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DEATH IN AMERICA

MATT CHERRY tells the story of a judicial killing

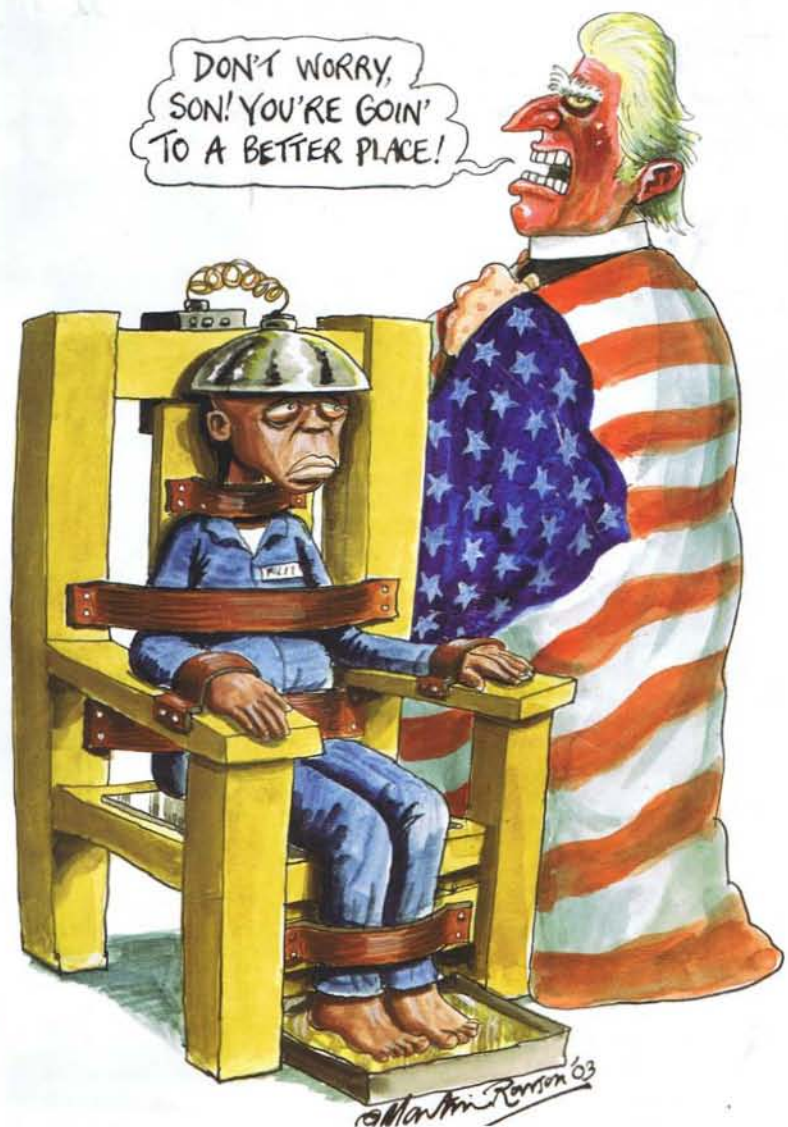
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Homicide - Justifiable

Matt Cherry tells the story of a judicial killing

Manny Babbitt was one of 6,000 US troops defending Khe Sanh against 40,000 North Vietnamese army regulars. Fighting was sometimes hand-to-hand. In the course of the 77-day siege, the US Air Force dumped more than 150,000 bombs into the surrounding jungle. When a soldier was killed, his comrades would try to cover the body, with bedrolls, blankets — whatever might protect the body from the shrapnel and the rats. They would take personal belongings, such as cigarette lighters, as keepsakes. Then the corpse's ankle was tagged for identification.

It has become the great moral divide between Europe and America not war, but the death penalty. American supporters claim capital punishment is a sign of moral clarity, and many US states practise it enthusiastically. European opponents claim it is barbaric, and all 44 member-states of the Council of Europe have outlawed it.

On the 56th day of the siege, Manny Babbitt was struck in the head by rocket shrapnel. He became one of 2,000 American casualties at Khe Sanh.

Jean-Marie Colombani, editor of Le Monde, recently wrote, "The death penalty, along with limits on abortion rights and the sale of firearms, is digging a gulf between America and the Old Continent, a gulf of values and misunderstanding that drives them apart. In this domain, President Bush, more than any of his predecessors, incarnates an America that is more and more distant from Europe."

Marine Lance Corporal Manny Babbitt died on May 4, 1999, his 50th birthday. He was killed by lethal injection, at San Quentin Prison, California.

Between 1997 and the end of 2002, the United States executed 462 people. As of January this year, death row contained 3,697 prisoners awaiting execution. In 2001, only 31 countries executed prisoners. Ninety per cent of all these judicial killings took place in the four countries that lead the death penalty league: China, Iran, Saudi Arabia, and the USA.

Manny Babbitt had a tough childhood, but he stuck it out at school until he was 17. Yet when he left, he was still in 7th grade — with 12 year olds. At 18, Manny applied to the United States Marine Corps, but failed the intelligence test so badly that the Marine recruiter had to help him answer the questions the second time around. Six months later, he was in Khe Sanh.

In June 2002, the United States Supreme Court ruled that executions of mentally retarded criminals violated the Constitutional ban on "cruel and unusual punishments." The Court majority said the decision reflected the growing national consensus on this issue.

It is still considered constitutional to execute convicts for crimes committed before they reached the age of 18. As of October 2002, there were 83 convicts on death row for crimes committed as minors.

Manny Babbitt took part in five major campaigns in Vietnam. After two tours of duty, Manny returned to the United States and civilian life. For a decade he drifted in and out of mental institutions. In 1975, Babbitt was diagnosed with paranoid schizophrenia. He was often homeless, and addicted to alcohol and drugs. Just before Christmas 1980, on a foggy night in Northern California, Manny was crossing the road in a drunken stupor. Startled by a vehicle, Manny Babbitt ran for cover, and tore through the screen door of the first house he came to. It was the home of Leah Schendel, a 78-year-old grandmother. Mrs Schendel confronted the intruder. Manny beat her with his hands. She fell dead from a heart attack. Manny took some personal

belongings from Mrs Schendel, but ignored many more valuable items. He put a mattress over her body. He tagged her ankle with a leather strap. Then Manny escaped back out into the night.

Supreme Court Justice Antonin Scalia wrote an angry dissent to the 2002 ruling against the execution of the mentally retarded. He mocked the "empty talk of a national consensus" on the issue, and accused his colleagues of adopting the "arrogant assumption ... [that they] have moral sentiments superior to those of the common herd." At least Justice Scalia could take some comfort that it is still legal to execute killers suffering from severe post-traumatic stress disorder.

When Bill Babbitt discovered a cigarette lighter with the inscription "L.S." in Manny's jacket, he feared the worst. He had heard about the senseless murder of Leah Schendel, and the strange treatment of her body. He knew his brother had never escaped his demons since returning from Vietnam. He told the police he thought he knew who killed Mrs Schendel. "He's sick. He needs help. Promise me he will be helped."

Bill received the necessary assurances. "They promised he would not go to the gas chamber, they said he would go to a mental institution" recounts Bill. "I cooperated fully, thinking he would get a fair trial and the treatment he needed. But I didn't understand the politics. The ambitious new Governor had to prove he was not soft on crime." The District Attorney announced she was seeking the death penalty for Manny Babbitt.

Juries in death penalty cases are always quizzed about their attitudes on capital punishment before the start of the trial. Those who could not impose a death verdict are eliminated from the jury pool. According to many studies, the resulting 'death-qualified' jury is not only prepared to return a death sentence, but is more likely to erroneously convict the defendant in the first place.

Manny Babbitt's trial was the first criminal case for the court-appointed defence attorney, James Schenk. Schenk was reportedly drunk during much of the trial. He was later forced to surrender his license to practise law.

The US Constitution says all defendants have the right to "adequate counsel." But the Supreme Court's standard of adequacy does not exclude attorneys who are drunk or asleep during trial. Rejecting the appeal of Calvin Burdine, a death row inmate whose attorney slept through much of his trial, the U.S. Appeals Court ruled that "it is impossible to determine whether ... counsel slept during the presentation of crucial, inculpatory evidence," and therefore, "prejudice cannot be presumed."

Judy Haney's court-appointed lawyer was so drunk during her trial in 1989 that he was held in contempt and sent to jail. The next day, both client and attorney came out of the cellblock and the trial resumed. Ms Haney remains on death row in Alabama.

In April 2001, Supreme Court Justice Ruth Bader Ginsburg observed, "I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial. People who are well represented at trial do not get the death penalty."

Bill Babbitt asked Schenk why his brother was being tried by an all-white jury: "Isn't a black man entitled to be tried by his peers? Shouldn't there be some black people on the jury? People who walked the walk that Manny walked?" Bill says that Schenk replied, "We're not interested in having niggers on the trial — we want people who are going to get up, show up, and understand a complex case."

Racism can influence capital cases at every stage: arrest, prosecution, decision to seek the death penalty, trial, jury deliberation, and sentencing.

In 1980, a 16 year-old white girl was raped and murdered at a Texas high school. Suspicion turned to the school's five janitors. One of the janitors later testified that a policeman looked at Clarence Brandley, the only black in the group, and said, "One of you is gonna hang for this. Since you're the nigger, you're elected." Brandley was convicted and sentenced to death by an all-white jury. The

prosecutor used his peremptory strikes to eliminate all blacks in the jury pool. Brandley was exonerated in 1990 after ten years on death row.

A 1998 study of district attorneys — the prosecutors who decide whether to seek the death penalty — revealed that 97.5 per cent are white, and only 1 per cent are black.

A race study in Philadelphia showed that from 1983 to 1993 prosecutors struck off 52 per cent of all black potential jurors, but only 23 per cent of other potential jurors. In Chambers County, Alabama, the prosecutor kept lists dividing prospective jurors into four categories: "strong," "medium," "weak," and "black."

William Henry Hance, a mentally impaired African-American, was sentenced to death in Georgia despite the fact that one of the jurors said she did not vote for death. The only black person on the jury stated that she had voted for a life sentence, but her vote was ignored. She was intimidated against speaking out in the courtroom, but later revealed her vote and the strong racial overtones in the jury room. Although another juror signed an affidavit confirming the black juror's story, Hance was executed in 1994.

In preparing for the penalty phase of the trial of African-American Anthony Peek, a white judge in Florida said in open court: "Since the nigger mom and dad are here anyway, why don't we go ahead and do the penalty phase today instead of having to subpoena them back at cost to the state." Peek was sentenced to death and the sentence was upheld by the Florida Supreme Court in 1986 reviewing his claim of racial bias. Anthony Peek was later granted a new trial, at which he was acquitted and released from death row.

Over 80 per cent of completed capital cases involve white victims, although nationally only 50 percent of murder victims are white. Since 1976, 12 white men have been executed for killing black victims, and 175 black men have been executed for killing white victims.

Bill Babbitt watched his brother's execution. "Manny kept his eyes closed the whole time. He didn't know if he would be able to see me in the crowd watching, and he didn't want the last thing he saw in this life to be a face filled with hate. He was very sorry for killing Leah Schendel but at peace. His final words were 'I forgive you all.' I felt that the executioners were an unwitting party to Manny's escape from evil."

Antonin Scalia, a devout Christian and outspoken conservative, has been cited by George W. Bush as his ideal Supreme Court justice. Speaking in Chicago in July 2002, Justice Scalia gave a fascinating analysis of the roles of religion and secularism in the debate on capital punishment. "It seems to me that the more Christian a country is, the less likely it is to regard the death penalty as immoral," observed Scalia. "Abolition has taken its firmest hold in post-Christian Europe, and has least support in the churchgoing United States. I attribute that to the fact that for the believing Christian, death is no big deal."

Justice Scalia was particularly scornful of the humanist belief that a human life is so valuable that the state should not be granted the right to forcibly end it. "For the nonbeliever, on the other hand, to deprive a man of his life is to end his existence," he noted, adding, sarcastically, "What a horrible act!"

Manny Babbitt's death certificate gave his cause of death as "Homicide". Above that someone had scribbled "justifiable".

<http://newhumanist.org.uk/578/homicide-justifiable>

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