

## A PINK CADILLAC, AN IQ OF 63, AND A FOURTEEN-YEAR-OLD FROM SOUTH CAROLINA: WHY I CAN NO LONGER SUPPORT THE DEATH PENALTY

*Mark L. Earley, Sr. \**

### INTRODUCTION

If you believe that the government always “gets it right,” never makes serious mistakes, and is never tainted with corruption, then you can be comfortable supporting the death penalty. I no longer have such faith in the government and, therefore, cannot and do not support the death penalty.

I supported the death penalty for all of my public life spanning from 1987 to 2001—as a Virginia State Senator, Attorney General, and Republican candidate for governor. Today, I can still make a conceptual argument as to why it should be a tool in the arsenal of a prosecutor—but it is just an argument. And, to me, the argument is tired, strained, and no longer defensible.

### I. MY VIEWS ON THE DEATH PENALTY IN MY POLITICAL CAREER

While in public office, it was convenient for me to support the death penalty. In the years I served the Commonwealth of Virginia, if you wanted to run for office to oppose the death penalty was to be saddled with an albatross. Politically, it was safer and easier to support the death penalty for the most heinous of crimes. And make no mistake—there are some very heinous and unspeakable criminal atrocities.

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\* Criminal Defense and Trial Attorney, Earley Legal Group, LLC, Leesburg, Virginia. J.D., 1982, College of William and Mary, Marshall Wythe School of Law; B.A., 1976, College of William and Mary. Former Senator of Virginia (1988–1998); Attorney General of Virginia (1998–2001); Republican Candidate for Governor of Virginia, 2001; President and CEO, Prison Fellowship USA, 2001–2011.

While serving in the Senate of Virginia for ten years,<sup>1</sup> I am fairly certain that I voted for just about every bill that expanded the death penalty. I also did not hesitate to support initiatives that made it more difficult for a defendant to challenge their death penalty conviction on appeal—we were “streamlining the process.” After all, it made little sense for someone to be sentenced to death and the execution to be carried out decades later.

While in the Senate, my stance on the death penalty, and my votes, were not made while getting my hands dirty in the methodical process of putting people to death. I was speaking and voting in the comfortable senate chamber. However, that would soon change.

When I was elected Attorney General of Virginia in 1997,<sup>2</sup> I found myself in charge of the Commonwealth’s attorneys who handled the prosecution of death penalty cases after they were appealed from the local courts. And most all were appealed.<sup>3</sup> In each case, we aggressively defended the decision by the local jury and judge to impose the death penalty. And our attorneys were good. At the time, they were derisively and, in my opinion, unfairly referred to by some death penalty opponents as the “Death Squad.”<sup>4</sup>

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1. 1988–1998. See generally Jessica M. Karmasek, *Former Va. AG Up for Judicial Opening*, LEGAL NEWSLINE (Apr. 6, 2011), <http://legalnewsline.com/news/232050-former-va-ag-up-for-judicial-opening> (“Earley was elected to the Virginia Senate in 1988, serving until he was elected attorney general in 1998.”); Mark Earley, CHUCK COLSON CTR. FOR CHRISTIAN WORLDVIEW, <http://www.breakpoint.org/learning-center/colson-center-courses/colson-center-courses/295-mark-early-bio> (last visited Feb. 27, 2015) (“[Earley] served in the Virginia State Senate from 1988 to 1998, followed by a term as Attorney General of the Commonwealth of Virginia from 1998 to 2001.”).

2. Karmasek, *supra* note 1; see *Election '97: Election Results—Attorney General Republican Primary/House Districts*, DAILY PRESS (June 11, 1997), [http://articles.dailypress.com/1997-06-11/news/9706110084\\_1\\_house-districts-election-results-attorney-general](http://articles.dailypress.com/1997-06-11/news/9706110084_1_house-districts-election-results-attorney-general).

3. See AM. BAR ASS'N, EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS: THE VIRGINIA DEATH PENALTY ASSESSMENT REPORT 213, 215 (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/death\\_penalty\\_moratorium/va\\_complete\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/va_complete_report.authcheckdam.pdf) (stating that a defendant sentenced to death can have a direct appeal to the Supreme Court of Virginia and is entitled to an automatic review of the death sentence, regardless of the appeal); see also John H. Blume, *Killing the Willing: “Volunteers,” Suicide and Competency*, 103 MICH. L. REV. 939, 939–40 (2005) (noting that of the 885 executions that occurred between *Gregg v. Georgia*, decided in 1976, and the time of the writing, only 106 defendants waived appeal).

4. ASSOC. PRESS, *Va. ‘Death Squad’ Criticized: Lawyers’ Work Ensures Executions*, FREE LANCE-STAR, Apr. 7, 1997, at C1, available at <http://news.google.com/newspapers?id=1298&dat=19970407&id=8-kyAAAAIBAJ&sjid=1QcGAAAIBAJ&pg=6425,1416521>.

Like a yo-yo on a string, these cases went up and down the appeals ladder all the way to the United States Supreme Court until literally moments before an execution was carried out—always around the dark hour of midnight.

On those dark nights, the attorneys in my office and I were “on call” until the executions took place. We were poised to fight any last minute appeals that were filed to spare the defendant’s life. Across the street from the Capitol and the Governor’s Mansion, we camped out in the Attorney General’s office while we waited for the moment of execution to arrive. After doing this a few times, it became clear to me that the executions were almost always carried out, and so I started going home and left the “death watch” to my chief deputy and those in our Criminal Appellate Division. In all honesty, I was becoming increasingly uncomfortable being involved in the whole process. It was my way to create some distance.

During my tenure as the Attorney General of Virginia, from 1998 to 2001,<sup>5</sup> the Commonwealth executed thirty-six people.<sup>6</sup> Being that close to it all had a profound effect on me. Overseeing a legal system that put so many to death with such efficiency eroded me. Regardless of one’s support or lack thereof, the carrying out of the death penalty is gruesome business. I was no longer simply debating it from the ornate chamber of the Virginia Senate; but I was now a participant. I began to question my own position on the death penalty. But I was running for Governor, and there was a part of me that did not want to closely scrutinize my own convictions for fear I could no longer support it. That was a political headache I neither needed nor wanted. As such, I effectively walled off my doubts.

## II. MY VIEWS ON THE DEATH PENALTY TRANSFORMED

Today, over a decade later, I have come to the conclusion that the death penalty is based on a false utopian premise. That false premise is that we have had, do have, and will have 100% accuracy in death penalty convictions and executions. Built into that

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5. *Attorneys General of Virginia*, ENCYCLOPEDIA VIRGINIA, [http://www.encyclopedia.virginia.org/Attorneys\\_General\\_of\\_Virginia](http://www.encyclopedia.virginia.org/Attorneys_General_of_Virginia) (last visited Feb. 27, 2015).

6. *Virginia’s Execution History*, VIRGINIANS FOR ALT. TO THE DEATH PENALTY, <http://www.vadp.org/dp-info/virginias-execution-history/> (last visited Feb. 27, 2015).

premise are certain assumptions that we must believe to be true: that the imposition of the death penalty will *always* be applied fairly, without bias, discrimination, public corruption, or incompetence. We further assume that the current state of forensic science, though ever-evolving, is good enough to assure no mistakes are made in guilt or innocence. We also assume that the death penalty makes the public safer and brings some measure of closure to victims' family members.

In some cases those assumptions prove to be true. The problem is that in other cases they do not. Certainly not close to 100% of the time, and, let's face it, the death penalty *has* to be a 100% proposition. Why? Because the criminal justice system of the Western world, particularly the United States, has long been rooted in the proposition that one is presumed innocent until proven guilty. From the inception of our democracy, we have viewed it better that ten guilty persons escape than one innocent person languish in prison or be put to death.<sup>7</sup> There are no do-overs when it comes to executions. The wrong cannot be righted.

The utopian premise of government infallibility when it comes to the imposition of the death penalty, and all of the assumptions that undergird that premise, can no longer stand. Since 1973, at least 150 people across the country have been exonerated and released from death row.<sup>8</sup> That means that 150 human beings who were convicted and sentenced to die were subsequently either acquitted, had their cases dismissed by the prosecution, or were granted a complete pardon based on evidence of innocence.<sup>9</sup>

These overturned convictions are the result of systemic failures in the criminal justice system. They were convictions based on shoddy or outmoded forensic science,<sup>10</sup> poor or corrupt police prac-

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7. 4 WILLIAM BLACKSTONE, COMMENTARIES \*358.

8. *Innocence: List of Those Freed from Death Row*, DEATH PENALTY INFO. CTR., <http://deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Feb. 27, 2015).

9. *Id.*

10. *See, e.g., Innocence Cases*, DEATH PENALTY INFO. CTR., <http://deathpenaltyinfo.org/node/4900#2> (last visited Feb. 27, 2015) (Adolph Munson, Oklahoma); *see also* State v. Munson, 886 P.2d 999, 1002 (Okla. Crim. App. 1994) (stating that "a significant amount of evidence, including police reports and photographs, was not turned over to Munson either before or during trial" and that some evidence "was not turned over to defense counsel until the post-conviction evidentiary hearing, which was held more than eight years after the original trial"); *Wrongful Convictions Involving Unvalidated or Improper Forensic Science that Were Later Overturned Through DNA Testing*, INNOCENCE PROJECT, <http://www.inno>

tices,<sup>11</sup> bias in the decision by prosecutors to seek the death penalty,<sup>12</sup> racial bias in jury selection in death penalty sentencing,<sup>13</sup> defense lawyers lacking the resources, skills, or motivation to provide a decent defense,<sup>14</sup> and the list goes on.

But for me, the most compelling facts have arisen from two cases in which I was personally involved and a third that broke my heart.<sup>15</sup>

### III. A PINK CADILLAC AND A LUCKY GREEN LAWYER

If you need brain surgery, you need a doctor—but not just any doctor. You need a brain surgeon. Likewise, if you are charged with capital murder—and face the government arrayed against you with all its might trying to put you to death—you need a lawyer, but not just any lawyer. You need a lawyer that specializes in death penalty cases. Sadly, many times this does not happen. I know from personal experience.

Within just a few years of being admitted to the State Bar to practice law in Virginia, I was appointed as the sole attorney on a death penalty case in Norfolk. Given my experience and level of expertise at the time, I had no business being appointed. My only qualifications were that I was an attorney duly licensed to practice law and that I had requested to have my name placed on the court appointed list to represent indigent defendants. It was the early 1980s and there was no public defender's office in Norfolk. I had never handled a murder case, much less a capital murder case. Despite the fact that such cases are highly sophisticated and

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cenceproject.org/causes-wrongful-conviction/DNA\_Exonerations\_Forensic\_Science.pdf (last visited Feb. 27, 2015) (listing cases in which unvalidated or improper forensic evidence led to wrongful convictions).

11. *Innocence Cases*, *supra* note 10 (Clarence Smith, New Mexico).

12. *Id.* (Daniel Moore, Alabama).

13. *See id.* (Harold Wilson, Pennsylvania); *see also* Emily Wax-Thibodeaux, *Ninth Execution in Missouri This Year in What Activists Say Was Racially Biased Case*, WASH. POST (Nov. 19, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/11/19/ninth-execution-in-missouri-this-year-in-what-activists-say-was-racially-biased-case/>.

14. *See Inadequate Legal Representation*, DEATH PENALTY FOCUS, <http://www.deathpenalty.org/article.php?id=83> (last visited Feb. 27, 2015) (“There have even been instances in which lawyers appointed to a death case were so inexperienced that they were completely unprepared for the sentencing phase of the trial. Other appointed attorneys have slept through parts of the trial, or arrived at the court under the influence of alcohol.”); *Innocence Cases*, *supra* note 10 (Muneer Deeb, Texas).

15. *See infra* Parts III–V.

unique, I had no special or individualized training on how to handle such a case. This is without mentioning the very high stakes involved—a human life.

My client was Dave.<sup>16</sup> He was a young African American in his late teens or early twenties. He was accused of robbing a grocery store in Norfolk, and shooting and killing the owner. It happened around midnight. The evidence was circumstantial.

When I first went to see Dave in jail, my first thought after a few minutes of conversation was that he seemed to be suffering some type of developmental disability. It was difficult to have a rational linear conversation with one question building upon another to unfold helpful information. But one thing was clear—he was adamant that he had never killed anybody.

After several interviews at the Norfolk jail, he told me that on the night of the murder he had been at church! It was a storefront church on Monticello Avenue in Norfolk. When I asked him why he was there at midnight on a weeknight, he replied that the preacher had just gotten a pink Cadillac and that he and others were there to lay hands on the car and pray over it.

I personally went to see if the church was there, and it was. As luck would have it, there was a twenty-four-hour pawn shop next door to the church. I went into the pawn shop and asked to speak with whoever was on duty at midnight on the day of the murder. The individual on duty at the time of the murder was not there when I inquired, but I was told when he would be back. I returned and spoke to the gentleman. The exchange went something like this: “I know this may sound crazy, but do you happen to recall a group of people out in the street praying and singing around a pink Cadillac on such and such a night around midnight?” Indeed he did.

I was then able to identify some of the individuals who were at the church that night who confirmed that Dave had been there as well. One of the older gentlemen, a bishop, had given Dave a ride home after the incident happened, which would have put him home at the time the murder had occurred.

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16. Dave was not my client's real name, but I will use this name as a substitute.

The head of the Homicide Division for the Norfolk Police Department at the time was a family friend. I called him up and said, “I think you may have the wrong guy.” I gave him all of the information and names I had unearthed and asked him to check it out. After a few weeks, he called back and said they were dropping the charges against Dave and releasing him from jail.

I will never forget Dave’s father calling me, crying, and thanking me for what I had done for his son.

Dave’s case had a happy ending, but I should never have been appointed on that case. Nor should I have accepted the appointment. Quite frankly, we got lucky. We were lucky that the murder did not happen on a routine night when Dave might have been at home alone with no witnesses or alibi. Rather, he was at an event that no one could forget. (It was a *pink* Cadillac after all). We were lucky that a twenty-four-hour pawn shop was next door and that the employee saw the “Caddy Consecration.” It was also good fortune that the homicide detective and I both knew and trusted one another.

If Dave’s case had gone to trial, I shudder to think what would have happened. I would have been totally out of my league. Unfortunately, that is true for many lawyers in many parts of the country who end up representing those charged with capital murder.

In its 2014 report titled “Irreversible Error,” the Constitution Project recommended that every state ensure that death penalty lawyers be properly trained and supervised, and adequately compensated.<sup>17</sup> It mirrors similar recommendations by the American Bar Association.<sup>18</sup> The significance of the need for effective counsel cannot be understated. Indeed, a jurisdiction’s appointment of an effective lawyer to represent the accused does not just ensure that a defendant’s Sixth Amendment right to counsel is protected. Most importantly, the right to counsel is the right through which all other constitutional rights are safeguarded. Without an effective defense team, a capital defendant is unable to effectively

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17. DEATH PENALTY COMM., CONST. PROJECT, IRREVERSIBLE ERROR: RECOMMENDED REFORMS FOR PREVENTING AND CORRECTING ERRORS IN THE ADMINISTRATION OF CAPITAL PUNISHMENT xlvii–xlviii (2014), [http://www.constitutionproject.org/wp-content/uploads/2014/06/Irreversible-Error\\_FINAL.pdf](http://www.constitutionproject.org/wp-content/uploads/2014/06/Irreversible-Error_FINAL.pdf).

18. See AM. BAR ASS’N., *supra* note 3, at 141, 148.

mount a defense, challenge the evidence against him, object to potentially prejudicial information that prosecutors seek to present to a jury, and present evidence that would support a sentence less than death.

When I served as Attorney General of Virginia, the lawyers in our office who fought to affirm death sentences before our state and federal appellate courts had a wealth of experience and were extremely good at what they did. Many of the defense attorneys I saw go up against them were just simply outclassed; they lacked the training, experience, and resources to have much or any chance at success, no matter how strong their clients' case might have been.

Also, for those who could mount a vigorous appeal, we had the benefit of procedural obstacles on our side, which often precluded relief for a death row inmate in most circumstances. By the time a capital case gets to the appeals process—after a conviction and death sentence have been handed down—the deck is already stacked against the defendant. Procedurally, the system is built to uphold convictions, not overturn them.<sup>19</sup> An excellent legal team is therefore indispensable to justice.

#### IV. MR. WASHINGTON GOES TO DEATH ROW

It took twenty-five years, but on April 11, 2007, Kenneth Tinsley pled guilty to the 1982 rape and murder of Rebecca Lynn Williams in Culpeper, Virginia.<sup>20</sup> He received two life sentences.<sup>21</sup>

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19. See Keith A. Findley, *Innocence Protection in the Appellate Process*, 93 MARQ. L. REV. 591, 602 (2009) (discussing capital appeals, the procedures of review, and stating that “most courts have applied the [no-evidence] standard so differentially that in practice they uphold convictions unless there is essentially no evidence supporting an element of the crime”). See generally *Death Penalty Appeals Process*, CAPITAL PUNISHMENT IN CONTEXT, <http://www.capitalpunishmentincontext.org/resources/dpappealsprocess> (last visited Feb. 27, 2015) (describing the death penalty appeals process).

20. Rape Case Docket Report for Commonwealth v. Kenneth Tinsley, VA. COURTS CASE INFO., <http://ewsocis1.courts.state.va.us/CJISWeb/circuit.jsp> (select “Culpeper Circuit Court” from drop-down bar; then search “CR06000256-01”) [hereinafter *Tinsley*, Rape Case Docket Report]; Murder Case Docket Report for Commonwealth v. Kenneth Tinsley, VA. CTS. CASE INFO., <http://ewsocis1.courts.state.va.us/CJISWeb/circuit.jsp> (select “Culpeper Circuit Court” from drop-down bar; then search “CR06000255-01”) [hereinafter *Tinsley*, Murder Case Docket Report]; see Frank Green, *Tinsley Pleads Guilty in '82 Death*, RICH. TIMES-DISPATCH, Apr. 12, 2007, at B1.

21. See *Tinsley* Rape Case Docket Report, *supra* note 20; *Tinsley*, Murder Case Docket Report, *supra* note 20.



Tinsley was identified as the killer from DNA evidence recovered at the scene.<sup>22</sup> He was already serving two life terms for another rape in Albemarle County, Virginia.<sup>23</sup> There was little press coverage of his plea and conviction. There should have been much more.

It might have appeared to be a routine murder investigation and plea, but it was not. It was this brutal, senseless murder of a nineteen-year-old mother of three that led to fundamental changes in how many would come to view the death penalty—including me.

One year after the 1982 murder, the police and prosecutors were sure they had their man, and it was not Tinsley. It was Earl Washington, Jr.—an uneducated African American farmhand with an IQ of 63 who had confessed to the killing after a long and unrecorded interrogation by investigators.<sup>24</sup> Washington had even initialed his confession, written for him by the police, despite the fact that Washington could not read.<sup>25</sup> The interrogation leading to the confession was not recorded.<sup>26</sup>

Washington came to the attention of the police when he had been arrested for breaking into the home of a neighbor in Fauquier County.<sup>27</sup> Specifically, he “broke into [the] house for the purpose of stealing a pistol he knew to be there” and assaulted a woman living in the home with a chair.<sup>28</sup> In the course of asking him about that incident, the police began to question him about Williams’ death in Culpeper a year earlier.<sup>29</sup> With the encouragement of law enforcement, Washington was only too happy to help and implicate himself in the murder to help police.

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22. Maria Glod, *Va. Inmate Indicted in Killing That Altered DNA Testing Law*, WASH. POST (Aug. 23, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/22/AR2006082201223.html>.

23. Green, *supra* note 20.

24. Eric M. Freedman, *Earl Washington’s Ordeal*, 29 HOFSTRA L. REV. 1089, 1090–91 (2001).

25. *See id.* at 1092–95.

26. *Id.* at 1092–93; *see* Bill Miller & Steve Bates, *DNA Test Could Free Retarded Man on Death Row in Virginia Slaying*, L.A. TIMES (Nov. 7, 1993), [http://articles.latimes.com/print/1993-11-07/news/mn-54102\\_1\\_sophisticated-dna-test](http://articles.latimes.com/print/1993-11-07/news/mn-54102_1_sophisticated-dna-test).

27. Freedman, *supra* note 24, at 1090.

28. *See id.*

29. *See id.* at 1093.

In 1984, a jury convicted Washington of capital murder and sentenced him to die in Virginia's electric chair.<sup>30</sup> He spent nine-and-one-half years on death row before Governor Douglas Wilder, on his last day as Governor in 1994, commuted his sentence to life with the right to parole.<sup>31</sup> Why? Because forensic testing showed Washington's blood type did not match that of the semen found at the scene<sup>32</sup>—a fact reportedly not introduced at the trial of Washington.<sup>33</sup>

In 2000, Governor Jim Gilmore ordered more sophisticated DNA tests which were not available when Wilder was Governor.<sup>34</sup> These tests found genetic material on the victim's body that did not and could not have come from Washington.<sup>35</sup> Governor Gilmore granted Washington a full pardon.<sup>36</sup> Those DNA tests would remarkably be matched with the real murderer, Kenneth Tinsley (a cold hit).<sup>37</sup> Washington became a free man after almost eighteen years in prison, nine of which were on death row.<sup>38</sup> During that time he came within nine days of being executed by electrocution.<sup>39</sup>

I was Attorney General of Virginia when Governor Gilmore was considering what to do about Washington's case. We had several meetings to discuss the matter. Governor Gilmore was troubled as more and more forensic testing called into question the validity of Washington's confession and conviction. Our office, whose job it is to represent the Commonwealth in criminal appeals, had persuasive arguments as to why the conviction should stand. After all, he had confessed, he had legal representation at trial, and a jury and judge had heard the evidence and found him

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30. *Washington v. Commonwealth*, 323 S.E.2d 577, 581 (Va. 1984); *see also* VA. CODE ANN. §§ 53.1-233, -234 (Repl. Vol. 1982) (indicating that at the time the only means for carrying out a death sentence was through electrocution).

31. Freedman, *supra* note 24, at 1100.

32. *See id.*

33. *See* MARGARET EDDS, AN EXPENDABLE MAN: THE NEAR-EXECUTION OF EARL WASHINGTON JR. 105 (2003).

34. *See* Freedman, *supra* note 24, at 1102–03.

35. *Id.* at 1103.

36. *Id.*

37. Jerry Markon, *Wrongfully Jailed Man Wins Suit*, WASH. POST, May 6, 2006, at B1.

38. EDDS, *supra* note 33, at xi–xiii.

39. *Id.* at 92.

guilty.<sup>40</sup> Moreover, the Virginia State Police agent who had conducted the investigation and secured the confession was part of a state police force known across the country for their professionalism and integrity.<sup>41</sup> The victim, Rebecca Williams, had been brutally raped and stabbed thirty-eight times in front of her children.<sup>42</sup> The Commonwealth had its man.

But with each new and advanced forensic test, those arguments became weaker and weaker. Governor Gilmore came to the right conclusion and did the right thing. I was lagging behind him.

In 2006, Earl Washington sued the estate of the Virginia State Police investigator who interrogated him, Curtis Wilmore, and received a jury verdict of \$2.25 million.<sup>43</sup> The jury found that the investigator manipulated the confession from Washington using fabricated evidence.<sup>44</sup>

#### V. FOURTEEN YEARS OLD, BLACK, AND LIVING IN SOUTH CAROLINA IN 1944

In December 2014, in a historic ruling, Judge Carmen Mullen of the Circuit Court of Clarendon County, South Carolina, vacated the conviction of George Stinney, an African American child, who was executed in 1944 at the age of fourteen for bludgeoning to death two white girls ages eleven and seven.<sup>45</sup>

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40. See *Washington v. Commonwealth*, 323 S.E.2d 577, 581–83 (Va. 1984).

41. See generally Press Release, Va. State Police, VSP Welcomes 50 Troopers to the Department (Nov. 19, 2014) (“Members of the 122nd Basic Session are from every corner of the Commonwealth as well as Florida, Georgia, Illinois, Louisiana, Michigan, Nevada, New Jersey, and New York. Many in the class sought out the Virginia State Police because ‘of their excellent reputation’ and ‘for the various career paths offered throughout the organization.’”).

42. Markon, *supra* note 37.

43. *Id.*

44. *Washington v. Buraker*, 322 F. Supp. 2d 702, 712 (W.D. Va. 2004); Michelle Washington, *Federal Jury Awards Earl Washington Jr. \$2.25 Million*, VIRGINIAN-PILOT (May 6, 2006), <http://hamptonroads.com/node/98571>.

45. Order Vacating Judgment at 1, *South Carolina v. Stinney* (S.C. Cir. Ct. Dec. 17, 2014) (on file with author) [hereinafter Order Vacating Judgment, *Stinney*]; Lindsey Bever, *It Took 10 Minutes to Convict 14-Year-Old George Stinney Jr. It Took 70 Years After His Execution to Exonerate Him*, WASH. POST (Dec. 18, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/12/18/the-rush-job-conviction-of-14-year-old-george-stinney-exonerated-70-years-after-execution/>; Bill Chappell, *S.C. Judge Says 1944 Execution of 14-Year-Old Boy Was Wrong*, NPR (Dec. 17, 2014), <http://www.npr.org/blogs/thetwo->

George and his sisters were out playing when the two young girls rode by them on bikes going to pick flowers.<sup>46</sup> They were found dead the next morning, not far from where George and his sisters had seen them.<sup>47</sup> George was taken from his home and arrested within a few hours.<sup>48</sup> He was convicted of capital murder just thirty days later by an all white jury, with a court appointed lawyer, in a trial that lasted one day.<sup>49</sup> The child's family was barred from the courtroom during the entire trial, and the jury took less than ten minutes to find him guilty and sentence him to death.<sup>50</sup> The only evidence of his guilt was his confession.<sup>51</sup>

He was electrocuted within sixty days of his "trial."<sup>52</sup> In this sordid affair, the State of South Carolina put this young man to death within ninety days of his arrest.<sup>53</sup> There is no evidence that anyone lifted a finger to help and defend him.<sup>54</sup> No appeals were filed, and no stay of execution was ever requested by his court-appointed lawyer.<sup>55</sup> At the time of his incarceration, he was a small, frail child weighing only ninety-five pounds.<sup>56</sup>

Evidence presented to Judge Mullen, some seventy years later, indicated that George Stinney's two sisters, who had seen the victims earlier in the day, were never interviewed by the police nor did defense counsel ever call them to testify at the trial.<sup>57</sup> In addition, a board certified child, adolescent, and forensic psychologist testified before Judge Mullen that based upon the child's age, race, and nature of the custodial interrogation, the "confession

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way/2014/12/17/371534533/s-c-judge-says-boy-14-shouldn-t-have-been-executed.

46. See Campbell Robertson, *South Carolina Judge Vacates Conviction of George Stinney in 1944 Execution*, N.Y. TIMES, Dec. 18, 2014 at A28; Bever, *supra* note 45.

47. Karen McVeigh, *George Stinney Was Executed at 14. Can His Family Now Clear His Name?*, GUARDIAN (Mar. 22, 2014), <http://www.theguardian.com/theobserver/2014/mar/22/george-stinney-execution-verdict-innocent>.

48. Order Vacating Judgment, *Stinney*, *supra* note 45, at 2.

49. See Robertson, *supra* note 46; *George Stinney Exonerated 70 Years After Execution*, NORTHEASTERN U. (Dec. 17, 2014), <http://www.northeastern.edu/law/news/announcements/2014/crrj-amicus-stinney-12.17.14.html>.

50. McVeigh, *supra* note 47.

51. See Bever, *supra* note 45.

52. McVeigh, *supra* note 47.

53. Bever, *supra* note 45.

54. See *id.*

55. See *id.*

56. McVeigh, *supra* note 47.

57. Order Vacating Judgment, *Stinney*, *supra* note 45, at 9–10.

given was a coerced, compliant false confession and is unreliable.”<sup>58</sup>

Calling it “a truly unfortunate episode in our history,” Judge Mullen stated, “[W]e are called to look back to examine our still-recent history and correct injustice where possible. Our common law provides for extraordinary relief . . . where great and fundamental injustice has occurred.”<sup>59</sup>

Judge Mullen was right and courageous in her ruling. But she is wrong about one thing: the injustice cannot be corrected. Not now.

### CONCLUSION

The Stinney case is a blueprint for why the death penalty is antithetical to the values of the American justice system in which it continues to reside. The death penalty is much like an unwelcome, embarrassing, high-maintenance guest that has stayed too long. George Stinney was put to death with a high-speed court system fraught with bias, lack of due process, a lackluster defense attorney, public outrage de jour, racial animus, and a less-than-competent police investigation.<sup>60</sup> This was not due process; it was an electrocution with a few preliminary formalities.

Soon George Stinney may be added to the list of 150 people on death row that have been exonerated since 1973.<sup>61</sup> But it is too late for him. He will not be released from prison after years on death row. There will be no tearful reunion with his family. He lies dead in the grave. It is also too late to find the murderer of the two young girls whose fate was so tragically linked to his.

Sadly, George Stinney was not the first, and he will not be the last, to be put to death without a fair trial. The electrocution and subsequent exoneration of fourteen-year-old George Stinney has broken my heart. For me, it was the tipping point. I can no longer support the imposition of a penalty so final in nature, yet so fraught with failures. Now, like an obnoxious reformed smoker, I do not think anyone else should either.

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58. *Id.* at 13–14; Bever, *supra* note 45.

59. Order Vacating Judgment, *Stinney*, *supra* note 45, at 27.

60. See Bever, *supra* note 45.

61. See *Innocence: List of Those Freed From Death Row*, *supra* note 8.