

Thomas Mallon

## DEATH RALLY DAYS

Live from San Quentin, the execution of murderer Robert Alton Harris is put on hold—while the debate over the death penalty moves to Main Street.

My diary from July 5, 1978, tells me that I spent much of the day, and the night to follow, on a train, the "Transalpino," all the way from Rome to London. The couchette in which I was riding up the Mediterranean coast was overloaded; designed for six people, it would eventually hold eight of us: myself; Signora Carla Bianco, an anthropologist from the University of Florence whose specialty was Italian-Americans ("Oh, yes, there are many Sardinians in Port Washington"); a retired Englishwoman; and an Italian family—mother, father, uncle, and two little boys—who were on their way to Boulogne for a wedding. The boys (I remember them now) were a happy handful. The diary says: "God, how their father adores them, giving them, especially the little one, big, schmoozy kisses just after he's swatted them for something. I've never seen people pay more attention to their children than in this country. They are never left out or pushed aside. However smothering it must be, and whatever heartbreak it must plant like a time bomb in parents, there is something wonderful about it."

Allowing for the time difference, it must have been during these hours that I was chatting with Signora Bianco and looking out at the Italian coast that two 16-year-old boys from Mira Mesa, California, Michael Baker and John Mayeski, were, in a blend of new and old all-American boyishness, pulling into a Jack-in-the-Box restaurant in San Diego on their way to go fishing. Before they could finish their fast food, 25-year-old Robert Alton Harris and his brother, Danny, would commandeer their car and force the boys to a

spot near a reservoir outside town. Robert had recently gotten out of jail after doing two-and-a-half years for beating a man to death, and the Harris

brothers wanted a car for an armed robbery they were about to commit.

To hear the brothers tell it (Danny testified against Robert), the kidnapping wasn't supposed to turn violent, but it did. Robert describes the killings as having been committed in the kind of sleepwalk frequently spoken of by capital offenders. Still, in the event, he managed to tell young Michael Baker, who was pleading for his life after the Mayeski boy had been shot, to cut it out and "die like a man."

The singular revolting detail that would ensure the crime's being remembered as the Jack-in-the-Box murders was Harris's lack of squeamishness afterwards in finishing off the boys' hamburgers. The irony of his injunction to Michael Baker about dying like a man would also not be lost on those observing, subsequent to Harris's conviction, his eleven years of appeals, leading, at last, toward an execution date set for 3:00 a.m. on April 3, 1990.

Robert Alton Harris arrived at San Quentin in 1979, exactly 400 years after Sir Francis Drake made his landings along the northern California coast. Parts of the prison Harris is in have been standing since 1852. The assertive architecture of San Quentin makes it seem more akin to San Francisco, across the bay, than to Marin County, of which it is actually a part. The town of Larkspur, just southwest of the prison, is a growing community (Robert Alton Harris has lived here longer than many of his neighbors), but in anti-development Marin, new structures tend to be placed apologetically, almost furtively, onto the land. An office building atop a hill near the Larkspur ferry landing seems to have been set there, with its brown, downward-sloping roofs, so that as few people as possible will notice it, and so that those who do will see its fealty to the natural contours of the earth. The builders of San Quentin seem, in fact, to have been less ashamed of what they

had to construct than some Marin residents are of the homes and workplaces they require.

The jokes and clichés about life here are too true—you really can't order an unhealthy Coke at The Good Earth restaurant—to require much elaboration. But the idea that an execution is scheduled to happen here, an officially proclaimed nuclear-weapons free zone, so borders on the fantastic that one searches one's mind for an inverted equivalent. A Socialist Youth Congress in rural Mississippi? Nine hours before Harris is to die, the Tiburon Wellness Group will be meeting, with "facilitator Hetty Herman Minsk," at the Belvedere Community Center. The group "uses Barbara Sher's books *Wishcraft* and *Teamworks* to help meet your goals, dreams and wants."

By Friday morning, March 30, less than 100 hours before the scheduled execution, the Harris story has become national news. Joan Lunden split-screens Steve Baker, father of one of the murdered boys, and Robert Bryan of the National Coalition to Abolish the Death Penalty. Baker plans to fly up from San Diego to San Francisco (his first trip here), sometime on Monday, to witness the execution. If that happens, an unusually complete circle will have been drawn: Baker was one of the San Diego police officers who arrested Harris on July 5, 1978. At that moment he thought he was only helping to catch two bank robbers. He didn't yet know that one of them had killed his son a little while before.

Bryan expresses rote sympathy for the Bakers and Mayeskis, but quickly gets to his own point, which is that countries with capital punishment have the same or higher rates of violent crime as ones without; indeed, we should be mindful that executing Harris may actually *increase* crime in the United States.

Mr. Baker is then asked by Joan Lunden if he thinks the death penalty



Thomas Mallon's most recent book is *Stolen Words: Forays Into the Origins and Ravages of Plagiarism* (Ticknor & Fields).

is a deterrent. "Not when it takes twelve years to carry it out," he says.

Having come to California to cover Harris's execution as part of the "nonwitness media pool" that will spend Monday night inside San Quentin, I look at the list of instructions that arrived with my credentials:

Do not wear Levi or jean-style blue, black or gray pants.

Do not run. In a prison, this indicates someone is in trouble.

The West Gate, through which the press must enter by 10:00 p.m. Monday, is just off Sir Francis Drake Boulevard, a short walk from the slate-colored Larkspur Landing shopping center below my hotel. On my way to check it out, I pass a small wildlife habitat that includes Remillard Pond, the sign for which explains that:

A POND IS A BALANCED HABITAT COMMUNITY. IT'S [sic] INHABITANTS DEPEND ON ONE ANOTHER FOR LIFE. REMILLARD POND PLANTS INCLUDE; ALGAE, CATTAILS AND WILLOW TREES. THEY USE SUN, WATER AND INORGANIC MATTER TO GROW AND MULTIPLY. ANIMALS FEED ON OTHER ANIMALS AND USE PLANTS FOR SHELTER AND FOOD. DEAD PLANTS AND ANIMALS DECOMPOSE, FERTILIZING THE POND AND PROMOTING GROWTH OF MORE PLANTS AND ANIMALS...

If Harris dies on Tuesday morning, the human ecology of the state of California will have shifted, slightly but unquestionably. It is the only thing upon which people on both sides of the capital-punishment issue agree. If the death penalty, whether as deterrent, or retributive ritual, or simple punishment, is once more, finally, carried out (it has been imposed on 275 men besides Harris now in San Quentin), then the state pond, for better or worse, will be a more primitive place, and the chain of predation more circular. Indeed, one gets the feeling that what really hurts many of those carrying "Not in California" signs of protest is the sensation that they will be perceived as being morally out of step with the West European countries that have embraced abolition and thereby, presumably, achieved a higher degree of civilization. One is struck more by their embarrassment at the prospect of joining the Southern "Death Belt" states than by their outrage.

The death penalty has had, of course, the overwhelming support of Californians, not only in every sort of poll but also when the question came before them on the ballot in 1978. Governor George Deukmejian was, as a state legislator, one of the authors of the

death-penalty statute created to bring the state into compliance with guidelines established by the U.S. Supreme Court when capital punishment was made once more permissible in 1976.

The first Governor Brown of California, Jerry's father, Edmund "Pat" Brown, has just recently, at 84, published a morally engaging book on the subject. In *Public Justice, Private Mercy: A Governor's Education on Death Row* (Weidenfeld & Nicolson, 1989) he reviews the various clemency dilemmas he experienced from 1959 to 1966. A vigorous opponent of capital punishment, Brown nevertheless allowed thirty-six people to die in the gas chamber during his two terms in office. (Crowds heckled him when he did commute a sentence, which was often.)

### Mr. Baker is then asked if he thinks the death penalty is a deterrent. "Not when it takes twelve years to carry it out," he says.

Some have been tempted to draw a parallel between Governor Brown on capital punishment and Governor Cuomo on abortion—two men distastefully upholding laws with which their private consciences cannot agree. But the parallel does not run very far: Cuomo has not campaigned to bring the laws into line with his personal convictions, whereas Brown risked, and perhaps eventually lost, his political future by repeatedly asking the state legislature to do away with capital punishment.

At least one poll suggests that Californians would be more inclined to part with the death penalty in exchange for "life without parole." In fact, there is life without parole in California, and has been since 1978. But what is statutory tends to seem hypothetical when pollsters ask about it because people simply don't believe that the courts will really keep the cells locked forever. Neither do criminals, according to Governor Brown:

Every prisoner knows that those laws have built-in escape hatches. Felons convicted under the California law before 1982, for example, automatically have their cases reviewed by the Board of Prison Terms, which can recommend clemency to the governor after twelve years. Those convicted after 1982 have to wait thirty years, but even that is a short enough period to legitimately frighten a large segment of the population.

Brown still favors life without parole, but notes that if it is to "save court time and taxpayers' money [when] used as a guarantee in return for a guilty plea,"

<sup>1</sup>On the death penalty issue itself, Cuomo does run parallel to Brown: he favors life without parole.

then, ironically, "the state also has to have a death-penalty law on the books—to motivate a murderer to give up his right to a full trial."

On early Friday afternoon, things look peaceful and routine around San Quentin. Some inmates in blue work shirts spend weekdays like this weeding ground between Sir Francis Drake Blvd. and the modest, pleasant-looking cottages for Corrections personnel living inside the gates. The main entrance to the prison is through a small road—Main Street—off the freeway. After one or two outlets it's really a cul-de-sac ending with a white STATE PROPERTY LINE and the prison gates, near which stand an adobe-style U.S. Post Office, the prison crafts store, and a little house that is the prison law office. Its wooden sign

contains an etching of a bird flying through bars. The street is sunny, modest, and wholesome-looking. You can descend a short flight of steps to a small beach and sit on the rocks, amidst buttercups and larkspur, watching the bay, oblivious to both the prison and the neighborhood on the promontory behind you.

Up there a group of people are keeping a vigil that's gone on for more than seven weeks; some of them are fasting. The officers at the gate seem relaxed, knowing that their real troubles will begin on Monday. The parking restrictions set to go into effect at 3:30 this afternoon hardly seem necessary yet.

And, as it suddenly happens, they may not be for quite a while longer. By late afternoon the news is out that Judge John T. Noonan, Jr., of the U.S. 9th Circuit Court of Appeals, a pro-life Reagan appointee, has just ruled favorably on a motion by Harris's attorneys for a new hearing to determine whether their client received adequate psychiatric evaluation at the time of his trial in 1979.

Even in the unpredictable judicial realm of impending executions—Pat Brown recalls how his predecessor's clemency secretary got through to the San Quentin warden two minutes after the cyanide pellets dropped into the sulfuric acid beneath a murderer named Burton Abbott—Noonan's decision comes as something of a shock. The considered opinion of most people with an interest in the matter had been that Harris, whose case had been reviewed by Judge Noonan once before

on other grounds, would die on Tuesday morning. Two days ago a federal judge in San Diego ruled against Harris's claim that he was a victim of fetal alcohol syndrome and organic brain damage. Since his initial conviction in 1979—the boys he killed would now be approaching their thirties his case has been appealed four times to the California Supreme Court and another four to the U.S. Supreme Court.

Between now and Tuesday it will be the turn of the state to appeal to Justice Sandra Day O'Connor, who takes emergency matters from the western states, that the Court vacate the stay granted by Judge Noonan. This appeal will be filed—faxed, actually—by state Attorney General John Van de Kamp, who is running in the Democratic primary for governor. An opponent of the death penalty, Van de Kamp has taken a beating in recent opinion polls from his competition, Dianne Feinstein, the former San Francisco mayor, who is in the luxuriously electable position of being both pro-choice on abortion and pro-capital punishment. Van de Kamp must therefore backpedal into Governor Brown's old position, namely, that regardless of his personal feelings he will carry out the laws of the state of California. The weekend will prove to be a somewhat unseemly bonanza for him. Not a news broadcast will go by without this non-believer in capital punishment telling the people of California how zealously he is urging the U.S. Supreme Court to allow the state to kill Robert Alton Harris at 3:00 a.m. on Tuesday. He says that meanwhile Harris will even be denied certain visitors: they've just discovered marijuana in his pillowcase.

Most of the weekend will be lived out in an atmosphere of inscrutable suspense. No one feels confident predicting what Justice O'Connor or the





entire Court will do. In the meantime reporters descend anew upon the families of the dead boys. John Mayeski's mother says that she's trying not to lose faith in the legal system. When asked if she has any advice or wish to express, she is succinct: "Speed it up."

Saturday's most pictorial news is the march of anti-death-penalty protesters across the Golden Gate Bridge. The demonstrators carry 121 black mock coffins—on TV they look like a toy train of coal cars—to stand for all those who have been executed since a firing squad did away with Gary Gilmore in 1977. The demonstration was planned long before yesterday's unexpected stay and was probably meant to have the mournfulness with which one awaits foregone conclusions. But the atmosphere is turning suspenseful now, especially since Attorney General Van de Kamp has announced that the Supreme Court has agreed to hear the state's appeal of Judge Noonan's decision. The hope is that the Court will rule by the end of its working day on Monday—2:00 p.m. out here in the West.

Outside the main gate of San Quentin, things are still sunny and peaceful. I go back and forth between the handfuls of pro- and anti-death demonstrators. Each side concisely reiterates its articles of faith—take an eye for an eye; execution costs more than life imprisonment (all the appeals expenses)—statements of instinct more baldly implacable than those clustering around any of the other issues perpetually before the nation. One comes to feel that if ever there was a topic about which nothing more can profitably be said, this is it.

I try to engage pretty young Angie Frabasilio, a College of Marin student from San Rafael, in a discussion of

whether her belief that the state has no right to take a life forces one, by logical extension, into a completely pacifist position. But when we get to the question of drafting an army, she says, "I was a little young when that issue was around." Wendy Zolla, holding the other end of Angie's banner (WHY DO PEOPLE KILL PEOPLE TO SHOW THAT KILLING PEOPLE IS WRONG?), has been coming here for 12-hour shifts since Thursday. She has previously protested nuclear weapons at the Nevada Test Site and has participated in letter-writing campaigns against capital punishment in Georgia, Louisiana, and Texas. "I include Robert Harris in my prayers every day," she tells me, even

**"I include Robert Harris in my prayers every day," she tells me. "I don't live in fear of people being released from prison. I live in fear of paying taxes and being part of a murder myself."**

though she's here on behalf of everyone on what San Quentin actually calls Condemned Row. "I don't live in fear of people being released from prison. I live in fear of paying taxes and being part of a murder myself."

The antis are on the side of the street with the prison law office and crafts shop. The proponents are across from them, just down from the little post office. One of them is Bill Fling, a Church of Christ minister from Orangeville, above Sacramento. He gives me a tract he's written and tells me that I will be able to find much pro-capital punishment material in the New Testament, "which some people think is more lenient" than the Old. "In my personal life, I'm to be willing to turn the other cheek, but civil government is made to protect me, because my cheeks could get pretty raw . . ."

He's with Gay Wamble, a stern crew-cut man who for twenty-two years was a part of the civil government as a corrections officer of the state prison at Vacaville. (He once directed Pat Brown's tour of the facility.) When the death penalty was overturned in the early 1970s, Vacaville received from San Quentin many prisoners whose sentences had been commuted to life, and Mr. Wamble worked with them "day after day after day after day" in the Maximum Custody Unit, S-Wing: "I know their inward-most thoughts and their mind about capital punishment . . . they can tell you, 'Oh, I don't pay any attention to that death penalty. It wouldn't change what I want to do. I'd do it anyway.' But I'm here to tell you that that's not his inward feeling . . . I hear them talking to each

other about the death penalty. I hear one convict saying, 'Well, when I get out of here I'm going to get that guy because he did such and such to me.' His answer would be, from another convict, 'Hey, man, you better watch that stuff. They snuff people for doing stuff like that.' So that shows you . . . a convict is afraid of the death penalty and it keeps him from committing capital crimes. Now, in their fit of anger, and circumstances, they do it anyway sometimes . . ."

I ask Mr. Wamble, who says he preferred Reagan and Deukmejian on matters of law and discipline, but the Governors Brown when it came to pay raises, about life without parole: "I

as if someone finally couldn't bear to display its expedient toughness. And by Monday a slim vertical placard with the single word, REHABILITATE, in rather small letters, will have appeared.

The Larkspur ferry to San Francisco glides right by San Quentin, and on Sunday afternoon, which is sunny, breezy, and routinely perfect, the prison offers no unified impression to the passing traveler. The part of it you first go by looks like a World War II aircraft plant with big, barracks-style sheds and quonset shapes. The yellow stone of the old prison itself, whose barred green windows look like giant tongue depressors, seems at first like part of some huge dam or pumping station, until the boat comes closer and you see how powdery the stone appears, the industrial impression giving way completely to that of a sand castle.

Some gulls—whose narrow, purposeful faces remind you of Gay Wamble's—fly the whole trip across the bay in a straight line behind the ferry. You wonder what sort of torment or peace the sight of them brings to the inmates living day after day under the arcs they describe. It's the same with the lone kayaker who paddles in front of the ferry: Does he provide them with a diversion or a rebuke?

If the free-flying gulls do insult the prisoners, it is possible that their revenge will come early Tuesday morning, when, after killing Harris, the cyanide gas must be vented into the atmosphere. Bob Cleek, a former guard at San Quentin who is now an attorney, recalls for a columnist in the *Marin Independent Journal*: "We used to hear stories about all the dead seagulls on the prison roof following deaths by poison." Sulfuric acid is dumped into the bay as well. "It'd be interesting to know if the prison possesses a toxic waste disposal permit," Cleek wonders. "Imagine Harris's life being spared because of an Environmental Impact Report."

On any weekend but this one, tourists on the ferry are more attentive to Alcatraz, the real bird-associated attraction in the bay. You pass it just before coming into the Port of San Francisco, whose piers house more restaurants than ships. Harry Bridges, the longshoreman leader who convulsed San Francisco with a general strike in 1934, died on Friday. Reminiscences of

<sup>2</sup>Sure enough, Wednesday's *San Francisco Chronicle* will report that phone calls from death-penalty opponents have led the San Francisco Bay Area Air Quality Control Board to make inquiries to the prison. According to Steven Hill, who manages the board's toxic evaluation section: "If we determine that the gas emission could cause harm, we would not issue a permit to operate [the gas chamber]."



him, and the old workingman's San Francisco, share the weekend papers with Harris, whose picture, taken last Monday, appears on the front page of today's *Examiner*. In it he hugs the baby son of a visitor to San Quentin and smiles benignly.

"This is not the end of it. This is round one as far as I'm concerned." It's not one of Harris's lawyers. It's nice Pat Orr, who lives at 58 Main Street, just a few houses down from the prison gates. She's the head of the San Quentin Village Association, and we're chatting, late Monday morning, on the wooden steps leading up from her small flower-filled yard. She's annoyed because this is a county road, not prison property, and even though the demonstrations were planned seven months ago, her group was never consulted. About a month and a half ago she began talking to the county sheriff's office, the Board of Supervisors, and other authorities, but the only consideration members of the San Quentin Village Association have been shown is being told to move their own cars off their own street to keep them from being damaged. Pleas that the demonstrators be moved to the West Gate out on Sir Francis Drake have been ignored; law enforcement, Pat reasons, cares more about traffic than homeowners. But she hasn't given up; she's ready to use the legal process, expensive and protracted though it may be. The dues for her organization are only \$10 a year, but "we'll have rummage sales if we have to," she says.

Actually, some of the residents are making a small killing here, if you'll pardon the expression. They've rented their yards and garage aprons to the TV people for their trucks, whose grinding motors bother good-natured Pat much more than the reporters and technicians themselves.

We're joined by Michelle, another resident, and her small son. According to Pat, people on the block have a variety of opinions on the death penalty—Michelle seems opposed to it and thinks the matter of Harris's supposed fetal-alcohol syndrome deserves consideration—but the association has decided that that's not their issue. The media carnival is. Pat says a handful of demonstrators have been here for fifty-seven days, but it's usually the press who form "a substitute crowd." In fact, they've been around so long that when we say good-bye to each other, she says, accidentally, "Nice to media you," and we burst out laughing.

By noon the press is here in force. People are expectant: the Court should say something within the next two hours. Gay Wamble and Bill Fling are

tirelessly giving interviews. Steve Souza does the same, smiling his endless-summer smile. One protester alternates between relaxed conversation with the others and quietly kneeling on a pillow while she reads from The Book of Common Prayer. People are in a good mood. It isn't gallows humor; it's the weather. The day and scenery are so spectacularly beautiful that it's hard to be otherwise. For all the suspense, and all the handicapping of the outcome, it's difficult to think of the yellow prison with its battlements as a jail at all. One might as well be out in the sun in front of some other sprawling piece of California architecture, San Simeon or the Mission Inn.

At 12:40 the clergy come up Main Street, most of them Unitarians in long, cheerful stoles. The press rush like antennae insects to film an impromptu debate between kindly, white-haired Bishop Francis Quinn of Sacramento and the fundamentalist Bill Fling, who's still passing out the pro-capital punishment tract he handed me Saturday. The two of them are a video-cameraman's dream. They will occasionally clasp each other's hands in a friendly way as they argue Deuteron-

omy 19, racial inequality in the application of the death penalty, and the soul of George Deukmejian. "The Governor's not a murderer," says Fling. "Oh, I know," responds Bishop Quinn, who later, going back to the Bible, asks Fling if he thinks adulterers should be put to death. The Bishop gets some kibitzing support from the circle of anti-death people around him. Meanwhile, a golden-haired TV reporter tries to get it all straight: "If the Supreme Court upholds the stay, that means there's no execution and you start [tonight's demonstrations] earlier." When told by Steve Souza that that's just so, he says, "Gotcha," with some relief.

"Paul is now going to play his flute to calm down the situation. He's such a typical Berkeley Unitarian." This is said affectionately by one of the MASK (March Against State Killing) demonstrators, who is popping some pills, for stress she says. Paul Sawyer sits down near the post office steps, and when the video people hear his flute and spot his colorful stole, they're onto one of the best photo ops of the day.

Rev. Sawyer leads some singing—a spiritual about how we have to walk

down that lonesome road all by ourselves: not a particularly optimistic choice for today, one thinks. He preaches to his converted colleagues about all the other kinds of violence done by the state, from Vietnam to Central America to the black community. A cameraman attaches a tiny microphone to his stole, the better to catch all of this. Sawyer hopes for a world in which "no one, no thing will be destroyed," and he pays Robert Alton Harris the ultimate northern California compliment: he compares him to a non-human life form. "We would do this as fittingly for the redwood tree being destroyed . . ." He asks the people gathered in a semicircle if they want to say anything, and a long-haired young man who was out here all night says: "I just have thanksgiving for you, man." Rev. Sawyer deflects the compliment back to him. A pediatrician then speaks about her experiences with fetal-alcohol syndrome (a subject on which Bishop Quinn also seems to have become recently knowledgeable), and soon it will be the turn of the priest with the "Boycott Salvadoran Coffee" button to have his say. →

# 99 reasons to read between the lines

Jane Fonda, Tom Hayden, Dan Rather, Norman Lear, Ed Asner, Tom Brokaw, Sam Donaldson, Martin Scorsese, Oliver Stone, Martin Sheen, Debra Winger, Paul Conrad, Lew Wasserman, Ted Turner, Ben Bradlee Sr., Ben Bradlee Jr., Morgan Fairchild, Barbara Walters, Tom Cruise, Paul Newman, Shirley MacLaine, Phil Donahue, A. Kent MacDougall, Robert Scheer, Constantine Costa-Gavras, Peter Jennings, Charles Winkler, Jack Lemmon, Barbra Streisand, Howard Hesseman, Judd Nelson, John Randolph, Pat Kingsley, Sally Field, Robert Redford, Leslie Stahl, Kathleen Sullivan, Bill Moyers, Kelly McGillis, Jonathan Kwitny, Kris Kristofferson, Robert Blake, Emilio Estevez, Mike Farrell, Charles Haid, Daphne Zuniga, Ralph Bakshi, Jackson Browne, Darryl Hannah, Little Stevie Van Zandt, Geraldo Rivera, Michael Douglas, Kirk Douglas, Burt Lancaster, Michael Gartner, Carl Rowan, Laurence Tisch, Rob Lowe, Robert Walden, Justine Bateman, Gregory Peck, Michael Tucker, Jill Eikenberry, Harvey Fierstein, Jack Valenti, David Crosby, Graham Nash, Frank Zappa, Bruce Christenson, Alexander Cockburn, Vladimir Posner, Max Frankel, Bill Thomas, Hugh Hefner, Bob Guccione, Larry Flynt, Bob Geldof, Bryant Gumbel, Jane Pauley, John Denver, Carl Bernstein, Bob Woodward, Jack Nelson, Stephen Kinzer, Walter Cronkite, Cathy Guisewite, Cher, Maria Lourdes Pallas, Tyne Daly, Valerie Harper, Saul Landau, Timothy Leary, Susan Sarandon, Dennis Weaver, Noam Chomsky, Barry Diller, Casey Kasem, Seymour Hersh, Alex Cox.

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AS2





Five officers from the California Department of Corrections have just taken up positions along the state property line, standing calmly with legs apart and hands behind their backs. The cameras scurry into position. I ex-

change a few words with Bishop Quinn, who tells me there are two California bishops named Quinn, but that it's "just a Quinn-cidence." I decide that I like him, which is why I wish he wouldn't do what he does next.

## TEDDY KENNEDY ON DEATH ROW

Washington

While in California politicians are making support for capital punishment the campaign issue of 1990, in our nation's capital Ted Kennedy and his allies are busy pushing a bill that would suppress the death penalty. Sometime after May 20, the Senate is expected to take up a Democratic crime package that includes Kennedy's so-called Racial Justice Act. The bill purports only to remove racial bias from capital sentencing, leaving death penalty laws still operable. But if critics are correct, the bill, by mandating that such sentencing can occur only if it conforms to racial quotas, will make these laws unworkable.

As its code name suggests, the Racial Justice Act is premised on the belief that a greater proportion of convicted black murderers receive death sentences than do white killers, that a smaller percentage of convicted killers generally are executed for murdering blacks than for killing whites, and that court systems are biased against minorities. To resolve these problems the bill would bar executions where there is a "racially discriminatory pattern" in capital sentencing and prosecuting.

If this sounds like the coming of affirmative action to death row, that's the point. Under the act, a convicted murderer can save his life by showing that executions are imposed disproportionately (1) upon "persons of one race than upon persons of another," or (2) as "punishment for crimes against persons of one race than . . . against persons of another race." The defendant is specifically *not* required to prove that his own trial and sentencing were influenced by discrimination.

Here's how the act would work. A black on death row finds, say, that five percent of blacks "arrested for, charged with, or convicted of" capital crimes are executed, as opposed to two percent of whites who fit that category; and that three percent of those convicted of killing blacks are executed, while seven percent of white victims' murderers receive a death sentence. Now according to the act, such figures would constitute a "prima facie showing of a racially discriminatory pattern," and so it decrees that our convict "shall not be put to death." Why? Because his execution would "further" that "pattern."

If this impossible-to-meet quota scheme becomes law, will any murderer ever again face a death sentence? Not so, say twenty-three state attorneys general (ten of them Democrats), who in a joint letter of March 12 charge that the Racial Justice Act "is designed to do nothing less than end the death penalty in this country." Attorney General Richard Thornburgh is even tougher on this "ill-considered and misnamed" proposal, saying it imposes such "unrealistic burdens of proof" on prosecutors that it "would likely result in the invalidation of every capital sentence now in effect." Thornburgh also argues that blacks—who are nearly "one-half of all victims of murders"—will be hardest hit because the proposal "would ensure that the death penalty is not available to punish such victims' murderers."

Thornburgh's criticisms have not deterred the NAACP and other liberal lobbies from giving strong backing to the measure. Their pitch continues to be that the act won't endanger the death penalty. To claim anything less would detract from the act's political allure of letting senators have it both ways: opposition to racism and support for the death penalty in some form. This accounts for the presence of capital punishment supporters like Arlen Specter, Daniel Patrick Moynihan, and Robert Packwood as co-sponsors of the measure.

At this point there's no talk of a House vote on the bill, so it's not likely the act will become law any time soon. But it could still win a symbolic vote on the Senate floor, unless conservative senators—risking media wrath for opposing "racial justice"—make good on rumored plans to attack the act as a ruse to scuttle capital punishment nationwide. "Given the way conservatives have caved in to previous liberal efforts at intimidation-by-bill-title," a Senate staffer says, recalling such gems as the Civil Rights Restoration Act and the Americans with Disabilities Act, "just putting up a fight would be a victory of sorts."

—Jack Fowler

(Mr. Fowler is a reporter in National Review's Washington bureau.)

"I'm going to go say hello to the guards," he says. He works his way down the row of five, as if the state property line were a communion railing, giving each officer a smile and a friendly tap on the chest. They receive this pleasantly enough but obviously have orders not to unclasp their arms, so the bishop comes away with no handshakes. Perhaps they're just thinking he's a friendly old crock, but the little scene seems depressingly cruel: he's soothing the leashed beasts, trying to keep them friendly, because we all know how they can be when aroused. It's also pointless, because tempers and emotions are under control, even as 1:30 approaches. I chat with Meg, another Unitarian minister, from Sunnyvale, who tells me she's got to get back to a meeting of her congregation tonight. "I can't believe it," she says with a disappointed smile, like a mother with a conflict between a school play and the Brownies.

The woman with two placards, one in each hand, keeps marching. Bill Fling and Steve Souza, like the bunny in the Energizer battery commercials, are still going, indefatigably talking to all media comers. I walk across the street so that I can hear the ocean. "It's got to be close to 2:00," somebody says. A protester in a chair is wondering what will happen "if we win . . ." That's what it is coming down to. There's the feel of an old-fashioned election night now, with people gathered to hear the returns come in from the other coast. At 1:50 someone asks Souza what the situation is. "Pretty soon we shall know," he says. A woman asks him who some of the people on his list of speakers are. "Human beings who reside on the planet Earth," he answers. One newsman is reminded by a colleague that it was calm and warm like this just before the October earthquake. "Standing by and ready to go at any time," another media person tells her troops.

Some motorcycle cops noisily arrive on Main Street and the photographers go off to snap them as they park. The Rev. Victor Carpenter of the First Unitarian Church of San Francisco compares the way cyanide deprives a gas-chamber victim of oxygen to the way the death penalty deprives society of its moral oxygen. Paul Sawyer takes up his flute again before joining the rest of the antis in a prayer circle. They sing: "This Little Life of Mine, I'm Gonna Let It Shine," and Sawyer, in the most outrageous falsehood anyone will utter today, tells some elbowing media person: "We're not here for the press; we're here for life." In fact, in just a little while, after a recitation of the 23rd Psalm, Meg will race to the cameras to tell, angrily, of a parking restriction that was just imposed on her and of how

she was threatened with arrest for walking up a ramp. She says this kind of restriction and intimidation may explain the relative lack of protesters here, and she is applauded.

Portable toilets arrive at 2:42, a little while after a picnic cooler—which for a moment I think might be a mock-coffin—is carried up the street. By 3:00 there is still no word out of Washington. Reporters listen to their radios: prisoners inside will be under a lockdown in order to avoid disturbances if the execution goes forward. I notice that policemen have appeared at the top of a hill inside the gates and to the right.

And then, at about 3:20, suddenly, like a grotesque version of a scrubbed space launch, it's over. Everyone clusters around the preppy blond reporter whose radio or phone is saying that the Supreme Court, by a vote of 6-3, has declined to vacate Judge Noonan's stay. The Harris case will go back to the 9th Circuit. Even if, from here on, everything goes the state's (and Van de Kamp's) way, there will be no execution for months.

Bishop Quinn is "overjoyed." The Antis hug. A smiling Steve Souza goes running up the street, arm in arm, with a woman. Rev. Carpenter makes an emotional speech of gratitude for the "overwhelming joy" he's feeling. Paul Sawyer asks, bewilderingly, for "a great round of sympathy," for Judge Noonan, that Reagan appointee. Applause.

A bustle of departure begins. "Great day, huh?" someone going past me says. "Paul, let's go!" cries a smiling Rev. Carpenter, hurrying his loquacious, flute-carrying colleague along. It is time to unplug cables, store cellular phones, head for the makeshift parking lot down by the freeway. I take a business card from the Rev. William Wood, who, while happy, worries that "we have a long journey ahead of us" ensuring that Robert Alton Harris survives the coming months and courtroom procedures ahead.

I start down Main Street, whose name will soon again, at least for a while, seem unlikely. Out of one of the pretty flower-bordered houses comes the unexpected sound of a saxophone. The tune is neither celebrational nor some mournful piece of prison blues. It's just, improbably enough, "Row, Row, Row Your Boat." For the first time today the two victims come to mind. It's impossible not to wish them this day, and the sunburn on one's face; impossible not to wish that their appetites hadn't delayed, so many years ago, their arrival at the lake, where they might have whistled, not learned, that life is but a dream. □