parties concerning potential abuse of First Amendment freedoms, when, in *Anderson v. Celebrezze,* it said:

> In *Williams v. Rhodes,* we concluded that First Amendment values outweighed the State's interest in protecting the two major political parties. . . . [I]n *Storer* we recognized the legitimacy of the State's interest in preventing "splintered parties and unrestrained factionalism" but we did not suggest that a political party could invoke the powers of the state to assure monolithic control over its own members and supporters.

Precisely such "monolithic control" was exercised by Fowler over decades-long members of the Democratic Party who supported LaRouche's candidacy. For example, plaintiff Grace Littlejohn has been an active Democrat for "52 years," and plaintiff Geneva Jones an elected official in her community for "18 years." Yet, District of Columbia Appellees, in concert with Fowler, refused the nominating petitions of these and the other LaRouche-pledged delegate candidates. . . .

. . .When the defendants try to hide behind the First Amendment their reliance is misplaced. Indeed, First Amendment protections exist to foster debate; not to arbitrarily grant the power of censorship as was exercised by defendants in this case.

* * *

D. The Issues Presented Are Not Moot

Although the 1996 election is completed, this case is not moot. Only one of the requested prayers for relief has been rendered moot by that occurrence. The issues of the lack of preclearance of the voting changes made by Rule 11(K) and whether the Fowler directive required preclearance before it was allowed to govern candidacy and counting of votes, remain to be decided. . . .

* * *

LaRouche has run as a Democrat for nomination for President in the past five presidential elections. He garnered over half a million votes during the 1996 primaries. On July 18, 1997, LaRouche issued his announcement titled, "The Time Has Come," stating his "intention to campaign for the Year 2000 Democratic Party presidential nomination." Given this fact, the circumstances similar to those identified in the Complaint are highly likely, if not certain, to recur against LaRouche and his supporters, and/or against another candidate similarly situated. Even were LaRouche not an announced candidate, the unfettered discretion, as detailed herein, exercised by the national defendants against members of their own Party who are minority voters and/or candidates with non-mainstream views, which resulted in the unconstitutional denial of the right to vote, have that vote counted, and to be a candidate, will surely happen again, unless this Court acts to prevent it.

America is killing innocent people

by Marianna Wertz

The execution of Joseph O'Dell in Virginia on July 23, and the last-minute reprieve of Thomas Thompson in California on Aug. 4, highlight the importance of the report, "Innocence and the Death Penalty," released in July by the Washington, D.C.-based Death Penalty Information Center (DPIC). The report is an update of the 1994 study, prepared by the DPIC at the request of Rep. Don Edwards (D-Calif.), then chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights, on the problem of innocent people on death row.

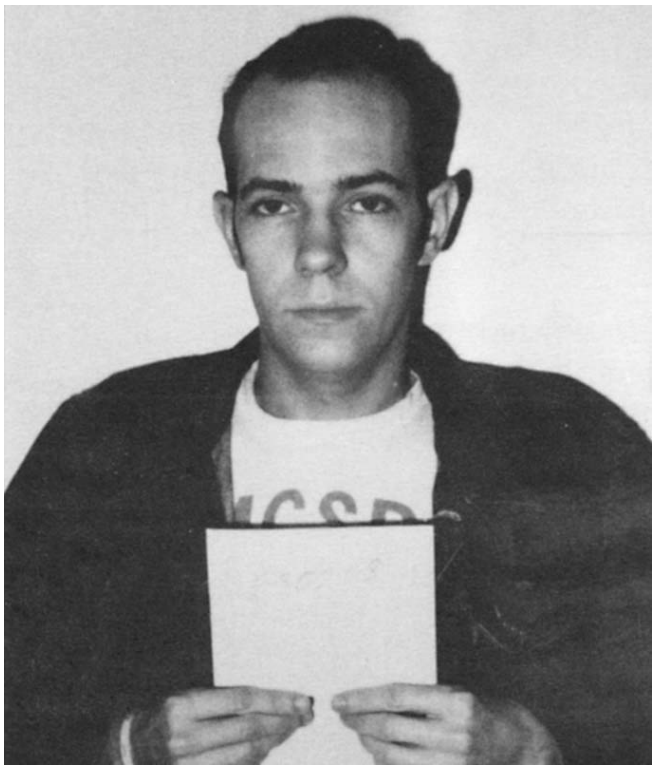
The 1994 report listed 48 defendants who had been released from death row in the prior 20 years because of subsequently discovered evidence of innocence. The growing number of additional cases of innocence on death row, prompted DPIC Executive Director Richard Dieter to prepare the updated report, which lists 21 new such cases since 1993.

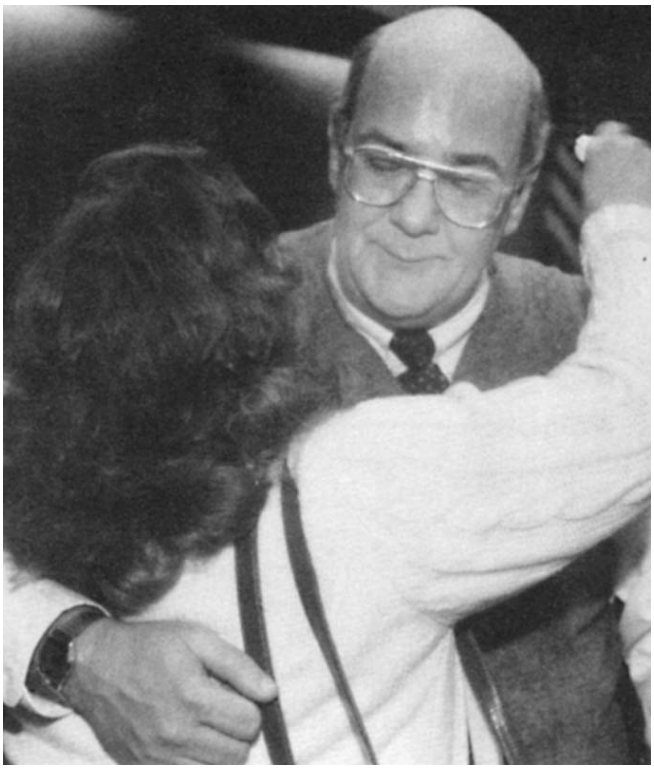
In an interview with *EIR* on Aug. 6 (see below), Dieter noted that the recent cases of O'Dell and Thompson "show a tendency in the courts to look at the procedure over substance, to ignore the merits of the case, and to emphasize whether the steps in the appeal have been followed, and that's a dangerous problem. That means that people could be executed solely because they didn't go through the right steps, procedures."

Joseph O'Dell went to his death in Virginia on July 23, proclaiming his innocence (see *EIR,* Aug. 8). He was executed without anyone, from Virginia Gov. George Allen and the lowest Virginia court, to the U.S. Supreme Court, ever allowing a second test on DNA evidence found on the murder-rape victim. The first test, done in 1986, was inconclusive. A second test, conducted with modern DNA analytic techniques, might have proved his innocence. We may never know if he was guilty, because these same courts are still refusing to release the evidence.

Thomas Thompson, 42, was sentenced to death in California for a 1981 rape and murder he says he didn't commit. A veteran with no prior criminal record, Thompson was scheduled to be executed on Aug. 4, but the execution was blocked on Aug. 3 by the 9th Circuit U.S. Court of Appeals in San Francisco. The court cited the "ineffective performance" of his trial attorney, who made no attempt to rebut the prosecution's evidence at trial. This ineffective performance, the court found, prejudiced the trial and led to his conviction.

California Gov. Pete Wilson (R), who has never granted clemency, refused to do so in this case, and denounced the





John Henry Knapp, at his booking in 1973 (left), and at his release in 1987. The pictures tell the story of a life lost to criminal injustice. Knapp was originally sentenced to death for an arson murder of his two children, but new evidence about the cause of the fire prompted a judge to order a new trial. At least one out of 100 people sentenced to death is innocent, a rate that is estimated to be much higher, because of the extraordinary resources needed to prove innocence.

9th Circuit as "a coterie of liberal judges." The state filed an immediate motion to expedite the execution with the U.S. Supreme Court.

On Aug. 4, at about 6:00 p.m. Pacific time, six hours before Thompson was to be executed, the Supreme Court upheld the Circuit Court's stay, sparing Thompson's life, for now. But the stay was entirely on technical grounds, not on the basis of agreement with the 9th Circuit, that Thompson received an unfair trial. The Supreme Court will limit its review of the case, to be heard sometime after October, to two issues only: 1) whether the appeals court, when it agreed to give Thompson's case a new look, circumvented a new federal law that limits prisoners to a single federal appeal; and 2) whether the appeals court exceeded its authority by reviewing the case after the normal time for review had expired.

O'Dell was also given a hearing by the Supreme Court, on such entirely technical grounds, in December 1996. The Court turned down his appeal, and O'Dell was then executed seven months later.

Innocence not considered

The importance of "Innocence and the Death Penalty" is that it proves, beyond the shadow of a doubt, that innocent people are being sentenced to death in America today. It also indicates that some people who may well have been innocent, have been executed. The report, written before O'Dell's execution, cites three such cases, all occurring since the death penalty was reinstated in 1976:

- Roger Keith Coleman, who went to his death in 1992 in Virginia, declaring that he was innocent and that no court would review his evidence. His appeal was blocked at every level of the justice system on purely technical grounds.
- Leonel Herrera, who was executed in 1993 in Texas. Though a former Texas judge submitted an affidavit stating that another man had confessed to the crime for which Herrera was facing execution, the Supreme Court said that he needed an extraordinary amount of proof to stop his execution.
- Jesse Jacobs was executed in Texas in 1995. While involved in the murder for which he was executed, the state prosecution itself admitted, in the trial of his co-defendant, that Jacobs was not the trigger-man, reversing their own testimony in his trial. U.S. Supreme Court Justice John Paul Stevens wrote, in his dissenting opinion: "It would be fundamentally unfair to execute a person on the basis of a factual determination that the state has formally disavowed. I find this course of events deeply troubling."

Getting worse

The report tells the stories of the 21 people who have been released from death row since 1993. It notes that "many

of these cases were discovered not because of the normal appeals process, but rather as a result of new scientific techniques, investigations by journalists, and the dedicated work of expert attorneys, not available to the typical death row inmate."

In other words, there are more such cases out there, waiting to be discovered. The Innocence Project, founded in 1994 at Benjamin N. Cardozo School of Law by Prof. Barry Scheck, has won the release of nine men since 1994, based on DNA testing, and has determined a common pattern in each of them. Scheck gained national fame as a DNA expert in the O.J. Simpson defense, and also testified in the O'Dell case.

Each of the cases won by the Innocence Project had the following common features: The men were convicted based on identification by witnesses; they were too poor to afford private lawyers; and any forensic data that had been introduced at trial were flawed, or were inadequate to establish the person's identity. Post-conviction DNA tests proved irrefutably that they were not guilty of the rape and/or murder for which they were convicted.

There are hundreds of people, among the 1.6 million men and women in America's prisons and 3,300 on America's death rows, who fit this description. As "Innocence and the Death Penalty" warns, "The current emphasis on faster executions, less resources for the defense, and an expansion in the number of death cases means that the execution of innocent people is inevitable. The increasing number of innocent defendants being found on death row is a clear sign that our process for sentencing people to death is fraught with fundamental errors—errors which cannot be remedied once an execution occurs."

Interview: Richard Dieter

Court trends are 'a dangerous problem'

Richard Dieter, executive director of the Death Penalty Information Center and author of "Innocence and the Death Penalty," spoke with Marianna Wertz, on Aug. 6.

EIR: Do you have any comment about the importance of your report, particularly in light of the execution of Joseph O'Dell and the reprieve of Thomas Thompson?
Dieter: I think that both of these cases show a tendency in the courts to look at the procedure over substance, to ignore the merits of the case and to emphasize whether the steps in the appeal have been followed, and that's a dangerous problem. That means that people could be executed solely because they didn't go through the right steps, procedures.

O'Dell was executed under a law that's clearly unconstitutional today, but the Supreme Court said it's not retroactive to him. In the Thompson case, the Supreme Court wants to look at, not the merits of whether Thompson was misrepresented, poorly represented, whether there were injustices in his case, but rather whether the Ninth Circuit followed the rules of procedure and the new laws. That puts the value of these human lives in second place.

EIR: Isn't that really a "Catch 22" situation with Thompson, because if they did follow those rules, then he would have been executed.
Dieter: Perhaps. Somewhere earlier in the process, I think they should have flagged this case. But given that mistakes were made in the process, that's not a reason to steamroll ahead with the execution.

EIR: I'd like to ask a question with respect to Supreme Court Justice Antonin Scalia. Lyndon LaRouche, who's the founder of our publication, has identified Scalia's doctrine as at the core of this problem, of looking not to the merits of the case, but to the question of procedure, and also majority rule as the basis for law. Have you noted that with Scalia?
Dieter: I don't really feel like I'm an expert on enough of the different decisions of the court to point that out. Certainly, he has gone out of his way in some death penalty cases to speak in the harshest terms possible, favoring executions and criticizing those who have stood in the way, including defense attorneys. He makes serious challenges seem inconsequential with his remarks. This is just from a few death penalty cases that I've noticed. I don't know how general that is on the court.

EIR: That was certainly true in the O'Dell case.
Dieter: Yes, just wanting to make sure—not even to consider the possibility that he's innocent. But he's done that before, criticizing the Texas Resource Center and their bringing these appeals. He goes out of his way to push to get these cases moved along and people executed.

EIR: Is there anything you'd like to say about the impact of the report?
Dieter: It has stirred some concern among the American public. I don't think they want to see innocent people being executed. They may be willing to make the changes necessary in the system, so that this is less of a possibility, or to stop it altogether, use an alternative, like life without parole. That's been supported in a number of polls that we've seen recently. So, there may be some changes in the offing, and the judges will have to step aside when the laws are changed. But, so far, that hasn't happened.