

# ED KENNEDY'S RAINBOW, STEVE BOOKER'S POETRY, AND DICK JORANDBY'S SOUL: REMARKS FOR A FUNDRAISER FOR DEATH PENALTY FOCUS OF CALIFORNIA

Michael Mello\*

*Stephen Todd Booker is a remarkable poet. The emotional strength in his poems is to be marveled at, especially since it was written on death row, in the shadow of the electric chair . . . . [Unlike the 15th century poet Francois Villon who bemoaned his fate as he faced the gallows] almost every poem in this book has a herculean calm, a mighty lifeblood which may defeat the angel of death.*

Menke Katz<sup>1</sup>

I just want to savor you all for a moment. The State of California reflects America's divided soul on the matter of capital punishment. On the one hand, California has the biggest death row in the western hemisphere. On the other hand, California also has Death Penalty Focus, Mike Farrell, and Lance Lindsey. And you. All of you. An overflow crowd, packed into this large space, with standing room only. My Lord, this turnout inspires me. You all inspire me.

I want, first and foremost, to thank Mike Farrell and Shelly Fabares for hosting this event; Death Penalty Focus of California and Lance Lindsey for

---

\* ©2001 Michael Mello, Professor of Law, Vermont Law School.

This essay is the text of a presentation I prepared for the Ninth Annual Summer Party and Auction of Artwork by Death Row Prisoners, a fundraiser for Death Penalty Focus of California. The event was held at the Frumkin/Duval Gallery in Santa Monica, California, on July 29, 2001.

I want to thank some of the people who made my and Deanna's stay in LA delightful: Mike Farrell, Lance Lindsey, Jeff Kaufman and his wonderful family, Jon Weiner and Co., Andrea Grossman, Micki Dickoff, Christie Webb, Sonia Jacobs, Tony Valdez, Pete and Joyce Peterson, Brett and Cassie Peterson and their delightful children.

This essay is dedicated to Mark Olive. I wrote and presented this essay in the world prior to September 11, 2001. September 11 changed much. *E.g.*, Michael Mello, *Friendly Fire*, 38 CRIM. L. BULL. \_\_\_ (forthcoming March/April 2002) (discussing the impact of September 11 on the law of privacy and expressing my support for the war on terrorism).

On the afternoon of September 11, I was scheduled to teach my capital punishment seminar at Vermont Law School. The law school closed around noon that day, and my seminar was cancelled. A student in the class found me in my office and asked, "So what do you think about capital punishment now?"

It was an entirely fair and proper question, and I told him so. However, the terrorist mass-murders of that morning had changed nothing about my opposition to capital punishment as a legal system. *See generally* Michael Mello, *A Statement to New Hampshire Legislators: Why you should Abolish Capital Punishment*, 37 CRIM. L. BULL. 27 (2001). I have long acknowledged that people are capable of great evil. The core question of capital punishment is how a civilized society ought to respond to those who commit evil against it.

1. STEPHEN TODD BOOKER, WAVES AND LICENSE (1983) (back cover, quoting Menke Katz).

sponsoring it; the honored guests, Antonio Villaraigosa, Marg Helgenberger (congratulations on the Emmy nomination for *CSI*), Alan Rosenberg and Peter MacNicol; and all of you for coming.

I want to thank Mike Farrell for something else as well. His involvement in the “Crazy Joe” Spaziano case—an innocent man on Florida’s death row who came within days of being executed in 1995—was pivotal in saving Joe Spaziano’s life.<sup>2</sup> Mr. Farrell wrote the Foreword to my book about Joe’s case—which I’ll be signing later on.<sup>3</sup> Mike Farrell is a hero of mine. I’d like to read just a couple of paragraphs from my book about Joe’s case to explain why in Mike Farrell you in Los Angeles have a true treasure in your midst.

Just to set the stage a bit. It’s the summer of 1995, and Joe Spaziano—the innocent guy—has just survived his fourth death warrant. We all know the reprieve is only temporary, that a new warrant would be signed any day, and that Joe would almost certainly be executed on that warrant. I’m trying to use the time between the warrants to explore novel, creative, extra-judicial methods of keeping my innocent client alive long enough to celebrate his 50th birthday. And so:

If memory serves, it was Mike Farrell who came up with the idea of an open letter to Florida Governor Lawton Chiles, signed by as many prominent people as possible, asking the governor to grant Joe clemency or pardon. It was contingency planning. If (when) a new death warrant came (meaning that Chiles had denied the clemency petition now pending), and if (when) the Florida Supreme Court summarily denied the out-of-time rehearing petition, and if (*when*) I hung tough with the decision not to take Joe’s case into federal court, we’d be left with nothing to do as Joe’s life trickled away. Presumably *Miami Herald* and others would continue investigating and writing about the case, but I’d have no control over any of that.

Conceivably, the media pressure (along with pressure from Richard Capozzola’s Sons of Italy platoons) might make Chiles want to stop the noise by stopping the execution, at least temporarily. If that happened, we needed to provide Chiles with an escape hatch—a rationale for staying Joe’s execution while saving face. We needed to affect the political

---

2. MICHAEL MELLO, *THE WRONG MAN: A TRUE STORY OF INNOCENCE ON DEATH ROW* 247 (2001).

3. *Id.*

atmosphere so that doing the right thing would also be the path of least resistance.

Until July 1995 I had never owned a TV, so I didn't recognize Mike Farrell's name when he called me out of the blue to offer any help he could provide on Joe's case. I was frazzled when he first called, and I said I'd get back with him. When I did, via fax, I misspelled his name "Farrell." Deanna, my significant other, *did* know who he was—he had played the character B. J. Hunnicut on the TV show M \*A \*S \*H—and I faxed him a second note apologizing for my previous abruptness. He asked me to send him the briefs and transcripts in Joe's case; after I did, I expected never to hear from him again. But to my delight, he played a critical role in Joe's case in the coming weeks. You know, it's the damnest thing. From Mike Farrell's generous introduction you'd think I saved "Crazy Joe" Spaziano's life. But I didn't. I just got the credit, because I was Joe Spaziano's lawyer. The *real* credit for saving Joe's life goes to the rabidly pro-capital punishment newspaper *The Miami Herald*. And Mike Farrell. That's one of the dirty little trade secrets in the business: The lawyers always get the credit for the hard work of others. However, I'm already getting ahead of my own story.

One great perk of doing deathwork is that you get to meet some extraordinary human beings. Mike Farrell is one. Farrell is directly involved in more capital cases than most people realize, and certainly far more than I'd realized. Almost always he works entirely behind the scenes: networking, bringing different people together, lobbying gently and invisibly. He sees his job as putting other people in the spotlight (condemned prisoners, their lawyers, social scientists, political activists) while never leaving the shadows himself.

Work is the operative word. Farrell worked his tail off for Joe Spaziano (and, at the same time, for Barry Fairchild and Mumia Abu-Jamal, and doubtless others he had no reason to mention to me, which is kind of the point). And as important as his networking on the open letter was, his noodling with me about the case's facts and investigation and tactics and strategy were even more valuable to me during that chaotic time.

My personal predisposition toward solitude has meant that I possess neither the skill nor the constitution for grassroots political organizing; I delight in the *theory* of political organizing, so long as I personally don't have to organize actual groups of people I don't already know. Groups of people make my feet itch. It's probably no accident that I live in Vermont.

In Joe's case this didn't matter, however, because three organizational and networking wizards were loaded for bear and ready to rock and roll.

They divided the world into three parts, one for each of our operatives. Richard Capozzola would expand his Sons of Italy mobilization to include the forty-nine other states in addition to Florida. Mike Farrell would work his awesome personal and professional network in Hollywood and beyond. Eric Freedman, a Hofstra University Law School professor and a former associate with the Paul, Weiss law firm (and a fellow traveler who I've always suspected has at least an ember of arson in his heart) would put out an Internet call for law professors to sign on to our open letter.

First we needed to create the open letter. Borrowing heavily from a superb article about Joe's case written by Colin Wentworth for *Moon* magazine, I knocked out a draft. Mike Farrell rewrote it and, as the open letter evolved over the following two weeks, our objectives became more ambitious. The letter would ask for a new trial in the Croft rape case as well as in the Harberts murder case. The letter would be directed to the Florida attorney general in addition to the governor (the attorney general is one of seven members of the executive cabinet, the clemency-granting body in Florida). Farrell thought we needed to ask for more than we expected to get, so the governor would have some wiggle room for compromise. Ask for a clemency hearing and you get nothing. Ask for commutation of the death sentence and you get a clemency hearing. Ask for absolute pardon and outright release and you get commutation of the death sentence to life imprisonment without possibility of parole. You never know. But it's certain that if you don't ask, you don't get.<sup>4</sup>

As I look around at this artwork by California's living dead—and one former Florida death row prisoner, an old client of mine named Ed Kennedy—I'm struck by the fact that capital punishment is, at its core, a collection of stories about *people*. Ghost stories. There is the story of the crime and the crime victims, of course. There is the story of the legal combat to either kill the killer or to spare him or her. There is the story of the convict's family, the most invisible victims of legal homicide.

But, as these paintings show, there is the story of the condemned soul as well. Each of these pieces of artwork tells a human story and hints of a larger story as well. The stories told in these paintings—and the backstories of those human beings who created this work—will survive regardless of whether California succeeds in killing these artists.

That, after all, is what stories do: bring the dead back to life. And that is why I want to talk briefly about the story of Edward Dean Kennedy, a

---

4. *Id.* at 247-249.

friend and former client of mine.<sup>5</sup> A painting by Ed is included in today's auction. This is his photo, which appeared on the cover of Lou Jones' haunting photography book *Final Exposure: Portraits From Death Row*.<sup>6</sup>

I represented Ed Kennedy in 1985 and 1986, when I was a lawyer with a Florida capital public defender office called CCR.<sup>7</sup> My memory of CCR is like the jagged shards of a shattered mirror. We worked pretty much around-the-clock, and it was insanity. I was twenty-six years old, a lawyer for two years, and I was responsible for thirty-five cases. That was nuts, but I was working in a madhouse. We brought in portable cots so we could steal a few hours of sleep as we lived in the office for days at a time. We lived on takeout-pizza and Chinese food. Late one night, I calculated my hourly salary since starting to work at CCR. It came to ninety seven-cents-per hour. I wrote in my diary that night: "I could make three times the money at a minimum-wage job, flipping burgers at McDonald's or pumping gas; well, back to work."<sup>8</sup>

We were the only government office with a wet bar, donated by a pro bono lawyer we had helped. He had sent us a case of Chivas Regal scotch, which was way too classy for us and was traded at a local liquor store for cases of low-rent vodka and cheap red wine.

Our client, Edward "Sonny" Kennedy, was scheduled to be executed in Florida's electric chair on June 17, 1986. He was African American, and had killed two law enforcement officers during his escape from a hellhole of a medieval prison in northeast Florida.

While serving a sentence for murder, Ed had escaped from Florida's maximum security prison (called "The Rock," named after its counterpart in San Francisco Harbor). After escaping, Ed hid in a mobile home. The problem was that the particular mobile home was owned by two white peace officers, Floyd Cone and Florida Highway Patrol Trooper Robert McDermon. The two peace officers had been part of the massive manhunt for Kennedy; they returned home; Kennedy grabbed some guns from the trailer (I think it's a state law: At least one rifle per trailer); a firefight ensued, and Ed Kennedy was the only one still standing when the shooting stopped. And he had done it in what we call "Klan Country," Union

---

5. See generally MICHAEL MELLO, *DEATHWORK: DEFENDING THE CONDEMNED* (forthcoming from Univ. Minn. Press, Fall 2002).

6. LOU JONES, *FINAL EXPOSURE* (Michael Radelet ed., 1997).

7. See generally MICHAEL MELLO, *DEAD WRONG* (1997); Michael Mello, *THE WRONG MAN* (2001).

8. Michael Mello, *In The Years When Murder Wore The Mask of Law*, 24 VT. L. REV. 583, 731 (1999).

County, only a few miles away from the building that housed Florida's electric chair.

Ed Kennedy was a quiet soul, and I came to like him very much. But, except in the end when it was too late, his case never really had much in the way of legal issues. His trial lawyer was inexperienced and pretty inept, but not bad enough to matter constitutionally. His lawyer did not fall asleep during the trial, as happens so often in Texas capital cases that there is a body of law addressing the "sleeping lawyer syndrome." (The cases say that sleeping is ok, so long as you only do it during non-crucial portions of the trial.) However, Ed Kennedy was African American, and there had been only two other Black families in the small Massachusetts town where Ed was raised. We sent an investigator to the town, in hopes of finding evidence of racism. The problem was that out of Ed's two African American childhood friends, one had gone on to become a doctor and the other a lawyer.

Ed Kennedy loved New Orleans jazz, and he was a really nice guy. He loved to paint. (None of these is a legal reason not to execute someone.) He painted mostly landscapes from his native New England. Tugboats in Boston Harbor. The fall foliage. That meant that Ed had a powerful visual memory. It also meant that, when he painted, his mind's eye never saw the prison bars that defined his existence in the 17 years before his death.

Anyway, in June 1985, during Ed Kennedy's first death warrant, the CCR office in Tallahassee was scrambling to finish the stay papers for filing in the state trial court in Jacksonville. Mark Olive,<sup>9</sup> my boss, was there in Jacksonville, chatting up the judge and his law clerks, while they waited for the papers to arrive. We also had a stay application pending in the US Supreme Court.<sup>10</sup> But DC was fogged in, and our papers were in a holding pattern above National Airport.

At noon, my co-counsel David Reiser and I got in a car to drive the Ed Kennedy papers from Tallahassee to Jacksonville. Every exit on I-10, we'd stop and call the office to see if the U.S. Supreme Court had ruled. None of us had slept in days. David was driving, and I was navigating.

Then I fell asleep. I must not have been doing much of a job navigating, because it took a while for David to notice I'd nodded off. David woke me up by screaming that we were lost somewhere in Jacksonville. He pulled over at a gas station, and I called the judge's office. The judge himself answered the phone, and he gave me directions to his courthouse. He also told me that it was 4:40 p.m., and that his office closed at 5:00 p.m. Sharp.

---

9. See generally MELLO, *supra* note 2.

10. *Id.*

We tore into the parking lot at 5:05. The courthouse was dark, and my boss, Mark Olive, was sitting on the courthouse steps. He informed me, with homicidal calm, that we were late. Then he broke into a broad grin. The US Supreme Court had issued a stay. I guess our stay papers had landed at National Airport after all.

So there we were, in the city of Jacksonville—a Navy town—with a car full of useless stay papers and time on our hands. So we decided to get blasted. Florida had a unique institution: drive-in liquor stores. We drove through a Jax Liquors and bought Wild Turkey and rum. For the two-and-a-half-hour drive back to Tallahassee on I-10, Dave Reiser drove. Mark and I drank. We all sang: Prince, Springsteen, and music from *The Rocky Horror Picture Show*. Mark and I got very drunk. And why not? Ed Kennedy had a stay. It was a Friday night. We could sleep it off on Saturday and come to work on Sunday morning. Three of our other clients had active death warrants at the time.

The drive-in liquor store is not what I most remember about Edward Kennedy. I remember him for a letter. It was a handwritten letter, and it now lives, framed, on my law school office wall.

In 1992, Ed Kennedy got a new death warrant and a new execution date. This date was real, and we both knew it. He wrote to me a few days before he was to be electrocuted. Kennedy's letter arrived while he was on Phase II of Deathwatch, which means that he mailed it from the very lip of the grave. This is what he wrote:

Dear Mr. Mello

I received your letter the other day and it was very nice to hear from you again.

I appreciate your concern very much and I know that you can see what the Federal Courts are doing with my appeal.

I know that you are angry about this but the best way that you can use that anger is to use it in a way that will turn it into a positive force rather than a negative one.

I would like to see you teach your law students what they are doing to me and others like myself, I believe the best thing that you can do is make people aware of just what these Courts are doing, this is the best thing that I believe that you can do to fight this thing.

Take Care  
Your Friend  
Ed<sup>11</sup>

---

11. Letter from Ed Kennedy to Michael Mello (original on file with author).

Ed Kennedy was put to death on schedule, at 7:00 a.m. on July 21, 1992, in Florida's three-legged, solid-oak electric chair. He was born in 1945, which put him at age 47, three years older than I am today. He never married. He had no children.

Near the end, though, Ed Kennedy did have a powerful legal issue. A few weeks before Ed was executed, the U.S. Supreme Court issued a landmark ruling in a case called *Espinosa v. Florida*, throwing out the portion of the Florida capital statute that authorized death if the crime was "especially heinous, atrocious or cruel."<sup>12</sup> Ed Kennedy's jury had based his death sentence on just such a finding.

Kennedy's appeals lawyers raised the issue, but the courts employed procedural technicalities to reject it.<sup>13</sup> Kennedy should have raised the claim earlier, they said. And so Ed Kennedy was killed on the basis of a legal technicality.<sup>14</sup>

An odd thing happened outside the deathhouse the morning Ed Kennedy was killed. A rainbow. Rainbows are extremely rare in north Florida; I don't know why. In my four years in the Sunshine State I never saw a single rainbow.

But, just moments after Ed Kennedy was pronounced dead, and as the witnesses to his execution filed out of the bunker-like death chamber, a radiant rainbow appeared in the misty dawn sky.

I do not want to make too much of this rare Florida rainbow. The rainbow was not a telegram from God telling us to keep up the good fight. Rainbows are naturally-occurring phenomena: They are caused by light refracting through atmospheric vapor (or something like that). Still, I like to think of Ed Kennedy's rainbow as a symbol of renewal, redemption, and hope. And now, whenever I see a rainbow, I think of Ed Kennedy and New Orleans jazz and paintings of landscapes. I do not think of his death when I see rainbows; he would hate it if his memory spoiled rainbows for me. Rather, rainbows make me think of his life and of the people he touched with his love.

Ed Kennedy touched a great many lives, and he was well-loved. His quietude touched everyone who worked on his case. That quietude came through in his paintings, I think, including this one. The thought that his artwork continues to touch people, even after the death of his body, would bring a smile to my friend Ed's face.

---

12. Michael Mello & Nell Medlin, *Espinosa v. Florida*, 22 STETSON L. REV. 960, 961 (1993).

13. *Id.* at 999.

14. *Id.* at 1001.

Ed Kennedy's paintings make me think of Steve Booker's<sup>15</sup> poetry. Like Ed, Stephen Todd Booker is an African American man on Florida's death row. As Ed Kennedy taught himself to paint while living on death row, so Steve Booker taught himself to write poetry while on death row. He has never attended a poetry workshop. He has never given a reading. Booker's searing poems, collected in two books<sup>16</sup> so far, make it difficult to dehumanize the poet who wrote them. Still, the poems were not enough to win Booker a life sentence. He remains on death row. Waiting. And writing.

Ed Kennedy's story and Steve Booker's story, and thousands like them, are the *real* capital punishment in America. You will not find the *real* capital punishment in law books or Supreme Court opinions or the stump speeches of politicians. The *real* capital punishment is a constellation of stories about human beings in extreme circumstances.

Tangible objects bear witness to the human hands that touched them, and to the circumstances surrounding that touching. During the Civil War, Abraham Lincoln was presented with a captured Confederate battle flag. He said: "Here is something material, something I can see, feel and touch. This means victory. This *is* victory."<sup>17</sup> What Lincoln was getting at, I think, was the idea that human beings are tactile creatures. I know I am. The act of touching an object—like this Union bullet from the Battle of Gettysburg I am holding in my hand—makes that battle more *real* for me than my library of books on the subject.

In the same way, this artwork makes capital punishment more *real*. These art objects hammer home the basic truth that death row prisoners are *human*. This may seem like a simple point, but it isn't.

Those who we want to kill, we must first dehumanize, demonize, and define as "other." But the one lesson I have learned from nearly twenty years of deathwork is that my clients are not really so different from myself. I have never killed anyone (that I know of), but I could have. There but-for the grace of God and impulse control go I.

Had a few facts in my life been different, I could have been the condemned client rather than the lawyer. Had I had a different mother and father. Had I been born Black. Had I grown up in Southeast DC rather than Arlington, Virginia. Had my family not been able to talk me out of dropping out or flunking out of high school. Had my high school guidance

---

15. I discuss Booker's case in MELLO, DEATHWATCH, *supra*.

16. STEPHEN TODD BOOKER, TUG (1994); STEPHEN TODD BOOKER, WAVES AND LICENSE (1983).

17. Michael Mello, *For Today, I'm Gay*, 25 VT. L. REV. 149, 240 (2000).

counselor not told me I didn't have the smarts for college, much less law school, and had I not been so stubbornly determined to prove the son-of-a-bitch wrong. Had I been arrested for the pot I smoked or the acid I dropped. Had Police Sergeant Schmirtz caught me that Halloween night I threw the cherry bomb into his squad car. No, it often struck me, as I sat across from my condemned clients in the visiting cubicles outside the colonel's office at Florida State Prison, that I could have been them, had I been a little bit less lucky.

Capital punishment may not be the most pressing issue confronting our nation or ourselves. There's AIDS in Africa and Houston. There's a U.S. Supreme Court on the road to overruling the 1964 Civil Rights Act. There's poverty and racism off death row as well as on it.

Still, the stories of Ed Kennedy—and of his California counterparts who created this artwork—should matter to all of us. The late Supreme Court Justice William Brennan perhaps said it best, in one of his last dissenting opinions before retiring from the court. Brennan wrote, “[i]t is tempting to pretend that minorities on death row share a fate in no way connected to our own, that our treatment of them sounds no echoes beyond the chambers in which they die. Such an illusion is ultimately corrosive, for the reverberations of injustice are not so easily confined.”<sup>18</sup> To the contrary, “the way in which we choose those who will die reveals the depth of moral commitment among the living.”<sup>19</sup>

In the end, we shouldn't abolish capital punishment because of those we are putting to death. Most of them have done hideous things; some of them may even deserve to die. I can't say. No person can really say.

No, we shouldn't abolish capital punishment for *them*. We should do it for *us*. We are killing people who are flamboyantly psychotic. We are killing people with mental retardation, with the minds of children. We are killing people who actually *were* children—minors, teenagers younger than eighteen, at the time they committed their crimes. We are killing Vietnam veterans. We are killing people who are totally innocent of the crime for which they were executed. We are killing minorities. We are killing the poor.

All this killing is bad—fatal, actually—for the people we are putting to death. But capital punishment is bad for *us*, too. It has corrupted our law and degraded our courts by turning good, decent people—jurors, judges, lawyers, governors, even the medical personnel who administer the actual machinery of death—into killers. It has made much of the world we

---

18. *McCleskey v. Kemp*, 107 S.Ct. 1756, 1794 (1987) (Brennan, J., dissenting).

19. *Id.*

consider civilized wonder whether our claims of human rights are nothing more than a cynical smokescreen for our own barbarities. We are killing a piece of our own national soul when we kill the Ed Kennedys of the world.

It will be abolished when our nation recognizes our common humanity with those on death row. This realization will occur because of people like Mike Farrell and Sister Helen Prejean and Susan Sarandon and you.

On the surface, things look bleak for our movement; the U.S. has the largest death row in its history (3,800 men and women). California has 603. Look below the surface, however. At the moment the U.S. is engaged in its first serious national conversation in half a century. Even conservative Republicans like George Will and Pat Robertson have begun to realize that capital punishment is a government operation: the IRS with the power to kill you.

Every movement needs its battle flags. There's a famous photo from the civil rights movement. An African American man is carrying a placard that says, simply, "I am a man." These paintings make the same point, and they could be the battle flags of the abolition movement.

Death row prisoners are not a different species of humans. Whatever else they are—whatever crimes they've committed—we are all *human*. We are all part of the same common humanity. When we kill them, we are killing a part of ourselves, too.

A final matter. I began by talking about one of my heroes, Mike Farrell, and I want to end by talking about another. I shouldn't even be here. I should be in Florida. That is so because something horrible happened recently to a fine man, a towering veteran of Florida's war against capital punishment as a legal system. Most of you have never heard of Dick Jorandby, but for 28 years Dick was the public defender of West Palm Beach County, Florida. His office<sup>20</sup> won such U.S. Supreme Court landmark victories as *Ford v. Wainwright*,<sup>21</sup> which prohibited execution of the insane, and *Hitchcock v. Dugger*,<sup>22</sup> which was sort of the Magna Carta for Florida's congregation of the condemned.

When it came to the death penalty, Jorandby was three decades ahead of conservative Republicans. Jorandby saw capital punishment as a government operation. In the year 2000 some prominent conservatives (George Will, Pat Robertson) had begun to make this connection. Jorandby had made it in the 1970's, and he made this insight the cornerstone of his life as a lawyer.

---

20. See generally DAVID VON DREHLE, *AMONG THE LOWEST OF THE DEAD* (1995).

21. *Ford v. Wainwright*, 106 S.Ct. 2595, 2597 (1986).

22. *Hitchcock v. Dugger*, 107 S.Ct. 1821 (1987).

Jorandby combined an iron will with a field commander's breadth of vision and a chess player's guile. Jorandby was patrician and a prominent fixture in Florida's conservative circles; he tirelessly devoted his life to ensuring that every citizen accused of crime, no matter how guilty, would be guaranteed the best possible legal aid. While other public defenders' offices were slaughtered by budget cuts, ours survived—in fact, our capital appeals division thrived and became the best in the nation. This was because of Dick Jorandby's political acumen.

One of Dick Jorandby's most inspired decisions was to hire Craig Barnard to be creator and coach of his capital appeals unit. Almost nothing rattled Craig. In spite of the onslaught and chaos of death warrants, briefs, oral arguments, and deadlines. Craig remained serene as Buddha in his office overlooking the intercoastal waterway, puffing on his pipe—the mastermind of our team.

Richard Burr was a master at tugging the heartstrings. His manner was self-deprecating, that of the southern gentleman—Jimmy Stewart with a law degree. Jorandby, Barnard and Burr—they were the team. I was the kid. I felt like a schoolboy working at the Manhattan Project.

We called ourselves “the conspiracy.” “The conspiracy” was an ironic reference to the views of some prosecutors, politicians and judges that there was a vast, tight-knit network of anti-capital punishment lawyers around the nation, directed by LDF in New York, who were implementing our coordinated, clever master plan of using the courts to abolish capital punishment by making it unworkable. In fact, this vast “conspiracy” consisted of about a dozen lawyers around the country—far too independent, stubborn and idiosyncratic to ever be part of any “conspiracy”—most of whom were always treading water to keep their death row clients alive.

Three weeks ago, Dick Jorandby was indicted for felony bribery and other forms of government corruption. The charges, two felonies and nine misdemeanors, contend that Dick pressured two of his subordinate lawyers into contributing \$10,000 each to his re-election campaign, and that he conducted campaign activities and fundraising from his state office and used his public employees for campaign work.<sup>23</sup> Dick's chief investigator,

---

23. See generally *In Re: Richard Jorandby, Summary of Offense and Probable Cause Affidavit* (copy on file with author); Paul Pacenti, *Ex-Public Defender Demanded Campaign Cash From Employees, Officials Say; Jorandby Jailed, Faces Bribery Charges; Spokesman, Investigator Also Arrested*, PALM BEACH POST, July 11, 2001; Gary Kane, *Ex-Employees: Jorandby Used Bonuses As Leverage*, PALM BEACH POST, July 11, 2001.

Jerry Justine,<sup>24</sup> and his spokesperson, Gary Herter, were also indicted. The indictment against Dick Jorandby is, in a word, hogwash. But it has laid Dick Jorandby's spirits pretty low. This great man, who devoted his full life as a lawyer to providing capital defendants and death row prisoners with real lawyers—and with something more important: hope—has lost hope himself. I sent Dick a letter:

July 24, 2001

Richard Jorandby  
Palm Beach, FL 33480

Dear Dick:

This is a love letter. I am writing to make it clear, beyond any doubt, that the shabby charges against you do not and will not diminish one iota the profound respect and admiration I have had for you since working for you. I came into your office with a respect for the capital appeals unit you had created. I left your office three years later holding you as my personal and professional hero. You have been my hero for nearly 20 years. Nothing a disgruntled and self-serving former employee, or a hack agency like FDLE (the purveyors of the secret police report in the Joe Spaziano case) will *ever* diminish my abiding respect for you as a public defender and as a man.

I'm not sure why, but PD offices, collections of hundreds of people, take on an identity of their own. That identity is shaped by the people who run the place; the early CCR was Sharlette Holdman's shop, and, of course, West Palm was yours.

Your imprint was the product both of your values—professional excellence and a genuine commitment to the highest ethical standards—which suffused the office, and of the critical decisions you made about its leadership and direction. Public defense wasn't a job to you; it was a calling, and so it became a calling for us as well. You chose great assistants like Craig Barnard, and then you gave them the independence and resources they needed to produce great lawyering. You also supported us at crucial moments, when our work was doubted or under attack by powerful forces in government.

---

24. Jerry Justine was a crucial figure in the "Crazy Joe" Spaziano case. See MICHAEL MELLO, *THE WRONG MAN* (2001).

President Bush's superficial remark about Putin notwithstanding, you can't glance into a person's eyes and read their soul. But when you live through horrible experiences with some people, one can catch occasional glimpses into their soul. That happened for me in 1984, in the days before and after James Adams was killed for a crime he probably did not commit. Your office—our office—had not ever before had a client executed, and so we possessed no policy about who in the office would witness the killing. We knew one of us had to. But who would represent our office as the designated witness? The front-line litigators, or the administrative head of the office?

Craig Barnard or Dick Burr, the senior members of the capital appeals division, were obvious choices. But witnessing Adams' execution would have annihilated them emotionally, and the office couldn't spare them: Another client, James Dupree Henry, would soon receive an execution date. I was the newest member of the team, but I wimped out: I just didn't have the guts.

That left you, as the head of the office. I remember talking with you, and looking into your eyes, the day before and the day after you witnessed the killing of James Adams. It wasn't until after—when I saw the haunted anguish in your face—that I realized the *courage* it took for you to bear witness to James' death. Watching a client die is not necessarily a courageous act, because for some lawyers it's just a distasteful part of the job. What made your act of witness courageous was how much it *cost* you emotionally and even physically.

You were the ideal boss. You were also a courageous pioneer. But, for me, you were first and foremost the ideal boss in a business where the qualities of the boss make all the difference in the world. You gave your assistants two especially important gifts: independence, and the knowledge that the boss would back us up when the chips were down.

In all the years I worked for you, you never told me what issues I could or couldn't raise on behalf of my capital clients. When the courts were sick to death of the *Hitchcock* issue—after we lost it in the 11th Circuit but before we won it, unanimously, in the U.S. Supreme Court—I know that judges told you privately the same thing they told me privately: "Stop raising this damn issue; you've lost it; get over it." But you encouraged us to keep on,

because we were right and eventually we'd prevail. Then we did, and you gave all the credit to Craig.

In my law school classes—especially my ethics course and my capital punishment seminar—I often discuss you and your office as examples of how lawyers can be good and honorable *people* as well as exemplary attorneys. In your office I learned to take professional ethics seriously; looking back on it now, I'm struck by how much of my conversations in your office were discussions about ethics. Because my superiors took ethics seriously, I knew that *their* superior—you—took ethics seriously as well.

If any good can be found in this ordeal, perhaps it will be that people who know and love you will have an opportunity to say so out loud and to you. That people of substance and quality—like Leon Wright and Richard Greene—are rushing to your side should, I hope, provide you with some solace. *Please* let us know how we can help.

No one who knows you could possibly believe that you did what they are saying you did. The idea that you could have fired an assistant for refusing to donate to your campaign is laughable (I've always thought that you were too indulgent of your subordinates: Some you kept on *should* have been fired).

I am very glad that I decided before this happened to dedicate my memoir book to you. I need to get a final version of the manuscript to my publisher by mid-August, and I'll send the latest version down to you.

I don't know why these ratbags are going after you, but I can guess. With the FDLE, it's payback time for all the years your assistants tore the cops to shreds in court. With your former employees, it's a big dose of sucking up to the new boss: which speaks volumes about the new boss as well as those who trash you as a shabby means of ingratiating themselves with her. I also think jealousy plays a role.

Yes, jealousy. *Your* office won two landmark capital cases in the U.S. Supreme Court; Alvin Ford's case and Jim Hitchcock's case have *your* name on the briefs. *Your* office was the star in David von Drehle's magnificent book, *Among the Lowest of the Dead*.

Your office was widely regarded on the national stage, as one of the very best in the U.S.

You always insisted that your assistants get the credit and the glory for the big wins and the hard work that went into even the worst losses. A casual observer might conclude that, because you deflected the praise for *Hitchcock* or *Ford* onto the front-line litigators, that you had nothing to do with those landmark cases.

But those of us who were there know better. *Hitchcock* and *Ford* wouldn't have happened without you at the helm, for the same reason that the Pentagon Papers and Watergate wouldn't be names we remember had Katherine Graham not been at the helm at the *Washington Post* at the time. You did for the West Palm office what Graham did for the *Post*: took an obscure, fifth-rate institution and transformed it into the best in the business.

And you brought about the transformation by the same means Graham did at the *Post*. You hired good people, and then you gave them the support, resources and freedom they needed to shine. You created and nurtured the environment that allowed people like Craig and Dick Burr to do great things. When Craig and Dick and Richard flew to the stratosphere of capital punishment law, they were at the controls of the aircraft; their names were painted on the fuselage below the canopy. But you built the planes. You got the funding for the parts and the fuel and the R&D.

And you made it all look easy. You were the Joe Dimaggio of public defenders: moving gracefully, never overdoing it, making it look like you just *happened* to have ended up in charge of the best PD office in America.

But, as your successor will soon learn, it wasn't easy, and the legendary office you created didn't spring into being by accident. Individual people of greatness make great PD offices—you at West Palm, Sharlette Holdman and Mark Olive at the early CCR. The dark side of this reality is that, when those great individuals leave, the offices they created decline into mediocracy; it is far easier to run an office made great by others than it is to create it in the first place. CCR went to hell when Sharlette and Olive left. So, I expect, will West Palm. The politicians seem to be in charge in West Palm.

As I grow older, I find myself less and less forgiving of people who commit evil. What is being done to you now is evil and, in my mind, unforgivable. Since leaving your employ in 1985, I have always held up West Palm as an example of the best of public defense. I have made that point in speeches, in books, and, most importantly, in my law school classrooms.

No longer. From this day forward, I will have nothing to do with anyone who presently works there and who did not resign in protest over what is being done to you. From the politician who replaced you on down, I hold the whole lot of them responsible for, at the very least, acquiescing in the destruction of one of the finest men it has been my privilege to know. What they are doing to you is evil, and I choose not to associate myself with the sort of evil that cloaks itself within the hypocritical slogans of "good government." I prefer my evil raw—death row prisoners—rather than alloyed with the base metal of hypocrisy.

Further—and I know I'm not going to say this right - even if everything they're saying about you *is* true, I don't care. It changes nothing for me. One thing I've learned from nearly 20 years of deathwork is to be reluctant to judge people's actions during events I have never myself experienced. I have never stood for election myself, but I have watched enough of them to know that elections have been warfare, and I will not judge your actions during the heat of battle.

Nothing you might have done during the hotly-contested campaign will ever, in my mind, come close to outweighing your good works during 28 years of public service to the most despised citizens of Palm Beach County—people accused of crime. That service is what *matters*. You are a good man, one of the best I have known. *Nothing* about this present idiocy will change that. Nothing.

I've been re-reading some books by and about Clarence Darrow, as I try to do every summer. Did you know he was indicted for bribery and jury-tampering? It happened late in his career, after Debs and the other union cases, after Leopold and Loeb, after Scopes. Darrow was devastated by the charges; he thought that they would cancel out everything he had done up to that time, even if he was acquitted at trial. As it happens, he was acquitted, but that's not the point. The point is that even a conviction wouldn't have changed his greatness in Leopold and Loeb and

Scopes. Your greatness in *Hitchcock* and *Ford*, and the lives you saved and nurtured, will be your legacy, *are* your legacy. This indictment crap isn't even about you; you're just the convenient vehicle for suck-up employees of your office and for its-payback-time cops and prosecutors who have never forgiven you for stomping them in court for 28 years. There's a special place in hell for your accusers within the PD office. Their sort of treason always ends up poisoning the traitors themselves more than the good people they betray.

The media, of course, will get none of this. Political blood-sport sells papers. They may tut-tut about the scabrous decision by the cops to take you away in handcuffs for the benefit of the cameras, but they still print the photos and repeat the accusations as if they were facts. The media has always treated the presumption of innocence as just another legal technicality used by guilty defendants to evade justice—until a reporter is arrested; *then* they suddenly realize that the presumption of innocence really is a big deal. The media have already tried and convicted you, even though they have not yet heard your side of the story. To hell with them. That's just the way the media operates. Best to simply ignore them as best you can.

Anyway, please know that I am behind you 100%. If there is *anything* I can do to help, please let me know. You know me well enough to understand that I mean it. You will remain in my thoughts and prayers.

*Please* attend to your health needs, physical, mental and emotional. Please surround yourself with people who love you. Please don't refrain from asking for help from those of us eager to supply it. And, most important, please remember that you are a good man. The best I have known.

Warmly,

Michael Mello  
Professor of Law<sup>25</sup>

Dick Jorandby should be spending his retirement sitting on a beach, writing his memoirs, and enjoying his family. Instead, this man who so

---

25. Letter from Michael Mello, Professor of Law, Vermont Law School, to Richard Jorandby, Public Defender of Palm Beach County, Florida (July 24, 2001) (on file with author).

ennobled the legal profession is in the fight of his life to retain his liberty and reclaim his reputation. That injustice is nothing less than tragic.

If I could think of any way to ask you to help Dick Jorandby, I would. But I can't. I just wanted you to know why I should be in Florida right now.

Capital punishment *will* end in this country, as it has in most of the rest of the world we call civilized. But it won't end because a lawyer like me writes a book or files a lawsuit or because a social scientist conducts a study. No, capital punishment will be abolished from the ground up, from the grassroots up, one heart and one mind at a time.

Thank you for your commitment to Death Penalty Focus and to ridding America of state-sponsored killing.

