

Invitation to an Execution



A HISTORY OF THE DEATH PENALTY IN THE UNITED STATES

EDITED BY

Gordon Morris Bakken

INVITATION TO AN EXECUTION

.....
A HISTORY OF THE DEATH PENALTY IN THE UNITED STATES

Edited by Gordon Morris Bakken



UNIVERSITY OF NEW MEXICO PRESS
ALBUQUERQUE

© 2010 by the University of New Mexico Press

All rights reserved. Published 2010

Printed in the United States of America

15 14 13 12 11 10 1 2 3 4 5 6

Library of Congress Cataloging-in-Publication Data

Invitation to an execution : a history of the death penalty in the United States
/ edited by Gordon Morris Bakken.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-8263-4856-2 (cloth : alk. paper)

1. Capital punishment—United States—History. 2. Capital punishment—
United States—States. 3. Executions and executioners—United States.
4. Executions and executioners—United States—States. I. Bakken, Gordon Morris.

HV8699.U5.I58 2010

364.660973—dc22

2010010258

INVITATION TO AN EXECUTION



— underneath its clouds of sin,
The heart of man retaineth yet
Gleams of its holy origin; 't
And half-quenched stars that never set,
Dim colors of its faded bow,
And early beauty, linger there,
And o'er its wasted desert blow
Faint breathings of its morning air,
O, never yet upon the scroll
Of the sin-stained, but priceless soul,
Hath Heaven inscribed "DESPAIR!"



Mr. *Frank Adkins*

You are invited to witness the execution of William Gay and William Biggerstaff
on Friday, December 20, 1895, at 10 o'clock A. M., at the Lewis and Clarke County Jail.

Respectfully,

Henry Jurgens

Sheriff of Lewis and Clarke County.

To Richard B. Bilder

and

the memory of Gordon B. Baldwin

Admirals of the University of Wisconsin Law School

Preface

INVITATION TO AN EXECUTION

IN NOVEMBER 2004, Evan J. Mandery of the John Jay College of Criminal Justice in New York wrote, "It is meaningless, really, to speak about the death penalty in America without being geographically specific. Each death penalty state, as well as the federal government, has its own system of determining who shall be subject to capital punishment. These systems share some basic features, but they are each unique, and some are more problematic than others."¹ This book focuses on these differences and many of the similarities among the states and with the

federal government. I must thank all of the librarians who wrote for this project and who gave so many hours helping the scholars researching this most difficult topic. Without the librarians, the research would be virtually impossible given the bulk of material available to researchers. Further, the librarians helped to separate the law review material from the social science scholarship for many of the authors. Thank you!

Gordon Morris Bakken
California State University, Fullerton

Note

1. Evan J. Mandery, "Foreword," in Jon Sorensen and Rocky Leann Pilgrim, *Lethal Injection: Capital Punishment*

in Texas during the Modern Era (Austin: University of Texas Press, 2006), ix.

Part One

Contents

Preface	ix
---------	----

PART ONE

Introduction: Invitation to an Execution, Gordon Morris Bakken	1
Chapter 1: Politics and Capital Punishment: The Role of Judicial, Legislative, and Executive Decisions in the Practice of Death, Stacy L. Mallicoat	9
Chapter 2: Conflicts of Interest: Business, Death, and the Bird Court, Michael A. Pierson	25
Chapter 3: Fear, Capital Punishment, and Order: The Construction and Use of Capital Punishment Statutes in Early Modern England and Seventeenth-Century New England, Patrick Callaway	47
Chapter 4: Murder Most Foul: Native Americans and the Evolution of the Death Penalty, Vanessa Gunther	61
Chapter 5: The Death Penalty in Federal Law, Lonnie Wilson	77
Chapter 6: Ovines and Bovines, Ion Puschila	97
Chapter 7: Amnesty International and the Death Penalty: Toward Global Abolition, Alexander Karn	115
Chapter 8: The Celluloid Execution: Hollywood Films and Capital Punishment, Susanne Teepe Gaskins	137

PART TWO

Introduction II, Gordon Morris Bakken	193
Chapter 9: The Death Penalty in the South, Michael A. Powell	203

Chapter 10: The Death Penalty in the North, Dino E. Buenviaje	215
Chapter 11: The Death Penalty in the Midwest, Melody M. Miyamoto and Charles W. Showalter	227
Chapter 12: The Death Penalty in the Great Plains, John Gregory Jacobsen	243
Chapter 13: The Death Penalty in the Pacific Northwest, Joseph Laythe	265
Chapter 14: To Do No Harm: Medicine and the Death Penalty in England and Texas, Norwood Andrews	285
Chapter 15: Means of Death: Methods of Execution in California, 1937–2007, Thomas Bojorquez	321
Chapter 16: Capital Punishment and Executions in Montana, Ellen Baumler	339
Chapter 17: The Death Penalty in Arizona and New Mexico, Daniel Stackhouse	353
Chapter 18: Arkansas and Missouri: The Death Penalty, Timothy R. Finch	373
Chapter 19: Capital Punishment and Corporal Punishment in the California Gold Mines, Andrea McDowell	389
Chapter 20: Vigilantism during the Gold Rush, Mary Marki and Christopher Clayton Smith	403
Chapter 21: The Death Penalty in California: 1857–1970, Susan Sanchez-Barnett	413
Chapter 22: Capital Punishment Suggested Reading, Catherine Kaye	431
APPENDIX:	
List of Men Executed in Montana by Miner's and Legal Courts, 1862–2007	449
Index	453

Introduction

INVITATION TO AN EXECUTION

INVITATIONS TO executions were very much a part of the ritual of death concluding a criminal proceeding in the United States. Until the early twentieth century, lawmen issued printed invitations to executions. These invitations were the last gasp of public executions in death penalty states.¹ These volumes are an invitation to readers to an understanding of the death penalty in America. The goal of the essays is to put death penalty statutes and practices in particular contexts. Moreover, these original essays use history to illuminate the circumstances of law and politics. Stuart Banner persuasively argues, “Many aspects of capital punishment today appear paradoxical without an appreciation of its history.”² Some of those paradoxes include the United States’ commitment to human rights worldwide amid executions not practiced in the industrialized western world. The death penalty was to serve as a deterrent, yet executions have been moved from the public square in front of crowds of thousands to the confines of prisons, hidden from public view. Some say the death penalty should be retributive, but we have come to the position that death must be relatively painless. History, particularly American cultural history, facilitates understanding of this movement in time and place.

An emphasis on place in time and history provides another dimension helping us to understand

the evolution of American cultural attitudes about crime and the death penalty. In November 2004, Evan J. Mandery of the John Jay College of Criminal Justice in New York, wrote, “It is meaningless, really, to speak about the death penalty in America without being geographically specific. Each death penalty state, as well as the federal government, has its own system of determining who shall be subject to capital punishment. These systems share some basic features, but they are each unique, and some are more problematic than others.”³ One part of this work is devoted to a regional analysis in the scholarly context of regionalism and regional studies. The split of the American Civil War commonly defines the North and South. The Midwest emerged from the settlement of the Old Northwest. The Great Plains was first the “Great American Desert” and was later marked by aridity, dry-land farming, and irrigation. The Northwest of Washington and Oregon also was part of a settlement pattern, but now in the influence of the Pacific rains, coastal mountains, and arid interiors. The regional essays put death penalty issues in this geographic and cultural context.

The American West is less well defined. Readers of Gordon Morris Bakken and Brenda Farrington, editors, *The American West: Interactions, Intersections, and Injunctions* (2001), will find

the question of “Where is the West?” debated by fourteen scholars.⁴ Parts of this West are included in the essay on the Great Plains because of physiographic characteristics. California, Montana, and Texas have separate chapters because of their unique histories and the centrality of the death penalty in the criminal justice systems of the three states.

The death penalty is part of the criminal justice system and the system is frequently the target of criticism as part of the death penalty abolition movement. Criminal punishment was a product of English tradition, liberal democracy of the early national period, and the creation of the penitentiary.⁵ In addition to reforming deviants, the prison as well as the death penalty was to be a deterrence of people from crime. Lawrence Friedman argues that deterrence works, but “the relationship between punishment and behavior is not a straight line but a curve; it flattens out as more and more people are, in fact, deterred.”⁶ Yet if murder is a crime of passion in some cases, how can the death penalty deter such behavior?

Some argue that race is a factor in the criminal justice system with African Americans “accused, arrested, tried, and jailed out of all proportion to their numbers.”⁷ Black defendants were sentenced to death at higher rates than white defendants.⁸ This was particularly true in the American South.⁹ But southern justice was not solely in black and white. American Indians suffered similar discrimination in state criminal courts.¹⁰ Racism was “not merely a psychological response driven by irrational gut instinct, nor solely a collective symbolic construction to define American whiteness,” it served white economic and political interests.¹¹ Racial stereotypes were transported into jury boxes.¹² The nature of the jury was part of criticism of the system as unfair.

The jury, the democratic protector of liberty and the foundation of justice, was only one part of the system. Lawrence Friedman sees crime as

national in scope, but criminal justice “is as local as local gets.”¹³ It is not a system but a “jigsaw puzzle with a thousand tiny pieces.” Legislators write statutes, police enforce the rules of the statutes, district attorneys prosecute the criminally accused, defense lawyers defend the accused, and in the courtroom “judges and juries go their own way.”¹⁴ It is easy to argue that the system is flawed.

It is even easier to find fault through specific cases. For example, Bill Neal’s *Getting Away with Murder on the Texas Frontier: Notorious Killings & Celebrated Trials* (2006) demonstrates that many of the criminally accused slipped through the criminal justice net for a wide variety of reasons.¹⁵ David R. Dow’s *Executed on a Technicality: Lethal Injustice on America’s Death Row* (2005) tells many tales of justice failing to function in Texas. Among those cases is that of Randall Dale Adams. A jury found Adams guilty of the murder of Robert Wood, a Dallas police officer, gunned down in 1976. Adams, a man without a criminal charge or a criminal conviction on his record, lost at trial due to the testimony of David Harris, a career criminal, who lied to avoid the death penalty. Harris did even better based on his testimony. He was not charged with anything. Adams went to death row and Harris went free only to murder. This time the jury sent him to death row and Texas ended his life in 2004. Harris admitted to the Wood murder long before his execution, but that did not get him off death row. Rather a documentary filmmaker, Errol Morris, produced *The Thin Blue Line*, it gained public notice, Adams’s lawyers went to the Texas Court of Criminal Appeals and won a new trial. The prosecution did not move to trial and Adams was a free man. He returned to his law-abiding lifestyle.¹⁶ The system had flaws on both sides.

The flaws give abolitionists academic fodder. Hugo Adam Bedau launched a series of death penalty books in 1964 warning his readers that he

was “opposed to the death penalty in all its forms, no matter how awful the crime or how savage the criminal.”¹⁷ William R. Long’s *A Tortured History: The Story of Capital Punishment in Oregon* (2001) focused on the history of a single state.¹⁸ Long’s history of Oregon’s death penalty law concluded that the 1984 death penalty statute’s costs outweigh its benefits in that post-conviction litigation was more expensive than life sentences. This anti-death-penalty message ran into the pesky problem of direct democracy. The people at the polls simply wanted the death penalty as the flood tide of voter sentiment washed away opposition in 1984.

The people of Oregon in prior years abolished the death penalty twice. Long focused on four periods in Oregon history to tease out the legal and political issues surrounding the death penalty. First, 1901–1903 was of interest because executions were taken from the public view and tucked away in the Oregon State Penitentiary in Salem. Second, the Progressive Era, 1912–1920, when voters gave the state direct democracy, abolished the death penalty, and then changed their collective mind on executions. Third, 1958–1964, when the voters return to the execution ban; and fourth, 1978–1984, when the flood tide swept the death penalty back into the statute books. In the process of analysis, attorney Long provided frequent historical and political linkages to Texas. Most revealing was his footnote on page 15: “Texas didn’t began [*sic*] to execute people in earnest until the late 1980s. Now the flood is coming there, and the rest of the nation is standing back rather nonplused at the reality of sending a person to death every month in that state.”

Long’s historical treatment of the four eras was balanced and demonstrates extensive primary source and legal research. For example, in dealing with the Progressive Era debates, Long correctly balanced the contrary views of the advocates. Those against the death penalty saw the march of

progress in science, social science, and civilization leading to only one conclusion, the abolition of the death penalty. On the other side, advocates believed themselves to be the true bearers of civilization. True civilization was ordered liberty, certain punishment for crime, and the elimination of the “everlasting meddling with the straightforward and certain operation of the law by weak-kneed Governors and by the higher courts through quibbles, technicalities, evasions and hair-splitting.”¹⁹ So it was. The contours of the debates have not changed much since then with the exception of the costs of justice.

Long’s treatment of the rise of social science and prisoner therapy is important. Social science could rehabilitate and safely release convicted murderers back into Oregon society, or so we thought. The paroled and rehabilitated murderers of the 1970s did not cooperate. They killed again with the same brutality and the people looked to the death penalty for protection. Texas law seemed to hold an answer and an initiative petition started the process forward leading to the 1984 statute. Long carefully chronicled the numerous state supreme court and United States Supreme Court cases that cropped up in the 1970s and 1980s further complicating the legislative and political process. Between initiative petitions and judicial declarations of principle, the therapy argument was lost. Oregon death penalty opponents were left with calls for the Oregon Supreme Court to revisit questions of the recent past in hopes of killing death for convicted murderers.

John D. Bessler’s *Legacy of Violence: Lynch Mobs and Executions in Minnesota* (2003) tells another story with an abolitionist victory in 1911.²⁰ Minnesota experienced nineteenth-century traditions of executions and a parallel abolition movement as early as 1864. Executions moved from the public square to the local jail with written invitations to attend. The fact that local sheriffs used these printed invitations motivated abolitionists to

stop the practice. In turn, the state legislature forbade newspapers to print notices of executions. Finally, in the Progressive Era the death penalty was buried. Less than a decade later, Minnesota passed an antilynching law directed at racially motivated lynching in Duluth.

Eliza Steelwater's *The Hangman's Knot: Lynching, Legal Execution, and America's Struggle with the Death Penalty* (2003), like Bessler, explores the national relationship between lynching and the state execution of the criminally accused.²¹ Steelwater cofounded Project HAL, Historical American Lynching, focused on the long-term practice of lynching. She deploys data from the Capital Punishment Research Project to demonstrate that historical practices are at the root of the politics of punishment. Based on the data and historical studies, she argues that executions, legal and extralegal, were the product of the political and economic aspirations of the people in power. She implicates western vigilante movements as well as modern lethal injection advocates in historical power alliances. Her message is clearly for the abolition of the death penalty. Fittingly, her last citation is to Michel Foucault's *Discipline and Punish: The Birth of the Prison*.²² Thomas L. Dumm's *Democracy and Punishment: Disciplinary Origins of the United States* (1987) focused on the linkages of Foucault's observations and the American experience. The American prison system as well as the death penalty was what Tocqueville termed "democratic despotism."²³ Dumm and Long both acknowledged the power of the people at the polls.

Regardless of democracy, there are committed advocates for the abolition of the death penalty. Anthony G. Amsterdam, an extraordinary attorney, has labored for more than a half-century for abolition. In addition to numerous appellate appearances, Amsterdam has written extensively since the 1970s against the death penalty.²⁴ Advocates like Bryan Stevenson, the celebrated death

penalty defense lawyer and professor, carry on Amsterdam's legacy.²⁵ Amsterdam and Stevenson are men committed to saving the lives of the condemned. They make the arguments that become media headlines and appellate cases.

The media keeps the issue of the death penalty before the reading public. When the United States Supreme Court blocked the execution of Scott Louis Panetti in 2007, it was headline news in the Milwaukee (Wisconsin) *Journal Sentinel*.²⁶ The majority of the court took the position that Panetti was too delusional to be put to death. The case was part of an ongoing debate over whether the mentally retarded could be executed. The *Los Angeles Times* gave the issue front-page coverage after the Panetti decision noting that defining the group was difficult as experts disagreed about the nature and extent of mental retardation.²⁷ State cases reveal inconsistency in exactly what constitutes mental retardation. Sara Catania argues that "the inconsistency may stem from confusion about what, exactly, defines mental retardation." The American Association on Intellectual and Developmental Disabilities says it consists of "significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual social and practical adaptive skills." She notes that there are IQ standards, "but these are not legal parameters, and the U.S. Supreme Court left state legislature and courts to wrestle with the definition." Definitions, if they exist in statute, vary among the states.²⁸

Courts and juries find for and against the death penalty and the media keeps the issue before the reading public. The California Supreme Court threw out a death penalty finding because the accused was not afforded the "right to represent himself."²⁹ The United States Supreme Court, reversing the Ninth Circuit Court of Appeals, restored the death penalty of a Washington man because the appellate court erred by intervening in the case and second-guessing the

determination of the trial court judge.³⁰ A Los Angeles jury decided that death was appropriate for a murderer of ten women. Chester Dewayne Turner “thus joined the roster of L.A. area’s infamous killers: Charles Manson, Night Stalker Richard Ramirez, Freeway Killer William Bonin and the Hillside Strangler.”³¹ Also of note, Sacramento Superior Court Judge Gary E. Ranson sentenced death penalty foe Kathleen Culhane to five years for producing fake documents to try to delay four executions. Prosecutors termed her actions “one of the largest frauds against the legal system in California history.” Culhane termed capital punishment “a brutal legacy of lynching” and declared, “I cannot have remorse for a government that kills at midnight and invests millions of dollars in the process.”³² In contrast, Oklahoma District Court Judge Twyla Mason Gray set Curtis E. McCarty free because a police chemist who had been fired for fraud and misconduct six years prior had acted in bad faith. Innocence Project attorney Colin Starger observed, “Every piece of evidence [that] was used improperly to secure convictions, now shows Curtis McCarty’s innocence.” The chemist’s false and misleading testimony in twenty-three other cases helped send him to death row and eleven had been executed by 2007.³³ The stakes are high and it is clear that the criminal justice administration system has flaws.

Abolition advocates argue that one of the flaws is lethal injection. On May 4, 2007, U.S. District Judge Todd J. Campbell blocked the execution of Philip Ray Workman on the grounds that Tennessee’s lethal injection protocol would expose him “to a foreseeable and likely unnecessary risk of unconstitutional pain and suffering in violation of the Eighth Amendment.”³⁴ It was Workman’s sixth stay of execution in over twenty years. On May 9, 2008, Workman’s time was up after a three-judge panel of the Sixth Circuit Court of Appeals lifted the temporary restraining order and the Tennessee

Supreme Court rejected defense motions.³⁵ On September 25, 2007, the United States Supreme Court agreed to hear another challenge to lethal injection in a Kentucky case.³⁶ The U.S. Supreme Court stopped a Mississippi inmate’s execution on October 30, 2007, signaling to some that executions should be halted pending the court’s decision.³⁷ That did not stop Florida’s supreme court from ruling lethal injection was constitutional.³⁸ Eric Berger, a University of Nebraska College of Law professor, wrote, “It is outrageous that states and the federal government have elected to carry out executions with dangerous, painful chemicals and then abdicated responsibility for the procedures to untrained, unqualified personnel. Government owes its citizens a transparent, careful reconsideration of this deeply flawed procedure that, as currently constituted, is bound to fail.”³⁹ This argument was one offered to the high court on January 7, 2008.⁴⁰

While high court legal jousting continued, others questioned the jury and other aspects of the criminal justice system. The high court agreed to hear a Louisiana case of a man sentenced to death by an all-white jury constituted by keeping African Americans off the jury.⁴¹ On February 11, 2008, the Pentagon announced that it would seek the death penalty for six of the 9/11 conspirators.⁴² The United Nations called for a worldwide moratorium on the death penalty on December 18, 2007.⁴³ Maureen Faulkner wrote a book to counter the death penalty abolitionist support for Mumia Abu-Jamal who was convicted of her husband’s murder a quarter-century ago.⁴⁴ It was a victim’s voice seldom heard. Another voice unheard except in trial was that of the county district attorneys. A report to the California Commission on the Fair Administration of Justice noted that only fourteen of the state’s fifty-eight counties explained the criteria used to determine whether the death penalty would be requested.⁴⁵ On February 20, 2008, the commission held hearings in

Los Angeles and “defense lawyers and prosecutors agreed . . . that California’s death penalty system was deeply troubled but split over the causes and solutions.”⁴⁶ On March 14, 2009, the *Los Angeles Times* ran a story about the costs of capital punishment focused on New Mexico, Louisiana, and California. New Mexico’s legislature voted on March 13 to abolish the death penalty; California found that it could not afford a new \$395 million death row prison; and Orleans Parish was next to bankruptcy because of a death penalty trial.⁴⁷ On March 19, 2009, the *Los Angeles Times* triumphantly announced that New Mexico governor Bill Richardson had signed the bill abolishing that state’s death penalty.⁴⁸ The death penalty debate is current and solutions are hotly contested.⁴⁹

In the chapters that follow in this work, our authors offer extensive analysis of the issues

surrounding the death penalty. As you can tell, this is a developing field of inquiry and a hot-button political and legal issue. You will find extensive research advice and tools for your personal research. *Invitation to an Execution* is an invitation to you to understand a most complex historical, political, and legal question with more facets revealed over time.

Part one focuses on politics, legal history, multicultural issues, and the international aspects of the death penalty. Whether discussed in the realm of law or politics, remember the death penalty is a highly charged moral, legal, and cultural issue. Changes in time and place are rapid or incredibly stable depending upon the factors explored in these chapters. Part two is a regional analysis with authors analyzing the rule of law and capital punishment in a regional setting.

Notes

1. See Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2002), 144–68; Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 168–71; and Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865* (New York: Oxford University Press, 1989).
2. Banner, *Death Penalty*, 3.
3. Evan J. Mandery, “Foreword,” in Jon Sorensen and Rocky Leann Pilgrim, *Lethal Injection: Capital Punishment in Texas during the Modern Era* (Austin: University of Texas Press, 2006), ix.
4. Gordon Morris Bakken and Brenda Farrington, eds., *Where Is the West: Interactions, Intersections, and Injunctions* (New York: Garland Publishing, Inc., 2001).
5. Thomas L. Dumm, *Democracy and Punishment: Disciplinary Origins of the United States* (Madison: University of Wisconsin Press, 1987).
6. Friedman, *Crime and Punishment in American History*, 458–9.
7. *Ibid.*, 459.
8. Banner, *Death Penalty*, 289.
9. Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984). Also see Ariela J. Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000).
10. Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race, and Citizenship, 1790–1880* (Lincoln: University of Nebraska Press, 2007), 38–46.
11. *Ibid.*, 103. Also see Clare V. McKanna Jr., *White Justice in Arizona: Apache Murder Trials in the Nineteenth Century* (Lubbock: Texas Tech University Press, 2005); and Vanessa Ann Gunther, *Ambiguous Justice: Native Americans and the Law in Southern California, 1848–1890* (East Lansing: Michigan State University Press, 2006).
12. On whiteness, a very expansive literature, see David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, revised edition (New York: Verso, 1999); Ronald Takaki, *Iron Cages: Race and Culture in 19th Century America* (New York: Oxford University Press, 1990); and Thomas A. Guglielmo, *White on Arrival: Italians, Race, Color, and Power in Chicago, 1890–1945* (New York: Oxford University Press, 2003).
13. Friedman, *Crime and Punishment in American History*, 461.

14. Ibid.
15. Bill Neal, *Getting Away with Murder on the Texas Frontier: Notorious Killings & Celebrated Trials* (Lubbock: Texas Tech University Press, 2006).
16. David R. Dow, *Executed on a Technicality: Lethal Injustice on America's Death Row* (Boston: Beacon Press, 2005), 98–108.
17. Hugo Adam Bedau, ed., *The Death Penalty in America: Current Controversies* (New York: Oxford University Press, 1997), vii.
18. William R. Long, *A Tortured History: The Story of Capital Punishment in Oregon* (Eugene: Oregon Criminal Defense Lawyers Association, 2001).
19. Ibid., 29.
20. John D. Bessler, *Legacy of Violence: Lynch Mobs and Executions in Minnesota* (Minneapolis: University of Minnesota Press, 2003).
21. Eliza Steelwater, *The Hangman's Knot: Lynching, Legal Execution, and America's Struggle with the Death Penalty* (Boulder, CO: Westview Press, 2003).
22. Ibid., 272.
23. Dumm, *Democracy and Punishment*, 128–40.
24. Nadya Labi, "A Man against the Machine," *The Law School: The Magazine of the New York University School of Law* (Autumn 2007):10–19.
25. Paul M. Barrett, "Bryan Stevenson's Death-Defying Acts," *The Law School: The Magazine of the New York University School of Law* (Autumn 2007):32–41.
26. Derrick Nunnally, "Hayward native's execution blocked," *Milwaukee Journal Sentinel*, June 29, 2007.
27. David G. Savage, "IQ debate unsettled in death penalty cases: The Supreme Court ruled against executing the mentally retarded, but defining that group has proved difficult," *Los Angeles Times*, June 11, 2007.
28. Sara Catania, "Death row's IQ divide," *Los Angeles Times*, May 8, 2007.
29. "State Court throws out a death sentence," *Los Angeles Times*, August 31, 2007.
30. "High court restores man's death sentence: In a 5–4 vote, justices support a trial ruling that excluded a juror who expressed some reservations about capital punishment," *Los Angeles Times*, June 5, 2007.
31. John Spano, "Jury votes execution for serial killer: The former L.A. crack cocaine dealer who murdered 10 women is to be sentenced July 10," *Los Angeles Times*, May 16, 2007.
32. "Death penalty foe gets five years: Former defense investigator Kathleen Culhane faked documents to try to delay four executions," *Los Angeles Times*, August 17, 2007.
33. Henry Weinstein, "Judge frees man facing execution: Police misconduct tainted the case against an Oklahoma convict who did 22 years," *Los Angeles Times*, May 12, 2007.
34. Henry Weinstein, "Tennessee killer's execution is blocked: A lethal injection set for Wednesday is stayed. Attorneys argue the condemned could face torturous pain," *Los Angeles Times*, May 5, 2007.
35. "Convicted cop-killer is executed: Tennessee's highest court denies pleas for further delay to study protocol," *Los Angeles Times*, May 10, 2007.
36. David G. Savage, "Supreme Court to hear lethal injection case: Justices could ban commonly used chemical concoctions that may cause dying inmates to suffer," *Los Angeles Times*, September 26, 2007.
37. Joan Biskupic, "Executions likely on hold until high court ruling: Reprieve in Miss. case signals more stays as justices review lethal injection," *USA Today*, November 1, 2007.
38. Paul Flemming and John Torres, "Florida top court rules lethal-injection method constitutional," *USA Today*, November 2, 2007.
39. Eric Berger, "Unfit to execute," *Los Angeles Times*, November 26, 2007.
40. Henry Weinstein, "High court takes up lethal injection: States have kept the execution process shrouded in secrecy," *Los Angeles Times*, January 7, 2008.
41. Henry Weinstein, "Jury to come under justices' scrutiny: The Supreme Court will hear a Louisiana case in which a black man was sentenced to die after African Americans were kept off the panel," *Los Angeles Times*, December 3, 2007.
42. Carol J. Williams, "9/11 suspects may face death penalty: The Pentagon brings murder and conspiracy charges against six detainees accused of plotting the attacks," *Los Angeles Times*, February 12, 2008.
43. Louise Arbour, "A world without executions: The United Nations addresses its voice to ending capital punishment," *Los Angeles Times*, December 19, 2007.
44. Catherine Sillant, "Still her husband's voice: In a new book the widow of a policeman gunned down in 1981 questions the high-profile support for his killer," *Los Angeles Times*, January 7, 2008.
45. Henry Weinstein, "Death penalty survey spurned: Many California D.A.s refuse to explain their decision-making on seeking executions," *Los Angeles Times*, February 20, 2008.
46. Henry Weinstein, "Lawyers divided on problems of the state's death penalty system," *Los Angeles Times*, February 21, 2008.
47. "States weigh cost of capital punishment," *Los Angeles Times*, March 14, 2009.
48. "N.M. Repeals Death Penalty," *Los Angeles Times*, March 19, 2009.
49. The debate in California has been a long one. See Theodore Hamm, *Rebel and a Cause: Caryl Chessman and the Politics of the Death Penalty in Postwar California, 1948–1974* (Berkeley: University of California Press, 2002).