

A close-up, profile view of a man's face, looking downwards and to the left. He has a beard and is wearing a white shirt and a blue tie. The lighting is dramatic, highlighting the contours of his face.

#1 *NEW YORK TIMES* BESTSELLER

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A MAJOR
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JUST MERCY

A STORY OF JUSTICE AND REDEMPTION

Bryan Stevenson

Just Mercy is a work of nonfiction. Some names and identifying details have been changed.

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Higher Ground

I wasn't prepared to meet a condemned man. In 1983, I was a twenty-three-year-old student at Harvard Law School working in Georgia on an internship, eager and inexperienced and worried that I was in over my head. I had never seen the inside of a maximum-security prison—and had certainly never been to death row. When I learned that I would be visiting this prisoner alone, with no lawyer accompanying me, I tried not to let my panic show.

Georgia's death row is in a prison outside of Jackson, a remote town in a rural part of the state. I drove there by myself, heading south on I-75 from Atlanta, my heart pounding harder the closer I got. I didn't really know anything about capital punishment and hadn't even taken a class in criminal procedure yet. I didn't have a basic grasp of the complex appeals process that shaped death penalty litigation, a process that would in time become as familiar to me as the back of my hand. When I signed up for this internship, I hadn't given much thought to the fact that I would actually be meeting condemned prisoners. To be honest, I didn't even know if I wanted to be a lawyer. As the miles ticked by on those rural roads, the more convinced I became that this man was going to be very disappointed to see me.

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I studied philosophy in college and didn't realize until my senior year that no one would pay me to philosophize when I graduated. My frantic search for a "post-graduation plan" led me to law school mostly because other graduate programs required you to know something about your field of study to enroll; law schools, it seemed,

didn't require you to know anything. At Harvard, I could study law while pursuing a graduate degree in public policy at the Kennedy School of Government, which appealed to me. I was uncertain about what I wanted to do with my life, but I knew it would have something to do with the lives of the poor, America's history of racial inequality, and the struggle to be equitable and fair with one another. It would have something to do with the things I'd already seen in life so far and wondered about, but I couldn't really put it together in a way that made a career path clear.

Not long after I started classes at Harvard I began to worry I'd made the wrong choice. Coming from a small college in Pennsylvania, I felt very fortunate to have been admitted, but by the end of my first year I'd grown disillusioned. At the time, Harvard Law School was a pretty intimidating place, especially for a twenty-one-year-old. Many of the professors used the Socratic method—direct, repetitive, and adversarial questioning—which had the incidental effect of humiliating unprepared students. The courses seemed esoteric and disconnected from the race and poverty issues that had motivated me to consider the law in the first place.

Many of the students already had advanced degrees or had worked as paralegals with prestigious law firms. I had none of those credentials. I felt vastly less experienced and worldly than my fellow students. When law firms showed up on campus and began interviewing students a month after classes started, my classmates put on expensive suits and signed up so that they could receive “fly-outs” to New York, Los Angeles, San Francisco, or Washington, D.C. It was a complete mystery to me what exactly we were all busily preparing ourselves to do. I had never even met a lawyer before starting law school.

I spent the summer after my first year in law school working with a juvenile justice project in Philadelphia and taking advanced calculus courses at night to prepare for my next year at the Kennedy School. After I started the public policy program in September, I still felt disconnected. The curriculum was extremely quantitative, focused on figuring out how to maximize benefits and minimize

costs, without much concern for what those benefits achieved and the costs created. While intellectually stimulating, decision theory, econometrics, and similar courses left me feeling adrift. But then, suddenly, everything came into focus.

I discovered that the law school offered an unusual one-month intensive course on race and poverty litigation taught by Betsy Bartholet, a law professor who had worked as an attorney with the NAACP Legal Defense Fund. Unlike most courses, this one took students off campus, requiring them to spend the month with an organization doing social justice work. I eagerly signed up, and so in December 1983 I found myself on a plane to Atlanta, Georgia, where I was scheduled to spend a few weeks working with the Southern Prisoners Defense Committee (SPDC).

I hadn't been able to afford a direct flight to Atlanta, so I had to change planes in Charlotte, North Carolina, and that's where I met Steve Bright, the director of the SPDC, who was flying back to Atlanta after the holidays. Steve was in his mid-thirties and had a passion and certainty that seemed the direct opposite of my ambivalence. He'd grown up on a farm in Kentucky and ended up in Washington, D.C., after finishing law school. He was a brilliant trial lawyer at the Public Defender Service for the District of Columbia and had just been recruited to take over the SPDC, whose mission was to assist condemned people on death row in Georgia. He showed none of the disconnect between what he did and what he believed that I'd seen in so many of my law professors. When we met he warmly wrapped me in a full-body hug, and then we started talking. We didn't stop till we'd reached Atlanta.

"Bryan," he said at some point during our short flight, "capital punishment means 'them without the capital get the punishment.' We can't help people on death row without help from people like you."

I was taken aback by his immediate belief that I had something to offer. He broke down the issues with the death penalty simply but persuasively, and I hung on every word, completely engaged by his dedication and charisma.

“I just hope you’re not expecting anything too fancy while you’re here,” he said.

“Oh, no,” I assured him. “I’m grateful for the opportunity to work with you.”

“Well, ‘opportunity’ isn’t necessarily the first word people think of when they think about doing work with us. We live kind of simply, and the hours are pretty intense.”

“That’s no problem for me.”

“Well, actually, we might even be described as living less than simply. More like living poorly—maybe even barely living, struggling to hang on, surviving on the kindness of strangers, scraping by day by day, uncertain of the future.”

I let slip a concerned look, and he laughed.

“I’m just kidding...kind of.”

He moved on to other subjects, but it was clear that his heart and his mind were aligned with the plight of the condemned and those facing unjust treatment in jails and prisons. It was deeply affirming to meet someone whose work so powerfully animated his life.

There were just a few attorneys working at the SPDC when I arrived that winter. Most of them were former criminal defense lawyers from Washington who had come to Georgia in response to a growing crisis: Death row prisoners couldn’t get lawyers. In their thirties, men and women, black and white, these lawyers were comfortable with one another in a way that reflected a shared mission, shared hope, and shared stress about the challenges they faced.

After years of prohibition and delay, executions were again taking place in the Deep South, and most of the people crowded on death row had no lawyers and no right to counsel. There was a growing fear that people would soon be killed without ever having their cases reviewed by skilled counsel. We were getting frantic calls every day from people who had no legal assistance but whose dates of execution were on the calendar and approaching fast. I’d never heard voices so desperate.

When I started my internship, everyone was extremely kind to me, and I felt immediately at home. The SPDC was located in downtown Atlanta in the Healey Building, a sixteen-story Gothic Revival structure built in the early 1900s that was in considerable decline and losing tenants. I worked in a cramped circle of desks with two lawyers and did clerical work, answering phones and researching legal questions for staff. I was just getting settled into my office routine when Steve asked me to go to death row to meet with a condemned man whom no one else had time to visit. He explained that the man had been on the row for over two years and that they didn't yet have a lawyer to take his case; my job was to convey to this man one simple message: *You will not be killed in the next year.*

—

I drove through farmland and wooded areas of rural Georgia, rehearsing what I would say when I met this man. I practiced my introduction over and over.

“Hello, my name is Bryan. I’m a student with the...” No. “I’m a law student with...” No. “My name is Bryan Stevenson. I’m a legal intern with the Southern Prisoners Defense Committee, and I’ve been instructed to inform you that you will not be executed soon.” “You can’t be executed soon.” “You are not at risk of execution anytime soon.” No.

I continued practicing my presentation until I pulled up to the intimidating barbed-wire fence and white guard tower of the Georgia Diagnostic and Classification Center. Around the office we just called it “Jackson,” so seeing the facility’s actual name on a sign was jarring—it sounded clinical, even therapeutic. I parked and found my way to the prison entrance and walked inside the main building with its dark corridors and gated hallways, where metal bars barricaded every access point. The interior eliminated any doubt that this was a hard place.

I walked down a tunneled corridor to the legal visitation area, each step echoing ominously across the spotless tiled floor. When I told

the visitation officer that I was a paralegal sent to meet with a death row prisoner, he looked at me suspiciously. I was wearing the only suit I owned, and we could both see that it had seen better days. The officer's eyes seemed to linger long and hard over my driver's license before he tilted his head toward me to speak.

“You're not local.”

It was more of a statement than a question.

“No, sir. Well, I'm working in Atlanta.” After calling the warden's office to confirm that my visit had been properly scheduled, he finally admitted me, brusquely directing me to the small room where the visit would take place. “Don't get lost in here; we don't promise to come and find you,” he warned.

The visitation room was twenty feet square with a few stools bolted to the floor. Everything in the room was made of metal and secured. In front of the stools, wire mesh ran from a small ledge up to a ceiling twelve feet high. The room was an empty cage until I walked into it. For family visits, inmates and visitors had to be on opposite sides of the mesh interior wall; they spoke to one another through the wires of the mesh. Legal visits, on the other hand, were “contact visits”—the two of us would be on the same side of the room to permit more privacy. The room was small and, although I knew it couldn't be true, it felt like it was getting smaller by the second. I began worrying again about my lack of preparation. I'd scheduled to meet with the client for one hour, but I wasn't sure how I'd fill even fifteen minutes with what I knew. I sat down on one of the stools and waited. After fifteen minutes of growing anxiety, I finally heard the clanging of chains on the other side of the door.

The man who walked in seemed even more nervous than I was. He glanced at me, his face screwed up in a worried wince, and he quickly averted his gaze when I looked back. He didn't move far from the room's entrance, as if he didn't really want to enter the visitation room. He was a young, neatly groomed African American man with short hair—clean-shaven, medium frame and build—wearing bright, clean prison whites. He looked immediately familiar to me, like everyone I'd grown up with, friends from school, people I played

sports or music with, someone I'd talk to on the street about the weather. The guard slowly unchained him, removing his handcuffs and the shackles around his ankles, and then locked eyes with me and told me I had one hour. The officer seemed to sense that both the prisoner and I were nervous and to take some pleasure in our discomfort, grinning at me before turning on his heel and leaving the room. The metal door banged loudly behind him and reverberated through the small space.

The condemned man didn't come any closer, and I didn't know what else to do, so I walked over and offered him my hand. He shook it cautiously. We sat down and he spoke first.

"I'm Henry," he said.

"I'm very sorry" were the first words I blurted out. Despite all my preparations and rehearsed remarks, I couldn't stop myself from apologizing repeatedly.

"I'm really sorry, I'm really sorry, uh, okay, I don't really know, uh, I'm just a law student, I'm not a real lawyer....I'm so sorry I can't tell you very much, but I don't know very much."

The man looked at me worriedly. "Is everything all right with my case?"

"Oh, yes, sir. The lawyers at SPDC sent me down to tell you that they don't have a lawyer yet....I mean, we don't have a lawyer for you yet, but you're not at risk of execution anytime in the next year....We're working on finding you a lawyer, a real lawyer, and we hope the lawyer will be down to see you in the next few months. I'm just a law student. I'm really happy to help, I mean, if there's something I can do."

The man interrupted my chatter by quickly grabbing my hands.

"I'm not going to have an execution date anytime in the next year?"

"No, sir. They said it would be at least a year before you get an execution date." Those words didn't sound very comforting to me. But Henry just squeezed my hands tighter and tighter.

“Thank you, man. I mean, really, thank you! This is great news.” His shoulders unhunched, and he looked at me with intense relief in his eyes.

“You are the first person I’ve met in over two years after coming to death row who is not another death row prisoner or a death row guard. I’m so glad you’re here, and I’m so glad to get this news.” He exhaled loudly and seemed to relax.

“I’ve been talking to my wife on the phone, but I haven’t wanted her to come and visit me or bring the kids because I was afraid they’d show up and I’d have an execution date. I just don’t want them here like that. Now I’m going to tell them they can come and visit. Thank you!”

I was astonished that he was so happy. I relaxed, too, and we began to talk. It turned out that we were exactly the same age. Henry asked me questions about myself, and I asked him about his life. Within an hour we were both lost in conversation. We talked about everything. He told me about his family, and he told me about his trial. He asked me about law school and my family. We talked about music, we talked about prison, we talked about what’s important in life and what’s not. I was completely absorbed in our conversation. We laughed at times, and there were moments when he was very emotional and sad. We kept talking and talking, and it was only when I heard a loud bang on the door that I realized I’d stayed way past my allotted time for the legal visit. I looked at my watch. I’d been there three hours.

The guard came in and he was angry. He snarled at me, “You should have been done a long time ago. You have to leave.”

He began handcuffing Henry, pulling his hands together behind his back and locking them there. Then he roughly shackled Henry’s ankles. The guard was so angry he put the cuffs on too tight. I could see Henry grimacing with pain.

I said, “I think those cuffs are on too tight. Can you loosen them, please?”

“I told you: You need to leave. You don’t tell me how to do my job.”

Henry gave me a smile and said, “It’s okay, Bryan. Don’t worry about this. Just come back and see me again, okay?” I could see him wince with each click of the chains being tightened around his waist.

I must have looked pretty distraught. Henry kept saying, “Don’t worry, Bryan, don’t worry. Come back, okay?”

As the officer pushed him toward the door, Henry turned back to look at me.

I started mumbling, “I’m really sorry. I’m really sor—”

“Don’t worry about this, Bryan,” he said, cutting me off. “Just come back.”

I looked at him and struggled to say something appropriate, something reassuring, something that expressed my gratitude to him for being so patient with me. But I couldn’t think of anything to say. Henry looked at me and smiled. The guard was shoving him toward the door roughly. I didn’t like the way Henry was being treated, but he continued to smile until, just before the guard could push him fully out of the room, he planted his feet to resist the officer’s shoving. He looked so calm. Then he did something completely unexpected. I watched him close his eyes and tilt his head back. I was confused by what he was doing, but then he opened his mouth and I understood. He began to sing. He had a tremendous baritone voice that was strong and clear. It startled both me and the guard, who stopped his pushing.

*I’m pressing on, the upward way
New heights I’m gaining, every day
Still praying as, I’m onward bound
Lord, plant my feet on Higher Ground.*

It was an old hymn they used to sing all the time in the church where I grew up. I hadn’t heard it in years. Henry sang slowly and with great sincerity and conviction. It took a moment before the

officer recovered and resumed pushing him out the door. Because his ankles were shackled and his hands were locked behind his back, Henry almost stumbled when the guard shoved him forward. He had to waddle to keep his balance, but he kept on singing. I could hear him as he went down the hall:

*Lord lift me up, and let me stand
By faith on Heaven's tableland
A higher plane, that I have found
Lord, plant my feet on Higher Ground.*

I sat down, completely stunned. Henry's voice was filled with desire. I experienced his song as a precious gift. I had come into the prison with such anxiety and fear about his willingness to tolerate my inadequacy. I didn't expect him to be compassionate or generous. I had no right to expect anything from a condemned man on death row. Yet he gave me an astonishing measure of his humanity. In that moment, Henry altered something in my understanding of human potential, redemption, and hopefulness.

I finished my internship committed to helping the death row prisoners I had met that month. Proximity to the condemned and incarcerated made the question of each person's humanity more urgent and meaningful, including my own. I went back to law school with an intense desire to understand the laws and doctrines that sanctioned the death penalty and extreme punishments. I piled up courses on constitutional law, litigation, appellate procedure, federal courts, and collateral remedies. I did extra work to broaden my understanding of how constitutional theory shapes criminal procedure. I plunged deeply into the law and the sociology of race, poverty, and power. Law school had seemed abstract and disconnected before, but after meeting the desperate and imprisoned, it all became relevant and critically important. Even my studies at the Kennedy School took on a new significance.

Developing the skills to quantify and deconstruct the discrimination and inequality I saw became urgent and meaningful.

My short time on death row revealed that there was something missing in the way we treat people in our judicial system, that maybe we judge some people unfairly. The more I reflected on the experience, the more I recognized that I had been struggling my whole life with the question of how and why people are judged unfairly.

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I grew up in a poor, rural, racially segregated settlement on the eastern shore of the Delmarva Peninsula, in Delaware, where the racial history of this country casts a long shadow. The coastal communities that stretched from Virginia and eastern Maryland to lower Delaware were unapologetically Southern. Many people in the region insisted on a racialized hierarchy that required symbols, markers, and constant reinforcement, in part because of the area's proximity to the North. Confederate flags were proudly displayed throughout the region, boldly and defiantly marking the cultural, social, and political landscape.

African Americans lived in racially segregated ghettos isolated by railroad tracks within small towns or in "colored sections" in the country. I grew up in a country settlement where some people lived in tiny shacks; families without indoor plumbing had to use outhouses. We shared our outdoor play space with chickens and pigs.

The black people around me were strong and determined but marginalized and excluded. The poultry plant bus came each day to pick up adults and take them to the factory where they would daily pluck, hack, and process thousands of chickens. My father left the area as a teenager because there was no local high school for black children. He returned with my mother and found work in a food factory; on weekends he did domestic work at beach cottages and rentals. My mother had a civilian job at an Air Force base. It seemed

that we were all cloaked in an unwelcome garment of racial difference that constrained, confined, and restricted us.

My relatives worked hard all the time but never seemed to prosper. My grandfather was murdered when I was a teenager, but it didn't seem to matter much to the world outside our family.

My grandmother was the daughter of people who were enslaved in Caroline County, Virginia. She was born in the 1880s, her parents in the 1840s. Her father talked to her all the time about growing up in slavery and how he learned to read and write but kept it a secret. He hid the things he knew—until Emancipation. The legacy of slavery very much shaped my grandmother and the way she raised her nine children. It influenced the way she talked to me, the way she constantly told me to “Keep close.”

When I visited her, she would hug me so tightly I could barely breathe. After a little while, she would ask me, “Bryan, do you still feel me hugging you?” If I said yes, she'd let me be; if I said no, she would assault me again. I said no a lot because it made me happy to be wrapped in her formidable arms. She never tired of pulling me to her.

“You can't understand most of the important things from a distance, Bryan. You have to get close,” she told me all the time.

The distance I experienced in my first year of law school made me feel lost. Proximity to the condemned, to people unfairly judged; that was what guided me back to something that felt like home.

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This book is about getting closer to mass incarceration and extreme punishment in America. It is about how easily we condemn people in this country and the injustice we create when we allow fear, anger, and distance to shape the way we treat the most vulnerable among us. It's also about a dramatic period in our recent history, a period that indelibly marked the lives of millions of Americans—of all races, ages, and sexes—and the American psyche as a whole.

When I first went to death row in December 1983, America was in the early stages of a radical transformation that would turn us into an unprecedentedly harsh and punitive nation and result in mass imprisonment that has no historical parallel. Today we have the highest rate of incarceration in the world. The prison population has increased from 300,000 people in the early 1970s to 2.3 million people today. There are nearly six million people on probation or on parole. One in every fifteen people born in the United States in 2001 is expected to go to jail or prison; one in every three black male babies born in this century is expected to be incarcerated.

We have shot, hanged, gassed, electrocuted, and lethally injected hundreds of people to carry out legally sanctioned executions. Thousands more await their execution on death row. Some states have no minimum age for prosecuting children as adults; we've sent a quarter million kids to adult jails and prisons to serve long prison terms, some under the age of twelve. For years, we've been the only country in the world that condemns children to life imprisonment without parole; nearly three thousand juveniles have been sentenced to die in prison.

Hundreds of thousands of nonviolent offenders have been forced to spend decades in prison. We've created laws that make writing a bad check or committing a petty theft or minor property crime an offense that can result in life imprisonment. We have declared a costly war on people with substance abuse problems. There are more than a half-million people in state or federal prisons for drug offenses today, up from just 41,000 in 1980.

We have abolished parole in many states. We have invented slogans like "Three strikes and you're out" to communicate our toughness. We've given up on rehabilitation, education, and services for the imprisoned because providing assistance to the incarcerated is apparently too kind and compassionate. We've institutionalized policies that reduce people to their worst acts and permanently label them "criminal," "murderer," "rapist," "thief," "drug dealer," "sex offender," "felon"—identities they cannot change regardless of the

circumstances of their crimes or any improvements they might make in their lives.

The collateral consequences of mass incarceration have been equally profound. We ban poor women and, inevitably, their children from receiving food stamps and public housing if they have prior drug convictions. We have created a new caste system that forces thousands of people into homelessness, bans them from living with their families and in their communities, and renders them virtually unemployable. Some states permanently strip people with criminal convictions of the right to vote; as a result, in several Southern states disenfranchisement among African American men has reached levels unseen since before the Voting Rights Act of 1965.

We also make terrible mistakes. Scores of innocent people have been exonerated after being sentenced to death and nearly executed. Hundreds more have been released after being proved innocent of noncapital crimes through DNA testing. Presumptions of guilt, poverty, racial bias, and a host of other social, structural, and political dynamics have created a system that is defined by error, a system in which thousands of innocent people now suffer in prison.

Finally, we spend lots of money. Spending on jails and prisons by state and federal governments has risen from \$6.9 billion in 1980 to nearly \$80 billion today. Private prison builders and prison service companies have spent millions of dollars to persuade state and local governments to create new crimes, impose harsher sentences, and keep more people locked up so that they can earn more profits. Private profit has corrupted incentives to improve public safety, reduce the costs of mass incarceration, and most significantly, promote rehabilitation of the incarcerated. State governments have been forced to shift funds from public services, education, health, and welfare to pay for incarceration, and they now face unprecedented economic crises as a result. The privatization of prison health care, prison commerce, and a range of services has made mass incarceration a money-making windfall for a few and a costly nightmare for the rest of us.

After graduating from law school, I went back to the Deep South to represent the poor, the incarcerated, and the condemned. In the last thirty years, I've gotten close to people who have been wrongly convicted and sent to death row, people like Walter McMillian. In this book you will learn the story of Walter's case, which taught me about our system's disturbing indifference to inaccurate or unreliable verdicts, our comfort with bias, and our tolerance of unfair prosecutions and convictions. Walter's experience taught me how our system traumatizes and victimizes people when we exercise our power to convict and condemn irresponsibly—not just the accused but also their families, their communities, and even the victims of crime. But Walter's case also taught me something else: that there is light within this darkness.

Walter's story is one of many that I tell in the following chapters. I've represented abused and neglected children who were prosecuted as adults and suffered more abuse and mistreatment after being placed in adult facilities. I've represented women, whose numbers in prison have increased 640 percent in the last thirty years, and seen how our hysteria about drug addiction and our hostility to the poor have made us quick to criminalize and prosecute poor women when a pregnancy goes wrong. I've represented mentally disabled people whose illnesses have often landed them in prison for decades. I've gotten close to victims of violent crime and their families and witnessed how even many of the custodians of mass imprisonment—prison staff—have been made less healthy, more violent and angry, and less just and merciful.

I've also represented people who have committed terrible crimes but nonetheless struggle to recover and to find redemption. I have discovered, deep in the hearts of many condemned and incarcerated people, the scattered traces of hope and humanity—seeds of restoration that come to astonishing life when nurtured by very simple interventions.

Proximity has taught me some basic and humbling truths, including this vital lesson: *Each of us is more than the worst thing we've ever done.* My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice. Finally, I've come to believe that the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.

We are all implicated when we allow other people to be mistreated. An absence of compassion can corrupt the decency of a community, a state, a nation. Fear and anger can make us vindictive and abusive, unjust and unfair, until we all suffer from the absence of mercy and we condemn ourselves as much as we victimize others. The closer we get to mass incarceration and extreme levels of punishment, the more I believe it's necessary to recognize that we all need mercy, we all need justice, and—perhaps—we all need some measure of unmerited grace.

Chapter Fifteen

The increasing rate of executions in Alabama went against the national trend. Media coverage of all the innocent people wrongly convicted had an effect on the death-sentencing rate in America, which began to decline in 1999. But the terrorist attacks in New York City on September 11, 2001, and threats of terrorism and global conflict seemed to disrupt the progress toward a repeal of capital punishment. But then a few years later, rates of execution and death sentencing were once again decreasing. By 2010, the number of annual executions fell to less than half the number in 1999. Several states were seriously debating ending the death penalty. New Jersey, New York, Illinois, New Mexico, Connecticut, and Maryland all took capital punishment off the books. Even in Texas, where nearly 40 percent of the nearly 1,400 modern-era executions in the United States had taken place, the death-sentencing rate had dropped dramatically, and the pace of executions had finally slowed.

Alabama's death-sentencing rate had also dropped from the late 1990s, but it was still the highest in the country. By the end of 2009, Alabama had the nation's highest execution rate per capita.

Every other month someone was facing execution, and we were scrambling to keep up. Jimmy Callahan, Danny Bradley, Max Payne, Jack Trawick, and Willie McNair were executed in 2009. We had actively tried to block these executions, mostly by arguing about the way the executions were being carried out. In 2004, I argued a case at the U.S. Supreme Court that raised questions about the constitutionality of certain methods of execution. States had largely abandoned execution by electrocution, gas chamber, firing squad, and hanging in favor of lethal injection. Viewed as more sterile and serene, lethal injection had become the most common method for the sanctioned killing of people in virtually every death state. But questions about the painlessness and efficacy of lethal injection were emerging.

In the case I argued before the Court, we challenged the constitutionality of Alabama's protocols for lethal injection. David Nelson had very compromised veins. He was in his sixties and had been a drug addict earlier in his life, making access to his veins difficult. Members of the correctional staff were not able to insert an IV in his arm in order to carry out his execution without medical complications. The Hippocratic oath prevents doctors and medical personnel from participating in executions, so Alabama officials planned for untrained correctional staff to take a knife and make a two-inch incision in Mr. Nelson's arm or groin so that they could find a vein in which to inject him with toxins and kill him. We argued that without anesthesia, the procedure would be needlessly painful and cruel.

The State of Alabama had argued that procedural rules barred Mr. Nelson from challenging the constitutionality of the protocol. The U.S. Supreme Court intervened. The legal question was whether condemned prisoners could file civil rights actions to challenge arguably unconstitutional methods of execution. Justice Sandra Day O'Connor was especially active during the oral argument, asking me

lots of questions about the propriety of correctional staff engaging in medical procedures. The Court ruled unanimously in our favor, deciding that a condemned prisoner could challenge unconstitutional methods of execution by filing a civil rights case. David Nelson died of natural causes a year after we won relief.

Following the Nelson litigation, questions about the drug combination that most states used to carry out lethal injections arose. Many states were using drugs that had been banned for animal euthanasia because they caused a painful and torturous death. The drugs weren't readily available in the United States, and so states had started importing them from European manufacturers. When the news spread that the drugs were being used in executions in the United States, European producers stopped making them available. The drugs became scarce, which prompted state correctional authorities to obtain them illegally, without complying with FDA rules that regulate the interstate sale and transfer of drugs. Drug raids of state correctional facilities were a bizarre consequence of this surreal drug dealing to carry out executions. The U.S. Supreme Court, in *Baze v. Rees*, later held that the execution protocols and drug combinations weren't inherently unconstitutional. The executions would resume.

What that meant for Alabama death row prisoners and EJI staff was seventeen executions in thirty months. It happened at the same time that we were representing children sentenced to life without parole all over the country. I'd flown to South Dakota, Iowa, Michigan, Missouri, Arkansas, Virginia, Wisconsin, and California to argue cases on behalf of condemned children over the preceding months. The courts, procedures, and players were all different, and the travel was exhausting. We were still very actively litigating on behalf of condemned children in Mississippi, Georgia, North Carolina, Florida, and Louisiana—Southern states where we had litigated previously. And, of course, our Alabama docket had never been more jammed or demanding. In a two-week period, I had been in California visiting Antonio Nuñez at a remote prison in the middle of the state before arguing his case in an appellate court there, while

also actively trying to win relief for Trina Garnett in Pennsylvania and Ian Manuel in Florida. I had visited Ian and Joe Sullivan in a Florida prison, and both of them were struggling. Prison officials weren't allowing Joe to have regular access to his wheelchair, and he had fallen repeatedly and injured himself. Ian was still in isolation. Trina's medical condition was worsening.

I was having an increasingly difficult time managing it all. At the same time, Walter's authorized length of stay at the Montgomery facility was up, so we frantically made arrangements for him to move back home, where his sister would do the best she could to take care of him. It was a worrisome situation for him and his family, for all of us.

By the time Jimmy Dill was scheduled for execution in Alabama, the entire EJI staff was exhausted. The execution date couldn't have come at a more difficult time. We had no prior involvement in Mr. Dill's case, which meant getting up to speed in the thirty days before his scheduled execution. It was an unusual crime. Mr. Dill was accused of shooting someone during the course of a drug deal after an argument erupted. The shooting victim did not die; Mr. Dill was arrested and charged with aggravated assault. He was in jail for nine months awaiting trial while the victim was released from the hospital and was recovering fine. But after several months of caring for him at home, the victim's wife apparently abandoned him and he became gravely ill. When he died, state prosecutors changed the charges against Mr. Dill from assault to capital murder.

Jimmy Dill suffered from an intellectual disability and had been sexually and physically abused throughout his childhood. He struggled with drug addiction until his arrest. He was appointed counsel who did very little to prepare the case for trial. Almost no investigation was done into the poor medical care the victim had received, care that constituted the actual cause of death. The state made a plea offer of twenty years, but it was never adequately communicated to Mr. Dill, so he went to trial, was convicted, and was sentenced to death. The appellate courts affirmed his conviction and sentence. He couldn't find volunteer counsel for his

postconviction appeals, so most of his legal claims were procedurally barred because he had missed the filing deadlines.

When we first looked at Mr. Dill's case a few weeks before his scheduled execution, no court had reviewed critical issues about the reliability of his conviction and sentence. Capital murder requires an intent to kill, and there was a persuasive argument that there was no intent to kill in this case and that poor health care had caused the victim's death. Most gunshot victims don't die after nine months, and it was surprising that the state was seeking the death penalty in this case. And the U.S. Supreme Court had previously banned the execution of people with mental retardation, so Mr. Dill should have been shielded from the death penalty because of his intellectual disability, but no one had investigated or presented evidence in support of the claim.

Along with his other challenges, Mr. Dill had enormous difficulty speaking. He had a speech impediment that caused him to stutter badly. When he became excited or agitated, it got worse. Because he had not previously had a lawyer who would see him or speak to him, Mr. Dill saw our intervention as something of a miracle. I sent my young lawyers to meet with him regularly after we got involved, and Mr. Dill called me frequently.

We tried frantically to get the Courts to issue a stay based on the new issues we'd uncovered, to no avail. Courts are deeply resistant to reviewing claims once a condemned prisoner has completed the appeals process the first time. Even the claim of mental retardation was thwarted because no court would grant a hearing at such a late stage. Although I knew the odds were against us, Mr. Dill's severe disabilities had made me privately hopeful that maybe a judge would be concerned and at least let us present additional evidence. But every court told us, "Too late."

On the day of the scheduled execution, I once again found myself talking to a man who was about to be strapped down and killed. I had asked Mr. Dill to call throughout the day because we were waiting to hear the outcome of our final stay request at the U.S. Supreme Court. Early in the day he had sounded anxious, but he kept

insisting that things would work out, and he told me he wasn't going to give up hope. He tried to express his gratitude for what we had done in the weeks leading up to his execution. He thanked me for sending staff down to visit him regularly. We had located family members with whom he had reconnected. We told him that we believed that he had been unfairly convicted and sentenced. Even though we hadn't yet persuaded a court to stay his execution, our efforts seemed to help him cope. But then the Supreme Court denied our final request for a stay of execution, and there was nothing else to do. He would be executed in less than an hour, and I had to tell him that the Court would not grant him a stay. I felt overwhelmed.

We spoke on the phone shortly before he was taken into the execution chamber. Listening to him was hard. He was stuttering worse than usual and having great difficulty getting his words out. The imminent execution had unnerved him, but he was trying valiantly to express his gratitude for our efforts. I sat for a long time holding the phone while he strained to speak. It was heartbreaking. At one point, I remembered something I had completely forgotten until that moment.

When I was a boy, my mother took me to church. When I was about ten years old, I was outside of our church with my friends, one of whom had brought a visiting relative to the service. The visiting child was a shy, skinny boy about my height who was clinging to his cousin nervously. He didn't say anything as the group of us chatted away. I asked him where he was from, and when this child tried to speak he stumbled horribly. He had a severe speech impediment and couldn't get his mouth to cooperate. He couldn't even say the name of the town where he lived. I had never seen someone stutter like that; I thought he must have been joking or playing around, so I laughed. My friend looked at me worriedly, but I didn't stop laughing. Out of the corner of my eye, I saw my mother looking at me with an expression I'd never seen before. It was a mix of horror, anger, and shame, all focused on me. It stopped my laughing instantly. I'd always felt adored by my mom, so I was unnerved when she called me over.

When I got to her, she was very angry with me. “What are you doing?”

“What? I didn’t do...”

“Don’t you *ever* laugh at someone because they can’t get their words out right. Don’t you *ever* do that!”

“I’m sorry.” I was devastated to be reprimanded by my mom so harshly. “Mom, I didn’t mean to do anything wrong.”

“You should know better, Bryan.”

“I’m sorry. I thought...”

“I don’t want to hear it, Bryan. There is no excuse, and I’m very disappointed in you. Now, I want you to go back over there and tell that little boy that you’re sorry.”

“Yes, ma’am.”

“Then I want you to give that little boy a hug.”

“Huh?”

“Then I want you to tell him that you love him.” I looked up at her and, to my horror, saw that she was dead serious. I had reacted as apologetically as I possibly could, but this was way too much.

“Mom, I can’t go over and tell that boy I love him. People will—” She gave me that look again. I somberly turned around and returned to my group of friends. They had obviously seen my mother’s scolding; I could tell because they were all staring at me. I went up to the little boy who had struggled to speak.

“Look, man, I’m sorry.”

I was genuinely apologetic for laughing and even more deeply regretful of the situation I had put myself in. I looked over at my mother, who was still staring at me. I lunged at the boy to give him a very awkward hug. I think I startled him by grabbing him like that, but when he realized that I was trying to hug him, his body relaxed and he hugged me back.

My friends looked at me oddly as I spoke.

“Uh...also, uh...I love you!” I tried to say it as insincerely as I could get away with and half-smiled as I spoke. I was still hugging the boy,

so he couldn't see the disingenuous look on my youthful face.

It made me feel less weird to smile like it was a joke. But then the boy hugged me tighter and whispered in my ear. He spoke flawlessly, without a stutter and without hesitation.

"I love you, too." There was such tenderness and earnestness in his voice, and just like that, I thought I would start crying.

—

I was in my office, talking to Jimmy Dill on the night of his execution, and I realized I was thinking about something that had happened nearly forty years earlier. I also realized that I was crying. The tears were sliding down my cheeks—runaways that escaped when I wasn't paying attention. Mr. Dill was still laboring to get his words out, desperately trying to thank me for trying to save his life. As it got closer and closer to the time of his execution, it became harder for him to speak. The guards were making noise behind him, and I could tell he was upset that he couldn't get his words out right, but I didn't want to interrupt him. So I sat there and let the tears fall down my face.

The harder he tried to speak, the more I wanted to cry. The long pauses gave me too much time to think. He would never have been convicted of capital murder if he had just had the money for a decent lawyer. He would never have been sentenced to death if someone had investigated his past. It all felt tragic. His struggle to form words and his determination to express gratitude reinforced his humanity for me, and it made thinking about his impending execution unbearable. *Why couldn't they see it, too?* The Supreme Court had banned the execution of people with intellectual disability, but states like Alabama refused to assess in any honest way whether the condemned are disabled. We're supposed to sentence people fairly after fully considering their life circumstances, but instead we exploit the inability of the poor to get the legal assistance they need—all so we can kill them with less resistance.

On the phone with Mr. Dill, I thought about all of his struggles and all the terrible things he'd gone through and how his disabilities had broken him. There was no excuse for him to have shot someone, but it didn't make sense to kill him. I began to get angry about it. Why do we want to kill all the broken people? What is wrong with us, that we think a thing like that can be right?

I tried not to let Mr. Dill hear me crying. I tried not to show him that he was breaking my heart. He finally got his words out.

"Mr. Bryan, I just want to thank you for fighting for me. I thank you for caring about me. I love y'all for trying to save me."

When I hung up the phone that night I had a wet face and a broken heart. The lack of compassion I witnessed every day had finally exhausted me. I looked around my crowded office, at the stacks of records and papers, each pile filled with tragic stories, and I suddenly didn't want to be surrounded by all this anguish and misery. As I sat there, I thought myself a fool for having tried to fix situations that were so fatally broken. *It's time to stop. I can't do this anymore.*

For the first time I realized that my life was just full of brokenness. I worked in a broken system of justice. My clients were broken by mental illness, poverty, and racism. They were torn apart by disease, drugs and alcohol, pride, fear, and anger. I thought of Joe Sullivan and of Trina, Antonio, Ian, and dozens of other broken children we worked with, struggling to survive in prison. I thought of people broken by war, like Herbert Richardson; people broken by poverty, like Marsha Colbey; people broken by disability, like Avery Jenkins. In their broken state, they were judged and condemned by people whose commitment to fairness had been broken by cynicism, hopelessness, and prejudice.

I looked at my computer and at the calendar on the wall. I looked again around my office at the stacks of files. I saw the list of our staff, which had grown to nearly forty people. And before I knew it, I was talking to myself aloud: "I can just leave. Why am I doing this?"

It took me a while to sort it out, but I realized something sitting there while Jimmy Dill was being killed at Holman prison. After

working for more than twenty-five years, I understood that I don't do what I do because it's required or necessary or important. I don't do it because I have no choice.

I do what I do because I'm broken, too.

My years of struggling against inequality, abusive power, poverty, oppression, and injustice had finally revealed something to me about myself. Being close to suffering, death, executions, and cruel punishments didn't just illuminate the brokenness of others; in a moment of anguish and heartbreak, it also exposed my own brokenness. You can't effectively fight abusive power, poverty, inequality, illness, oppression, or injustice and not be broken by it.

We are all broken by something. We have all hurt someone and have been hurt. We all share the condition of brokenness even if our brokenness is not equivalent. I desperately wanted mercy for Jimmy Dill and would have done anything to create justice for him, but I couldn't pretend that his struggle was disconnected from my own. The ways in which I have been hurt—and have hurt others—are different from the ways Jimmy Dill suffered and caused suffering. But our shared brokenness connected us.

Paul Farmer, the renowned physician who has spent his life trying to cure the world's sickest and poorest people, once quoted me something that the writer Thomas Merton said: We are bodies of broken bones. I guess I'd always known but never fully considered that being broken is what makes us human. We all have our reasons. Sometimes we're fractured by the choices we make; sometimes we're shattered by things we would never have chosen. But our brokenness is also the source of our common humanity, the basis for our shared search for comfort, meaning, and healing. Our shared vulnerability and imperfection nurtures and sustains our capacity for compassion.

We have a choice. We can embrace our humanness, which means embracing our broken natures and the compassion that remains our best hope for healing. Or we can deny our brokenness, forswear compassion, and, as a result, deny our own humanity.

I thought of the guards strapping Jimmy Dill to the gurney that very hour. I thought of the people who would cheer his death and see

it as some kind of victory. I realized they were broken people, too, even if they would never admit it. So many of us have become afraid and angry. We've become so fearful and vengeful that we've thrown away children, discarded the disabled, and sanctioned the imprisonment of the sick and the weak—not because they are a threat to public safety or beyond rehabilitation but because we think it makes us seem tough, less broken. I thought of the victims of violent crime and the survivors of murdered loved ones, and how we've pressured them to recycle their pain and anguish and give it back to the offenders we prosecute. I thought of the many ways we've legalized vengeful and cruel punishments, how we've allowed our victimization to justify the victimization of others. We've submitted to the harsh instinct to crush those among us whose brokenness is most visible.

But simply punishing the broken—walking away from them or hiding them from sight—only ensures that they remain broken and we do, too. There is no wholeness outside of our reciprocal humanity.

I frequently had difficult conversations with clients who were struggling and despairing over their situations—over the things they'd done, or had been done to them, that had led them to painful moments. Whenever things got really bad, and they were questioning the value of their lives, I would remind them that each of us is more than the worst thing we've ever done. I told them that if someone tells a lie, that person is not *just* a liar. If you take something that doesn't belong to you, you are not *just* a thief. Even if you kill someone, you're not *just* a killer. I told myself that evening what I had been telling my clients for years. I am more than broken. In fact, there is a strength, a power even, in understanding brokenness, because embracing our brokenness creates a need and desire for mercy, and perhaps a corresponding need to show mercy. When you experience mercy, you learn things that are hard to learn otherwise. You see things you can't otherwise see; you hear things you can't otherwise hear. You begin to recognize the humanity that resides in each of us.

All of sudden, I felt stronger. I began thinking about what would happen if we all just acknowledged our brokenness, if we owned up to our weaknesses, our deficits, our biases, our fears. Maybe if we did, we wouldn't want to kill the broken among us who have killed others. Maybe we would look harder for solutions to caring for the disabled, the abused, the neglected, and the traumatized. I had a notion that if we acknowledged our brokenness, we could no longer take pride in mass incarceration, in executing people, in our deliberate indifference to the most vulnerable.

When I was a college student, I had a job working as a musician in a black church in a poor section of West Philadelphia. At a certain point in the service I would play the organ before the choir began to sing. The minister would stand, spread his arms wide, and say, "Make me to hear joy and gladness, that the bones which thou hast broken may rejoice." I never fully appreciated what he was saying until the night Jimmy Dill was executed.

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I had the privilege of meeting Rosa Parks when I first moved to Montgomery. She would occasionally come back to Montgomery from Detroit, where she lived, to visit dear friends. Johnnie Carr was one of those friends. Ms. Carr had befriended me, and I quickly learned that she was a force of nature—charismatic, powerful, and inspiring. She had been, in many ways, the true architect of the Montgomery Bus Boycott. She had organized people and transportation during the boycott and done a lot of the heavy lifting to make it the first successful major action of the modern Civil Rights Movement, and she succeeded Dr. Martin Luther King Jr. as the president of the Montgomery Improvement Association. She was in her late seventies when I first met her. "Now Bryan, I'm going to call you from time to time and I'm going ask you to do this or that and when I ask you to do something you're going to say 'Yes, ma'am,' okay?"

I chuckled—and I said, “Yes, ma’am.” She would sometimes call just to check in on me, and on occasion she would invite me over when Ms. Parks came to town.

“Bryan, Rosa Parks is coming to town, and we’re going to meet over at Virginia Durr’s house to talk. Do you want come over and listen?”

When Ms. Carr called me, she either wanted me to go some place to “speak” or to go some place to “listen.” Whenever Ms. Parks came to town, I’d be invited to listen.

“Oh, yes, ma’am. I’d love to come over and listen,” I’d always say, affirming that I understood what to do when I arrived.

Ms. Parks and Ms. Carr would meet at Virginia Durr’s home. Ms. Durr was also a larger-than-life personality. Her husband, Clifford Durr, was an attorney who had represented Dr. King throughout his time in Montgomery. Ms. Durr was determined to confront injustice well into her nineties. She frequently asked me to accompany her to various places or invited me over to dinner. EJI started renting her home for our law students and staff during the summers when she was away.

When I would go over to Ms. Durr’s home to listen to these three formidable women, Rosa Parks was always very kind and generous with me. Years later, I would occasionally meet her at events in other states, and I ended up spending a little time with her. But mostly, I just loved hearing her and Ms. Carr and Ms. Durr talk. They would talk and talk and talk. Laughing, telling stories, and bearing witness about what could be done when people stood up (or sat down, in Ms. Parks’s case). They were always so spirited together. Even after all they’d done, their focus was always on what they still planned to do for civil rights.

The first time I met Ms. Parks, I sat on Ms. Durr’s front porch in Old Cloverdale, a residential neighborhood in Montgomery, and I listened to the three women talk for two hours. Finally, after watching me listen for all that time, Ms. Parks turned to me and sweetly asked, “Now, Bryan, tell me who you are and what you’re

doing.” I looked at Ms. Carr to see if I had permission to speak, and she smiled and nodded at me. I then gave Ms. Parks my rap.

“Yes, ma’am. Well, I have a law project called the Equal Justice Initiative, and we’re trying to help people on death row. We’re trying to stop the death penalty, actually. We’re trying to do something about prison conditions and excessive punishment. We want to free people who’ve been wrongly convicted. We want to end unfair sentences in criminal cases and stop racial bias in criminal justice. We’re trying to help the poor and do something about indigent defense and the fact that people don’t get the legal help they need. We’re trying to help people who are mentally ill. We’re trying to stop them from putting children in adult jails and prisons. We’re trying to do something about poverty and the hopelessness that dominates poor communities. We want to see more diversity in decision-making roles in the justice system. We’re trying to educate people about racial history and the need for racial justice. We’re trying to confront abuse of power by police and prosecutors—” I realized that I had gone on way too long, and I stopped abruptly. Ms. Parks, Ms. Carr, and Ms. Durr were all looking at me.

Ms. Parks leaned back, smiling. “Ooooh, honey, all that’s going to make you tired, tired, tired.” We all laughed. I looked down, a little embarrassed. Then Ms. Carr leaned forward and put her finger in my face and talked to me just like my grandmother used to talk to me. She said, “That’s why you’ve got to be brave, brave, brave.” All three women nodded in silent agreement and for just a little while they made me feel like a young prince.

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I looked at the clock. It was 6:30 P.M. Mr. Dill was dead by now. I was very tired, and it was time to stop all this foolishness about quitting. It was time to be brave. I turned to my computer, and there was an email inviting me to speak to students in a poor school district about remaining hopeful. The teacher told me that she had heard me speak and wanted me to be a role model for the students and inspire them

to do great things. Sitting in my office, drying my tears, reflecting on my brokenness, it seemed like a laughable notion. But then I thought about those kids and the overwhelming and unfair challenges that too many children in this country have to overcome, and I started typing a message saying that I would be honored to come.

On the drive home, I turned on the car radio, seeking news about Mr. Dill's execution. I found a station airing a news report. It was a local religious station, but in their news broadcast there was no mention of the execution. I left the station on, and before long a preacher began a sermon. She started with scripture.

Three different times I begged the Lord to take it away. Each time he said, "My grace is sufficient. My power is made perfect in your weakness." So now I am glad to boast about my weaknesses, so that the power of Christ may work through me. Since I know it is all for Christ's good, I am quite content with my weaknesses and with insults, hardships, persecutions and calamities. For when I am weak, then I am strong.

I turned off the radio station, and as I slowly made my way home I understood that even as we are caught in a web of hurt and brokenness, we're also in a web of healing and mercy. I thought of the little boy who hugged me outside of church, creating reconciliation and love. I didn't deserve reconciliation or love in that moment, but that's how mercy works. The power of just mercy is that it belongs to the undeserving. It's when mercy is least expected that it's most potent—strong enough to break the cycle of victimization and victimhood, retribution and suffering. It has the power to heal the psychic harm and injuries that lead to aggression and violence, abuse of power, mass incarceration.

I drove home broken and brokenhearted about Jimmy Dill. But I knew I would come back the next day. There was more work to do.