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Near Executions of Innocent People Show Folly of Pressure to Reinstate Penalty

BY JOHN C. BOGER

Earl Patrick Charles, a young black man from Savannah, Ga., was released from jail last month—an utterly unremarkable event except for two facts:

—Charles had been imprisoned for the past three years awaiting death by electrocution for his part in two brutal murders committed on October 3, 1974, in Savannah.

—It is now as clear as such things ever are that he is, and always has been, innocent of the charges against him.

Charles' innocence was not always as evident as it seems today. Indeed, at his murder trial in May, 1975, two eyewitnesses identified him as the slayer of a 72-year-old Savannah furniture-store operator and his son during an armed robbery. These were the storeowner's widow and his bookkeeper.

In his own defense, Charles insisted that he had moved to Tampa, Fla., shortly before the crime was committed and had been working at a Tampa service station on the afternoon of the murders. Yet each of three alibi witnesses Charles produced was shown by the prosecution to be biased because of friendship with him. Two other defense witnesses—managers of the Tampa service station who also placed Charles in Tampa—were discredited by a Savannah police detective, who testified that, in a pretrial interview, one of them admitted that Charles had not been present at the Tampa service station on the day of the crime.

Charles' insistence that he was innocent might have been quieted by his execution had not another witness turned up in December, 1977, nearly three years later. The new witness, a Tampa sheriff's detective, stated that, during the week of the Savannah murders, his superiors had asked him to keep an eye on a new Tampa service-station employe, Earl Charles. The detective, whose written records are unimpeachable, swore that he carefully noted Charles at work several times on the day of the murders.

Armed with this evidence, the defense counsel approached the Savannah prosecutor's office—which, to its credit, began a complete reinvestigation of the case in January, 1978. That investigation not only confirmed the Tampa detective's story but also uncovered evidence suggesting that the Savannah detective who had taken the stand to discredit Charles' alibi witnesses had apparently given false testimony. The investigation also revealed that, in questioning the victim's widow and the furniture store's bookkeeper, Savannah police had on at least four occasions presented these eyewitnesses with a series of photos of possible perpetrators. On each occasion, though Charles' picture had been among those exhibited, the eyewitnesses had pointed to several other persons who might have been the gunman.

Following these discoveries, Savannah's chief of police stated publicly, "I believe he didn't do it." The widow acknowledged, "I could have made a mistake." So, after facing execution for more than three years, Charles was set free.

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In a similar recent case, five members of a California motorcycle gang that was led by a bearded, tattooed ex-convict, Ronald (Grubby) Keine, were convicted in 1974 of the torture-murder of a young man in Albuquerque, N.M., William Velton. The five drifters were sentenced to death after an Albuquerque waitress, Judith Weyer, described in detail how she saw the gang slash Velton with a heated knife and leave his mutilated body in the desert.

Miss Weyer's eyewitness testimony, buttressed by the prosecutor through a pretrial polygraph examination, was backed up by strong physical evidence—including spots of blood on one of the biker's blankets that matched Velton's unusual blood type.

Yet, 15 months after the five Keine gang members were sentenced to die, a prison inmate in North Charleston, S.C., Kerry Rodney Lee, confessed to the murder. Miss Weyer, contacted in Detroit, now readily admitted that she had completely fabricated her testimony—explaining that she had been swept along by police questioning.

Meanwhile a number of public figures, including Atty. Gen. Robert Shevin of Florida and the chief justice of the Georgia Supreme Court, H. E. Nichols, have condemned the careful, often-lengthy process of postconviction review in death-penalty cases, urging instead the swift execution of capital sentences. The Charles and Keine cases demonstrate the rashness of such calls for abbreviating the judicial process.

In fact, these cases point up a need for more than applying careful procedural safeguards before imposing capital punishment. They illustrate one of the strongest arguments against the death penalty itself.

In a brilliant essay, "Capital Punishment: the Inevitability of Mistake and Caprice," law professor Charles Black of Yale has argued that "two problems—mistake and arbitrariness in death-penalty cases—are not fringe problems, susceptible to being mopped up by minor refinements in concept and technique, but are at the very heart of the matter and are insoluble by any methods now known or now foreseeable. If we resume the use of the death penalty, we will be killing some people by mistake and some without application of comprehensible standards, and we will go on doing these things until we give up the death penalty."

As any lawyer seriously involved in defending capital cases knows, Black's observations are on target. Indeed, the most remarkable aspect of Charles and Keine is not their innocence, or the presence of police misconduct, but the good fortune that the noninvolvement of these condemned inmates was discovered in sufficient time to prevent their execution.

Yet, despite the growing evidence that capital punishment can lead to terrible injustice, courts and legislatures across the country are succumbing to pressure to reinstate it following 1976 Supreme Court decisions upholding the constitutionality of death-sentence statutes in three states. A year ago Sacramento legislators overrode Gov. Brown's veto of a capital-punishment law, and a proposition on the November ballot, sponsored by state Sen. John Briggs (R-Fullerton), would expand the categories of first-degree murder punishable by death.

It would be a mistake to suggest, of course, that all of those now waiting on death rows across the country are innocent. We would be even more mistaken, however, were we to derive false comfort from assurances that—under the safeguards and procedures currently required by our capital statutes—only the guilty will be sent to their deaths.