

**My Turn**  
*William Van Poyck*

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On a quiet day almost twenty years ago I watched two fellow prisoners at Florida State Prison enter Dana DeWitt's cell and stab him so viciously that his blood painted the walls and ceiling like a Jackson Pollock abstract. Neither the first nor last murder I would witness, I nevertheless marked it as one of life's broadening experiences, for it was the first time I personally saw a man confess to a crime he did not commit, and personally saw an innocent man sentenced to death. James "Pop" Agan, with a documented history of mental illness and driven by indiscernible imperatives, soon stepped forward. Pop not only confessed to Dana's murder, he insisted on pleading guilty, a strategy his court-appointed attorney, who conducted no independent investigation, fully embraced. At sentencing Pop vociferously demanded a death sentence, and Judge Green obliged. Many years later the federal appellate court took Pop off the row, not because of his innocence, but based upon his trial attorney's blatant incompetence.

Seventeen years ago, Earl Washington, black, poor, and bearing a borderline IQ, allegedly signed a confession helpfully typed up for him by police. In it, Earl, unable to read, "admitted" to the brutal rape and murder of a young woman in bucolic Culpeper, Virginia. No other corroborating evidence existed. Earl protested his innocence. But who would listen? Earl was sentenced to death. On the eve of execution, then-Governor Douglas Wilder, troubled by the facts, commuted Earl's sentence to life. Last year, faced with DNA evidence excluding Earl and implicating the true killer, Governor James Gilmore pardoned Earl.

Fourteen years ago, Frank Smith, poor, black, and with an extensive documented history of mental illness, was arrested for the rape and murder of an eight-year-old Fort Lauderdale girl. Though the only evidence was two questionable eyewitness identifications, Frank's trial attorney helpfully pled him not guilty by reason of insanity, a *de facto* guilty plea because it concedes the defendant committed the crime. Relieved of its burden of proof, the state easily convicted and sentenced Frank to death. One eyewitness later recanted, testifying that police pressured her to identify Frank.

In 1972, serving life for a Miami robbery, and tutored by an ex-judge doing life for double murder, I dedicated myself to studying law. Infused with the Panglossian<sup>1</sup> confidence of a neophyte and the fervency of a zealot convinced

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<sup>1</sup> Blindly or naïvely optimistic (editor).

of the inherent justness of the system, I set out on my odyssey. In 1988, my own personal tides propelled me to death row for my part in a botched attempt to free a friend from a prison transport van in downtown West Palm Beach, during which my co-defendant shot a prison guard.

I celled close to Frank Smith for ten years. Crazy as Hamlet, often behaving irrationally, Frank was easily overlooked and looked down upon by prisoners and staff alike. Frank shuffled around Florida State Prison in quiet desperation, convicted of and ostracized for a crime he said he did not commit. In his deepest moments of private pain, Frank sometimes came to me, painfully deferential, his taped-up state eyeglasses framing a face without happiness or anticipation of anything, clutching tattered legal papers as indecipherable to him as a Mandelstam<sup>2</sup> poem. I would patiently explain the merits of his lawyer's latest motion, even as I blithely assumed his guilt. I should have known better. I can still hear Frank's gravelly voice, like a refrain in a minor key, reaching up through his psychosis, claiming his innocence with the same passionate articulation he employed to proclaim himself a messenger of God. Perhaps he was. People were, Frank assured me, plotting on him. Perhaps they were. Who would listen?

In January 2000, Frank Smith, stricken by cancer, still enduring his own solitude, quietly died on the other side of truth. Ten months later the FBI released its DNA report conclusively excluding Frank. The assistant attorney general, doubtless a dedicated public servant, expressed shock and dismay that she had so earnestly sought the execution of an innocent man for so many years. "I was certain he was guilty," she lamented. The case has been reopened. Who will listen to the voices of those murdered by the true killers while Frank and Earl languished in prison?

Fourteen years after I stood up in a West Palm Beach courtroom to demand the then-nascent DNA testing that could conclusively establish I was not the triggerman, the bloody clothes remain untested. Though the state now belatedly concedes I was not the shooter, it vigorously occupied the opposite position at trial and I was sentenced to death by a judge and jury that believed them.

One need not study law for twenty-eight years to discern the common threads in the warp and woof of this fabric. Cases like Pop, Earl, and Frank

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<sup>2</sup> The great, enigmatic poet of twentieth-century Russia, Osip Mandelstam (1891–1938), employed a poetics based on recollection.

are as common and close as yesterday's *Chicago Tribune*, today's *Newsweek*, or tomorrow's segment of "Nightline."

Between them all lies a continuum of consequences. People inexplicably confess to crimes they did not commit, innocent people occupy death row, and DNA tests are not done. To remain silent is to speak the lie of acquiescence. Who will listen?

**William Van Poyck** was transferred to Virginia's death row in 1999, following the death row murder of his co-defendant, Frank Valdes, allegedly by a group of prison guards. The guards await trial for murder. William (#274949) can be contacted at Sussex I State Prison, 24414 Musselwhite Drive, Waverley, Virginia 23891, U.S.A.