

## WITNESS TO INNOCENCE

**Shabaka WaQlimi\***

**South Royalton, Vermont**

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This is a strange experience for me because I usually don't talk in a state that doesn't have the death penalty. I'm usually a hostile witness. I'm used to coming to college campuses where there has been a protest as to why they was allowing this murderer to speak. I'm going to tell you a little story; it just happens to be true.

At the tender, bright age of twenty-three, going on twenty-four, I was charged with three horrific crimes: murder, rape, and robbery. I protested my innocence, but I was tried, I was convicted, and I was sentenced. I received a life sentence for the rape, a consecutive life sentence for the robbery, and I received death for the murder. I can only guess that by giving me these sentences, it was the judge's thought that if I somehow defeated death, I would remain the rest of my life incarcerated.

I was taken from Hillsborough County jail, located in Tampa, Florida, to Florida State Prison, where I spent the next fourteen and a half years of my life. I was put in what I call a cage, and for the first three and a half to four years on death row, I survived primarily on the strength that I gained from my anger and my hatred of everyone that was involved in my case.

You see, I didn't have the wherewithal to hire an attorney, so the courts appointed me a gentleman by name of Mike J. Shea, three years out of law school with no training or expertise in capital law. Mike did the best he could. But for the first three and a half to four years, I was angry at him too. And in that cage, and on death row, you couldn't concern yourself about guilt or innocence or whether the person next to you was guilty or innocent. And the reason was because regardless of what the status of your case was, each and every one of you had one common goal—because everyone lived less than one hundred yards from instant death. And in that cage, you tried not to make friends, because you knew that sooner or later one of you was going to take a walk. But being humans as we were, that

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\* Shabaka WaQlimi was convicted of rape and murder and sentenced to death in 1974. Mr. WaQlimi spent thirteen years on Death Row. His wrongful conviction was overturned fifteen hours before his scheduled execution. In 1987 his pro bono attorneys obtained a stay from the Eleventh Circuit Federal Court of Appeals based on prosecutorial misconduct. "The court found that the prosecutor had knowingly allowed and exploited perjured testimony from the State's star witness." Press Release, Vermont Law School, Exonerated Death Row Inmate to Speak at Vermont Law School (Nov. 7, 2007), [www.vermontlaw.edu/media/emp\\_medpre\\_template.cfm?doc\\_id=1432](http://www.vermontlaw.edu/media/emp_medpre_template.cfm?doc_id=1432).

was very difficult: you made friends. See, the State of Florida killed sixteen men while I was there, and I came fifteen hours from being number seventeen.

I don't use the term executed. If I had been killed, it would have been murder because I had committed no crime. But being in that cage taught you something, it taught you no matter how big or how bad you may think you were, it would break you. It broke you down. Four people committed suicide while I was there. I attempted suicide in 1979, but as you see, I punked out. Sometimes punking out is good. But one other thing about that small cage, ladies and gentlemen, is that each and every day you have a decision to make. You have a decision as to whether or not you will become a plaything of circumstances. It is a cage in which you live and it makes you want to cry, it makes you want to scream, to yell out, but you can't. And the reason why you can't is because society says you are a monster with horns on your head, and therefore you have to be removed from the greater part of society. It is a place, ladies and gentlemen, that I do not wish for my enemies. It is a place where in the night when the hours are getting slow, and you want to cry, you want to yell, you want to say, Lord have mercy! Momma please help me! But there's nobody there. And that's when you realize just how alone you are. That you want to reach out and touch another human being, but you are not allowed to reach out and touch another human being.

But each and every day you have to dig down, you have to reach with just this much, and you can see I don't have fingernails, but just that much to survive today. Everyone, no matter which walk of life we come from, we have our own unique way of surviving. So I developed what I call the toothpaste-tube way of surviving. Now what I mean by that is, all of us in this room use toothpaste every day, and when we look at that toothpaste tube, no matter how old or wrinkled that tube becomes, we all know if you squeeze it just right, something will come out every time. And that's all you needed, just that much, to survive each day. To rise above dehumanization because, you see, there were a bunch of sick people trying to take your life. And you had to do something about it.

In my case, three years after my being on death row, I learned my lawyer had left, that I was indeed alone. You see, the Florida statute at that time said that the lawyer who handled your trial was the lawyer that handled your initial appeal to the Florida Supreme Court. But if that lawyer left your case, you were not bound by statute to receive another lawyer. So in August 1977 I found myself alone. A high school dropout. I didn't know a damn thing about the law, but I hit the books. I studied and I kept myself alive from August of 1977 until November of 1981 when I found an appellate attorney.

Ladies and gentlemen, in Florida they have what they call a two-stage process. Stage one is called Death Row, which has that tiny cell I was talking about. But once your death warrant is signed, they remove you from that small cell and they place you in a much larger cell, which they call Death Watch. Now Death Watch is a little bigger cage and is located exactly thirty feet from the electric chair. Now you spend an average of twenty-one to twenty-three days in this cell. And there are only two ways out: you get a stay of execution, or you leave in a pine box. There is nothing in between. And also during your stay on Death Watch, you are treated to what we then jokingly called the Presidential Treatment. And the Presidential Treatment consisted, ladies and gentlemen, of you sitting in that cell and listening to that electric chair being tested twice a day and knowing that it is being tested in your honor. Sickening.

Have any of you ever heard the sound of electricity? Have you ever heard that crackle, crackle—knowing that's you? That's *you*. It can make a person insane. You see, there is a ritual that goes on while you're in that cage. About seventy-two hours before your appointment with death, a civilian will be escorted in by a lieutenant, and you'll be asked to step outside of the cage. And the civilian will have a tape measure in his hands, and he'll put that tape measure around your chest, around your waist, and down the inseam of your legs. See what's going on here? The State of Florida is very generous; if your family cannot financially buy you a burial suit, one is being measured just for you. That's sick.

And also while you are in that cage, a lieutenant will sit from where I am to you, and his sole purpose of sitting there is to make sure that you do not commit suicide and therefore deny the State its right of killing you. That is sick ladies and gentlemen. And they go even further. They will have the audacity to ask of you what it is you would like for a last meal. You can have anything under the sun, especially prepared by a chef. But the ritual most of all that got to me, and which I violently protested, was the incident I just described when they was putting that tape measure around my body. I was just standing there and they was going about their little deed as though I was an inanimate object. And something just rose up inside of me. And it was at that moment that I was determined, if I was going to be killed, they was going to do it with some dignity. I got my butt whooped, but it felt good.

Fifteen hours before I was to be put to death, I received a stay from the U.S. district judge. And I remember to this day that he granted the stay, and he made sure to point out that he was doing it very begrudgingly because, you see, the State of Florida had had my case for nine years. It wasn't until after my warrant was signed that my case was let loose. So, very

begrudgingly he granted my stay because it was my first time in a federal court. And an interesting thing took place right before my warrant was signed. The assistant state attorney who was handling the case for the State of Florida—it was the first time this ever happened and it hasn't happened since—interrupted my clemency proceeding to tell Bob Graham and his cabinet that he, the assistant state attorney, had serious doubt about my guilt. Three days later, my warrant was signed.

I would be remiss if I didn't tell you another story so you can see where my mind was back then. In 1979, my oldest brother Willie Brown was living in Lyons, Georgia. He needed a kidney transplant. His doctor examined my siblings, and then he came to Florida State Prison to examine me. Bam! We matched. But the Department of Corrections said that I couldn't go to Alliance to give my brother a kidney, and security was given as the reason. I understand that. That's reasonable. You don't want to take a person off of Death Watch not knowing if he is guilty or innocent, because he might escape or hurt somebody. It was reasonable. So my brother's doctor responded by saying they would transport my brother from Alliance to Gainesville, Florida to Chance Teaching Hospital. I want you to listen very closely: Chance Teaching Hospital, located exactly twenty-two miles from Florida State Prison and Death Row, was the hospital back in 1979 and is the hospital today, November 13, 2007, in which prisoners, death row prisoners included, were taken when they became ill. Y'all hear that?

Once again I was denied giving my brother one of my kidneys, and once again security was used as the reason. Nine days later, ladies and gentlemen, my brother died because he could not find a kidney donor. I live my life knowing that my brother is not among us because I was somewhere where I never should have been. I maintain that the State of Florida killed my brother. I even go a step further and maintain that my death sentence was carried out on my brother. Because you see, there was no legal reason to deny me that second time—none whatsoever. So I am told that from a Christian standpoint I should forgive and turn the other cheek. But see, I have my own saying. I have no problem whatsoever forgiving, but I make it a point to remember my enemy's name. I don't forget that. Because you see, those are two separate things there.

Now people that support capital punishment, I have no problem with them. It is not my job to convince anybody to believe one way or another. I stand before people when I talk to them, so that they can look at me and see for themselves. As long as there are things there that we call human hands, as long as human hands are involved with anything, mistakes will be made. The question is, how many are we willing sacrifice for the

betterment of the whole? Are we willing to get rid of everybody on this side of the room here to save those over there? Because that's what we're doing. We have about 30,000 homicides in this country a year, and we get ourselves a big funnel, and we drip out about 2500 that we charge with a capital offense. Then we get another funnel, a little smaller one, from which we drip out about 1500 that we convict. Then we get a smaller one still, and we drip out about another 500 who we give the death penalty to. And then we get a much smaller funnel in which we drip out about 150 that we actually kill. And my question is: what makes those 150 human beings we kill more horrible than the other 29,000 that we give a chance at repentance? So once again, we get down to the selection process.

There's always been a selection process. We live in a country that has almost four hundred years of slavery as its legacy. We cannot overturn that in a night's time. We must be honest with ourselves because it wasn't that long ago that we just got rid of our own little apartheid system. The fact is that in certain parts of the United States right now, apartheid is well and good. We have made a lot of strides in this country. As law students, you are aware, you *should* be aware, that there are laws on the books in the United States of America that date back to 1832 that we must abide by. And I question: why should I, or any other African American person abide by those laws because in 1832 my people weren't even considered human? And yet we must abide by those laws. And that's what it always boils down to: it's the law. Slavery was the law; it didn't make it right. That women in this audience couldn't hold onto certain jobs because they were female was the law, but it didn't make it right. We, of all nationalities in this room, couldn't gather as we do tonight. That was the law, but it didn't make it right. Man makes law. Man can change law.

I was asked since I've been here today: why am I here in Vermont? Vermont doesn't have the death penalty. I am here to ask you to make sure it stays that way. Right now, you are unique because you do not have any innocent blood on your hands. But let's say a really horrible crime takes place, whether it involves a child, whether it involves the killing of a law enforcement person, you will hear a cry for the death penalty. Because, once again, it goes to whose life we value. Timothy McVeigh is a good example. He was accused, and I understand it was, what, 168 people died in that bombing? But what did Timothy McVeigh go on trial for? What was he charged with? He was charged with killing 8 law enforcement people. Eight law enforcement. So, the other 160 didn't matter. The 8 law enforcement personnel lives were more valuable than the other 160. And this is what he got the death penalty for.

And I asked, and I receive a question a lot: Mr. Shabaka, do you have

anger? Are you bitter? And you know, my answer's always the same. Yes, I have anger, I have bitterness, I have hatred, and I have frustration. Why shouldn't I? Those are basic human emotions, and I am human. And I will never deny my humanness. If a person has a problem dealing with that, that's not for me to talk to. I'm not a psychiatrist. I can't help you. You know, that's a personal problem. But Death Row, ladies and gentlemen, it is a place of horror. It is a place in which your every waking moment is spent wondering what today's going to be like. Am I going to have some crazy officer, some young officer with a uniform, stick his chest out and mess with me today? Every day you have to make a decision. Every moment you have to make a decision. You see, you are confined to a cell twenty-four hours a day. You are let out of that cell for two hours of recreation, and I must add, weather permitting. If it is your turn to go outside and you have inclement weather, you must wait until your turn comes again. So it might be two or three months before you get out. But you have to deal with it.

But we all deal with our own little demons, and we all know we all got 'em. There's evil and good in all of us. I'm not denying mine. I know it's there. And as I was saying earlier this evening, while I was talking to a class here at the law school, I sincerely hope that those emotions that I just described, if they ever show their ugly head, I truly, truly pray that I will be by myself because Shabaka don't know whether or not he is strong enough to deal with it all. I might be able to deal with one or two, but if it all hit me at the same time, I don't know if I'd be that strong. And I don't want to guess because I don't know what state of mind I will be in. I might be going through a divorce. I might have just lost my job. I don't know what my state of mind will be. But if they all come right now, I'm strong enough to beat them back.

I am not here to tell you anything you don't know. I'm here to advise you to do your own thinking. Don't care what mamas think, what daddy's position is, sister, brother, or your friend. Do your own thinking. You see, I'm a true believer that nothing that originates in the heart is bad. And the reason why I say that is, everyone in this room, no one has to tell you when you do something wrong. Every time you do something wrong, you're immediately, Shit! I shouldn't have done that. You immediately know, and that's that—your heart. That's that. So why can't we, like the animals on a farm, get along? You ever notice how well they get along? Why can't we humans be like that? Why can't we get along?

I mean, what would have been accomplished by killing me? Extend somebody's life five or ten years? Giving somebody a chance at longevity? Longevity's promised to none of us. And why do we love killing so much?

I mean, we actually get off on killing. We love it. We love it in our books. We love it in our movies. We love it in our games. Even now, the animated movies have got a lot of violence in them. We just love it. It's money making. And you know the sad part about my case is, there's two ironies in that case. One, I spent fourteen and a half years locked up. The boy that killed her, walked free. Two, if I was given a third consecutive life sentence, I probably wouldn't be standing here. I'd probably still be fighting that case, trying to get some lawyer, some judge to listen. And that's the truth.

The state of Florida spent \$2.8 million trying to kill me—\$2.8 million was spent trying to kill me. That's a lot of money. You see, another thing about Death Row is that when someone was killed, we didn't have to see a white handkerchief waved. We knew. We instantly knew because as human beings, we stink when we burn. There's a special stench that stays in the air. So we knew. It is a sobering moment, like being in church when the preacher asks for a moment of silence. That's the respect we gave to our fallen brother, regardless of what we thought of him—if he was guilty or innocent.

And like I said, we all knew we lived less than a hundred yards from instant death. And believe me, ladies and gentlemen, I got to know death up close. Up close and personal. And it was decided, I wasn't ready. I wasn't ready. Why was I saved? I don't know why I was saved. I don't know why I walked out with my sanity. I don't know why, after twenty-seven years, I'm still talking about this issue when I don't have to. I owe no one nothing. I paid my dues. So maybe I should be asking that question I asked earlier: why am I still doing it? See, I'm still doing it because they're still killing, and I know innocent people are being killed. I can't live with that. I have to do something, if nothing other than to try to put a face to this issue.

See, most of the time when we discuss this issue, we don't have a face. As law students, all you have is just a rough black and white copy; you don't have a face. But I put a face to it because, see, I *am* that mistake, and there are 123 others like myself who verify that mistake. But people will say, Mr. Shabaka, doesn't your release prove that the system works? And as graciously as I can, I always respond with a soft voice, no. That's as soft as I can get, believe me. See, I stand before you because the system did not work the way certain people advocated. If it had, I would be dead. I'd be a dead man. And I can't explain to you what it felt like when I first got out. I know when I first got the word, I was so afraid. I mean, were they trying to trick me? Was I really getting out? I was so afraid that they were trying to set me up to have me walk out that door and shoot me in my back.

And I committed a criminal offense when I got out, which today we call panhandling. I panhandled three quarters to call my attorney. And after he verified it, I used the second one to call my mom; she thought I was jiving. And I called my lady friend; she thought I was jiving. So then my lawyer came and got me. He took me to his office, smoked a cigar, drunk I think about a glass of Michelob and got high as hell! I mean, the body wasn't ready for that! You know? And he put me up in the Holiday Inn for my friends from Gainesville to come down and pick me up the next morning. And I always tell the story that when we were getting ready to leave, my lady friend got in the back seat, and an attorney friend of mine got behind the wheel, and I got in the passenger side. And Susan was just looking at me, just staring. And after awhile, I said, Susan, why are you looking at me like that? Matter of factly, she said, Shabaka, you have to put your seatbelt on. Simple enough. And I remember, I turned to her and in a very cold voice, I said, Susan, for the past 15 years, I have done my damndest to prevent some sick MF from strapping me in a chair, and now you're making me strap *myself* in one?! No way; ain't gonna work! I can laugh at that today.

And they took me back to Gainesville in the clothes that I wore in 1973 when I was arrested, bell bottoms. I mean, it was the 70s look, except I didn't have the afro. People were laughing at me, and so they had to do a clothes drive for the boy. They had to get the boy some rags—they said I couldn't walk around like that. And I wanted some barbecue, and ladies and gentlemen, I must admit that was the sorriest thing I ever ate. It was lousy.

I always like asking my audience before I end, and I would like a couple of you to answer if you know: When I got out, what do you think that I wanted most of all, more than any other thing? If I could have anything under God's blue sky, what do you think it was? Not sex, not sleep, not a good meal, not a Coca-Cola, not my mother, and especially not privacy; I had too much of privacy. That was the *last* thing I wanted. Believe me, ladies and gentlemen, it is something that we use everyday. All I wanted was an ice-cold glass of water. After fourteen and a half years of drinking luke-warm water, I wanted to taste some ice water. And that sucker tasted *so* good. And that's all I wanted.

But as for my mom, I just lost my mom this past March. She's very dear to my heart; she was my strength because that's my mom. My family, we were wondering whether or not she was going to survive to her birthday, which is on Valentine's Day, and she survived. She turned 107 on Valentine's Day. We lost her on March twenty-first, and I don't think that I've actually gone through my grieving process. I was told that I don't

show my grief; I don't wear it on my shoulder. Just like a person could walk by me all day long and never know what my history is because I don't show it, but my mom was my heart and soul. And I can't explain to you after I got out and I drove—I'm originally from Charleston, South Carolina—and we drove down to Charleston, and she came out on the porch, and she saw her baby. And her face lit up, I lit up, and damn that was a good moment. There's nothing like it. There's nothing you could write down on paper and describe. It was just one of those moments in time that only come once in a lifetime. And when I was on Death Watch waiting to be killed, she was my main concern because I had no way of letting her know, Mom, I'm going to be all right; they ain't gonna kill me. And I couldn't do that. I couldn't let her know. And I learned right after I got the stay that she had had a heart attack and suffered a stroke when she learned that they were about to kill me. You see, there's victims all over. I know about victimization. I got out; I could have easily worn the label that was placed upon me. And if I had, I ask, what could have been done to me? Wasn't a damn thing they could have did to me, which they already hadn't done, other than take my life. You see, that's the trouble with retribution that we must be careful about. I didn't get a chance to see my daughters grow up, but I am happy to report that three and a half years ago, I had the great blessing from above to walk my baby daughter down the aisle to give her away.

And so, I've been blessed. I have a good wife, and this past June, the twenty-second, we just celebrated our eighteenth anniversary. She is the type of person that slaps me—she's got a habit of sneaking up behind me and slapping me on the back of the head when she thinks I'm out of line—you know how your woman is. And she's like most of y'all: she's got a PhD in cussing. Ok, she's a *real* southern, cussing gal. And she do it very nasty too, but she has held me together, and I am the man that I am today because of her. And I am very fortunate to have met her in the laundry mat. And, ladies, all you ladies, I want you to know that I met her in a laundry mat and every Saturday, you'll find Shabaka in the basement doing the laundry—doing my honey dos. That's the main one.

But I'm doing good, ladies and gentlemen. I'm doing real good. I got a job. I don't know if any of you have every heard of Covenant House, but I work for Covenant House Washington, which is an organization that works with at-risk, runaway, and homeless youth, ages sixteen to twenty-one. It's a very humbling experience. You've got to have heart or don't get involved at all because there's a lot of pain. And with these youth, being in the Washington D.C. area, 99.99% of them have either witnessed or know someone that has been killed. And the females, it's very difficult for our

male staff to develop a relationship because most of them have been abused sexually, physically, or emotionally, so it's kind of hard—it's like the Atlantic Ocean and the Pacific Ocean trying to develop trust. But when one comes to you and says, Mr. Brown, can I talk to you? you might want to say: Yes, I got it. I got that trust! But you don't say it. And it's so good to work with these young kids because I never knew how many issues they had. I never realized the mental health problems that all these youths have. I never knew so many youths suffered from bipolar disorder. It's very sobering. It makes you humble. It makes you not think about what happened to you because no matter what your problem is—whether you and your wife are getting together, your children, or whatnot—when you walk through the door that morning, you put all that aside because you can't help that child if you're distracted. And once again, you've got to go to the toothpaste tube because someone needs your help. And that's all I'm doing ladies and gentlemen: giving something back because twelve or thirteen individuals that didn't know me from Joe Blow believed in me, and they helped me prove my innocence.

And I ask you to remember, when you get your degrees, to remember that there are a lot of unfortunate people in this country. There are more Shabakas on the inside—not just on death row—but in prison, period. And I ask you, as the old saying goes, to never ever look down on a person unless you're going to reach down and pick them up. If you're not going to do that, don't look down because that will get the evil side of us. That side we try to keep hidden. And actually, most of all, be true to yourselves. Be true to your beliefs, your ideals. And somehow, remember one thing: don't give your power away. We give a governor of a state the almighty power to determine who should live and who should die. We don't give our teachers that kind of power to teach us certain things in the classroom. Not even our ministers to say a certain thing from the pulpit, but yet, we will give a governor—one person—the ultimate power not only to decide who's going to die, but *when* that person's going to die. And I always wonder what makes this single individual any more wise than us? Why do we give away our power? A good example just happened a couple of years ago: 9/11. After 9/11, we so proudly gave up our rights to so many things—rights you can't regain. Why? Because Americans are a people that if you get them emotional, they will do what you tell them to do. They will believe what you tell them to believe. All you have to do is get them emotional, and we are an emotional society. And we act from emotion, whether we want to or not, but it's just the way we are.

Once again I thank you for your invitation. This is my first time in Vermont, and as I was telling Professor Michael Mello when I first was told

about coming here, I was hesitant because I did a little research on Vermont, and I found that Vermont has less than one percent African Americans in the population. And the thought crossed my mind that was it going to be another setting that happened years ago when I was at trial when I had an all-white jury, white judge, white prosecutors, white defense attorneys, and I was the only black dude there, and I remember sitting there when the thought crossed my mind: Damn, am I the guest of honor at a KKK meeting? But there are so many brothers and sisters here on campus—it's good to see you here tonight. Thank you, ladies and gentlemen.