

## I.

# Death by Texas

## 1. Killing Rooms

The first man to die in the Texas electric chair was Mack Matthews, a black man convicted of murder in Tyler County. He was killed February 8, 1924. Four other black men, all convicted of murder, died in the chair the same day: George Washington (Newton County), Melvin Johnson (Liberty County), Ewell Morris (Liberty County), and Charles Reynolds (Red River County).

Before February 1924, Texas had no electric chair, and its state prison had no Death Row. Men under death sentences were kept in the same county jails they stayed in during their trials, and when the appeals ran out, they were hanged by local officials. After Texas prison inmates built the chair, execution services were centralized at the Huntsville Unit of the Texas prison system. By July 30, 1964, the date of the last execution by electrocution in Texas (Joseph Johnson, black, murder, Harris County), 361 men had died in the Huntsville killing room.

Huntsville Unit is the official name for a prison everyone calls “The Walls.” It is the only one of Texas’ fifteen prisons with a real wall around it: thick, thirty feet high, guards on top with automatic and semiautomatic weapons. The Walls is the oldest building in the Texas Department of Corrections. It was constructed not long after the Civil War and once held an Indian chief. All the other prison buildings date from the 1930s or later. Most were built in the 1950s and 1960s, and some are under construction. Except for The Walls, all the Texas prisons now have their perimeters secured by single or double cyclone fences and underground pressure-sensing devices. These are easier to maintain, cheaper to build, and easier to watch.

The death house at The Walls has eight cells. They used to be adequate. That was because not very many people were sent down each year, and those who were sent down were processed quickly. The courts now insist that procedures be examined very carefully before the state kills anyone, so after conviction in court and fixing of a death penalty, years pass by before anyone is really at mortal risk.

The old death cells and the execution chamber are between one of The Walls's cellblocks and some of the administrative offices. It is possible to reach the execution chamber without passing through the large brass prison gates and walking through the yard and cellblock. It is just a matter of passing through an office corridor, unlocking a few doors, crossing a small patch of grass, and stepping across the small exercise yard, which is now only a vestige of the days when condemned men actually spent a lot of time there. That route was taken by witnesses to 361 deaths.<sup>1</sup>

The killing room is not large. A gurney is now where the chair used to be. When an execution takes place, the gurney will be taken through the control room into the row of death cells, and the man to be killed will be strapped to it. The gurney will be quickly moved back to the killing room.

An iron rail separates the witness area from the killing area. Three intravenous tubes will be inserted in the condemned man's arm. They lead through a wall to three petcocks and three bottles. One tube and bottle, according to the present plan, will contain water or some other harmless fluid; a second will contain sodium pentothal; the third will contain the killing fluid (it hasn't yet been determined exactly what will be in that third bottle). Presumably, there will be three hands on the three petcocks, preserving the old fiction: none of the three executioners will know for sure who did the killing, so no one will have to feel guilty about it later in the unlikely event that the executioner decides that the death penalty is something the state shouldn't do, and that execution is something he or she shouldn't have helped to do.

There are no chairs for witnesses. A visitor, being shown the room for the first time, said to the guide, "You should have chairs. People may get faint."

"No," the guide said, "that won't be a problem. It will be very quick. And it will look just like the guy is going to sleep. That's the reason for the pentothal. There won't be time for people to get sick. It will be over in seconds."

Of the 361 men who died in that room during the years Texas still used the electric chair, 229 were black, 108 were white, 23 were Mexican American, and 1 was an Indian. Five were executed for armed robbery, ninety-seven for

rape, and 259 for murder. Only two women were sent to Death Row during those years, but neither was electrocuted. Emma Oliver (black, murder, Bexar County) had her sentence commuted to life in 1951 and died in prison, and Carolyn Lima (white, murder, Harris County) won a new trial in 1966, got a fifteen-year sentence, served her time, and was released.

When the Supreme Court temporarily outlawed the death penalty in 1972, fifty-two Texans were under sentence of death. Forty-five were on Death Row at Ellis Unit, the others were still in their county jails. All fifty-two death sentences were commuted to life. Between 1924 and 1972, 506 men and women had been placed on Death Row.

The change to execution by lethal injection was made by the Texas legislature in 1977. The electric chair—called “Old Sparky” by some—was crated up. It presently rests along a wall facing the eight old death cells.

In the old days, after a condemned man was strapped into the chair, the executioner would hit him with three jolts. The first was 1,800 volts and lasted one minute; the second was 200 volts and lasted two minutes; the third was 1,400 volts and lasted one and a half minutes. The executioner had to manipulate a rheostat or throw shunting switches to get the different voltages, and he had to watch the clock to make sure the times were right. Sometime in the late 1960s or early 1970s (no one around remembers quite when) the state acquired an automated sequencer. The executioner had only to push one button and the device pumped through the wires clamped to the condemned’s body the proper voltages for the proper times. Lights on a chrome panel would inform witnesses of the system’s status at any particular moment. When the sequence was finished, the device was programmed to shut itself off. The machine was never used because, by the time the men condemned under Texas’ 1974 capital punishment law began getting close to potential execution dates, the state had adopted what it considered the more humane technology of lethal injection. The chair-automator is still in place, ready to be hooked up should the lethal injection technology have problems no one yet anticipates.

The following articles from the Texas Code of *Criminal Procedure* are in force:

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for execution. (article 43.14)

The Director of the Department of Corrections at Huntsville, or in the case of his death, disability or absence, the Warden of the

Huntsville Unit of the Texas Department of Corrections, shall be the executioner. In the event of the death or disability or absence of both . . . the executioner shall be that person appointed by the Board of Directors of the Texas Department of Corrections for that purpose. (article 43.18, amended by Acts of 1975)

The following persons may be present at the execution: the executioner, and such persons necessary to assist him in conducting the execution, the Board of Directors of the Department of Corrections, two physicians, including the prison physician, the spiritual advisor of the condemned, the county judge and sheriff of the county in which the Department of Corrections is situated, and any of the condemned person's relatives or friends that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution. (article 43.20)

The body of a convict who has been legally executed shall be embalmed immediately and so directed by the Director of the Department of Corrections. If the body is not demanded or requested by a relative or bona fide friend within forty-eight hours after execution then it shall be delivered to the Anatomical Board of the State of Texas, if requested by the Board. If the body is requested by a relative, bona fide friends, or the Anatomical Board of the State of Texas, such recipient shall pay a fee of [*sic*] not to exceed twenty-five dollars to the mortician for his services in embalming the body for which the mortician shall issue to the recipient a written receipt. When such receipt is delivered to the Director of the Department of Corrections, the body of the deceased shall be delivered to the party named in the receipt or his authorized agent. If the body is not delivered to a relative, bona fide friend, or the Anatomical Board of the State of Texas, the Director of the Department of Corrections shall cause the body to be decently buried, and the fee for embalming shall be paid by the county in which the indictment which resulted in conviction was found. (article 43.25)

The last executioner in Texas was Joe Byrd, assistant warden of the Huntsville Unit. After his death, the cemetery in which unclaimed inmate bodies are buried was renamed the "Joe Byrd Cemetery."

## 2. The Row

In the later years of the old Texas death penalty, the eight-cell Death Row at The Walls was clearly inadequate. When the Ellis Unit was built in the early 1960s, one side of one wing, J-23, was set aside to be Death Row. The Row was emptied for a time when the Supreme Court created a temporary moratorium on executions in *Furman v. Georgia* in 1972.

Ellis is twelve miles from Huntsville. It is Texas' maximum-maximum unit. Ellis takes the inmates other Texas prisons can't or don't want to handle. When the death penalty was suspended, J-23 was Ellis's segregation unit. Segregation is for inmates Ellis can't or doesn't want to handle; it is almost continuous lockup.

After the Texas legislature drafted a law in 1974 that it thought could withstand the confusing and ambiguous constitutional tests littered through the nine separate opinions in *Furman*, the Row was reactivated. At first, the condemned men were put on the lower part of the row, and segregation inmates were locked in the higher cells.

In February 1978, all of J-23 and a small portion of J-21 held condemned men. In April 1979, the condemned had taken over all of the cells on the first run of J-21 and some of the cells on the second run. By July 1979, only five cells in J-21 were not occupied by condemned men.

There were 114 men under sentences of death in April 1979. Sixty were white, forty were black, and fourteen were Mexican American. Only one of the 114 had been condemned for killing a black victim. The median ages were thirty-one for whites, thirty-two for Mexican Americans, and twenty-five for blacks. The oldest man on the Row was fifty-one; the youngest was twenty. One man had been on the Row slightly over five years, another had just arrived. The median age at time of offense was in the early twenties. Several, particularly among the blacks, were there for crimes committed before they were nineteen. Twenty-six percent of the whites, 29 percent of the blacks, and 38 percent of the Mexican Americans had previous Texas Department of Corrections records.

J-23 is the left side of the last wing on the left as you face the prison from the front gate. There are no lights or electrical outlets in its cells: the state didn't want to risk voluntary, premature electrocutions. By the time overcrowding forced expansion into J-21, the method of execution had changed to death by lethal injection, so the J-21 cells were not modified. They have the same light fixtures and electrical outlets over the sinks that all other cells in Ellis prison have. Inmates on J-23 are now permitted to run extension cords from the run into their cells to power their fans,

electric razors, and stingers. They are not allowed to run extension lights into their cells.

J-23 cells are always dark. Even on bright days they are dark because one is always looking out at an enormous wall of shimmering translucent glass. Sitting in the cells is not unlike sitting in a small cave. The contrast in light levels makes the cave darker than it may in fact be because the pupils of the eyes narrow in response to the windows' glow. Inmates look out between their bars, squinting into a world that is never more than ten or twelve feet away.

Between the large windows are the television sets bolted to the concrete wall. There are eight of them on J-23. Inmates on the first run can look through their cell door bars and see the television sets clearly, but none of them can look at the sets directly because the lower four sets are positioned so men on the second row can see them also. To watch television, it is necessary to sit close to the bars and tilt up or down. The inmates on the second and third rows look through a wire mesh designed to keep anyone from leaping off the tier or throwing someone else off the tier. Second-tier inmates can see the heads and shoulders of people moving outside the first-tier cells if those people step out from under the run overhang. Men on the third tier see nothing but the television sets, and to do that they must lean forward and look down.

When Ellis was built, J-23 had clear glass in its windows, as did all the other prison rows. Sometime in the past ten years, all the glass on J-23 was replaced. Instead of transparent windows, J-23 now has translucent panes. All the windows—those looking out on the prison grounds from the row, those looking out on the prison grounds and onto the central corridor from the dayroom—are translucent. Until the overcrowding that forced the takeover of J-21, no Death Row inmate could see birds, grass, trees, rain, the sky, or other prison inmates. Inmates on J-21 get to look from their recreation room onto the prison corridor, and from their cells into the parallel cellblock.

The previous paragraph is not quite accurate: someone smashed one pane on J-23, and it was replaced with a clear piece of glass. A few men can see a small piece of the world outside.

They cannot select what comes on television. The radio is piped in through small speakers in each cell; it plays one of three stations they can select. But their choices don't matter much because the speakers are all suspended in the narrow passage between the two sides of the block called the *pipe chase*. The pipe chase reverberates with the sounds of all three stations.

Directly below the speaker, also opening on the pipe chase, is the air vent. If they block off the air vent with towels or sheets, they can hear just one station, but they stifle the flow of air.

Death Row is a world of enormous sensory overload and sensory deprivation.

There is no silence until late at night; the radios come on again at 6:00 a.m. Some men try to sleep all day and get up at night to write and read. Their eyes go bad and they grow old waiting to die.

One man asked us for a Polaroid to send home. We took it and gave it to him. He waited for it to develop, then called us to his cell. "How old do you think that man is?" he asked. We thought he was in his middle or late forties, so we said, "Forty." He nodded. "I just turned twenty-eight. One day you look in the mirror and you know it's you there, but it doesn't look like you."

Using their shaving mirrors, the inmates can see along the run: the world in a five-inch circle of glass. The rest of the time, they see only the rectangle marked by their cell doors and the wall a dozen feet away. At night, the only illumination in the J-23 cells comes from sixty-watt bulbs suspended about two feet outside the cells.

The only times J-21 or J-23 inmates get to focus at any distance is when they come out for showers or recreation, and that does not consume very much time, or when they have visits. For most inmates, visits are rare, and some get none at all. As a result, many of the men who have been on the Row awhile have bad eyes. The muscles atrophy in the murk of the cramped iron space.

The cell sinks are along the back wall, next to the toilet. That is the darkest part of the J-23 cells. The men hang shaving mirrors on the bars and walk back and forth to the sink while shaving. They come to the bars, wait a moment for their eyes to adjust, shave, then move back into the darkness for water.

Razors—safety injector types—are passed out and collected every day. A guard goes down the row with a long tray with each man's razor in a small slot. He carries the tray in one hand, a jar of pink shaving cream in the other. He hands the razor to the inmate, and the inmate reaches out between the bars to take a glob of the pink stuff. A little while later, the guard collects the razors. He makes sure the blade is still in place.

All other Texas inmates are now allowed to keep injector razors in their cells. The guards change blades at regular intervals. Officials say the blades are so small they're not very dangerous, and anyone really wanting

to hurt someone can easily find himself a more deadly weapon—a piece of steel from one of the shops, a pitchfork tine, something like that.

There are some five hundred other men at Ellis doing time for murder, but only the Death Row inmates cannot have their razors. The notion is that they would be dangerous with them. Inmates on the Row think that is silly. “You could make somebody bleed with one of them blades,” one inmate said, “but it would take all day to kill him.” “They claim we’re dangerous with the razors,” another said, “but you’ve got everything in here that you could do more damage with than the razor. That mirror there. You could break it and do anything with it. You got glass in here that you could hurt somebody else with a whole lot worse, but they take the razors back. It’s just rules, you know, that they go by.”

It’s more than “just rules.” In the late fall and early winter of 1979, a series of incidents on Death Row and in Ellis prison’s Isolation Unit (where particularly violent inmates are held) changed the policy about allowable items. An Isolation inmate had his throat cut with one of those little injector blades. The blade was melted into a plastic ballpoint pen. One witness said, “You could stick both hands in that hole.” A guard was stabbed by a Death Row inmate who bent into a weapon the hard wire used to hang the shaving mirrors. There were two incidents of glass throwing at porters and guards. In December 1979, all glass was taken out of Death Row and Isolation cells: the mirrors, the coffee and peanut butter jars, nearly everything that could be turned into a weapon.

“It’s not fair to punish all of us just because some jerk on the other side stabbed a guard,” one inmate said to us. “I didn’t stab a guard, but I can’t have a mirror anymore. That’s not right.”

“But how do you know who is going to stab someone before it happens?” Diane asked.

“I don’t know, but it’s not right to punish us all for what someone else did.”

It wasn’t clear when, if ever, the restrictive policy would again relax.

During the day, inmate porters work on each of the J-wing rows. They perform a variety of services, ranging from delivery of commissary to loading and collecting food trays to cleaning and mopping. Food comes from the central mess hall in a hot-cart. The porters serve one wing at a time. One week J-21 gets served first, the next week J-23 gets served first. Usually, the two porters from J-23 will come to J-21 to help with food service, then the two J-21 porters will help on J-23. Each tray must be carried to each cell—a lot of running up and down the iron stairs. One



porter will load the trays (sometimes the guard on duty will help) and the others carry them. The trays are slid under the cell doors.

At night, only one porter is on duty on each row. He gets the laundry ready for the next day. He lays out fresh clothes and clean towels. He runs errands for inmates on the Row: he gets hot water for those without “stingers” (electric immersion heaters), and he carries notes, newspapers, and magazines. He makes patrols and alerts the guards if anyone is acting strangely.

A guard in the hallway controls access to J-21 and J-23 with a big yellow key. The individual cells are controlled by another guard in the cage—they call it the *picket*—spanning the ends of the two wings. The picket has a stairway so the guard can unlock cells on the second and third runs. He is responsible for letting men in and out of the six separate rows of cells. At certain times of the day, he is constantly running up and down the metal stairs.

The only telephone in the wing is in the picket. If a free person working on the wing has a call, the wing door must be unlocked, then locked again, then the picket door is unlocked and locked again. After the call, the process is repeated in reverse. Prisoners are never near the telephone.

On each row, an iron stairway leads to the second and third tiers. In most of the blocks of Ellis, that stairway is always open, but on Death Row it is frequently locked by a heavy iron door, especially when groups of inmates are moving to and from recreation or when they are showering. By locking the stairway, the guard can have one inmate out on one-row and another out on two-row and not have to worry that they’ll meet halfway and get into a fight.

Death Row inmates get showers one at a time. The noun takes a verb form: “I’m going to shower the row now,” the guard says. “I’m opening one-row cell 13 to shower Jones.” One is “being showered” rather than “taking a shower.” The option is the guards’, always. The same thing happens with recreation; it becomes a verb: “I’m going to recreate group three now,” the guard says, meaning he will let one-quarter of the men on the row out of their cells and into the small dayroom.

Saturday and Sunday are the visiting days for regular convicts. There is a prison rule that Death Row inmates shall never come into contact with other inmates (except for the barber and the porters who service J-21 and J-23), so Death Row inmates have visits Monday through Friday.

Free-world visitors come through the prison’s double cyclone fence, enter a doorway, and make an immediate left turn into the visiting area. It

is a large room with the visiting tables making two sides of a large U. The closed end of the U is a solid wall. Running the entire length of the tables on both sides is a tight steel-mesh screen that goes all the way from the oak tabletop to the ceiling. There are no contact visits at Ellis for anyone. The screen is fine enough so a cigarette won't pass through; a joint might, but there are always guards close by, watching.

Inmates enter the visiting room from the open top of the U, which passes through a pair of rooms, where they are searched coming and going. Beyond those rooms is the quarter-mile-long central corridor of Ellis.

On weekends the visiting room is crowded. Ellis now has 2,300 inmates, so a fair number of families always makes the trip. But on the Death Row visiting days, when the other convicts are at their jobs in the fields or the factories or in the building, or are in school, the room is usually empty. It is rare for even two Death Row inmates to get a visit at the same time. A guard always sits nearby, presumably to make sure that nothing is passed through the tiny interstices of the screen. Some inmates complain that he sits close enough to overhear the family conversations. "Why would I want to listen to their bullshit?" one guard said. "They got nothing to say I'm interested in."

At first it would seem that Death Row inmates have better visiting options than do other prisoners: five days to two, empty rooms to full ones. But most prison inmates come from poor families, and Texas is a big state. Houston is seventy-five miles away, Dallas is 160, and El Paso and Amarillo are five hundred miles to the west. For some, a trip to Huntsville and a visit consume a whole day; for many, a visit requires far more time. The family of a regular inmate can leave home after work Friday, spend Saturday at the prison, and perhaps get home in time for church on Sunday, or in time for the football game. Who can afford the luxury of taking off two or three days during the week?

Every day, every Death Row inmate takes a shower. The guard in the picket at the front of the wing starts on a row and, one by one, lets the inmates out, watches as they walk to the shower at the near end of the wing, and watches as they pick up clean clothes and go back into their cells. After a man is locked back down, the guard opens the next cell. This continues until he reaches the last man in the last cell. Then he goes up to another row and begins the process over again. Then the last row. During the entire time, he sits at the end of each row, watching. Inmate porters are working around the Row, ready should there be trouble.

The stairway folds back upon itself; there is no point attempting to throw oneself down it. A metal screen rises from floor to ceiling on both

two- and three-row, so no one can throw himself to the concrete floor below. The only kind of trouble that can occur during shower time is if one prisoner on the way to or from a shower should attempt to do something to a prisoner locked up in one of the cells he passes.

One day there was an incident. Dancer was going to the shower. He carried with him an empty coffee jar that he said he intended to fill with hot water from the tap. Inmates of the Row have stingers, but if they're going out of the cell they often get water from the tap in the utility room because it is faster. The tap water is extremely hot, hot enough to cause a bad burn if one isn't careful. Shower was Dancer's only time out of the cell: he had been on cell restriction since he had had a fight in the recreation room with another inmate a few months back.

He took his shower, filled his jar, and walked toward his cell, alternately humming and talking to himself. Almost without breaking his stride, he swung his right arm to the left and smashed the jar of scalding water against the bars of cell 13. No one saw the move coming; he had given no signal, no telegraph. He was still humming and talking to himself, again walking toward his cell. Two porters and one of the guards reached him in seconds; they pushed him into his cell, afraid he was about to explode. The guard in the picket spun the big stainless-steel disk, and the cell door slammed shut.

"Sonofabitch tried to burn Donnie," someone yelled.

"Didn't try to burn me," Donnie said. "Tried to blind me. If he'd wanted to burn me, he'd have just thrown the water."

Dancer had smashed the glass against the bars so it would send fragments hurtling toward Donnie's face. None of them did any damage, however.

Donnie swept his cell while Dancer began discussing politics and ethnic purity with the two invisible friends he said lived behind the air vent in the dark shadows of the pipe chase. He talked to his friends in the pipe chase a lot. Sometimes late at night, sometimes all night long, he talked to them, argued with them, screamed at them. Sometimes he sang them songs. It was because of the conversations with the two friends in the pipe chase that he had gotten into that fight in the recreation room. Another inmate told Dancer he had to stop it, no one was getting any sleep. Dancer said he didn't have to stop anything. This went on for days, they argued, and one morning the other inmate punched Dancer in the head. He was still on cell restriction too.

Recreation occurs in three ninety-minute segments each week. J-21 and J-23 are each divided into four recreation groups. Each weekday except Wednesday, which is haircut day, three of the groups are let out.

When the weather is warm and the ground dry, the inmates can go out to a small caged area where there is a concrete bench and a small volleyball court. Playing volleyball is more difficult for J-23 than it is for J-21 because the top of the cage is lower and hitting the ball without hitting the top of the cage is difficult. Hitting the top of the cage counts as a missed point.

On days when the weather is cold or wet, or when the ground is muddy, or when there isn't an extra guard available to sit outside the cage and monitor what is going on, Death Row inmates are allowed into the recreation room but not the yard. The recreation room has a water fountain and three tables. Each table has four backless attached seats. Some men play dominoes. Others sit and talk. Some walk around the room or stand near the window, letting the sunlight hit their bodies. It isn't often that they get to move very far, and, after the tiny cells, even the small recreation room seems like a minor liberty.

Only rarely do all the men in a recreation group come out at once. Some never come out at all, like one man who has snitched several times on the others. Some, like Dancer and the man he fought with, are under cell restriction. Some, like the man on three-row who cut his wrists, are kept on lockup for punishment. And some don't come out for recreation because they don't like other Death Row inmates. "I don't talk to any of them while I'm in my cell," one said. "Why should I come out there and talk to them? I got my coffee here. I got things to do in here."

And some don't come out because one of their soap operas is on. For men on the Row, soaps can become very important. Characters in the soaps are, for some of them, the people they know better than anyone in the world. Family may not visit, free-world friends may drop away, but "All My Children," "The Doctors," and "As the World Turns" continue forever, as reliable as the prison routine. For some men on the Row, the characters in the soaps are the closest thing to a family they will ever again have. All the prisoners have stories about other prisoners who refused or cut short a rare visit because it was time to see what was happening in one of the soaps.

During the first two weeks of April 1979, a Baptist minister visited the Row twice, each time for about five minutes. When we asked to speak with him about the Row and his work there, he said he preferred not to talk about it. One inmate overhearing that conversation said, "That's because all he does down here is play dominoes or get the Bible freaks reading certificates." We saw no other chaplains or priests. There are no church services on Death Row.

A few times each day, the medical assistant came through with his plastic box full of medication for those inmates who had managed to get a prescription from the doctor, and aspirin for those who hadn't. Talking with

the doctor, the inmates complained, was not easy because his English wasn't very good, and he handled the problem of difficult communication by not communicating much at all. They would ask for medication for nerves and he would ask what was wrong with them. They would say, "Nerves," and he would nod and say, "Yes, but what is *wrong* with you?" They thought they had already told him and he was awaiting a disease he could hang a pill upon. They had only symptoms, not diagnoses, to offer.

We tried talking with the doctor once. He was very small and, we thought, Asian. One of the inmates said he was Filipino, another said he was Vietnamese. Another said, "Who gives a shit?"

"We'd like to talk with you," we said to the doctor.

His eyes darted and he backed away. "Fine, everything fine," he said, and fled. We didn't see him on the Row again during the visit.

One afternoon, the unit psychologist, a young man very dapperly dressed and combed, came to the wing. He stood against the outside wall for a moment, talked to one inmate, then left.

An assistant warden made a circuit of the wing, presumably listening to requests, complaints, grievances, and needs. He told one inmate, an artist, that he would be allowed to continue receiving his drawing pens. The inmate had been worried because the assistant warden was new and the grapevine had said he thought drawing was unimportant and frivolous.

Other than those visitors, we saw no one on the Row but the porters, the wing officers, and the condemned men. It is possible there were other visits, say, when we were out to lunch, which sometimes took thirty minutes, or at night after we were gone, but no one said anything about other visitors to the wing except to complain: "They bring reporters or citizens' groups through here. They come down and say, 'A woman's gonna be on the wing, get dressed.' Then they come in, they walk through real quick, and they look at us like animals in a zoo. Nobody ever talks to us. They just look in the cage and they go away."

### 3. Time and Trivia

Many Death Row inmates, like many other Ellis inmates, are convinced that prison officials regularly hold up their mail. They talk of letters that took an inordinately long time to arrive or letters they sent that never arrived at all. One inmate "proved" to us that Ellis officials held up his mail by showing us a letter he had gotten from a friend in New York. The postmark was eight days earlier and he had received the letter the previous evening.

“The only reason that letter could take that long,” he said, “is because they were sitting on it up there.”

“Why would they sit on a letter from your girlfriend in New York?”

“Don’t ask me. Ask them.”

We watched the mail room at various times. Officers would be in there most of the day sorting the mail, bundling it for delivery to the wings. There didn’t seem to be any special bags for incoming or outgoing mail to be held up for special inmates; we saw no lists of inmates whose mail was segregated or—in the FBI vernacular—given a “cover.” Every time we saw the mail sorting, it seemed to be very much like mail sorting in the other institutions we knew: clerks spent their eight hours putting envelopes and folded newspapers and magazines into boxes. The only difference was the slicer, which cut the edges off envelopes for the visual inspection for contraband.

As an experiment, we mailed a letter to ourselves from Huntsville. We put it in the mailbox at the post office near the town square. It took a full week to reach us in Buffalo.

It’s not surprising that mail should be such a focal point for the paranoia, for the mail is, even more than visits, the prisoners’ primary contact with the free world. The mail is the way one reaches family, obviously, but it is also the way one reaches lawyers, newspapers, judges, and potential friends. There are no telephones for prisoners on Death Row, nor are there for prisoners anywhere else on Ellis prison farm.

Absence of mail or delay of mail means people out there are not bothering to respond or are not responding quickly, or that prison authorities are hiding the mail for some devious reasons of their own. It is easier to think that the prison authorities are hiding the mail than that a judge or a loved one is too busy to send a letter back to Ellis.

Ask why the authorities go to all the trouble of delaying the mail and you get a variety of answers: they want to be mean, they want to keep us off-center, they want to show they’re in control, they have it in for me.

A warden says, “I don’t want anybody to do hard time. They do hard time and I do hard time. We’re all in this place together, everybody knows that.” Another says, “I don’t have enough men to man the pickets properly. How am I going to spare people to segregate the mail just to harass somebody?”

Many inmates and workers on the Row refer to some inmates’ behavior as “paranoid.” It is difficult to deal with that term in the context of a community defined only by the knowledge that rational society has carefully decided that nearly everyone in sight is to be put to death. People

out there *do* want to kill them, every one of them, so it is hardly surprising that some inmates look upon everyone within sight or sound as dangerous or malevolent.

Several Death Row inmates told us they feared being killed if they were returned to the counties that originally tried them. They were sure that the local sheriffs and police would find some excuse for shooting them down.

Two inmates whose interviews appear here were transferred to the counties of original jurisdiction after their interviews. One was out for a date, the other for a court proceeding. Neither was harmed; both were treated fairly well by the police. One preferred his time in the county jail to his time on Death Row and wanted to stay on there. No Death Row inmate has ever been killed by local police or sheriffs while out on a bench warrant.

One of the saddest things is that no one really cares. Too much time has passed. Police might have killed some of these men had the opportunity and idea arisen before trial, but not now. Local authorities fully expect that, after the court choreographies are done, the state will *do* it, and the hot anger that precipitated the original convictions are long forgotten. It is no longer necessary, because the state will kill them clinically, without anger, without rancor. That is one more unbearable insult.

What was bizarre about the bench warrant experience for the two men was understanding that the communities and organizations that had ordered their deaths were no longer *angry* at them. Something out there was still intending to kill them, but it no longer had a face or a name: it was just a bureaucratic procedure, working its way out.

Prison is an institution of contracts and agreements, most of them unarticulated but nonetheless well understood by all. Most of the contract terms are set forth by the administration, but convicts can modify many of them in certain ways, and they can punish some individual administration workers for failing to carry out their part. The balance of power is with the administration, surely, but it is not total or unilateral. A guard who won't play by the rules, for example, can be sabotaged in various ways. The techniques necessary for keeping the system bilateral reinforce convict culture, and generate brilliant hustling. It probably does nothing for rehabilitation, but it keeps the prison running.

It doesn't work that way on Death Row. On Death Row, none of the usual bargains apply.

Elsewhere in the prison system, the counters are obvious. A convict who behaves badly gets shipped to increasingly restrictive prisons, where he has fewer and fewer personal options and where he earns less and less good

time and where the job choices are less and less interesting. A convict who behaves well gets more good time, a better job. If a warden decides a man is trying to make it, he can help the man; if a warden decides a man is trying to be a hard case, he can make the man's life miserable.

On the Row, there is little the wardens can do to or for the men, and equally little the men can do to or for the prison. They don't work, so they can't strike. They don't get good time, so their behavior is meaningless. What they do on the Row—unless they start fights or try to kill themselves—matters to no one.

Most convicts spend their time trying to convince prison officials that they are nice and benign and should be released. The parole board does the releasing, but its decisions are largely based on reports and recommendations generated by the prison officials. A report, which may not be in writing, saying a man is a troublemaker kills a shot at parole. A report, which also may not be in writing, saying a man is really ready may ensure one.

For men on the Row, the opinions of the prison officials count for nothing. The decisions are made elsewhere, by men who never see the Row or the condemned. The decisions are made by judges in Austin or the Texas Court of Criminal Appeals or in New Orleans at the Fifth Circuit or in Washington at the Supreme Court.

Most regular convicts spend most of their energy getting by. Few have any hope of getting a reversal; the time a reversal takes is longer than most will spend in prison anyway. Men with a few years of time to do are not likely to elicit the attention of unpaid lawyers.

Death Row convicts spend their time trying to get out. Getting by means accepting death, getting by too well is itself a form of death. Some of the men keep themselves alive, emotionally and literally, by fighting the case. Some live in the case, think of nothing but the case, talk of nothing but the case.

They talk of two things: their innocence or how procedure was violated in their trials. Most talk is of the procedure, which might strike an outsider as curious—after all, it's the innocence or guilt that matters, right?

Wrong. For the courts considering the appeals, guilt or innocence is irrelevant and immaterial. That decision was made by the jury, long years ago. Appeals courts rarely try to second-guess juries. That would be usurping the rights of the other citizens, their right to say whether one of their peers was guilty or innocent.

Appeals courts review the process by which an individual was convicted. A trial examines evidence for guilt or innocence; an appeal examines



a *trial* and the steps leading to it for legitimacy. The decision a Death Row prisoner hopes it will make is that the entire process was somehow contaminated by some official misbehavior, so the trial decision must be reversed, and a new trial is impossible. Second best is the new trial, *absent* the offending information.

So the condemned who elect to fight become passionate devotees of legal trivia, always in the hope that the uncovered item, the discovered decision, the neglected fact will turn out to be reversible error.

This is not such a matter of concern among other convicts because courts generally find minor trial errors “harmless,” which means that “the error or misbehavior did occur, but we don’t think it affected the outcome enough to warrant starting all over again.” Proof of an error isn’t enough to get a new trial; one must also prove that the error affected the results. But in a death penalty case, “harmless error” is not so simple. The death penalty is absolute, not relative. It is everything, not just a few years. A minor difference in terms of the trial may not have influenced the decision about guilt or innocence, but it may very well have influenced the decision about prison time versus death.

#### 4. Death

Several Death Row inmates complain about the lack of rehabilitative facilities on the Row. They say conditions make them harder, meaner; that there are no opportunities for self-improvement, but a lot of reasons for developing or worsening antisocial attitudes.

They miss the point.

Death Row is decided to the notion that these men, of all the criminals in the penitentiary, are special. They are the ones society has said are not capable or deserving of redemption or reform.

To give them schooling, training, or therapy would create an ambiguity the system is not ready to manage and that it has no desire to have become overt: it would acknowledge that residence on the Row is still tentative. In order to deal with the Row and what it means, the prison system adopts the posture of the inmate who says, “We’re here for one thing: we’re here to die.”

Death Row fits none of the rhetorical models of the prison, and in that conceptual hole are bred most of the abominations of the place.

There are four justifications given for the existence of prison in America, or four functions given for the institution: specific and general deterrence

(to scare this person or people in general away from doing this act again or doing it at all), incapacitation (keeping the offender from hurting someone for a period of time), rehabilitation (fitting the individual for a law-abiding life), and punishment.

Deterrence and incapacitation have nothing to do with what goes on in a prison, since they are outside concepts, defined merely by the successful existence of the prison. Success in this context is giving the appearance of prison not being a happy place, and being a place no one leaves without authorization. Rehabilitation is known only later. It turns up in statistics compiled after the person leaves; it has nothing to do with day-to-day management. Punishment usually is defined as merely being there; the court sends you to prison *as*, not *for*, punishment.

Most prison workers focus on security and maintenance of order, because those are immediately measurable. Legitimizing those two factors are the other five. They supply the theoretical foundation that permits keeping men locked in tiny cages, forcing them to march in narrow lines, keeping them silent in the mess hall, and subjecting them to all kinds of personal intrusions.

But on Death Row, the foundation is missing. There is no notion of rehabilitation; it is the one place in criminal justice where rehabilitation is denied, ignored, or irrelevant. There is no incapacitation that couldn't be handled as well in one of the wings down the hall. There is no deterrence because deterrence, here as everywhere else, is unmeasurable. There is no punishment (in theory) because the punishment to which these men are condemned is death, not loss of time. Technically, Death Row prisoners more than thirty days away from execution are the legal property of the counties, not the state prisons. The years in the cells are without meaning in the prison logic. No good time accrues, no benefits are conferred for behaving well or working diligently. There is no work to do diligently.

The condemned do not fit the conceptual model that prison workers—wardens, ministers, doctors, guards, convict porters, everyone—have of the prison. So the prison workers abandon them.

The condemned live with the barest services, the minimum contact, the slightest concern. They write letters that go unanswered; they ask for help that does not come; they ask for individual recognition that is not given.

What prisons do best of all is warehouse people; all the rest is rhetoric. Death Row is the most obvious warehouse of all, and prison workers do not like to face that. Death Row inmates have a problem facing where they

are, but prison workers have a problem facing what Death Row is, what it says about their industry.

The style of managing people on Death Row is not unlike the style of managing patients in wards for the terminally ill: the condemned/patients are treated as if they were already partially dead, as if they were already partly out of this world.

Death is difficult to deal with in any circumstances, and to deal with people who are more or less certain of meeting it in the near future is, for the kinds of people who handle Death Row inmates and terminal patients, very frightening. The almost-dead are treated as if they were contagious, and the handlers protect themselves by preserving distance.

There are many institutions in most societies for dealing with people in transitional phases of life, what anthropologist Victor Turner calls the “liminal phase,” when one is, in his terms, “betwixt and between.” Often there is a rite of passage framing this liminal period so that by the end of the period and the rite, one has moved into the new phase and the new role.

Most passages are volitional or serial. That is, one elects to become a priest, to become married, and so one goes into the liminal world in preparation for induction to the priesthood or for ratification of the marriage. For those passages that simply reflect maturation—the coming of age of a hunter or the marriageability of a girl—the community has had the experience of such passages before. All the adults did it: the men with the tipped bows put aside their childish sticks and went through it, the women stopped playing house with the other girls and did it, the boys stopped playing hunter and now go on real hunts and live in their wives’ lodges.

But death is a transition like no other, for there is no objective sense of the other side. It is always hypothesis, and the rituals all deal with the remains, with fragments. For many tribes, and for many highly civilized peoples as well, the recently dead are difficult to understand, difficult to accept. It is not just a matter, as Freud suggested, of withdrawing affect. It is also a matter of being incapable of comprehending the transition because there is no objective sense—save for the postulates named in myth—of the other side.

So some funeral ritual has to do with naming the otherness of the recently dead, of saying how that person is now really different from us. In a prescientific world, that otherness is not easy to understand because the change is not at all clear: that motionless thing upon the ground looks like Harvey, but the “Harveyness” has somehow gone away. The thing that