

## Waiting to Die: the Shaping of San Quentin's Death Row

### *Intro*

-Today, California is at a **turning point** concerning capital punishment. Indeed, **three executions** have been scheduled between now and February 2005...if carried out, it would constitute a dramatic comeback to the 1950s, the last time this state killed with such regularity. Also important, we will soon know if the State of California agrees to build the biggest death row ever seen in the US, a death row that could house up to a 1000 inmates at San Quentin; the Department of Corrections has asked such building for the last 2 years but controversies on budget and on San Quentin itself have postponed the decision so far.

-**Death row has not yet become an object of historical study by itself.** Historians strangely avoid it; legal specialists don't provide precise accounts either and take its existence for granted<sup>1</sup>. More surprisingly, historians working on famous criminal cases show some disturbing tendencies to systematically avoid judicial or penal sources, while studying almost frantically the press<sup>2</sup>. However, judicial and penal archives in California are extremely rich and well conserved at the *California State Archives*, in Sacramento. I worked on those papers for two years and was able to gather a mountain of data. For the period when archives are closed, I used oral histories to gather different testimonies by some of the almost anonymous actors of this history.

-**Death row is an expression created by the popular culture**, probably in the late 1930s. The penal administration always talks about the "condemned row". Death row is a pragmatic response to the need of this administration to house in its penitentiaries people about to be executed. Its primary objective was, at the beginning, to control a potentially dangerous population, to insure its safety and sanity until the day of the execution. After a while, death row received new tasks, primarily to give the Governor satisfying information on people requesting his pardon.

-I want to answer to some very basic question: **how this structure came to be organized as a bureaucratic structure of control and surveillance? How did it evolve when faced with challenges such as rights demands by the prisoners, increased numbers and increased time of detention?**

### *I. In the Penitentiary, To Be Hanged Shortly (1890s-1930s)*

#### **A. A Transfer in the Name of Decency?**

-Transfer of executions behind prison walls began as early as the 1830s in NY State<sup>3</sup>.

-In Ca. sources are rare! Modification of the P.C. in 1891. L. Friedman believes the measure was taken after repeated complaints by county sheriffs<sup>4</sup>. One of them, Hale, is actually warden

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<sup>1</sup> The standard book in the field is Stuart Banner's book (*The Death Penalty, an American History*, Harvard University Press, 2002) it simply ignores the topic altogether. A notable exception is Scott Christianson's *Condemned, Inside The Sing Sing Death House*, New York University Press, New York & London, 2000. Specialist like Robert Johnson *Death Work, A study of the Modern Execution Process*, Wadsworth, Belmont Ca., 1998, doesn't provide a historically satisfying account either.

<sup>2</sup> See for example, Paula Fass *Kidnapped, History of Abduction* Oxford University Press, Oxford & New York, 1997, which never alludes to the very rich judicial or penal archives kept on some of the criminals she spent pages to study.

<sup>3</sup> See Eric Masur, *Rites of Executions, Capital Punishment and the Transformation of American Culture, 1776-1865*, Oxford University Press, Oxford & New York, 1989.

<sup>4</sup> See L. Friedman *Crime and Punishment in American History*, Basicbooks, New York, 1993.

of San Quentin, at the time of the 1<sup>st</sup> execution behind the walls of a state penitentiary in 1893.

-It's very specifically organized as reported in this anonymous pamphlet:

*"(...) When the date of his execution arrived only a few visitors evinced any interest in the event. It had been suggested that the gallows be erected in the prison yard, and that the prisoners, locked in their cells, should be given a full view of the hanging, that it might have a deterrent effect upon them. Warden Hale, however, who knew the convict opposition to capital punishment, argued that the prisoners would set up such a hooting and yelling that the place would be turned into a bedlam and the effect would be anything but that desired. Accordingly two large rooms in the sash and blind building were fitted up, and on the morning of March 3, 1893, under the supervision of Colonel McKenzie, at that time the hangman of San Quentin, Jose Gabriel, the insane animal, paid his debt to the commonwealth of California. (...)"<sup>5</sup>*

-The question of "properly" organizing executions (maintaining order in the penitentiary) appears to be at the heart of the segregation of the condemned.

-Shelley Bookspan shows in her book<sup>6</sup> a map for a "death row" projected in 1905...however, budget for state prisons remained low up to the reform of Earl Warren (1940, creation of the California Department of Corrections, CDC) and the "death row" projected was never built.

## **B. The "Murderer's Row" in the Progressive Era**

-In Ca. the abolitionists didn't have a lot of success (compared to other states which abolished DP during the progressive era)...even though there was between 1912/18 a strong movement & a governor (Hiram Johnson) opposed to CP.

-But CP seems in contradiction with the flurry of **progressive reforms** in the justice system: parole, indeterminate sentence...At San Quentin, work at the jute mill was celebrated as a great "rehabilitation" tool. Moreover, recent study reveals the remarkable extent of education in prison...a partnership with UC Berkeley for example<sup>7</sup>.

-The condemned were excluded from all of this. Not much is known from this period! Lack of sources! However, study in the press of the times from famous cases (like the famous Theodore Durant, in San Quentin between 1895 and 1898, an exceptionally long time for this period) shows that the "Murderer's Row" as it was sometime called, was a specific place in the prison in which the condemned were isolated. They "enjoyed" individual cell & some privileges in terms of visits, mails and contact with the outside world (especially with the press if their case was interesting).

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<sup>5</sup> From *The Death Penalty*, the men who have suffered it at San Quentin State Prison, California, Their Lives and Crimes Briefly Sketched, Publisher California ?, Mrs. B. C. Wilcox? c1903, The Bancroft Library.

<sup>6</sup> See Shelley Bookspan, *A Germ of Goodness, The California State-Prison System, 1851-1944*, p. 58 [?] Nebraska University Press, Lincoln, 1991

<sup>7</sup> Cf. Benjamin Justice "The Transformation of the Prison: Education Reform at San Quentin, 1880-1920", *History of Education Quarterly*, 40, n°3, 2000.

-Fiction, see Jack London's last novel *The Star-Rover* (1915) which tells the life of one Darrell Standing, condemned to death for assaulting a guard. Standing described the awful time he spent in the "straitjacket" (the prisoner was let tied up in a jacket for hours, even days)...used as a punishment and the incredible technique of meditation he conceived to evade this physical suffering and imagine other lives in the past.

### **C. A Community by Itself, the Row in the 1930s**

-It is much easier to describe and analyze the Row at the eve of its reform in the early 1930s. We have a remarkable testimony by Edward Lamson<sup>8</sup> (Lamson, an editor at Stanford University, was condemned to death for the killing of his wife...she died inexplicably in her bath...after 16 months & 2 hung juries, was cleared and freed. He made a career in Hollywood as a screenwriter...)

-size of the cell: "I could stand in the center of my cell and with outstretched arms touch either sides"  
-time in the cell: "...I spent 22 hours every weekday & 24 hours on Sunday"  
-"no watches nor razors allowed"  
-"the warden is all powerful, the admiral of the ship"

**-Example:** 3 Afro-Americans from San Bernardino County executed in 1934 named George WILLIAMS, John MICK & Walter RIPPY (in their 20s)<sup>9</sup>.

-The San Quentin files reveal little about those 3 young men. We got a glimpse of the atmosphere since "colored", "negro" are constantly used to talk about them. However, the file contains only a "Statement of Inmate on Entering Institution" which presents very basic biographical information but no detailed reports as we would see later on.

-Those files need to be completed by the study of their **clemency's application**: here we find not only the complete trial's record but also the letters written by and for those young men. We understand how death row at the time was a **place of intense fear, despair and prayer, a place in which one struggles to understand his fate**

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<sup>8</sup> See Edward Lamson, *We Who Are About To Die, Prison Seen by a Condemned Man*, Charles Scribner's and Sons, New York & London, 1936.

<sup>9</sup> See their files Williams, Mick & Rippy (#55933, 55934 & 55935) in *Execution Files*, F3918:81, California State Archives, Sacramento, California, USA (hereafter C.S.A). Also in the C.S.A, we find their clemency application which contains the trial's record & all the mail sent to the governor (*Governor's Pardon File*, ref. File n°646, E4022, Box 2).

**Walter Rippy (handwritten, pencil), to the Governor, June 29<sup>th</sup>, 1934**

1) "Dear sir

I am write you a few line [sic] to you to let you hear from a hour my troubled and conda [?] for my time aunt long and I would like to no [sic] if there is a chance for me or not because I was the States witness and tell you the true and all about it and I help states and all I had and the men in and tall them jus what was slan [?] ad it was true jus as I have tall you and I am not guilty of it as all and me and John Micks woud not hard [sic] be in if we hadn't met Geo William because we was get a long fine before met him but I did no he was that way at all because we did not wan [sic] to get inty [sic]troubled at all.

But he got us in to troubled jus the same. By not thing.

I am sake you for chance if you please for I am not guilty at all I am sake for you a chance if you please. I have no mother and no father at all and will you please give me a chance if you please (...)

For we pray night and day for a chance from you if you please and we sake a life in hour and pray for it if please. May god blessed all of us and he with our lord JC be with you all amen."

**2) July 5<sup>th</sup>, 1934**

"Dear sir,

I am write [sic] a few line to you a bout my condition because my tim is going short and I woud [sic] like very much to hear from you I have rite [sic] a few days ago but have not heard from you yet I [?] my condition and I seek Jesus to for give me all my trouble and I pray for him forgive and he will because I believe in his word and his word is truth and or [?] am pray for him to help me because I stand in need [?] of him and this what Jesus said for it is so written as I live saith [?] the lord every fence shall bow to me and every tongue shall confess to God so then every one of us shall give account of himself to god and it is truth.

And I hope you will give me a chance for my life if you please Mr. Merriam because we all get into troubles som time [sic] but not no [sic] and this is my first tim into troubled like this and it is the truth and I hope you will see into my condition if you please and I sake write soon and let me no from Walter Rippy, and my tim is July 13 [sic]."<sup>10</sup>

-This case reveals the relatively basic nature of the Row at the time. Clemency was possible but for 3 young Afro-Americans without money nothing was done to help them appeal to the Supreme Court of California. They were hanged **3 months** after their arrival at San Quentin.

## ***II. The Death Row: a bureaucratic structure of surveillance and control (1930s-1960s)***

### **A. Modernity and Bureaucracy**

-During the mandate of **Warden James B. Holohan (1927-36)**, the recurrent lack of funds and the increased population for the penitentiary foster mutiny, revolts and breaking attempts. One of them in 1936, with the full Bureau of Prison as hostages dramatically demonstrates the need for reform! These reforms are well known thanks to **Clinton Duffy's memoirs**<sup>11</sup>, SQ's warden between 1940 and 1950.

-Holohan resigns and enters politics...as a state-senator. New buildings are created at SQ. One of them, the "North Block", a five-story structure, is chosen to house the new "Condemned Row". Holohan is also a foe of hanging, which appears to him cruel & bloody. As early as 1933, he pays a visit to the Nevada State Penitentiary (Carson City) to witness an

<sup>10</sup> N.B.: I have tried to render those letters to the best of my abilities as a non native English speaker. The question marks means that I could not clearly *read* what has been handwritten; the [sic] notation means that the errors belong to the original text, letters by a young Afro-American, from the Deep South, in the middle of the Depression, who probably had little education.

<sup>11</sup> Cf. Clinton Duffy & Al Hirschberg *88 Men and 2 Women*, Doubleday Company, New York, 1962, esp. p. 100-105.

execution using a **gas chamber**. After years of debate, his proposition is adopted: after October 1938, all executions would happen at San Quentin with a gas chamber. The chamber is built on the 1<sup>st</sup> floor of the “North Block”. This new physical organization allows executions (which are, at the time, monthly events) to proceed “smoothly”:

“Transporting a man from death-row to the holding cell was much simpler than it had been before. When the room was in the old Spanish block and the Gallows in the Sash and Blind, the prisoner had to be taken outside and escorted about 150 yards in the open, where other inmates might see him. The gas chamber was just an elevator ride down from the row, a trip that took only a couple of minutes and eliminated the necessity of leaving the building.”<sup>12</sup>

-One can also witness some profound changes in the way condemned are handled by the penal administration. Beginning with C. Duffy, condemned men benefit from **basic human attentions**: visits with family are made easier, last requests granted and depressing rituals (like the reading of the death warrant on the eve of the execution) are suppressed. On the other hand, beginning with Duffy, **surveillance and control** become much tighter and leave behind a remarkable “**paper trail**”.

### **B. A Structure Continuously Improving Itself**

-Let's examine 3 examples of files<sup>13</sup> dating respectively from 1945, 1948 & 1958.

#### **1) Wilson De La Roi (1945)**

-This file is relatively modest in size<sup>14</sup>. It's essentially composed of legal and prison papers. DLR had been convicted to a life sentence for a homicide committed in 1939, at the age of 20, in Shasta County. But while in Folsom, DLR stabbed another convict to death, thus was convicted to death for “assault by life convict” and transferred to Death Row in San Quentin.

-Apart from basic biographical information (DLR was an orphan, raised by the State, a delinquent with a long criminal record), one cannot find any specific information provided by people (psychiatrists, social workers, chaplains...) working at SQ.

-It's no absolute proof that such reports weren't made. On the opposite, by a 1943 internal memo, Governor Warren asked SQ to provide him & his clemency secretary with a detailed report on the condemned. It's therefore reasonable to think that the SQ administration, at first, didn't keep copies of those reports.

#### **2) Paul Winton (1948)**

-Here, the prison administration appears much better organized: the file begins with a “**Cumulative Case Summary**”, the new bureaucratic form created to gather every information concerning the condemned man. [The “CCS” gives: name, age, DOB, race & all legal details, plus multiple reports by the probation officer, judge & DA]= here we learn that Winton committed a triple homicide in October of 1947 in Mendocino County. He went to his former home and shot his wife, daughter and son-in-law. The report states that PW “could give no reasons for his acts”. PW had a previous sentence for rape (5 years in prison, and another 4 years for having violated his parole).

-PW's mail is read and copied, even his legal mail. Here the file has a copy of a letter written to US Supreme Court Justices Douglas & Murphy. In this letter PW asks for an attorney to present his case to the federal courts, he believes he was forced to accept a guilty plea.

-Specifically, while at SQ, he was interviewed by=

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<sup>12</sup> Cf. C. Duffy *op. cit.* p. 103.

<sup>13</sup> The C.S.A. has a collection of some 300 execution files from 1911 to 1967 that the author examined in its entirety between September 2002 and December 2004.

<sup>14</sup> See his file at the C.S.A., ref: #63949 A, F3918:132, D2391 box3.

°a social worker: one learns his life story, social origins, diseases, and details of his sexuality...Any possible mitigating circumstances. However the report doesn't have a conclusion. In PW's case, there isn't any specific element to underline.

°a psychologist: after testing, concludes that PW has a "dull normal to mentally defective intelligence"

°a committee of 3 neuro-psychiatrists: their role is to guarantee the condemned's sanity. They give an important conclusion to their observation:

“(...) PW was aware of his acts, he knew they were wrong and he fully understood their consequences. Although his history shows that he deviated markedly from generally accepted behavior, there is no evidence that these deviations were the results of mental illness.”<sup>15</sup>

-It is apparent that the 3 psychiatrists fulfill their mission: they evaluate, to the best of their knowledge, that PW is sane & therefore could be legally executed. But they also provide a **discreet but real judgment** read by the governor: this man is a pervert, although not mentally ill. He does not deserve clemency!

-These reports, not only show a constant surveillance on the part of the staff, but also participate in a **continuing judgment of the condemned** since they are read by the Governor –or his secretary- while trying to take a decision on clemency.

### 3) Harvey Glatman (1958)

-Those tendencies are even stronger in this last example. HG was convicted to death for a double homicide committed in San Diego County<sup>16</sup>. G lured young women in his home by advertising that he was a photographer and could help them becoming famous model. He raped and killed two women and was arrested on the highway with a 3<sup>rd</sup> potential victim. G fully recognized his guilt.

-The file shows an even greater surveillance:

°the **psychiatric committee** concluded its report with the following:

“[HG has a] psychopathic personality of the schizophrenic type, he is sexually perverted; impulses are the basis for his criminality”. Thus offering a crystal clear motive and explanation to the crime and attaching to HG a **frightening psychiatric label**.

°the **catholic chaplain** also gives precious information to the staff:

“Subject has freely admitted his guilt & expressed the hope that the judgment would be carried out without any unnecessary delay. In view of the foregoing (...) subject will not present any problem during his stay on Condemned status”. In other words, the chaplain predicts that HG's execution won't be a problem. He isn't so much offering spiritual help than working as a disciplined controller of the prisoner.

-HG differs from other cases as he **volunteered** to be executed.

-The file also shows that surveillance & control reached their climax 2 weeks before the execution with a **protocol**. The condemned to be executed is placed under constant watch (“**death watch**”) and reports are filled 3 times a day on him.

(Glatman's execution is scheduled for September 19, 1959, the “death watch” begins on the 5<sup>th</sup>). For the 9<sup>th</sup>, one can read:  
“Subject's conduct is *good*, his attitude is *good*, he spends his time *reading, radio*.  
Additional comments *Co-operative & polite, has never been very talkative.*”

<sup>15</sup> Psychiatric Report, from Paul Winton's execution file, ref. #A-7674, F3918: 216, D2393 box 1

<sup>16</sup> See his file at the C.S.A. ref: #A-50239, F3918:378, D2396, box 1

These “death watch” reports are typed on prepared forms which show how perfectionist and routine like this bureaucracy has become in 1959.

### **C. Chessman, a “Rebel”**

-Caryl Chessman's stay & fight on death row (1948-60) is well known<sup>17</sup> but remains fundamental. By his books and constant opposition to the authorities, he totally redefined the Row. One could argue that he gave it its name: after the 1954 publication of his 1<sup>st</sup> book *Cell 3345 Death Row*, the public always used the expression “death row”.

-With CC, for the 1<sup>st</sup> time, the **rules of the Row escaped the hands of the penal bureaucracy**. In a way, he can be considered the 1<sup>st</sup> prison militant<sup>18</sup>. One could deny this idea since CC constantly offered himself as a potential “guinea pig” for the justice system, so it could better understand “the delinquent”<sup>19</sup>.

-However, C, during his 12 years stay on death row constantly **challenged** the prison authorities. He organized the 1<sup>st</sup> strike ever known in this place: in September 1950, 12 of the 14 condemned refused to go back to their cell after exercise until their demands were satisfied (= fountain pen, paper, and better food were some of the few demands). They were removed by force...but after a while the authorities granted most of what was asked. Later, C fought the so called “civil death” statute which denied any right for the condemned by smuggling out of SQ manuscripts and by writing numerous writs of habeas corpus for him and others. He nonetheless lost his fight and **was gassed on May 2<sup>nd</sup> 1960**.

-But such fight force the prison authorities to **clarify their position and clearly state the rules** and rights of the condemned for the 1<sup>st</sup> time since condemned men have been brought in state penitentiaries at the end of the 19<sup>th</sup> century:

By 1961, condemned men were informed of the following when they entered death row at San Quentin:

“(…) Men on Condemned Row have certain privileges, none of which are considered rights, with the exception of the basic rights of humans and that such privileges that are given may be revoked for misconduct. (...)”

-[they are] at liberty to be interviewed. (...)”

-[they are] not permitted to write for publication (...)”

-legal help in the preparing of petitions or writs by other inmates [is] not permissible.”<sup>20</sup>

-All those interdictions are clear and official answers to Chessman's challenges. The precise extent of “**the basic rights of humans**” will be the subject of fights before the federal courts after 1975.

## ***III. The Death Row confronted to the Constitution: death row inmates have rights***

### **A. Civil Death, the example of visiting rights**

-Even with a humane warden (like C. Duffy) & with contestation organized later by charismatic inmates like Caryl Chessman or Alfred Wells...the condemned remain locked

<sup>17</sup> Cf. Eric Cummins *The Rise and Fall of the California Prison Radical Movement*, Stanford, Stanford University Press, 1994; and more recently Theodore Hamm *Rebel and a Cause, Caryl Chessman and the Politics of Death Penalty in Postwar California*, Berkeley, University of California Press, 2001.

<sup>18</sup> This is Cumins' analysis which places Chessman at the beginning of a tradition later continued by the Black Panthers, George Jackson and the Prisoners Union.

<sup>19</sup> This is T. Hamm's analysis which tends to underplay Chessman's role as a militant and present him as a model prisoner according to middle class values.

<sup>20</sup> From the execution's file of James Bentley, C.S.A.

under a **very draconian statute: civil death**. Theoretically, the condemned men had simply no civil rights at all: no rights to mail, visit, expression, hygiene, etc...

-The following example, an exchange of letters between C. Duffy & an Assemblyman in the early 1940s illustrates this statute in regard to visiting rights. Before Duffy, visiting was strictly reserved to family:

A correspondence between the warden, a visitor & an assemblyman (1941) "(...) I did give permission to have materials for painting but he [the condemned] should purchase these materials through the prison commissary department. I would therefore suggest that you send him a small sum of money to be used for that purpose instead of sending him the materials.

Condemned men are usually permitted to receive visits only from close relatives and in fairness to many other who have made request for permission to visit on Sundays and who have been denied I do not feel I can make an exception in your case. However, if you will write me again later on, I will consider arranging for you to visit Hoyt on a Sunday." (March 20, 1941)

-March 21, 1941 from Assemblyman Edward F. O'Day "A very dear friend of mine, Captain A. P. Alberga has a friend, Miss Margaret Fisher of 556 California St. San Francisco. Miss Fisher is the sweetheart of an unfortunate lad, Barzan Hoyt [sic] who has been convicted of murder & is now in your custody, pending his execution. This young lady is employed in San Francisco & cannot leave her work to visit with Mr. Hoyt, except on her day off, which is Sunday. Hoyt father lives at Laguna Beach & does not have the opportunity to visit with him and she is the closest one to him in this area. If you could possibly arrange to permit her to visit him on Sunday, I would sincerely appreciate it. It seems to me it would be a very humane thing as these folks, along with myself will be deeply indebted for the granting of such request."

-Answer of Duffy (March 25, 1941) "(...) I have advised her that ordinarily only close relatives were permitted to visit condemned men, but if she should write me later I would consider arranging for her to have one visit with Hoyt. I trust this will meet with your approval, and assure you of my appreciation of your interest."

-Answer of O'Day (March 28, 1941) "(...) It is a matter of surprise to me to learn that it is impossible under ordinary circumstances, for a person in her position to visit a condemned man. I do not understand the reason for it as it seems to me to be an unnecessary restriction. I would sincerely appreciate your advising me why such a rule is in operation (...)"<sup>21</sup>

-As this Assemblyman remarks at the time, most of the time, those extremely strict rules had pretty **obscure** justification, one of them being that it had always be like this.

## **B. The Thompson consent decree: "the best settlement in the nation"**

-The **context changes dramatically at the end of the 1960s & early 1970s**:

° Litigation against the death-penalty in California and elsewhere in the US reaches its peak: all executions suspended between 1967 and 1978.

° As a consequence, in San Quentin, the death row is overcrowded. In June 1972, following the decision of the US Supreme Court in *Furman v. Georgia* which declared the current death penalty statutes unconstitutional, SQ's death row is emptied. It re-opens in September 1973 after California adopts a new statute.

°The US Supreme Court in *Wolff v. McDonnell* legitimizes some 15 years of prison litigation (especially in the South), the Court declares: "**There is no iron curtain between the Constitution and the prisons in this country**".

°Between 1970 & 1974 a very strong prisoners' movement challenge old rules, marked with dramatic revolts (like Attica in NY). It protests against the indeterminate sentence, lock up and civil death statutes. In California the Governor Jerry Brown signs into law a "Prisoner's Bill of Rights".

<sup>21</sup> From the file of HOYT, Barzen (#66281) F3918:148, D2391, C.S.A.

-(The following history has not yet been written...the author gathered the facts thanks to half a dozen of interviews with lawyers and representatives of both sides<sup>22</sup>)

-At first, SQ death row inmates are **excluded** from those improvements. 2 young lawyers **Paul Comiskey & Michael Sattris** create a law office ("Prison Law Office", hereafter PLO) dedicated to help the prisoners. After a hunger strike by the death row inmates in April 1976, they decide to begin litigation about the living conditions of the condemned.

-At that time, the CDC is already under scrutiny by a Federal District Judge in San Francisco, **Stanley Weigel**, for the rights of prisoners in "lock-up units". Judge Weigel is selected to decide the case concerning death row (*Thompson v. Enomoto*). The Attorney General office, which represents the CDC, agrees in **October 1980**, to an historical, although not very famous, compromise, "a consent decree" (= a settlement) *Thompson v. Enomoto*.

-The "Thompson decree" is a **remarkable compromise** between the penal bureaucracy's desire to keep a strong control on death row inmates and the aspiration of those prisoners to obtain a decent statute. It guarantees them right to open visits, privacy of mail (especially legal mail), movement without handcuff, standard for food, noise...According to all actors of the negotiation, this is the best agreement ever made in the US concerning death row inmates.

### **C. The decree's chaotic application**

-To effectively apply the decree was a different matter altogether. 2 main reasons:

°the **political climate** was very different in the 1980s: conservative & pro-death penalty politicians were in power (G. Deukmejian was Governor of California), a 'Victim's Bill of Rights' had been adopted in 1982; in 1986, 3 liberal justices were "recalled" by the voters from the California Supreme Court.

°**No execution was carried out but sentences continued to be handed down.** The population of death row grew so much that it rendered impossible the concrete application of the decree. The warden, Daniel Vasquez, places some death row inmates in a different part of the penitentiary (the 'East Block').

-Both sides remain firm on their position and the judge, S. Weigel, if he is favorable to prison inmates and critical of prison officials, refuses to hold the administration in contempt. He chooses **negotiation** and nominates one of his clerk, **Robert Riggs**, as a **special monitor**, to follow the application of the decree and organize the negotiations.

-After years of delay, discussions and negotiations, both parties agree on a compromise: warden Vasquez' concern about security are satisfied with the handcuffing of inmates out of their cell and the classification of inmates in 2 categories<sup>23</sup> (A & B) while inmates see their rights (mail, visit, food, noise) guaranteed.

-Since the late 1990s, two elements have endangered this compromise:

°in 1996, President Clinton, pressed by the Republican on 'law and order' issues in an electoral year, accepts the **Prison Litigation Reform Act (PLRA)** which drastically limits the prisoners' possibilities to present a writ about their living conditions to the federal courts. The PLRA also ends most litigation if they have produced most of their intended results. It's the case for the *Thompson* decree.

°The **population of SQ's death row continues to grow**. In 2005, it housed more than 640 inmates. Only 11 executions were carried out between 1992 and 2004. Twice as much

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<sup>22</sup> The author wish to thank the 'Regional Oral History Office' (ROHO), at UC Berkeley, where he spent a remarkable year between July 2003 & June 2004. During those months, the author also enjoyed a Fulbright grant.

<sup>23</sup> 'Grade A' inmates benefit from all the rights of the decree; they are housed in the North Segregation building and in the East Block. 'Grade B' inmates, who are violent or considered dangerous, are isolated in the 'Adjustment Center' and have very limited rights.

inmate died either by suicide or...natural causes. **Time on death row in California typically ranges between 20 and 25 years.**

-Nonetheless, inmates on death row do have now certain rights that were simply denied to them 40 years ago. They are still under very strict guard.

-A simple visit to San Quentin with its almost infinite list of forbidden clothes for visitors and forbidden items...tells a lot about the administration attitude. Death row inmates are prohibited to work and are crowded by the hundreds in 'exercise field' when allowed to go outside every morning. Inside, issues like noise or quality of food are still very real.

## ***Conclusion***

-Death row was originally a **pragmatic response** to the need to house a specific population awaiting execution.

-In the late 1930s, SQ's death row was dramatically **modernized** together with the adoption of the gas chamber as the method of execution. DR became a **bureaucratized structure of control and surveillance**.

-From the mid-1950s on, **contestation** in death row and in prison dramatically increased and forced the penal administration to concede some **very substantial reforms**.

-Today, the nature of death row, even as improved by the *Thompson* decree, has not fundamentally changed. The administration wants to avoid public scandal and sternly refused to grant any 'opportunities' (education, work) to death row inmates, widely considered outside by society like 'monsters'<sup>24</sup>. It still offers **no perspective to the prisoners but death** either by the hands of the State, by suicide or by natural causes.

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<sup>24</sup> When asked by the author why death row inmates weren't allowed to work or to benefit from education, the new CDC director **Jeanne Woodford** (also former San Quentin's warden) said that security was not guaranteed for such activities. Record & transcription of this June 2004 interview in the author's possession.