court in the country—that he knew. He answered, "Well, we've got the *Miranda* case. Everybody knows the *Miranda* case."⁴⁰ Asked to recall any others, he could only name the case in which he was testifying and "the *Dred Scott* case."⁴¹ Those were the only "criminal" cases that he could name.

One would think that surely such a lawyer could not render effective assistance in a capital case or any other type of criminal case. Yet courts have held in two capital cases that the representation he provided was

35. Peter Applebome, *Two Electric Jolts in Alabama Execution*, N.Y. TIMES, July 15, 1989, at A6.

36. Trial Transcript, *State v. Leatherwood*, Miss. S. Ct. No. DP-70, *rev'd. on other grounds*, 548 So. 2d 389 (Miss. 1989).

37. See, e.g., *Armstrong v. Dugger*, 833 F.2d 1430, 1433 (11th Cir. 1987) (defendant represented by lawyer who had been member of the bar eight weeks when case tried); *Tyler v. Kemp*, 755 F.2d 741, 743 (11th Cir.), *cert. denied*, 474 U.S. 832 (1985) (defendant represented by an attorney who had been admitted to the bar just a few months before trial); *Bell v. Watkins*, 692 F.2d 999, 1008 (5th Cir. 1982), *cert. denied*, 464 U.S. 843 (1983) (defendant represented by attorney who had recently graduated from law school and never tried a criminal case all the way to verdict).

38. 428 U.S. 153 (1976).

39. Transcript of testimony of O.L. Collins at hearing of April 25-27, 1988, *State v. Birt*, Sup. Ct. of Jefferson Co., Ga. No 2360, at 230-31.

40. *Id.* at 231 (referring to *Miranda v. Arizona*, 384 U.S. 436 (1966)).

41. *Id.* Of course, *Dred Scott v. Stanford*, 60 U.S. (19 How.) 393 (1857), was not a criminal case.

adequate.⁴² Unfortunately, the Supreme Court's decision in *Strickland v. Washington*⁴³ has, in application in the lower courts, resulted in a Sixth Amendment standard of representation that is little more than "close enough for government work." As observed by former Supreme Court Justice Thurgood Marshall, "all manner of negligence, ineptitude, and even callous disregard for the client" pass muster under *Strickland*.⁴⁴ There are more examples of what Justice Marshall described than I can share with you, but I would like to describe a few which demonstrate that the protections of the Bill of Rights are often missing from the process of imposing death because of deficiencies in the quality of legal representation.

The only time the court-appointed lawyer ever referred to George Dungee at his capital trial was in the closing argument when he called him a "little 138-pound nigger man."⁴⁵ This is one of four Georgia cases I am aware of, in which defense lawyers referred to their own clients with this racial slur during the trial. If Dungee's attorney had ever done any investigation, he would have found that his client was profoundly mentally retarded. He could not write his name, drive a car or make change.

Just a short time after John Young was sentenced to death in Macon, Georgia, he met his defense lawyer on the yard at the jail. The lawyer had been arrested on state and federal drug charges. The lawyer later said that he

42. *Birt v. Montgomery*, 725 F.2d 587, 596-601, 603-05 (11th Cir.), *cert. denied*, 469 U.S. 874 (1984); *Williams v. State*, 368 S.E.2d 742, 747-50 (1988), *cert. denied*, 492 U.S. 925 (1989). In *Birt*, the dissent would have found the attorney ineffective for failing to investigate and challenge jury pools that were unconstitutionally composed. *Birt*, 725 F.2d at 603-05 (Hatchett, J., dissenting). However, because the majority concluded that the attorney was not ineffective, *Birt*'s conviction was upheld even though the jury which convicted him was drawn from a jury pool in which black people and women were unconstitutionally underrepresented.

43. 466 U.S. 668 (1984). In adopting a Sixth Amendment standard of effective assistance of counsel in *Strickland*, the Court held that deference was to be paid to the performance of counsel and a conviction set aside only if the defendant could demonstrate that his lawyer "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and that these deficiencies resulted in "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would be different." *Id.* at 694.

44. Remarks of Justice Thurgood Marshall to the Second Circuit Judicial Conference, Sept. 1988, at 6.

45. Record Excerpts, *Dungee v. Kemp*, No. 85-8202 (11th Cir.), at 102 (transcript of Opening and Closing Arguments in *State v. Dungee* at 39).

was under considerable stress during John Young's trial. He was on drugs. He was breaking up with his wife. He was breaking with his gay lover. He really was not focused on the trial.⁴⁶ But this was close enough for government work. John Young was executed in 1985.

The first person executed in Georgia after the resumption of capital punishment was a person named John Eldon Smith. Because his lawyer was not aware of the case from the United States Supreme Court holding that juries must fairly represent women,⁴⁷ he did not object to the exclusion of women from the jury pool from which John Smith's jury was selected. The lawyer for John Smith's co-defendant knew about the case and raised the issue. Nevertheless, the elected state judge overruled the objection. In separate trials, both Smith and his co-defendant were sentenced to death.

When the two cases were reviewed in federal court, the co-defendant won a new trial because the exclusion of women from the jury violated the Constitution of the United States.⁴⁸ At a new trial before a jury that represented the community, a life sentence was returned. John Eldon Smith was sentenced to death by a jury chosen out of that same jury pool from which women were excluded. But his lawyer had not raised the point. The federal courts refused to consider the issue.⁴⁹ He was executed.

If you switched the lawyers in these two cases, you would change the outcomes. If Smith had been represented by the co-defendant's lawyer and vice-versa, Smith would be alive today. The co-defendant would be dead. Once again, we see history repeating itself. In his opinion in *Furman*, Justice Douglas, in showing how the death penalty had been randomly applied, pointed to an instance where one person was saved from execution because his attorney made timely objection to the jury selection system while another person was sent to his death by a jury selected in precisely the same system because his lawyer did not raise the issue.⁵⁰

Is this a principled way to decide who should die? Yet often whether someone receives the death penalty is determined not by whether he committed the worst crime, but whether he was assigned the worst lawyer at trial.

46. *Young v. Kemp*, Civ. No. 85-98-2MAC (M.D. Ga. 1985) (affidavit of Charles Marchman, Jr.).

47. *Taylor v. Louisiana*, 419 U.S. 522 (1975).

48. *Machetti v. Linahan*, 679 F.2d 236 (11th Cir. 1982), *cert. denied*, 459 U.S. 1127 (1983).

49. *Smith v. Kemp*, 715 F.2d 1459, 1476 (11th Cir.) (Hatchett, J., dissenting), *cert. denied*, 464 U.S. 1003 (1983).

50. *Furman*, 408 U.S. at 256 n.21 (Douglas, J., concurring).

Larry Heath is scheduled to be executed by the state of Alabama, on March 20.⁵¹ The brief filed by his court-appointed attorney on direct appeal to the Alabama Supreme Court contained only one page of argument. It raised one issue. It cited one case.⁵² The lawyer did not even show up for oral argument. This "brief" would not have received a passing grade in a first-year legal writing class. It should not have been filed in even the most minor case. But in a capital case in Alabama, it was close enough for government work.

Such shameful representation is pervasive in capital punishment cases⁵³ and in other cases involving poor people charged with crimes.⁵⁴ Why is this allowed to go on in our courts? Why would any conscientious judge, why would any bar association, why would any system that is supposed to dispense justice ever allow these kinds of things to happen?

51. The execution was carried out on that day.

52. Brief and Argument in Support of Petition for Writ of Certiorari, *State v. Heath*, Ala. S. Ct. #82-1060.

53. The "inadequacy and inadequate compensation of counsel at trial" has been described as one of the "principal failings" of the capital punishment system today. American Bar Ass'n, *Toward a More Just and Effective System of Review in State Death Penalty Cases*, 40 Am. U.L. Rev. 1, 16 (1990). The *National Law Journal*, after an extensive study of capital cases in six Southern states, found that "justice in capital murder trials is more like a random flip of the coin than a delicate balancing of the scales" because the defense lawyer "too often is ill-trained, unprepared and grossly underpaid." Marcia Coyle et al., *Fatal Defense: Trial and Error in the Nation's Death Belt*, NAT'L L.J., June 11, 1990, at 1. See also Kathryn Kahler, Newhouse News Service, *Death Row Defendants Given Inferior Lawyers*, STATEN ISLAND ADVANCE, May 13, 1990, at pages A1, A8; Kathryn Kahler, Newhouse News Service, *Mercy Short as Money for Death Row's Poor*, STATEN ISLAND ADVANCE, May 14, 1990, at A6; Anthony Lewis, *Crime Is Politics*, N.Y. TIMES, Oct. 1, 1990, at A21; Thurgood Marshall, *Remarks on the Death Penalty Made at the Judicial Conference of the Second Circuit*, 86 COLUM. L. REV. 1, 1-2 (1986); Tom Wicker, *Defending the Indigent in Capital Cases*, 3 CRIM. JUSTICE ETHICS 2 (1983).

54. See, e.g., Peter Applebome, *Study Faults Atlanta's System of Defending the Poor*, N.Y. TIMES, Nov. 30, 1990, at B5; Stacey Colino, *When Justice Goes Begging*, A.B.A. STUDENT LAW. MAG., Oct. 1988, at 14; Hal Straus, *Indigent Legal Defense Called 'Terrible'*, ATLANTA J. & CONST., July 7, 1985, at A1.

There are a number of reasons. Some, such as the lack of public defender programs and inadequate funding for indigent defense programs,⁵⁵ I will not discuss here today. But I would like to address several factors which are interrelated. Some of them have to do with how we decide to practice our craft when we become lawyers.

One reason is the refusal of lawyers and the criminal courts to acknowledge and deal with the way in which antagonisms between people of different races influence decisions in the court system. Racial prejudice and the exclusion of minorities from participation in the process is the determinative factor in many cases, capital and non-capital. Often issues involving racial discrimination are summarily swept aside by courts based upon the Supreme Court's decision in *McCleskey v. Kemp*.⁵⁶ There is little recognition of the

55. Many states still do not have comprehensive public defender programs and instead appoint lawyers to defend capital cases. The old adage, you get what you pay for, clearly applies to attracting lawyers to defend poor persons in complex cases. In many Southern states it is difficult to find any type of legal work that pays less than defending a person in a capital case. For example, Alabama limits compensation for out-of-court preparation to \$20 per hour up to a limit of \$2,000 for a capital case. ALA. CODE § 15-12-21(d) (Supp. 1989). South Carolina pays \$10 per hour for time spent out of court and \$15 per hour for time spent in court up to a limit of \$5,000 for the total fee for two attorneys appointed. S.C. CODE ANN. §§ 17-3-50, 16-3-26(B) (Law. Co-op. 1976 & Supp. 1991). It is completely unrealistic to expect capable and experienced attorneys to defend cases at these rates of compensation.

56. 481 U.S. 279 (1987). In *McCleskey*, the Supreme Court concluded, by a vote of 5-4, that a pattern of significant racial disparities in the imposition of the death penalty throughout Georgia did not establish a constitutional violation. Among other things, the evidence in *McCleskey* established that "prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims; 32% of the cases involving white defendants and white victims; 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims." *Id.* at 287. Some courts have held that *McCleskey* forecloses inquiry into the influence of racial discrimination on a defendant's sentence. *See, e.g.,* *Meeks v. Singletary*, 963 F.2d 316, 318 (11th Cir. 1991); *Griffin v. Dugger*, 874 F.2d 1397, 1401 (11th Cir. 1989), *cert. denied*, 493 U.S. 1051 (1990). However, *McCleskey* holds that, while evidence of a state-wide pattern is insufficient, a defendant may prevail if he presents evidence which establishes "that the decisionmakers in *his* case acted or intend to act with discriminatory purpose." *McCleskey*, 481 U.S. at 292-93. Thus, even under *McCleskey*, a defendant may show that the decision to seek

urgency with which we must ensure full participation by minorities in the criminal justice system and adopt procedures to identify and eliminate racial prejudice by decision-makers.

Another reason the injustices I have described are tolerated is that courts do not function well when they are caught up in the passions and politics of the moment. And no case involves the passions of the moment more than a death penalty case, particularly one involving an interracial crime. Defending a poor person accused of a crime will usually be bad for a lawyer's business, but prosecuting or presiding over a celebrated murder case is almost always good for a prosecutor's or judge's political career. Often a capital prosecution is serving political purposes and not the goals of law enforcement or justice.

Another factor is that we are isolating ourselves from our history and the reality of what is going on in our society today. We have learned so well how to do this in the last ten years. A lot of people would like to believe that the problem of racial discrimination just ended all of a sudden in 1964, 1970 or whenever; that the relationship between the races is perfect today; or that the only problem is affirmative action programs.

Yet the President was elected by exploiting the Willie Horton advertisements that played on racial fears. His party has convinced many white people that all of their problems—from finding employment to threats to their standard of living—are attributable to our society's recent efforts to make up for 200 years of brutal racial discrimination. Americans continue to move to racially exclusive neighborhoods, join racially exclusive private clubs and send their children to private schools, but say that there is not a problem with regard to race. David Duke, an unrepentant racist, won fifty-five percent of the white vote in the recent election for governor of Louisiana, and people deny that there is racial prejudice.

The racial biases in our society are clearly felt in the courtroom. The people who voted for David Duke are sitting on juries in Louisiana, and, undoubtedly, some of them are prosecuting or judging those cases. Racial biases are particularly evident in the selection of cases for capital prosecution. Most murders in our society are intraracial. Murders of white people are by other white people, and murders of African Americans are usually by black people. Comparatively, there are few interracial crimes. Yet those are the crimes that are most likely to result in the death penalty. Georgia prosecutors seek the death penalty in seventy percent of the cases involving black defendants and white victims, but in less than thirty-five percent of cases involving all other racial combinations.⁵⁷ Georgia has executed fifteen

the death penalty in his case is based on racial considerations by his prosecutor or other decision-makers in the case.

57. *McCleskey*, 481 U.S. at 287.

people. Ten of those were black people executed for crimes against whites.

The criminal justice systems in our nation are the institutions least affected by America's civil rights movement. In one community after another, even those with substantial minority populations, the courts are made up of judges who are white, prosecutors who are white, and jurors who are white.

We tolerate racial discrimination in the court system that we do not tolerate in any other area of American life today. In a recent Florida case, the judge referred to the defendant's parents as the "nigger mom and dad."⁵⁸ If that judge had been a sportscaster with CBS, he would have lost his job. But all that the Florida Supreme Court said in response to this incident was to emphasize "the need for all judges to be constantly vigilant about their comments and demeanor both inside and outside the courtroom to assure that their impartiality may not 'reasonably be questioned.'"⁵⁹ In short, a judge who keeps his racial prejudice to himself may preside over capital trials in Florida today.

Wiley Dobbs was sentenced to death in Georgia at a trial where was referred to as "colored" and "colored boy" by the judge and defense lawyer and called by his first name by the prosecutor.⁶⁰

The District Attorney in Jackson, Mississippi, Ed Peters, admitted under oath, that it was his practice in selecting a jury to "get rid of" as many black people as he can.⁶¹ In what other area of American life could a public official have a policy like that and get away with it?

If an educational institution or housing authority selected applicants like the prosecutor selected a capital jury in Chambers County, Alabama, by dividing them into "weak," "medium," "strong" and "black" and excluding all the African Americans first, does anyone doubt that it would not be allowed? But a prosecutor is permitted to select a jury for a capital trial that way.

The passions of the moment often contribute to the tolerance of racial discrimination in these cases. I was in a court not long ago, where a district attorney was justifying his use of nine of his ten peremptory strikes against African Americans.⁶² He gave reasons for each strike and, after each one, an assistant district attorney would ask whether race was a part of the reason he struck that juror. The District Attorney would solemnly answer that it was not.

58. *Peek v. State*, 488 So. 2d 52, 56 (Fla. 1986).

59. *Id.* (citation omitted).

60. *Dobbs v. Zant*, 720 F. Supp. 1566, 1578 (N.D. Ga. 1989), *aff'd*, 963 F.2d 1403 (11th Cir. 1991).

61. *Edwards v. Scroggy*, 849 F.2d 204, 207 (5th Cir. 1988), *cert. denied*, 489 U.S. 1059 (1989).

62. The prosecutor was required to give reasons for his strikes under the Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79 (1986).

He knew he was lying. We knew he was lying. The judge knew he was lying. The judge was a former prosecutor himself. He used to strike all the African Americans when he picked juries; he knew the game. Yet he put on blinders and pretended that the answers were true. It was not a court of justice; it was a court of vengeance. That is what the death penalty is doing to a lot of our courts. Their purpose is to serve interests of vengeance, not justice. Many state courts in the South have never had sufficient commitment to the interests of justice. The death penalty is pushing them even further away from the goal of justice. When courts are not dispensing justice but vengeance, it has an effect on all of us. Everyone—the bar, lawyers, even the press—tends to look the other way when the purpose of justice is subverted.

People got very comfortable during President Reagan's administration in pretending that a typical example of poverty in America was a welfare queen in Chicago who drove a Cadillac and collected too many welfare checks. That was a great escape, but it was not the reality of what was going on in our world. It is easier to pretend that our courts are dispensing justice than to recognize how difficult some of these problems are and how unpleasant it is to deal with them. But we are going to have to do that if we are going to have a better world.

Increasingly, the wealthy, the professionals, those in government and others with power and influence in our society are losing touch with poor people and the reality of life for them. Many lawyers live in exclusive neighborhoods. They drive to work hermetically sealed in their luxury cars on expressways that take them over the neighborhoods where the poor live. They drive into their private parking buildings and take private elevators to their offices. They never have any contact with or get to know the poor, members of other races, the homeless, the disadvantaged, the mentally ill. They do not know the reality of what life is like for those unlike themselves.

Not long ago a lawyer told me that homeless people want to be homeless; that a lot of homeless people are making a lot of money and just living on the streets and begging because it is a good way to make money; and that everyone in this country who wants a job can have one. This lawyer, who has probably never met a homeless person, was very secure in these beliefs. A teacher at a segregation academy⁶³ in Forsyth, Georgia, told me recently that

63. After the Supreme Court held that the Constitution required the abolition of dual school systems segregated by race in *Brown v. Board of Education*, 347 U.S. 483 (1954), "there arose in the South a new type of private school, popularly called the 'segregation academy.' . . . [T]hese completely segregated schools have one common characteristic: they were created to avoid the desegregation mandate of *Brown* and its progeny." Note, *Desegregation of Private Schools*, 48 N.Y.U. L. REV. 1147, 1148 (1971). Between 1967 and 1970, as the public schools in Georgia were desegregated,

his students think that people are homeless because they have done something morally wrong.

These beliefs have no relation to the reality of life for homeless people in our society. My office is in downtown Atlanta in a little row of buildings where three of the five are vacant and abandoned. I know a great many homeless people. I see them at night as I walk down the street. I see them going through the garbage bags from the fast food restaurants, picking out little pieces of hamburgers and fish sandwiches to eat. I see them talking to people who are not there and hearing voices that the rest of us do not hear. My good friend, Ronnie Fortson, shines shoes for a dollar a pair on the streets of Atlanta. He is homeless. He has been arrested eight times for shining shoes without a license. He tries to make an honest dollar so that he can afford a room for the night. We found it would cost him \$171 to get a shoe shining permit, but it did not matter how much it cost because there was a freeze on. He could not have had a shoe shining permit anyway. This is an example of the high cost of getting out of poverty. It is a cost many of the homeless cannot afford.

We have blinded ourselves to the reality that many people in this society are denied opportunity. There are children in schools who are not learning to read, not because they do not want to or are incapable of learning, but because of our abandonment of the public schools. They are not only being denied an education, they are being denied any chance for meaningful employment later in life.

We ignore the reality that there are other people in our society who through no fault or choice on their part are simply not able to function on the same level as the rest of us. There are people with limited intellectual

the number of private schools in Georgia increased from eighty to 224, a 180% increase, and the number of students in private schools increased 400%. Anthony M. Champagne, *The Segregation Academy and the Law*, 42 J. OF NEGRO EDUC. 58, 60 n.8 (Winter 1973). These "segregated private schools have become the new vehicle for evading the principle of integrated education," *id.* at 58, and have resulted in "a resegregation that has divided education between private academies for whites and public schools too poor to make a difference for blacks." Jim Auchmutey & Priscilla Painton, *Stigma Haunts Black Belt like a Bad Dream*, ATLANTA J. & CONST., Nov. 16, 1986, at 1A, 16A. Of course, the creation and maintenance of these schools for the last twenty years by white Southerners demonstrates the depth of their racial animus. Such extraordinary efforts to perpetuate separation of the races sets an unmistakable example for children which helps keep alive racial prejudice in new generations. In addition, the lack of interaction with people of other races leaves children without experiences which would contradict the suggestion that those who are different are inferior and to be feared.

functioning of varying degrees. There are other people with serious mental impairments, who can no longer get the treatment and supervision that is required because so many of the programs have been cut back. Some of these people—again through no fault of their own—are without families or other support. They need our help.

And we continue to ignore the foolhardiness of the easy availability of guns, which means that any of those people can go in and exercise their exalted right to bear arms, as they do occasionally with tragic results. A recently released mental patient walked into a mall in Atlanta and starting shooting everybody who was there. In Columbus, Georgia, a person walked into a police station at midday and shot one of the policemen dead and wounded another. He was a paranoid schizophrenic who believed the police were in a conspiracy with his former employers to get him. Prosecutors spent a lot of that community's money seeking the death penalty in that case. We must deal with the realities behind these tragedies. Killing such people *after* the crime is not going to make us any safer when we walk down the streets.

We are denying or ignoring these and other important realities and focusing on our own individual well being. Most tragically, whether the American Dream is being realized is defined today by the questions: Are we better off than we used to be? Will the next generation live better than the last generation? Will we live better than our parents, and will our children live even better than we live? The cover of *Fortune Magazine* on sale today at the newsstands says that the question for this year's election is the one that President Reagan posed when he ran in 1980: Are you better off than you were four years ago?

I submit we are asking the wrong question. The questions we should be asking are:

Are the hungry being fed?

Are the sick being treated?

Are the schools educating our children?

Are the courts dispensing justice?

Are we gaining in our struggle to end racial discrimination?

How do we eliminate poverty and homelessness from our society in the shortest possible time frame?

Certainly, we as citizens should press the candidates and our governments for the answers to these questions. But regardless of whether the larger society decides to ignore or confront these problems, those of us in the legal profession have the privilege of being able to do something as individuals about these problems. But to do that, we must get away from the notion that we are going to go where the money is and not where the problems are.

There is something fundamentally wrong with a legal system in which the Bank of Commerce and Credit International (BCCI) can hire former Secretary of Defense Clark Clifford to deal with the government or E.F. Hutton can hire

former Attorney General Griffin Bell for \$1700 per hour to do a white-wash,⁶⁴ but a person facing the death penalty is often assigned a lawyer that you or I would not have represent us in a minor traffic matter. There is something fundamentally wrong with our legal system when people facing the death penalty are being represented by lawyers whose total knowledge of the law is a vague familiarity with *Miranda* and *Dred Scott*.

Something is grievously amiss in the United States when the Justice Department spends a substantial amount of its energy and resources devising ways to speed up the process of executing poor people without regard to the racial discrimination, the inadequacy of counsel, and the influence of politics and the passions of the moment on the process, but drags its feet in investigating the savings and loan scandal, police brutality in Los Angeles, and so many other urgent national problems.

Lawyers must decide whether their allegiance is to certain principles or material wealth. If you ask people whom they admire the most, Mother Teresa or Imelda Marcos, most people will say Mother Teresa. Yet in the legal profession it seems that many of us are trying to emulate Imelda Marcos. Everywhere one looks in the profession, one sees the trappings of wealth: the Porsches, the car phones, the summer homes, and the Rolex watches. Robert Altman, one of the lawyers who represented BCCI, has twenty-three bathrooms in his house. There are people living on the street with no home at all. Yet many in the legal profession have developed a sense that such ridiculously extravagant life styles are a part of what being a lawyer is all about; that these are the rewards of success in the profession; and that there is something wrong with the lawyers who make a modest living and live a modest lifestyle.

As a member of the legal profession, I was embarrassed by the way in which the president of the American Bar Association was ridiculed after he asserted that lawyers were defending the downtrodden and the poor in response to criticism of our profession by Vice President Dan Quayle. One commentator said that the only time the president of the ABA has seen a poor person was when he came to take his trash out. This criticism may have been unfair, but it is a telling comment about how people see our profession.

As Dr. Martin Luther King, Jr., pointed out, we are prone to judge success by the index of our salaries or the size of our automobiles, rather than by the quality of our service and relationship to humanity. That must change. Elie Wiesel said, when he accepted the Nobel Peace Prize in 1988, "Our lives no longer belong to us alone; they belong to all those who need us desperately."⁶⁵

64. *Bell Earned \$1,711 an Hour in E.F. Hutton Probe*, ATLANTA J. & CONST., Feb. 1, 1987, at B10.

65. *Wiesel's Speech: This Honor Belongs to All the Survivors*, N.Y.

I have not had enough time here today to describe adequately the urgency and desperation of the need that poor, minority and disadvantaged people have in this country for adequate legal representation. But I hope that I have at least alerted you to the need for lawyers who will commit not just a few years to learn at the expense of the poor, but who will commit a lifetime to legal services, public defender and other programs where they can help the poor of this country get through this dark midnight of greed and selfishness and indifference that has taken over our country.

I do not suggest for one minute that it is an easy road. It is not. The workload is overwhelming because there are not enough people who will respond to the need. The hours are often long. The sorrows are many. But if you do not respond, it may very well be that no one else will either. And the Bill of Rights may remain unavailable to those who most need its protections.

As you consider this, I leave with you a thought by Justice Oliver Wendell Holmes: "I say no longer with any doubt—that a man [or woman] may live greatly in the law as well as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable."⁶⁶

My challenge to you is that you consider going not where the money is, but where the problems are. Take that difficult journey and make it not just of the moment but of a lifetime. For those of you who will respond to these desperate needs and these urgent problems, I wish you good luck and Godspeed.

TIMES, Dec. 11, 1986, at A2.

66. LIVA BAKER, *THE JUSTICE FROM BEACON HILL* 291 (1991) (citing BOSTON DAILY ADVERTISER, Feb. 17, 1886, at 8).