The Case of “Death for a Dollar Ninety-Five”: Miscarriages of Justice and Constructions of American Identity

Mary L. Dudziak*
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Abstract

This is a story about a case long forgotten. It was a case that needed to be forgotten, to safeguard the meaning of American justice. The case of “Death for a Dollar Ninety-Five” began one July night in Marion, Alabama, in 1957, and soon captured the attention of the world. It involved an African American man, a white woman, and the robbery of a small amount of change late in the evening. The conviction was swift and the penalty was death. International criticism soon rained down on the Alabama Governor and the American Secretary of State, leading to clemency and a life sentence. For $1.95. And the case was forgotten. This story helps us to see the way narratives of American justice and injustice are managed. The United States identifies itself with the rule of law, and so miscarriages of justice are often perceived as breaches in that identity, violations of the nation’s own core principles. Resolutions of miscarriages of injustice, this paper argues, are often about repairing a breach in American identity, making America whole again. What happens to the person at the center of the story is, at best, secondary. For the story to turn out right, the nation is restored, and the person is forgotten.

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Chapter 1

The Case of “Death for a Dollar Ninety-Five”

Miscarriages of Justice and Constructions of American Identity

Mary L. Dudziak

One July night in Alabama in 1957, a story began that would capture, for a moment, the attention of the world. That it involved a man, a woman, and a small amount of money, all could agree. The man was black, the woman was white, the criminal charge was robbery. The penalty was death. About the remaining details, there were different stories, but one thing was clear: at stake in the case was not just the life of Jimmy Wilson but the meaning of America.

This is a story about a case long forgotten. It was, as it turns out, the point of the case for Jimmy Wilson to be forgotten, so that America might emerge unsullied.

Jimmy Wilson is not the first disappearance to be noted in American legal history, of course. Others have written about the ways that human beings disappear in law. Cases come to stand for principles and legal concepts, but the human whose life story gave rise to a legal dispute fades from the page. The detachment of legal idea from life story has often been described as an absence that affects our understanding of the true meaning of law and justice. John T. Noonan, Jr., has suggested that “neglect of persons . . . led to the worst sins for which American lawyers were accountable.” The absence of the person has also been described as imposing a false or incomplete narrative. Kendall Thomas has written that the absence of the person in legal history leaves an “ordered image that the historical narrative of constitutional progress imposes on an unruly past.” Angelo Herndon, an unjustly imprisoned African American labor organizer, was
not forgotten by legal history, but Thomas describes the “dissection” and "dismemberment" of this human being’s encounters with the law, with episodes fitting into different doctrinal categories, obscuring the whole.²

But the erasure of the person from the law is more than a hole, an absence, an incompleteness. It also aids in the forward-looking construction of ideas about the nature of American justice.³ When legal principle is detached from human person, American justice is measured through the march of principle. Ambiguities and injustice in the individual case do not get in the way of the story. The nation can be identified with certain legal ideas, with the idea of a rule of law itself. The messiness of life stories does not disrupt this construction of national self-identity.

The Jimmy Wilson case illustrates this. The case captured attention at home and abroad, feeding a global debate about the nature of American democracy. This helps us to see the way narratives of justice and the rule of law aid conceptions of American identity.⁴ It is not simply the law but the nation that is constructed when we form legal narratives. When the image of American justice is fractured, resolutions of miscarriages of justice often serve to repair a breach in American identity, making America whole again. What happens to the person at the center of the story is, at best, secondary. In fact, for America to be whole, Jimmy Wilson needed to disappear. In this way, forgetting Jimmy Wilson did not simply leave a void in our understanding, as Noonan might suggest but, instead, aided the formation of a particular national narrative. In this case, for the story to turn out right, the nation is restored, and the person is forgotten.

Death for a Dollar Ninety-Five

The case of “Death for a Dollar Ninety-Five” began in Marion, about 80 miles northeast from Montgomery, Alabama, the state capital. Montgomery “remained one of the most rigidly segregated cities of the South,” in the 1950s, historian Patricia Sullivan has written. The urban South had been energized by World War II, and the city’s population had increased by nearly 50 percent during the 1940s. Though many new migrants were white, Montgomery remained 37 percent African American in 1951, but “only 3.7 percent of eligible black voters were registered.”⁵ Alabama was also home to the city of Tuskegee, the site of the legendary Tuskegee Institute and the location of a notorious 1960 voting rights case, when the city redrew its boundaries to exclude nearly all African Americans from
the city limits to ensure that they could not vote in city elections.\textsuperscript{6} Events in Birmingham and elsewhere in the state would move the conscience of the nation and the world in the 1960s.\textsuperscript{7} But in 1950s Alabama, Jim Crow's hold remained firm: nearly all elected officials, judges, police officers, and jurors were white.\textsuperscript{8}

Alabama was in the news in the 1950s, ground zero in what was still a fledgling civil rights movement. Martin Luther King, Jr., was a new, 26-year-old pastor at the Dexter Avenue Baptist Church when the Montgomery bus boycott catapulted him to civil rights leadership in 1956. The year-long struggle by the African American community against segregation in Montgomery captured the attention of the nation and the world.\textsuperscript{9} But the full impact of this effort, and the course of the movement, could not be known in 1957 when Jimmy Wilson found himself in a jail cell. That the nation was on the cusp of change held out promise for an African American defendant in Alabama, but also trouble.

"I Speak for the White Race," was the headline in a weekly column in the leading local newspaper by a local judge in March 1957. Judge Walter B. Jones cut to the heart of the issue, as he saw it:

I speak for the White Race, my race, because today it is being unjustly assailed all over the world. It is being subjected to assaults here by radical newspapers and magazines, Communists and the Federal Judiciary. Columnists and photographers have been sent to the South to take back to the people of the North untrue and slanted tales about the South. . . . Their real and final goal is the intermarriage and mongrelization of the American People.

His race would "never submit," Jones insisted. "The white race shall forever remain white."\textsuperscript{10}

Linking equality with miscegenation had been a central theme for some time. Virginia Durr wrote that, for the White Citizens Councils that had "flowered all over the Black Belt" after Brown v. Board of Education, "their slogan is that 'the end of segregation will mean unlocking the bedroom doors of our white women to Negro men.'"\textsuperscript{11} Other Southern leaders would famously stand at the schoolhouse door, drawing a line there for white supremacy.\textsuperscript{12} Alabama state judges drew the line where they could, in the cases in their courtrooms.

It was in this context that Jimmy Wilson walked into Estelle Baker's bedroom one night. The Montgomery Advertiser reported the story on August 2: "A 53-year-old Negro is charged with burglary, robbery and
robbery with intent to ravish of an elderly widow last Saturday night." The widow, Mrs. E. B. Baker, "said the robber ordered her to give him money, and was given a few dollars from her purse. He was not satisfied with the amount, she said, and choked and threatened her until he was frightened away by a noise from a nearby home."

This was not, however, an encounter between strangers. Baker testified at trial that Jimmy Wilson had worked for her in her yard. On the evening of July 27, he arrived at her home, "and said he had come to do some work. She replied that it was too late." Wilson asked for some water, and Baker told him to go outside, to the back of the house, and get water there, as he had before. Wilson went outside and then entered the house again through the back door. "She asked him what he wanted and he said he wanted her money. She said she had none and he said, 'Yes, you have too.' She went to her wardrobe and got her purse and he told her to 'pour it out on the bed.'" Baker said that she poured about $3.95 onto the bed, and that he took most of it. Then, she said, "He threw me on the bed, pulled off my stepins, and attempted to rape me, that is what he did." Baker testified that Wilson threatened to kill her if she moved. Then, "a light flashed outside... He jumped up and told her he would kill her if she opened her mouth and then ran out the door." Two days later, Baker picked Wilson out of a five-man lineup at the Perry County Jailhouse. At trial, however, when asked if she saw him in the courtroom, "she said that she did not know and she then stated that she did not want to see him."

Wilson's court-appointed lawyer was State Representative Judson C. Locke. He moved unsuccessfully for a mistrial when Baker testified about the alleged assault, arguing that it "inflitrates the mind of the jury." But he did not crossexamine Baker or any other witness. He did not call Wilson to testify in his own defense and did not call any other defense witnesses. "Wilson was actually being tried for touching a white woman," a University of Alabama law professor later told a reporter. "His lawyer still could have attempted a defense. It doesn't sound as if he did anything but appear in court." The entire trial took four and one-half hours. The all-white jury took less than an hour to convict Wilson of the only crime he was charged with at trial: robbery.

Only three people had ever been sentenced to death before in Alabama for robbery, all African American men. Wilson became the fourth. The Alabama Supreme Court heard his appeal. Wilson's lawyer argued that it was impermissible to admit evidence of the alleged attempt to "ravish" Baker since it happened after the offense of robbery had been committed. The
court upheld the conviction, finding the evidence part of the context of the crime and finding that the trial as a whole did not result in unfairness.19

Even seeing the events of that night from the perspective of Baker's testimony, how could a jury sentence Wilson to death? Virginia Durr thought of it this way, writing to a friend as her husband, Clifford Durr, assisted Fred Gray in Jimmy Wilson's defense:

This is the fourth death sentence this summer. One was electrocuted, he was a fifteen-year-old boy accused of rape. The second was commuted, he was a seventeen-year-old boy accused of rape. In neither instance were the women harmed in any way and both stories were terribly phony. The third was commuted, that was simply murder so no wild emotion over that, and murder of a policeman, and now the Wilson case which is on the face of it a robbery case but in reality is a rape case or attempted rape. I sometimes feel we southern white women are some kind of obscene goddesses that they make these burnt offerings to. "Burn the Nigger, burn the Nigger" is what you hear when one of them comes up and there is something so awful and horrible about it, especially when no white man ever gets the death penalty for rape in any case and of course when it occurs with a Negro woman they never even believe it is rape. A little thirteen-year-old Negro girl who was babysitting got raped by the man of the house when he took her home and the proof was positive and she was terribly torn and harmed and yet nothing was ever done to the white man.20

Others have chronicled the role of ideas of black male sexuality and white female purity in conceptions of white Southern culture and in the policing of race and gender.21 A death sentence, carried out by the state within the walls of a prison was, in some ways, a civilizing gesture, removing the power to directly police the lines of race and sex from the community. That lynching remained the preference of many was underscored by the report that Wilson was held in prison in another county "for safekeeping."22

In this context, it was, of course, a breach for Jimmy Wilson to be in Estelle Baker's bedroom or simply to be inside with her, alone, after dark. Whether or not they touched, whether or not the "stepins" came down, Wilson had crossed a line running straight to many unmarked graves in Alabama.23 That his path toward death was through a courtroom, with the aid of a lawyer and appellate review, was simply a sign that the New South was modernized and civilized.
Jimmy Wilson would tell his own story of the case to a Toronto reporter. Marty Goodman described Wilson this way: “His cheeks sunken, his eyes haggard, he perspired during our hour-long interview, though the warden’s office was air-conditioned.” He was five foot seven and 135 pounds. “He crossed and uncrossed his arms, patted his shoulders and scratched his short, gray fuzzy hair while puzzling two syllable words. He is fully aware he must die for the crime he committed although, he says, he realized this only recently.” According to Goodman, he said “over and over again . . . ‘They never asked me anything,’ . . . ‘The policeman that arrested me . . . he didn’t ask. He says ‘that’s how it happened, wasn’t it?’ I say ‘no.’ He cuffed me until I say ‘yea . . . that’s how’.”

Wilson admitted to drinking the night of the alleged crime: “That was bad . . . an old man like me.” He ran out of money and thought of Baker, who had advanced him money before against future wages. “So I went back. She refused. I thought about it all day and went back again. She must have been scared because she gave me some—about $1.50 . . . I’m not sure because I paid it all to the taxi when I left.” When Wilson arrived at the house the second time, Baker “told me to come in. I went in. I ain’t lying . . . before God I ain’t.” Wilson admitted that he and Baker argued. Then “[s]he reached inside her purse and threw the change on the bed. I asked for more but she said she didn’t have no more. I never touched her. I never broke in. I know I shouldn’t have been drinking . . . but I’m telling the truth. I don’t want to die.”

The Alabama Supreme Court ruled against Wilson following an automatic appeal. Newspapers then reported: “Court upholds death penalty in $1.95 theft,” and the case became known as the case about death for $1.95. After reading of the story in a New York paper, Louis Kousin, a Cranford, New Jersey, social worker, sent a check for $1.95 to Alabama Governor James Folsom. He wanted to “dramatize what he called the ‘unbelievable’ fact that Wilson was scheduled to die for stealing $1.95.”

By early September, while a motion for rehearing was pending in the Alabama Supreme Court, Wilson had a new lawyer and a new chance. Fred Gray was just four years into his law practice in Montgomery, but he had already become a fixture in the civil rights movement, representing Rosa Parks and Claudette Colvin before her, in their challenges to bus segregation that led to the Montgomery Bus Boycott. Wilson’s first lawyer, a white man, had said that “no effort would be made as far as he knew to appeal to the federal courts.” In contrast, although Gray declined to discuss his plans, he “told a newsman asking about a possible habeas
corpus petition in [state] court that it could also be filed in federal court." This simple answer was enough for a local news story: "Fred Gray May Take Wilson Case into Federal Court." The best course for his client, however, was not clear.

In a letter, Virginia Durr wrote that the "big question" for the lawyers in the Wilson case was "what to do, try and get clemency of which there is a very good chance or to go to the courts with a weak case under Alabama law and there seems no federal question of any significance and take a chance on [John] Patterson coming in and not giving him clemency." Governor Folsom had said that he would always grant clemency in death penalty cases: "if I can find some excuse." Patterson would take office in January 1959, and Gray said, "Patterson was a racist," and "I'd already had trouble with him." The question of strategy, Durr thought, "will have to be settled by Wilson himself, whether he wants to take a chance on his life or accept what looks like a good chance for clemency, and life imprisonment! The poor fellow is perfectly ignorant," she thought, "and seems almost in a daze and it is hard to know if he knows what he is saying or if he just says what he thinks the 'white folks' want to hear." Publicity did not always help in a death penalty case. Public outcry over fifteen-year-old Jeremiah Reeves's death sentence had seemed to put pressure on Governor Folsom, who then did not grant clemency. So the lawyers did not seek to publicize Wilson's case. Nevertheless, publicity was just what Jimmy Wilson received.

The World Takes an Interest in Jimmy Wilson

On June 27, 1958, a small article appeared on the front page of the Listener Daily in Monrovia, Liberia. "American Negro May Die for $1.95," was the headline. The story reported that Wilson "will go to the electric chair" unless the governor intervened. The Listener Daily article was nearly identical to a story in the European edition of the New York Herald Tribune, which had circulated in Monrovia a few days before. A dispatch from the American Embassy in Monrovia to the U.S. Department of State reported on this development. "It hardly seems necessary to point out," wrote Richard L. Jones at the embassy, "that one small news item of the above type does considerable damage to the United States in this area of Africa. Although this sort of thing is by no means a new problem, nevertheless it is unfortunate when it occurs."
By 1958, race in America had become a regular story in newspapers around the world. The United States was the leader of the free world during the Cold War, and differences between the nation and its Soviet adversary were regularly described as the difference between a regime of rights and a regime of oppression. If America was the land of the free, governed by a rule of law, treating all with dignity, then how, foreign commentators often wondered, did American values square with racial segregation and discrimination? Race was widely thought to be the nation’s Achilles’ heel, and it was a vulnerability easily exploited by the Soviet Union, which used this issue relentlessly in anti-American propaganda. In this environment, American diplomats were sensitive to the way any episode of racism could further erode the image of the nation in the world.37

But the world took an interest in the Jimmy Wilson case. The Monrovia Listener Daily article was just the beginning. The U.S. Consulate General in Toronto reported to the State Department on August 25 that two front-page stories about the Jimmy Wilson case had appeared in the Toronto Star. The Telegram had carried a “screaming headline” on the story and reported Canadian efforts to intervene in the case: “Prime Minister Diefenbaker had been asked by a member of the Canadian Parliament to try to prevent the execution,” but “the question was ruled out of order and never answered.” A Toronto woman acquainted with Kwameh Nkrumah “pleaded by overseas phone with Ghana’s prime minister to intervene with President Eisenhower to prevent the execution and urged him to lead a world protest against it.” In an editorial, the Telegram argued that the punishment should fit the crime and pointed out that “people of the South should remember that these cases are reported around the world and give excellent propaganda material to those wishing to criticize the United States for tolerating barbaric, obsolete laws.”38 Numerous news stories were followed by extensive radio and television coverage of the Wilson story in Canada.39

Although Ghana’s Prime Minister Nkrumah declined to become personally involved, by August 30, the U.S. Embassy in Accra reported that Wilson’s death sentence was “being strongly denounced by every newspaper in Ghana,” with each emphasizing that “the severity of the sentence can be accounted for only because Wilson is a negro.” Archie Lang, the second secretary of the U.S. Embassy, thought that “it seems likely that the goodwill which exists here towards the US will be seriously compromised if the execution is carried out. Even if the sentence is commuted, it will probably still leave a mark.”40 Soon diplomatic posts around the
world cabled the State Department for assistance. A telegram from Dublin asked for "facts and instructions how to handle inquiries regarding Wilson Alabama case," and the U.S. Embassy in Montevideo asked for the same. More than 400 high school students in Switzerland sent a letter to the U.S. ambassador to that nation, expressing "friendship for the United States, but shock at this particular case." Student groups in Tunis and Copenhagen also protested, as did the rector of a university in Uruguay.

In sentencing Wilson to death, the State of Alabama poured salt onto a wound that American diplomats had worked hard to heal. American race relations had long been viewed as central to American identity. Gunnar Myrdal famously called the "Negro problem" an "American Dilemma" in 1944. Around the world, as well as at home, many believed that the way the nation treated the race it had formerly enslaved was a reflection of the true nature of American democracy. During World War II, a broader civil rights consciousness within the United States developed, as many viewed American racism in a new light in the context of the war with Germany. This was a war against Nazi racism. It seemed hypocritical for the United States to wage a war that was in part an ideological battle against Germany when in the United States itself racial intolerance of a different kind continued to reign.

This issue took on particularly urgent global implications after World War II. The Cold War was seen by American leaders as a struggle of apocalyptic proportions. The United States and the Soviet Union were seen as representing different ways of life. President Truman warned the nation in 1947:

At the present moment in world history nearly every nation must choose between alternative ways of life... One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression. The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio; fixed elections, and the suppression of personal freedoms.

American world leadership was needed to maintain the freedom of Americans, and of other peoples of the world. The two were linked: "If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of our own nation." To meet this challenge,
American leaders turned not only to buildup in strategic arms but also to the battle of ideas. In this battle, the U.S. could simply put its superior form of government on display. As a crucial 1950 National Security Council report suggested, “the potential within us of bearing witness to the values by which we live holds promise for a dynamic manifestation to the rest of the world of the vitality of our system.”

But superior values were not always on display in the United States. And as the United States positioned itself as the leader of the “free world” in the early years of the Cold War, the nation found itself under increasing global scrutiny. Racial incidents were no longer local news. When African American soldiers returned home from World War II, Southern communities reminded them, violently, of their place. Beatings, maimings, and killings of veterans were news throughout the nation and the world. Many foreign readers wondered what the nature of American democracy was if such things could happen in America. News of battles of school segregation and voting rights reinforced the international concern about race in America.

The strategic consequences of this issue heightened when the Soviet Union featured race in America as a principle anti-American propaganda theme by the late 1940s. Soviet propaganda was often overblown, of course, but was also easy to write. Sometimes the most inflammatory news was simply a reprint of an article from a U.S. news source about something that had really happened, such as the time Macio Snipes of Georgia was shot to death by four whites after being the only African American in his district to vote. U.S. allies worried about the impact of civil rights problems on the image of American democracy around the world. While Soviet propaganda was often dismissed, many found propaganda on race and America to be uniquely effective because there was so much truth to the stories. For this reason, the U.S. ambassador to India in the Truman administration, Chester Bowles, among others, hammered away at the importance of the issue, arguing that the United States had a limited amount of time in which to address its civil rights problems in order to maintain the nation’s global standing. Secretary of State Dean Acheson went as far as to provide material to the Justice Department to include in its brief in Brown v. Board of Education, to emphasize to the Supreme Court that a ruling against segregation was essential to protect the nation’s global prestige and Cold War allegiances.

The State Department and the Voice of America tried hard to protect the image of America in the face of continued negative press, hoping to
turn the story of race in America into a story of enduring racial progress. The Brown ruling was a success for American diplomats. The 1957 crisis in Little Rock was a great challenge, but with the secretary of state’s involvement, by sending in federal troops to integrate Central High School, President Eisenhower turned a devastating drama of American racial intolerance into a story for the world that the force of American government was behind equality.  

And then came Jimmy Wilson. For Secretary of State John Foster Dulles, the Wilson case was certainly unwelcome, though not entirely a surprise. There were the big cases like Little Rock, of course, but there were also periodic eruptions, like small flare-ups in a forest fire. They would emerge, demand attention, and then, if addressed, hopefully recede from view. When the Wilson case first captured the world’s attention, the State Department began to track its global impact, at times pesterling U.S. embassies around the world for information.

The U.S. embassy in London received over 1,000 protests about Wilson, "a much greater volume of mail than the Embassy has had on any other specific incident in America over the past two years," which would have included the widely covered Little Rock crisis. This was in part, the embassy counselor for public affairs thought, "because the case of one individual has a greater dramatic appeal than broad or abstract issues; and partly because the present case involves what appear to the British as the various evils of color prejudice, capital punishment, and lack of a just trial."

When the Alabama Supreme Court denied Wilson’s petition for rehearing, the news was carried in Dutch papers, prompting two telephone calls to the U.S. Embassy at The Hague that threatened the life of the U.S. ambassador, claiming that the ambassador "would not survive day after Wilson execution." In Jamaica, the Pittsburgh Courier reported, "hundreds of shouting men and women, carrying anti-American slogans, marched to the consulate in protest." They chanted: "If Jimmy Wilson goes to the electric chair, no American white man nor woman can remain in Jamaica." This protest followed a meeting that had been attended by "thousands of Negroes."

Secretary of State Dulles wrote to Governor Folsom to inform him of the international reaction. In mid-September, according to Dulles’s aide, "approximately 600 letters a day are being received protesting the sentence at the London Embassy and . . . about 400 daily are being received in Ireland." Other protests went directly to the White House.
Much of this worldwide attention bore down directly on the governor of Alabama. Folsom "received an average of 1000 letters a day from all over the world, some of them containing one dollar 95 cents." The case prompted the secretary of the British Labour Party to send a letter to the governor urging clemency, which was widely covered in the British press. The Presbyterian Church of Jamaica sent a telegram urging that clemency would "forstall an act that would . . . bring an eternal blot on a great and generous nation." A telegram from the International Commission on Jurists at The Hague drew attention to "world legal concern regarding the Wilson case" and urgently requested clemency "in the interests of the prisoner as well as the high legal reputation of the United States in and outside of the free world." From Telemark Arbeiderblad, an influential, normally pro-U.S. newspaper in Oslo, Norway, 700 protest petitions from readers poured in.

In reaction, Folsom told the press: "I admit that we have got the worst penal system in the world, including Dark Africa. . . . I hope the next Legislature will do something about improving the situation." On September 13, he held a press conference "to announce he was 'snowed under' with mail from Toronto demanding clemency." Over 3,000 letters had arrived that day alone. "I've been Governor for two terms and I've never seen anything like it," he said. "I am utterly amazed." Folsom "hinted broadly," the New York Times reported, "that he would commute the death sentence to life imprisonment whenever a clemency hearing is requested."

Even the Birmingham Post-Herald came down in favor of clemency. In an editorial, the paper emphasized that "the decision is for Governor Folsom to make," but clemency "would serve not only justice but the best interest of Alabama as well. . . . So much world-wide interest has been centered in this case and misunderstanding of it is so widespread the sentence of death, if carried out, could never be satisfactorily explained much less justified before world opinion." It was "abhorrent" that in a Mideastern country, a person convicted of petty theft could be "dragged into the public square and there have his right hand severed at the wrist. . . . How much more difficult it must be for the people of many countries to understand a penalty of death in a theft involving $1.95."

With Wilson's execution date set for October 24, Fred Gray was now "'exploring every possibility' to save [his] life." When he asked for a clemency hearing in front of Governor Folsom, the governor quickly granted it, saying: "I want to put an end to this international hullabaloo."

At the hearing, Solicitor Blancard McCleod, for the State of Alabama,
strongly objected to clemency. He argued that Wilson had made “complete and deliberate plans to rob and rape an 82-year-old woman.” This was, he shouted, “the most vicious, heinous and contemptible crime man is capable of.” The Post-Herald reported that Gray argued that Wilson was “a victim of a prejudiced jury” and that he would never have been given the death penalty if he had been a white man. Gray also urged that clemency be granted “to protect the prestige of Alabama and the United States abroad.” The governor listened silently, asked Wilson a few questions about his background, and then said, “hearing dismissed.” The proceeding lasted half an hour.69

Jimmy Wilson would not die in the electric chair. Folsom announced his decision on September 29. He was now finished with a case that had plagued him. “I have given him clemency,” he said. “It will be up to the Pardon-Parole Board to see how long he has to serve.”70 Folsom sent a message to Secretary Dulles advising him that he had commuted Wilson’s sentence to life imprisonment. “Knowing of your interest in the matter I thought you would like to have a formal notice of the decision,” he wrote.71 The international media reaction to this decision was euphoric. In Nigeria, Jeremy Blunt, in his Daily Telegraph column, called Folsom “God’s own Gentleman, No 1 Citizen of the State of Alabama!! What a name!! What a divine use of one’s position!! What a heart!!! What humanity!!!!” There remained more work to be done in Alabama, Blunt thought: to remove the statute under which Wilson had been sentenced from Alabama law.72 Tleemark Arbeiderblad in Oslo celebrated its own role, noting that over 1,200 readers had sent in appeals. “No one knows the role of our readers in this event,” the paper said of the commutation decision, “[but ten thousands of other people, most of them probably Americans reacting as we did, did the same, so perhaps we were a little whirl in a large stream?]” The paper’s editor wrote to the embassy that the turn of events and the U.S. Embassy’s handling of the protest ultimately “strengthened my reader’s confidence in the U.S.A.”73

In England, the reaction was tempered. Twelve hundred British Labour Party delegates cheered when they received a cable with the news that Wilson’s sentence was commuted, but then jeered when they learned that he would serve a life sentence.74 Fred Gray agreed with this sentiment. “I still feel that life imprisonment is extreme and harsh punishment for what Jimmy Wilson did,” he said.75 Gray considered filing a petition for habeas corpus in federal court, but this course was never pursued. A new trial would have posed risks. Gray lost touch with Wilson not long after. “We
lawyers, people call us when they need us,” he later said. “They usually don’t.”

Under Secretary of State Christian Herter sent out a helpful form letter for embassies to use in replying to Wilson-related correspondence. It said that Folsom had commuted Wilson’s sentence and that “[t]he Pardon and Parole Board of the State of Alabama has the authority to determine when Jimmy Wilson may be released from prison.” Meanwhile, dispatches from U.S. embassies around the world on the case quickly dropped off. As if overnight, Jimmy Wilson was forgotten.

A blot on the American image had been removed. But Jimmy Wilson was still in prison, serving a life sentence for stealing a handful of change.

The image of America would endure other rough patches during the Cold War and the civil rights movement, until civil rights acts passed by congress in the 1960s and other evidence of civil rights progress helped to convince the world that the U.S. government was behind civil rights reform, not racial inequality. What of Jimmy Wilson? According to the Alabama Department of Corrections, Jimmy Wilson was paroled on October 1, 1973. He would have been 70 years old and had served 16 years in prison. From that point, the historical record is silent.

In the Wilson case, when the crisis was passed, it seemed important in the celebrating that the person at the center of the story be forgotten. A wrong had been righted, but Wilson’s punishment remained obviously excessive. This should cause us to ask just what the miscarriage was that was set aright, what the harm was that had so surely been undone. If justice had arrived, but not quite for Jimmy Wilson, then just who, or what, was justice serving?

Forgetting the “Scottsboro Boys”

Wilson’s fate was not unlike that of many other subjects of miscarriages of justice. The “Scottsboro boys” were, perhaps, the most notorious examples. Scottsboro involved nine African American teenagers falsely accused of gang rape of two white women on a freight train in Alabama in 1931. After perfunctory trials with minimal representation before all-white juries, eight defendants were quickly convicted and sentenced to death. In various appeals, their cases led to landmark rulings in the U.S. Supreme Court. But victories on appeal would lead to new trials and new injustices. Through it all, the Scottsboro defendants remained in jail.
charges against some of the young men were eventually dropped years later, others were convicted on subsequent retrials and served long prison terms before being paroled. Andy Wright, the last, was not released until 1950. Arrested when he was 19, Wright was then 38 or 39.\textsuperscript{82}

The lives of the “Scottsboro boys” were shattered, but their cases were landmarks in American justice. The first Supreme Court case, \textit{Powell v. Alabama}, established the right to adequate counsel in capital cases. Justice Sutherland wrote for the Court in a widely quoted passage:

\begin{quote}
The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he had a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.\textsuperscript{83}
\end{quote}

In \textit{Powell}, “the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.” In this case, “the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process.”\textsuperscript{84}

\textit{Powell v. Alabama} was lauded at the time it was decided. “A Notable Decision: The Supreme Court Writes a Chapter on Man’s Rights,” was the
headline of a *New York Times* op-ed on the case by Harvard law professor Felix Frankfurter. "Even lay comment upon the Scottsboro decision was alive to a significance that went beyond a respite from death for seven illiterate Negro boys," he wrote. "In truth, the Supreme Court last Monday wrote a notable chapter in the history of liberty." The significance of the case lay especially in the return of the Fourteenth Amendment's due process clause to its more appropriate purposes, Frankfurter argued. Due process rights had been used by the Court to protect property rights; "[n]ow . . . they return to their more immediate purpose of protecting black men from oppressive and unequal treatment by whites."  

*Powell’s* holding has been remembered. It is widely cited in contemporary legal casebooks. While the contributions of the case to constitutional criminal procedure are noted, usually there is no discussion of the fate of the Scottsboro defendants after the ruling was announced. For Frankfurter, the transcendence of the ruling lay, in part, in its failure to provide specific relief for the defendants themselves. "Thus the judgment of the court transcends the fate of the seven pitiful defendants concerned," he wrote. "It leaves that fate ultimately untouched. Upon the question of guilt or innocence it bears not even remotely." The "Scottsboro boys" made their mark on American law largely by appearing in the Supreme Court and then, at some point, dropping out of notice.  

In Scottsboro, the image of American justice was remedied, but the defendants' lives remained shattered. Milestones in American law reinforced faith in American justice, in spite of the fact that the Scottsboro defendants themselves continued to live tortured lives. These cases paved the way for fairer treatment of others; but if American justice and constitutional rights rest on personal harms and remedies, it remains troubling that resolution benefits the future but not the present, the nation but not the person at the heart of a case.

*Constructing America*

When Governor Folsom commuted Jimmy Wilson's sentence, the case of "death for a dollar ninety-five" that had infuriated the world disappeared from the global radar screen. It no longer interrupted a narrative that mattered to an American self-concept and also, it was thought, to U.S. national security.

When someone is forgotten, we often think of this as an absence. The missing story results in a void. From this standpoint, forgetting people
in the law results in misunderstandings and incomplete narratives. But the act of exclusion is also a creative act, an act of making a particular narrative.

In *Powell v. Alabama* and the Jimmy Wilson case, what is remembered is the rectification, the workings of the rule of law. What is left out is the failure of the law to put an end to wrongs inflicted within the legal system to the humans whose stories had been the occasion for the rule of law to demonstrate itself to the world. That demonstration depended on the erasure of the defendants' continuing stories.

What has been set right, what has been accomplished, in cases like this? We often think of American legal narratives in domestic terms. But there is another narrative space for law's stories. Stories of domestic American law, stories of justice and injustice among Americans, have been part of a global narrative that defines the meaning of America in the world. Erasing Jimmy Wilson helped protect a narrative about America that American leaders had self-consciously worked to construct.

During the Cold War years, the story of race in the United States did not stand alone. Instead, for foreign audiences and Voice of America copywriters, it was part of a broader narrative about U.S. national identity. In the story promoted by the U.S. government, American democracy was superior to Soviet communism—not because America had always been pure of heart but because American democracy was on a path of moral progress. The structure of government itself aided this onward movement toward realizing an American ethos, which was imagined to be a true, essential characteristic. The nation's shameful past of slavery and discrimination served a useful purpose in this narrative. As U.S. information programming became more sophisticated in the 1950s, American diplomats learned not to deny the past but to embrace it. A troublesome past helped to illustrate the extent of progress.

In an important pre-*Brown* circular for foreign audiences on race in America, the message was that the nation had made so much progress in a mere 100 years from slavery to freedom that surely American democracy was a superior form of government to an authoritarian structure like the Soviet Union. This narrative provided an explanatory framework for the state of American injustice in the 1950s. Inequality could be explained as a stage in the inevitable path of racial progress. But it was crucial to this narrative for "progress" to remain on display. Eruptions like the Wilson case threatened to disrupt the progress narrative. To preserve the narrative, and the image of America, a resolution was required that would keep Jimmy Wilson alive and get him out of the Ghana papers.
Clemency plays an interesting role in the making of an American Cold War image. Austin Sarat places clemency on the borders of law. By showing us an outside, a fissure, it helps us see what law is. If “America” is thought of as defined by the “rule-of-law,” then clemency, by drawing a border between American legal identity and what is on the outside, helps us see what America is.

Once Governor Folsom granted clemency, the harm that had been driving this case—the harm to the American image—was rectified. Wilson’s sentence remained unjust, but there was no audience for his story. And for there to be closure, it mattered that his story seemed to come to an end. In the global arena, a chapter had been closed. America was all right again.

Restoring the image of America required two things: Jimmy Wilson could not be executed, and the governor’s act must be seen as the end of the story. And so, it was the nation that was saved when the death sentence was commuted. What happened to Jimmy Wilson was simply beside the point.

NOTES

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3. In this sense, law is a form of memory. As Marita Sturken has written, the construction of memory requires forgetting, as selected past events are formed into the narrative that we remember. Marita Sturken, Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering (Berkeley: University of California Press, 1997).


13. "Marion Negro Man Held in Robbery of Widow, 70," Montgomery Advertiser, August 2, 1957, p. 6A. Papers would later report that Baker was 82.


15. Ibid., at 68.

16. Ibid.

17. Marty Goodman, "Rob's White Widow, Can't Read, Write, Aware He'll Die," Toronto Daily Star, August 20, 1958; Attachment to Consulate General, Toronto, to Department of State, August 25, 1958, Despatch no. 22, Records of the Department of State, RG 59, Central Decimal File, 811.411/8-2558, National Archives, College Park, Maryland (hereafter cited as National Archives).


19. Wilson, 105 So. 2d at 69–70. There is a long history of imposition of the death penalty for robbery and burglary dating from the colonial period in North America. By the early twentieth century, the death penalty was reserved for murder in Northern states but retained for other crimes in the South. Stuart Banner writes that, as of 1954, burglary remained a capital crime in four states: Alabama, Kentucky, North Carolina, and Virginia. Stuart Banner, The Death Penalty: An American History (Cambridge: Harvard University Press, 2002), 228–29.
By 2008, the death penalty was reserved for murder except in four states that authorized it for rape of a child and a fifth, Montana, that authorized it for repeat rape with serious injury. Louisiana is the only state in recent years to sentence a defendant to death for a crime other than murder. The United States Supreme Court struck down the Louisiana law allowing the death penalty for rape of a child in 2008, finding the death penalty unconstitutional when the crime did not result in death of the victim. States Allowing the Death Penalty for the Sexual Assault of a Child, Death Penalty Information Center, available at http://www.deathpenaltyinfo.org/article.php?did=2612#statesw; State of Louisiana v. Kennedy, No. 95-KA-1981 (2007), available at http://www.lasc.org/opinions/2007/05KA1981.opn.pdf.


25. Ibid.


33. Quoted in Sullivan, Freedom Writer, 167. While serving as Alabama Attorney General, Patterson brought suit against the NAACP to enjoin the organization from doing business in Alabama. His 1958 campaign for governor was openly supported by the Ku Klux Klan. When Patterson defeated the more moderate George Wallace, he promised to maintain segregation in the schools and threatened to shut the schools down if anyone attempted to integrate them. Ibid., 97–98, 167; Gray, Bus Ride to Justice, 174.
34. Sullivan, Freedom Writer, 166.
35. Gray, telephone interview.
36. Embassy Monrovia to Department of State, July 1, 1958, Despatch no. 3, Records of the Department of State, RG 59, Central Decimal File, 811.411/7-158, National Archives.
38. Consulate General, Toronto, to Department of State, August 25, 1958, Despatch no. 23, Records of the Department of State, RG 59, Central Decimal File, 811.411/8-2558, National Archives.
40. Embassy Accra to Department of State, August 30, 1958, Despatch no. 126, Records of the Department of State, RG 59, Central Decimal File, 811.411/8-3058, National Archives.
41. Dublin to Secretary of State, August 26, 1958, Telegram no. 42, Records of the Department of State, RG 59, Central Decimal File, 811.411/8-2558, National Archives.
42. Montevideo to Secretary of State, September 16, 1958, Telegram no. 126, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1658, National Archives. While reaction was widespread, it did not occur in all countries. There was little reaction, in French West Africa, for example, which was attributed by consular officials to the lack of English-language users in the region. Amcongen, Dakar, French West Africa, to Secretary of State, September 19, 1958, Airgram no. G-28, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1958, National Archives.
43. Embassy, Bern to Department of State, September 16, 1958, Despatch no. 176, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1658, National Archives.
44. Embassy Tunis to Department of State, September 16, 1958, Despatch no. 208, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1658, National Archives; Embassy Copenhagen to Department of State, August 29, 1958, Despatch no. 153, Records of the Department of State, RG 59, Central Decimal File, 811.411/8-2958, National Archives; Embassy of Uruguay to Department of State, September 19, 1958, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1958, National Archives.
48. Ibid.
50. Dudziak, Cold War Civil Rights, 29–46.
52. Ibid., 48–54, 107, 144–45.
53. Dulles to All AF Posts, September 12, 1958, Department of State Instruction no. 1073, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1258, National Archives.
54. AmEmbassy to Department of State, September 23, 1958, Despatch no. 717, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-2358, National Archives.
55. The Hague to Secretary of State, September 12, 1958, Telegram no. 469, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-1258, National Archives.
57. "Wilson Case May Go to U.S. Court," Baltimore Afro-American, September 20, 1958, p. 1. Dulles’s executive secretary, Ralph Hammond, indicated that Dulles was "very emphatic that he was not trying to interfere with the judicial or court system of Alabama, but just wanted to inform the Governor of what was occurring throughout the world." "Dulles Sends a Letter to Folsom Dealing with Condemned Negro," New York Times, September 6, 1958, p. 7.
58. "World-wide Appeals for Negro," Rhodesia Herald, September 8, 1958, p. 9; Enclosure to AmConGen Salisbury to Department of State, October 3, 1958, Despatch no. 171, RG 59, Central Decimal File, 811.411/9-358; AmEmbassy to Department of State, September 23, 1958, Despatch no. 717.
59. AmEmbassy to Department of State, September 23, 1958, Despatch no. 717, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-2358, National Archives.
60. AmCongen Kingston, to Department of State, September 25, 1958, Despatch no. 96, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-2558, National Archives.
62. AmEmbassy Oslo, to Department of State, September 29, 1958, Despatch no. 233, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-2958, National Archives.
63. "Dulles Sends a Letter to Folsom Dealing with Condemned Negro," New
York Times, September 6, 1958, p. 7. The governor added: “I want to say to the world that I have fought for four years of my first administration to reduce the Alabama prison population. . . . As a result, my administration was prosecuted and persecuted.” Dulles Tells Folsom of World Concern over Negro’s Fate,” Birmingham Post-Herald, September 6, 1958, pp. 1–2.


69. Ibid.


71. Folsom to Dulles, September 29, 1958, Records of the Department of State, RG 59, Central Decimal File, 811.411/9-2958, National Archives.


73. Amembassy Oslo to Department of State, October 13, 1958, Despatch no. 243, Records of the Department of State, RG 59, Central Decimal File, 811.411/10-358, National Archives.


76. Gray, telephone interview.

77. Department of State to American Embassy Canberra, October 20, 1958, No. A-51, Records of the Department of State, RG 59, Central Decimal File, 811.411/10-2058, National Archives.

78. Dudziak, Cold War Civil Rights, 240–41.

79. Rebecca Haajee, telephone conversation with Alabama Department of Corrections, Records Department, spring 2006.

80. James Goodman, Stories of Scottsboro (New York: Pantheon, 1994), 5–6. The lone exception was defendant Roy Wright, the youngest at age 13. According to James Goodman, because of Wright’s age, “the state, mindful of public opinion, asked only for life in prison.” But when 11 jurors “held out for the death penalty, the judge declared a mistrial.” Ibid., 41.

Scottsboro gained a more sustained international audience than the Jimmy Wilson case, though without the Cold War edge. See James A. Miller, Susan D.


84. Ibid., 71.


87. Frankfurter, "A Notable Decision."
88. Another Scottsboro case was *Norris v. Alabama*, 294 U.S. 587 (1935). The Supreme Court overturned Clarence Norris's conviction on the ground that where "all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race" the defendant is denied the equal protection of the laws. African Americans had to be listed on the jury roll for a defendant's due process rights to be satisfied. The case was remanded; Norris was tried again and convicted again. His death sentence was commuted to life in 1938, and he was finally paroled in 1944.


89. Austin Sarat (chapter 8 in this volume), drawing on Drucilla Cornell, brings our attention to two audiences of legal interpretation: the present and the future. Writing about legal interpretation usually proceeds on a domestic terrain. This is, after all, where law's violence is often realized. See Robert M. Cover, "Violence and the Word," *Yale Law Journal* 95 (1986): 1601. But there is another way to bifurcate the audience: the local and the global.


91. Essentializing the American character is at work in Myrdal, *The American Dilemma*, and other classic writings on race in America. Rogers Smith's critique of the Myrdalism embedded in American political science can be seen as a critique of this essentialism. Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, Conn.: Yale University Press, 1999).
