

**THE BRIDGE CONNECTING PONTIUS PILATE’S SENTENCING OF
JESUS TO THE NEW JERSEY DEATH PENALTY STUDY
COMMISSION’S CONCERNS OVER EXECUTING THE INNOCENT:
WHEN HUMANS BEINGS WITH INHERENTLY HUMAN FLAWS
DETERMINE GUILT OR INNOCENCE, AND LIFE OR DEATH.**

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I. Introduction

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There are few, if any, injustices that are more unacceptable than when an innocent defendant is convicted of a crime he or she did not commit.¹ Such injustices are especially egregious when, in our American halls of justice, the defendant is wrongfully convicted of capital murder and faces execution.² Such wrongful convictions can be attributed to a variety of reasons with one single denominator. We as humans are imperfect.

Our criminal justice system is administered by, investigated by and litigated by humans. Thus, we as humans can never guarantee that every decision rendered by the trier of fact, whether a human judge during a bench trial or a human juror during a jury trial is perfect.³

Despite the human imperfections inherent in our criminal justice system, the overwhelming majority of defendants who have been convicted of a capital crime, actually committed the capital crime.⁴ The problem is that when it comes to capital punishment, executing just one innocent capital defendant is one too many.⁵

Recently there have been a myriad of death penalty cases where, some capital defendants were exonerated of the crimes they had been convicted of committing.⁶ These cases are important for modern criminal law jurisprudence. They are important because these exonerations highlight the imperfect manner we as humans evaluate guilt and innocence.⁷

Despite modern day revelations of innocent defendants being convicted, the legal profession and the legal academy has had access to a death penalty

¹ See D. Michael Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 J. CRIM. L. & CRIMINOLOGY 761, 789 (2007) (“There are plenty of people... who will assert that every factually wrongful conviction is a serious injustice.”).

² See *id.* at 790 (“Most people would probably rank factually wrongful capital convictions as the worst possible, since death is both absolute and uncorrectable.”).

³ *Id.* at 765 n.8 (“No human judgment is infallible...”).

⁴ See *id.* at 762 (observing that the percentage of wrongful convictions in capital rape-murder cases in the 1980’s is between 3.3% - 5%).

⁵ See *id.* at 781 n.40. As Professor Risinger eloquently noted, “I do not think a 3-5% error rate is an acceptable price to pay, nor do I think we are ever likely to undertake the reforms to reduce that error rate...”. *Id.* See also discussion *infra* note 35.

⁶ See *id.* at 772. See also discussion *infra* note 36.

⁷ See, e.g., discussion *infra* note 40.

case that is quite possibly the most well known unjust execution of an innocent defendant in the history of civilization. Over 2,000 years ago, the Roman governor of Judea, Pontius Pilate sentenced Jesus, the Christ, to death by crucifixion on the cross for the crimes of treason and blasphemy.⁸ Jesus, a carpenter by trade, represented himself *pro se*.⁹ He was innocent.¹⁰

His initial trial court was in front of the Sanhedrin, who convicted him for his proclamation that he was the Son of God.¹¹ The Sanhedrin were priests and officials who represented Jewish authority at the time.¹²

Since Rome maintained dominion over Israel during the time of Caesar, Pilate as governor also served as the appellate judge for disputes brought to his attention by the Sanhedrin.¹³ Jesus was faced with the unenviable task of representing himself in front of two definitive kangaroo courts.

The arrest, trial, appeal and sentencing of Jesus is instructive for 21st Century capital punishment jurisprudence for a variety of reasons.¹⁴ First, there are few, if any, cases that depict the imperfect nature of the way we as humans administer criminal justice more vividly than scripture's version of the way Jesus' case was mishandled by the Sanhedrin and Pilate.¹⁵ Second, Jesus

⁸ William T. Braithwaite, *An Introduction for Judges and Lawyers to Plato's Apology of Socrates*, 25 LOY. U. CHI. L.J. 507, 508 (1994) ("It was nearly twenty centuries ago, about the year 30 of our era, that Jesus appeared before the Jewish authorities on a charge of blasphemy...and then before the Roman governor Pontius Pilate on a charge of treason. . . .").

⁹ *Id.*

¹⁰ See discussion *infra* note 132.

¹¹ *Id.* See also Mark 14:53-65; Matthew 26:57-68; Luke 22:63-71. For a brief description of the Sanhedrin see generally THE HOLY BIBLE NEW INTERNATIONAL READER'S VERSION 723 (The Zondervan Corporation 2001). The Sanhedrin was,

[t]he ruling council of the Jews in Jesus' time. It was made up of seventy men, and the leader was the high priest. The Sanhedrin could decide whether someone was innocent or guilty of breaking a Jewish law, but it could not put anyone to death without the permission of the Roman governor. *Id.*

¹² *Id.*

¹³ See discussion *supra* note 11.

¹⁴ See Mark Osler, *Christ, Christians and Capital Punishment*, 59 BAYLOR L. REV. 1, 3 (2007) ("One reason we have much to learn from the criminal process afforded Christ is that it bears so many similarities to the criminal process employed in the United States today.").

¹⁵ See Braithwaite, *supra* note 8, at 508.

In the history of Western civilization, two trials in particular share an undisputed position of coprimacy, by reason of their drama, their instructiveness, and the oceanic influence that the defendants' lives and words have had on all later generations, including our own. These are the trials of Socrates and Jesus.

Id.

was totally innocent of the charges brought against him.¹⁶ He was nonetheless executed in one of the most agonizingly painful ways used by the Roman Empire in that era, the cross.¹⁷

Because of the imperfect nature of our criminal justice system, we as a society could potentially execute an innocent defendant.¹⁸ It is bad enough that there have been documented instances of innocent defendants being convicted and imprisoned for crimes they did not commit.¹⁹ It is bad enough that there have been documented instances of guilty defendants being acquitted for crimes they did commit.²⁰ Our imperfect criminal justice system cannot guarantee justice 100% of the time. The potential that we in modern day society, can execute an innocent defendant trumps all reasons in favor of capital punishment.²¹

Last year, the New Jersey Legislature and Governor Jon Corzine abolished capital punishment in New Jersey.²² The Garden State is the first state to do so by an act of legislation.²³

The driving force behind New Jersey's cutting edge decision to abolish capital punishment was the work of the New Jersey Death Penalty Study Commission (hereinafter "the Commission").²⁴ In its landmark report

¹⁶ See Osler, *supra* note 14, at 4 ("[T]he innocence of Christ makes His execution wrong.").

¹⁷ The cross is defined as "a tall beam with a crossbar on which a criminal was hung or tied to die." See BIBLE, INTERNATIONAL VERSION *supra* note 11, at 712.

¹⁸ Christine M. Wiseman, *Representing the Condemned: A Critique of Capital Punishment*, 79 MARQ. L. REV. 731, 757 (1996) ("With the increased fervor to kill criminals and kill them sooner after conviction, we clearly run the increased risk of executing the wrongfully convicted.").

¹⁹ See, e.g., *id.* at 736 (observing that, "fifty-three capital defendants have been released from death row because of probable innocence. That number represents nearly 2% of the people sitting on this nation's death rows.").

²⁰ See, e.g., James B. Johnston, *Prosecuting Government Fraud Despite the "CSI Effect": Getting the Jury to Follow the Money*, 41 NEW ENG. L. REV. 563, 566-567 (2007) (discussing a fraud case where despite an avalanche of evidence confirming the defendant's guilt, he was acquitted of all charges that were filed against him). See also Risinger, *supra* note 1, at 764 (discussing the "magnitude of the problem of factually wrongful conviction and wrongful acquittal.").

²¹ See Wiseman, *supra* note 18, at 738 (observing that, "the criminal justice system in this country has not been able to foreclose the inevitability of wrongful conviction...").

²² See *Garden State Eliminates the Death Penalty*, THE CATHOLIC ADVOC., Jan. 9, 2008, at 7 ("History was made last month when Gov. Jon S. Corzine signed into law legislation abolishing the death penalty in favor of life in prison ...").

²³ *Id.* ("New Jersey is the first state to legislatively do away with capital punishment.").

²⁴ See Report, *infra* note 25, at 1.

(hereinafter “the Report.”),²⁵ the New Jersey Death Penalty Study Commission, recommended that capital punishment be removed from the state’s landscape and instead be replaced with life in prison without parole.²⁶

The Commission was charged with the obligation of analyzing “seven specific issues” pertaining to capital punishment in New Jersey.²⁷ One of these issues was the danger of executing an innocent defendant; or as the Commission put it, “the risk of making an irreversible mistake.”²⁸

The bridge that links Pilate’s sentencing of Jesus to death to the very real potential of executing the innocent, has not been used by opponents of capital punishment, as an aggressive strategy to argue against the death penalty.²⁹ Ironic, since the overwhelming majority of Americans identify themselves as being Christian.³⁰

Another point of irony is the fact that many American law schools are affiliated with Christian universities.³¹ One would imagine after all the exhaustive amount of work and effort by our nation’s legal profession for and against capital punishment, at least some of our Christian universities would generate lawyers and academics that see the link between the crucifixion of

The New Jersey Death Penalty Study Commission was created by P.L. 1005, c. 321. The enactment directed the Commission to study all aspects of the death penalty as currently administered in New Jersey and to report its findings and recommendations, including any recommended legislation, to the Legislature and the Governor.

Id.

²⁵ *New Jersey Death Penalty Study Commission’s Report*, available at http://www.njleg.state.nj.us/committees/dpsc_final.pdf.

²⁶ *Id.* at 2. (“The commission recommends that the death penalty in New Jersey be abolished and replaced with life imprisonment without the possibility of parole, to be served in a maximum security facility.”).

²⁷ *Id.* at 1.

²⁸ *Id.*

²⁹ *See Osler, supra* note 14, at 3 (“Oddly, lessons from the sentencing of Christ have not been a part of the American debate over the death penalty...”).

³⁰ *See Osler, supra* note 14, at n.8 (observing that “85% of Americans identify themselves” as being Christian). *See also* Bill McKibben, *The Christian Paradox: How a Faithful Nation Gets Jesus Wrong*, HARPERS, Aug. 2005, at 31.

³¹ Some samples of Christian law schools include, Seton Hall University School of Law, Notre Dame Law School, Saint John’s University School of Law, Regent University School of Law, Georgetown University Law Center etc..

Christ, a man without sin and was totally innocent of the charges against him, and today's death penalty.³²

The goal of this article is to use Pilate's death sentence of Jesus as a metaphor for our imperfect criminal justice system. Before doing so however, an analysis of the Commission's findings regarding the possibility of executing the innocent is fitting.

II. Executing the Innocent: The Ultimate Irreversible Error.

The Commission addressed the imperfect manner in which our criminal justice system evaluates guilt or innocence in its report.³³ None of the capital defendants in New Jersey have been exonerated.³⁴ However, there have been documented instances of innocent defendants being convicted in New Jersey courts and elsewhere in non-capital matters.³⁵

Nationwide there have been at least 182 wrongfully convicted defendants having been exonerated thanks to DNA testing.³⁶ A number of them were convicted of capital murder and sentenced to death.³⁷

The Commission obtained testimony from several individuals who provided their own experiences with our imperfect criminal justice system having wrongfully convicted individuals who did not commit the crime they were accused of having committed.³⁸ They included a lawyer,³⁹ a rape victim who mistakenly identified the wrong man as her attacker,⁴⁰ a defendant who

³² See discussion *supra* note 29.

³³ See Report, *supra* note 25, at 51 ("The penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake.")

³⁴ See Report, *supra* note 25, at 51 ("The Commission notes that there have been no exonerations from death row in New Jersey in the 24 year history of the State's modern death penalty law.")

³⁵ See Report, *supra* note 25, at 51 ([E]xonerations in other states and exonerations in New Jersey in non-capital cases must be taken into consideration in weighing the risk of a mistaken conviction here.")

³⁶ See Report, *supra* note 25, at 51 ("182 individuals in the United States have been exonerated with post conviction DNA testing, 14 of whom have been sentenced to death.")

³⁷ See discussion *supra* note 36.

³⁸ See Report, *supra* note 25, at 51-52.

³⁹ See Report, *supra* note 25, at 51 ("Attorney Barry Scheck, Co-Director of the Innocence Project at Cordozo School of Law.")

⁴⁰ See Report, *supra* note 25, at 53-54

Jennifer Thompson... testified about her experience as a rape victim who wrongly identified her attacker. She was raped at knifepoint by an intruder in 1984 and during the rape made a conscious effort to memorize her attacker's

was convicted of rape and murder then released from prison based on DNA testing⁴¹ and a head of a religious organization that works to free the wrongfully convicted.⁴² The Commission also acknowledged a New Jersey case that addressed the issue of imprecise nature of eye-witness identifications.⁴³

The Commission was not unanimous in its concerns over executing the innocent however.⁴⁴ Commission member, Senator John F. Russo, noted that any chance that a defendant convicted of capital murder and subsequently executed is small.⁴⁵ Senator Russo provided some insight into the most insidious of murders.⁴⁶ According to Senator Russo, protections were intentionally put into place so the defendant convicted of capital murder could appeal his sentence.⁴⁷ These appellate procedures were designed to protect against executing the innocent.⁴⁸

Perhaps the most reasonable voice to be heard regarding our imperfect criminal justice system is Professor Eric Lillquist.⁴⁹ He correctly observed that,

[t]he criminal justice system is a human system. It...involves decisions made by human beings, not by computers. And inevitably we make mistakes. Those who argue that we will never make a mistake in the criminal justice system in general and the death penalty process in general...are fooling themselves. Any criminal justice system including

face so she could later identify him. Despite these efforts she mistakenly identified a man named Ronald Cotton as her assailant. Mr. Cotton was convicted and sentenced to life plus 50 years.

Id.

⁴¹ See Report, *supra* note 25, at 52

Larry Peterson...testified about his 1989 conviction for the brutal rape and murder of his neighbor . . . [B]ased on DNA test results, Mr. Peterson was released from prison in 2005 [T]he prosecutor's office announced that the State would not be able to sustain its burden of proof and requested a dismissal of the indictment.

Id.

⁴² See Report, *supra* note 25, at 52 ("Kate Hill Germond, Assistant Director of Centurion Ministeriesw in Princeton, testified that her organization has freed 35 innocent people from prison, including seven in New Jersey.").

⁴³ See Report, *supra* note 25, at 54 (citing *State v. Cromedy*, 158 N.J. 112 (1999)).

⁴⁴ See Report, *supra* note 25, at 79-83.

⁴⁵ See Report, *supra* note 25, at 81 ("[T]he risk that New Jersey will execute an innocent person under the 1982 statute is minute.").

⁴⁶ See Report, *supra* note 25, at 82 ("[T]he bill was drafted very narrowly as to apply only to the worst criminals and afford each defendant the full opportunity to mount an effective defense and appeal his case to the State Supreme Court.").

⁴⁷ See discussion *supra* note 46.

⁴⁸ See discussion *supra* note 46.

⁴⁹ See Report, *supra* note 25, at 53.

the death penalty system, no matter how carefully we draw it is going to make a mistake at some point.⁵⁰

Professor Lillquist is right. As human beings all of us are subject to human frailties. These include a tendency to make a mistake, which we all have at one time or another have committed, though perhaps not on such an important issue as executing an innocent individual accused of capital murder.

III. Pontius Pilate and the Sanhedrin: The Definitive Kangaroo Court.

Before starting this discussion on Pilate's sentencing of Jesus I wish to emphasize a few points to the reader. First and foremost I am, in no way, comparing Jesus, Son of God, Son of Saint Mary, Stepson of Saint Joseph and foundation of the Christian faith, to the individuals on death row who were legitimately convicted of capital murder.⁵¹ Jesus was without sin. His innocence, as we will see, was confirmed by Pilate himself.⁵²

Second, I do not insinuate that any death row inmates were treated in the same manner, Pilate and the Sanhedrin treated Jesus. I am confident that today, in the 21st Century no death penalty defendant would face a judgment of execution that Jesus faced. I am confident that no sitting judge would be as corrupt, cowardly, intellectually dishonest and devoid of concern for his fellow human being as was Pilate in sentencing Jesus to death.

Third, I am a Roman Catholic, and a graduate of a Catholic university. The same Catholic university where I teach. I am a lector at my church. I do not however pretend to be an authority on scripture. This analysis is not a commentary on the Catholic Church's position or any other church's position on capital punishment.

⁵⁰ See Report, *supra* note 25, at 52.

⁵¹ See Osler, *supra* note 14, at 5 ("While I certainly do not mean to compare the crime of which Christ was accused with the depraved acts of modern day killers, I do think it is fair to compare the process leading to that execution and the American death penalty process of today."). See also Risinger, *supra* note 1, at 781 n.40 ("I am not morally opposed to the death penalty categorically. In fact, after reading the details of the underlying episodes in 406 capital cases in a fairly short period, I am even less opposed to it on moral grounds than I was before.").

⁵² See discussion *infra* note 124.

This analysis is solely used as a lay person's effort at discussing the most unjust death sentence known to humankind.⁵³ A death sentence that was rendered thanks to the human imperfections that are inherent in the human dynamic.⁵⁴ Through this analysis of the New Testament, the goal here is to highlight the human dangers documented by the Commission in assuming the risk of executing an innocent capital murder defendant. Put another way, making the ultimate irreversible error.⁵⁵

Lastly, the bulk of the analysis of Jesus' trial and execution is based on the Gospels of the apostles Matthew and John. Confining this analysis to two of the four gospels should not be interpreted as a reflection on my own personal preferences or biases for or against any of the four Gospels. It has been done for space considerations and to guarantee the reader that he or she will not be forced to endure my own imperfect human tendencies at being mind numbingly longwinded.

A. The Sanhedrin: Creating and Implementing the Plot to Kill Jesus.

The Sanhedrin was the trial court for the Jewish people during the time of Jesus.⁵⁶ It consisted of numerous members of the religious community and was lead by the high priest.⁵⁷

While the Sanhedrin decided guilt and innocence of a person accused of violating Jewish law, it could not order the execution of a defendant unless the Roman governor, in this case Pontius Pilate, allowed such.⁵⁸

From the outset, one can see that the proverbial fix was in for Jesus.⁵⁹ The members that consisted of the Sanhedrin's tribunal were also associated with the priests and scribes that Jesus criticized in public.⁶⁰ Their motives in killing Jesus

⁵³ See Osler, *supra* note 14, at 4 (“[T]he trial of Christ can be read as a moral basis for eliminating capital punishment altogether so long as there is the possibility of the execution of an innocent.”).

⁵⁴ See Wiseman, *supra* note 18, at 757.

⁵⁵ See discussion *supra* note 33.

⁵⁶ See discussion *supra* note 11.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See *John* 18:12-14 (“They bound him and brought him to Annas, who was the father-in-law of Caiaphas, the high priest that year. Caiaphas was the one who advised the Jews that it would be good if one man died for the people.”)

⁶⁰ See *id.* See, e.g., *Matthew* 21:12:

were purely political and designed to protect their own power.⁶¹ Motivations that are so inherently human. The same powers that would serve as judge and jury during the trial of the Son of Man were also the powers who conspired to kill him even before he was arrested.⁶² Instead of simply murdering Jesus, the priests, scribes and what may today be considered law professors of the Sanhedrin ordered his arrest to create an appearance of legitimacy to his upcoming death sentence.⁶³

After Jesus was arrested he appeared in front of the high priest Caiaphas, the high priest who owned the palace where the plot to arrest and execute Jesus was orchestrated.⁶⁴ This appears like what would be considered an arraignment in modern day criminal jurisprudence.⁶⁵ The concerns today's judges have over conflicts of interest and appearance of impropriety were of no concern to the Sanhedrin. Justice and due process for Jesus meant nothing to them.⁶⁶

Jesus entered the temple area and drove out all who were buying and selling there. He overturned the tables of the money changers and the benches of those selling doves. "It is written" he said to them, "My house will be called a house of prayer but you are making it a den of robbers.

Id.

⁶¹ See Mark 11:18 ("The chief priests and the teachers of the law heard this and began looking for a way to kill him, for they feared him, because the whole crowd was amazed at his teaching.").

⁶² *Id.*

⁶³ Matthew 26:3-4 ("Then the chief priests and the elders of the people assembled in the palace of the high priest, whose name was Caiaphas and they plotted to arrest Jesus in some sly way and kill him.").

⁶⁴ Matthew 26:57 ("Those who arrested Jesus took him to Caiaphas, the high priest where the teachers of the law and the elders had assembled."). According to John's gospel Jesus was initially brought to the father in law of Caiaphas. His name was Annas. See also discussion *supra* note 50.

⁶⁵ See Osler, *supra* note 14, at 14 ("He was taken to an official named Annas, who conducted something which sounds strikingly like an initial appearance or arraignment. A primary purpose of an arraignment, of course, is to make the defendant aware of the charges and enter a plea on those charges.")(Internal Citations Omitted).

⁶⁶ See Osler, *supra* note 14, at 17:

What is significant is what Jesus does not have in any of the Gospel accounts of the trial. He does not have counsel or an advocate of any kind. He does not seem to have the ability to call witnesses or have any role in the composition of the fact-finders. In short it does not seem to be a very fair proceeding or one intended to come to the truth rather than a conviction- an observation that some would argue also describes the modern capital murder trial.

Id. (Internal Citations Omitted).

Caiaphas cross-examined Jesus on his teachings.⁶⁷ Here, Caiaphas looks more like the prosecutor as opposed to a judge.⁶⁸ Caiaphas' questioning was a farce.⁶⁹ In actuality the cross examining of Jesus began well before his arrest when members of the Sanhedrin tried to ask trick questions of him.⁷⁰ Jesus confronted Caiaphas with this fact.⁷¹ As a result he was assaulted by one of the individuals on the tribunal.⁷²

Despite their best efforts at obtaining evidence against Jesus that would justify execution, the Sanhedrin found none.⁷³ Instead of dismissing the charges against Jesus, Caiaphas, the high priest and leader of the Sanhedrin, merely created his own evidence.⁷⁴ In a moment of discourse that would make those of us that comprehend the idea of a defendant's right to remain silent cringe,⁷⁵ Caiaphas, disgusted with the way the trial has up to this point favored Jesus⁷⁶ proclaims,

“I charge you under oath by the living God: Tell us if you are the Christ, the Son of God.”⁷⁷ Jesus, the only human without sin told the truth. He answered, “Yes, it is as you say . . .” Knowing his fate he defiantly tells

⁶⁷ See *John* 18:19 (“[M]eanwhile, the high priest questioned Jesus about his disciples and about his doctrine.”)

⁶⁸ See Osler, *supra* note 14, at 15 (“ . . . Caiaphas served as the prosecutor and the religious elders formed the jury.”)

⁶⁹ See discussion *supra* note 66.

⁷⁰ See e.g., *Luke* 20:1-8:

One day as He was teaching the people in the temple courts and preaching the gospel, the chief priests and the teachers of the law, together with the elders, came up to him. “Tell us by what authority you are doing these things,” they said. “Who gave you this authority?” He replied, “I will also ask you a question. Tell me, John’s baptism – was it from heaven, or from man . . . So they answered, “We don’t know where it was from.” Jesus said, “Neither will I tell you by what authority I am doing these things.”

Id. See also Osler, *supra* note 14, at 9-10 (discussing the numerous ways the Pharisees tried to “trap Jesus by showing Him to be an enemy of the state . . .”).

⁷¹ *John* 18:20-21 (“I have spoken openly to the world,” Jesus replied. “I have always taught in synagogues or at the temple. . . I said nothing in secret. Why question me? Ask those who heard me. Surely they know what I said.”).

⁷² *John* 18:22 (“When Jesus said this; one of the officials nearby struck him in the face. ‘Is this the way you answer the high priest?’ he demanded.”).

⁷³ *Matthew* 26:59-60 (“The chief priests and the whole Sanhedrin were looking for false evidence against Jesus so that they could put him to death. But they did not find any, though many false witnesses came forward.”).

⁷⁴ See discussion *infra* note 79.

⁷⁵ See Osler, *supra* note 14, at 14 (“The words of Jesus at His arraignment have the same effect as asserting the Fifth Amendment – they amount to a refusal to admit guilt and a demand that the authorities produce their own evidence.”).

⁷⁶ See Osler, *supra* note 14, at 13 (“While the Pharisees now had Jesus in custody, it would seem there was little evidence against him.”).

⁷⁷ *Matthew* 26:63.

the Sanhedrin “But I say to all of you: In the future you will see the Son of Man sitting at the right hand of the Mighty One and coming on the clouds of heaven.”⁷⁸

Emotion takes over the tribunal.⁷⁹ Caiphas dismisses the idea that more evidence is needed and appeals to his compatriots for their verdict and sentence.⁸⁰ They obediently oblige Caiphas and declare Jesus’ death sentence.⁸¹

There was only one problem for the corrupt Sanhedrin. They had no authority to execute.⁸² That job rested with the equally corrupt Roman Governor Pontius Pilate.⁸³

B. Pontius Pilate: The Ultimate Crooked Judge.⁸⁴

After his conviction and sentencing by his trial court, Jesus was brought to Pontius Pilate early in the morning.⁸⁵ Ironically, the Sanhedrin did so to avoid violating provisions of the upcoming Passover.⁸⁶ The Sanhedrin’s status as not only being ethically bankrupt but also hypocrites⁸⁷ is cemented in that fact that they have absolutely no problem in executing the innocent Jesus, the Son of God, yet continue to display some sort of allegiance to Jesus’ father by performing what is essentially a murder before the sun rises.⁸⁸

⁷⁸ *Matthew* 26:64.

⁷⁹ *Matthew* 26:65-66 (“Then the high priest tore his clothes and said, “He has spoken blasphemy! Why do we need any more witnesses? Look, now you have heard the blasphemy. What do you think?”).

⁸⁰ *Matthew* 26:66 (“He is worthy of death, they answered.”). *See also* Osler, *supra* note 14, at 19. The verdict is stunningly simple. . . This too, is like the sentence of an American jury, whose most profound decision is often reflected by simply checking a box in the verdict form rather than in the lengthy opinions issued by judges or the complex multi-part verdict forms completed by civil juries.

Id.

⁸¹ *Id.*

⁸² *See supra* note 11 and accompanying text. *See also* discussion *infra* note 88.

⁸³ *See John* 18:28 (“Then the Jews led Jesus from Caiaphas to the palace of the Roman Governor.”)

⁸⁴ I would like to acknowledge that the first time I ever heard Pilate being described as a crooked judge was during a homily at a Red Mass several years ago, sponsored by the Saint Thomas More Society at Seton Hall Law School and celebrated at the Cathedral/Basilica of the Sacred Heart in Newark. The homilist, was Cardinal Avery Dulles, S.J.

⁸⁵ *John* 18:28-30 (“By now it was early morning, and to avoid ceremonial uncleanness the Jews did not enter the palace; they wanted to be able to eat the Passover.”).

⁸⁶ *Id.*

⁸⁷ *See* Osler, *supra* note 14, at 8 (“The principal investigators of Jesus were the Pharisees and scribes . . . [i]t should be no surprise that these officials would want to prosecute Jesus, as He denounced them publicly in the harshest terms, saying at one point “[w]oe to you, scribes and Pharisees, hypocrites!”). *See also Matthew* 23:23-33.

⁸⁸ *Id.* *See also Matthew* 26:1-5

Their hypocrisy is an important ingredient in their plot to kill Jesus, which pre-dated his execution.⁸⁹ Here, the Pharisees present their own evidence that Jesus blistering critiques of them as “hypocrites”⁹⁰ and “snakes”⁹¹ is accurate. If being a hypocrite was a crime in Judea during the time of Caesar, the scribes who investigated and prosecuted Jesus were most definitely guilty as charged.

When Pilate asked the Sanhedrin what Jesus had been charged with⁹² they responded by saying nothing more than, “[i]f he were not a criminal. . .we would not have handed him over to you.”⁹³ Here, the corrupt members of the Sanhedrin present Jesus to the equally corrupt Pilate with nothing more than their naked allegation that He is a criminal merely because they say so.⁹⁴

Even in Jesus’ day just because one is in custody does not mean that person is *ipso facto* a criminal. This was lost on the Sanhedrin. The Sanhedrin is trying to convince Pilate at this stage of Jesus’ trial to rubber stamp their view that he is a criminal and thus must be punished.⁹⁵ This may be because they wanted to keep the flimsy nature of their evidence against Jesus away from Pilate.⁹⁶

Again, even in front of the Roman authorities, Jesus has no legal counsel or any type of remote protection or representation to shield him from his fate.⁹⁷ He continues to represent himself *pro se*.⁹⁸

When Jesus had finished saying all these things, he said to his disciples, “As you know, the Passover is two days away – and the Son of Man will be handed over to be crucified.” Then the chief priests and the elders. . . assembled in the palace of the high priest. . . and they plotted to arrest Jesus in some sly way and kill him. “But not during the Feast,” they said, “or there may be a riot among the people.

Id. See also Osler, *supra* note 14, at 10 (“The authorities were intentional about timing in arresting Jesus. Originally they planned to arrest Jesus during the “Festival of Unleavened Bread” (Passover) but postponed the arrest for strategic reasons. Specifically, they feared the reaction of Jesus’ followers, concluding that if they chanced a public arrest during the festival, “there may be a riot among the people.”) (Internal Citations Omitted).

⁸⁹ *Id.*

⁹⁰ See, e.g., *Matthew* 23:29 (“Woe to you teachers of the law and Pharisees, you hypocrites!”).

⁹¹ See *Matthew* 23:33 (“You snakes! You brood of vipers! How will you escape being condemned to Hell.”).

⁹² See *John* 18:29 (“So Pilate came out to them and asked, “What charges are you bringing against this man?”).

⁹³ *John* 18:30.

⁹⁴ *Id.*

⁹⁵ See discussion *supra* note 88.

⁹⁶ See Osler, *supra* note 14, at 17.

⁹⁷ See Osler, *supra* note 14, at 4 (“Jesus had no true advocate in the court.”).

Pilate, apparently unaware that Jesus had already had a trial, albeit in front of a kangaroo court, told the Sanhedrin to keep their prisoner and apply Jewish law to Jesus.⁹⁹ This was unacceptable to the Sanhedrin.¹⁰⁰ They complained that if they did so they could not kill Jesus.¹⁰¹ It is not enough that Jesus was convicted, now he must die.¹⁰²

The fact that Jewish law forbid execution¹⁰³ was a mere formality. The Sanhedrin would just implement the laws of the ruling class. The laws of Caesar.¹⁰⁴ Clearly, the motive of the Sanhedrin has nothing to do with justice.¹⁰⁵ Their claim was merely that Jesus committed blasphemy and thus must be killed¹⁰⁶ conceals their own true motives which include revenge, power and political expediency.¹⁰⁷

Make no mistake. The priests of the Sanhedrin who orchestrated Jesus's death acted less like religious leaders and more like criminals. Identity thieves and money launderers of today who conceal the nature of their crimes so they can profit from their misdeeds and motives¹⁰⁸ would do well for themselves by learning lessons from the Sanhedrin's efforts at concealing their own criminal conspiracy and their own true motives.¹⁰⁹

⁹⁸ See Osler, *supra* note 14, at 17 (“What is significant is what Jesus does not have in any of the Gospel accounts of the trial. He does not have counsel or an advocate of any kind.”).

⁹⁹ *John* 18:31 (Pilate said, “Take him yourselves and judge him according to your own law.”).

¹⁰⁰ See *infra* note 113 and accompanying text.

¹⁰¹ *John* 18:31 (“But we have no right to execute anyone.”).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *id.*

¹⁰⁵ See *infra* note 107 and accompanying text.

¹⁰⁶ See discussion *supra* note 70.

¹⁰⁷ See *John* 11:47-50.

Then the chief priests and the Pharisees called a meeting at the Sanhedrin. “What are we accomplishing?” they asked. “Here is this man performing many miraculous signs. If we let him go on like this, everyone will believe in him, and then the Romans will come and take away both our place and our nation.” Then one of them. . . who was a high priest. . . spoke up. “You know nothing at all! You do not realize that it is better for you that one man die for the people than that the whole nation perish.”

Id.

¹⁰⁸ See James B. Johnston, *An Examination of New Jersey's Money Laundering Statutes*, 30 SETON HALL LEGIS. J. 1, 6 (2005) (discussing the crime of money laundering, identity theft and other crimes).

¹⁰⁹ See discussion *supra* note 88.

The trial of Jesus occurred 1,800 years before the 5th Amendment of the United States Constitution¹¹⁰ was ratified and 2,000 years before the infamous *Miranda* decision.¹¹¹ Jesus had no right to remain silent.¹¹² Every word he spoke was used against him during his initial trial and later in the presence of Pilate.¹¹³

Jesus tells Pilate the truth.¹¹⁴ He is the Son of God or “King of the Jews.”¹¹⁵ As for Pilate, as was the case with the Sanhedrin, the truth means nothing.¹¹⁶ He is a man with the power to put an innocent man to death.¹¹⁷ Yet while questioning Jesus he asks him, the Son of God, to explain what the truth really is.¹¹⁸ Imagine a case in modern times where a sitting judge on the record asks the defendant to explain “What is truth?”¹¹⁹

C. Pilate’s Verdict: Not Guilty Is Not Enough.

¹¹⁰ See U.S. CONST. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Id.

¹¹¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¹¹² See, e.g., Osler, *supra* note 14, at 15.

¹¹³ See, e.g., *John* 18:31-35

So Pilate went back to the praetorian and summoned Jesus and said to him, “Are you King of the Jews?” Jesus answered, “Do you say this on your own or have others told you about me? Pilate answered, “I am not a Jew am I?” It was your people and your chief priests who handed you over to me. What is it you have done?”

¹¹⁴ See discussion *infra* note 118.

¹¹⁵ See *John* 18:33-34 (“Pilate then went back inside the palace, summoned Jesus and asked him “Are you King of the Jews?”)

¹¹⁶ See *infra* note 118 and accompanying text.

¹¹⁷ See *John* 19:10 (“Pilate said ‘Don’t you realize I have power either to free you or to crucify you?’”).

¹¹⁸ *John* 18:36-38

Jesus said, “My kingdom is not of this world. If it were, my servants would fight to prevent my arrest by the Jews. But now my kingdom is from another place.” “You are a King, then!” said Pilate. Jesus answered, “You are right in saying I am a king. In fact, for this reason I was born, and for this I came into the world, to testify to the truth. Everyone on the side of truth listens to me.” “What is the truth?” Pilate asked.

Id.

¹¹⁹ See *supra* note 118 and accompanying text.

In addition to being corrupt Pilate was a coward.¹²⁰ After reviewing the flimsy evidence presented by the Sanhedrin he renders his decision to the conspirators. “I find no basis for a charge against Him. . .Do you want me to release the King of the Jews?”¹²¹ There you have it. Not guilty. An acquittal.

Today, one would imagine the acquitted defendant would be released from custody. Instead, Pilate looks for the stamp of approval from Jesus’ enemies.¹²² These were the same individuals who plotted his demise.¹²³

Here, Pilate’s human weaknesses shine through.¹²⁴ Instead of showing the courage to make a politically unpopular decision, as we expect judges to make, he asks for permission from Jesus’ persecutors to release him.¹²⁵ This would be unthinkable in today’s judicial system where judges are paid to make decisions based on the evidence whether they are politically popular or not.

The humiliation of Jesus continued under Pontius’ cowardly eye.¹²⁶ Mocking Jesus’ claim that he is the king of the Jews, Roman soldiers placed a crown of thorns on his head.¹²⁷ Pilate presented Jesus to his accusers and again tried to appease them by proclaiming Jesus’ innocence.¹²⁸

When the Sanhedrin saw this they were unmoved. Jesus’ innocence was as relevant to the Sanhedrin as it was to Pilate.¹²⁹ They wanted their plot completed. It was not enough that Jesus should die. The Sanhedrin wanted Jesus killed in

¹²⁰ See *Matthew* 27:24 (“When Pilate saw that he was getting nowhere, but that instead an uproar was starting, he took water and washed his hands in front of the crowd. ‘I am innocent of this man’s blood,’ he said.”).

¹²¹ *John* 18:36-38.

¹²² *Id.*

¹²³ See, e.g., *supra* note 63 and accompanying text.

¹²⁴ See *John* 19:6-7 (“But Pilate answered, ‘You take him and crucify him. As for me, I find no basis for a charge against him.’”).

¹²⁵ See *infra* note 133 and accompanying text.

¹²⁶ See *infra* note 127 and accompanying text.

¹²⁷ *John* 19:2-3 (“The soldiers twisted together a crown of thorns and put it on his head. . .saying ‘Hail, king of the Jews.’”).

¹²⁸ *John* 19:4-5

Once more Pilate came out and said. . .“Look, I am bringing him out to you to let you know that I find no basis for a charge against him.” When Jesus came out wearing the crown of thorns and the purple robe, Pilate said to them, “Here is the man.”

Id.

¹²⁹ *John* 19:6 (“As soon as the chief priests and their officials saw him, they shouted, ‘Crucify! Crucify!’”).

what may have been the most publicly degrading and agonizingly painful way used by the Romans at that time.¹³⁰

Instead of standing by his verdict of not guilty, Pilate tried to wash his unclean hands of the matter.¹³¹ He told the Sanhedrin to take the innocent Jesus and do with him as they wished.¹³²

Once it became clear to the Sanhedrin that Pilate wanted to acquit Jesus, they implemented one of the most purely evil instances of blackmail ever documented in scripture.

The Sanhedrin threatened to go to higher Roman authorities and question Pilate's loyalty to Caesar based on his acquittal of Jesus' claim to be King of the Jews.¹³³

The not so subtle insinuation is clear. The Sanhedrin would portray Pilate as a traitor to Roman authorities if he did not runner stamp their demands for Jesus' death.¹³⁴ Doing so could potentially compromise Pilate's political standing with Rome and possibly have meant a death sentence for Pilate himself.

Despite his own cowardice, or perhaps because of it, Pilate told the Sanhedrin who their king was when he proclaimed, "Here is your king[.]"¹³⁵ The judge and indirectly the Roman authorities have spoken. Even one who is as cowardly and dishonest as Pilate acknowledges the greatness of Jesus, the Son of God.¹³⁶ He acknowledges that Jesus has spoken the truth; He is a king.¹³⁷ The truth however, will not save Jesus from death.

Now Pilate must deal with Jesus' enemies,¹³⁸ a group of individuals who do not care about the truth. They are only concerned with completing their death plot against the Son of Man.¹³⁹ Masquerading their treachery with a self serving

¹³⁰ *Id.*

¹³¹ *See supra* note 120 and accompanying text.

¹³² *John* 19:6 ("But Pilate answered, 'You take him and crucify him. As for me, I find no basis for a charge against him.'").

¹³³ *John* 19:12 ("From then on, Pilate tried to set Jesus free, but the Jews kept shouting, 'If you let this man go, you are no friend of Caesar. Anyone who claims to be a king opposes Caesar.'").

¹³⁴ *See id.*

¹³⁵ *John* 19:14.

¹³⁶ *Id.*

¹³⁷ *See supra* note 107 and accompanying text.

¹³⁸ *See, e.g., supra* note 133 and accompanying text.

¹³⁹ *See supra* note 88 and accompanying text.

blanket of loyalty to Caesar,¹⁴⁰ the Sanhedrin told Pilate to “[t]ake him away! Take him away! Crucify him!”¹⁴¹ Here the persecutors are telling the dishonest judge what to do.

Pilate obliges and thus begins the process of executing a person he as Roman governor and sitting judge acknowledges to be a king and more importantly a man who has been rendered not guilty.¹⁴² The Sanhedrin has successfully overcome Pilate as the one obstacle that stood in the way of fulfilling their plot against Jesus.

Since they could not convince Pilate to author his writ of execution based on their flimsy evidence, they instead appealed to his political ambitions, cowardice and concerns for self preservation.¹⁴³ They were a very politically astute group albeit morally and ethically bankrupt.¹⁴⁴

Pilate’s acknowledgement of Jesus’ innocence and his status as being a king does not end with his writ of execution however.¹⁴⁵ In what might today be considered a judgment of acquittal Pilate had a writing placed on the cross. It said, “Jesus of Nazareth, the King of the Jews.”¹⁴⁶

For the first and only time, Pilate stood up to the Sanhedrin. They complained that the inscription should read merely that he claimed to be king.¹⁴⁷ Pilate responded by telling them, “I have written what I have written.”¹⁴⁸ Pilate as

¹⁴⁰ See *John* 19:15 (“‘Shall I crucify your king?’ Pilate asked. . . ‘We have no king but Caesar,’ the chief priests answered.”).

¹⁴¹ *John* 19:15.

¹⁴² *John* 19:16 (“Finally, Pilate handed him over to them to be crucified.”).

¹⁴³ See Osler, *supra* note 14, at 34-35 (“At each turn, powerful political actors urged those making the decision on Jesus’ fate to have Him killed. . . [t]he response of the judges to political pressure is clear.”) (Internal Citations Omitted).

¹⁴⁴ See *id.*

¹⁴⁵ See Osler, *supra* note 14, at 28-29.

¹⁴⁶ *John* 19:19.

¹⁴⁷ *John* 19:19-21

It read: “Jesus of Nazareth, The King of the Jews.” Many. . . read this sign, the place where Jesus was crucified was near the city, and the sign was written in Aramaic, Latin and Greek. The chief priests. . . protested to Pilate, “Do not write ‘The King of the Jews,’” but that this man claimed to be king of the Jews.”

Id.

¹⁴⁸ *John* 19:22.

Roman governor and judge has acknowledged Jesus' status as King and thus His innocence in writing for any passerby to witness.¹⁴⁹

This is not to let Pilate off the hook for his writ of execution however. Jesus at this point of the drama is still very much alive. This was at least the third time Pilate has proclaimed Jesus' innocence and status as the Son of Man, yet the crucifixion continues. Pilate can stop the crucifixion from continuing but does no such thing.

Pilate, the governor and judge documents the innocent Victim's legitimate status as Son of God.¹⁵⁰ There is no evidence against Jesus yet his execution continues its course.¹⁵¹

D. The Other Innocent Victim: The Blessed Virgin as a Witness to her Son's Execution.

No parent should be forced to endure the death of their child. The Gospel of John tells what I believe is one of the most powerful chapters of Jesus' first venture on Earth.¹⁵² As he hung on the cross in unspeakable agony, Jesus' mother, the Blessed Virgin, Saint Mary is at the foot of her Son's cruel instrument of death grieving with relatives and friends.¹⁵³

Jesus, knowing he can no longer care for his mother makes certain the most important woman in his life will be taken care of when he is gone:

When Jesus saw his mother and the disciple there whom he loved, he said to his mother, "Woman behold your son." Then he said to the disciple, "Behold your mother." And from that hour the disciple took her in to his home...aware that everything was now finished...Jesus said, "I thirst"...So they put a sponge soaked in wine...and put it up to his mouth. When Jesus had taken the wine he said "it is finished." And bowing his head, he handed over the spirit.¹⁵⁴

Jesus, Son of God, completely innocent of any and all crimes, knowing he is about to die looks down at his grieving mother. Then, just prior to his last breath he makes sure the most significant woman in his life and Christianity, Saint

¹⁴⁹ See *id.* See also Osler, *supra* note 14, at 28-9.

¹⁵⁰ See Osler, *supra* note 14, at 29.

¹⁵¹ See *John* 19:16-37.

¹⁵² See BISHOP KEN UNTENER, *THE LITTLE BLACK BOOK: SIX-MINUTE REFLECTIONS ON THE PASSION ACCORDING TO JOHN* (2002).

¹⁵³ *John* 19:25 ("Near the cross of Jesus stood his mother, his mother's sister Mary the wife of Clopas, and Mary Magdalen.").

¹⁵⁴ *John* 19:26-30.

Mary, Mother of God would be taken care of by his closest ally. The innocent victim, taking care of the other innocent victim, his mother, as his body overwhelmed by pain consumes its final moments.

One can only imagine the unthinkable grief Jesus' mother, Saint Mary was forced to endure at watching the Son she conceived, gave birth and raised to manhood, slowly die at the hands of Pilate, the Roman soldiers and the Sanhedrin. Imagine Jesus' own sorrow at the sight of the mother he loved overcome with heartache. What did she say to her Son? What did she say to the soldiers? Was she crying? Was Jesus crying? Did she beg the soldiers for mercy? Who consoled her after Jesus died? This portion of the story of Jesus illustrates that the innocent capital murder defendant is not the only victim in death penalty litigation. The innocent defendant's friends and relatives are also victimized.

Here, Jesus and the Blessed Virgin exhibit the courage that Pilate and the Sanhedrin are incapable of showing. Jesus exhibits the selflessness and love that made him the foundation of the Christian church. Saint Mary's heroism in the face of her Son's death is inspiring. Pilate, the Sanhedrin, nor the Roman soldiers could keep her from her Son during his time of need. Like most good mothers, the combined forces of the seven seas would not have had the power to keep the Blessed Virgin away from her Son.

Did Pilate care about Saint Mary when he handed over her innocent Son for execution? Did any of the Sanhedrin consider for one moment the impact their murderous plot would have on the Mother of God? Scripture is silent in this regard but a safe bet is that they did not. Their selfishness, ambitions and greed would have prohibited any concern for anyone other than themselves. If they did not care about killing the Son of God, despite the fact that there was no evidence against him and despite Pilate's own judgment of acquittal, it is doubtful they were concerned with the welfare of the Mother of God.¹⁵⁵

¹⁵⁵ See Wiseman, *supra* note 18, at 757-758.

Jesus' trial was a circus at its best and a fiasco at its worst.¹⁵⁶ His death was less a sovereign administering the death penalty against one who was rightfully considered a peril to the powers at be and more a murder planned and implemented by the Sanhedrin and rubber stamped by Pilate as the symbol of Rome. Justice had nothing to do with the trial of Jesus.¹⁵⁷ To say that he did not receive a fair trial would be an under statement.¹⁵⁸

He was killed because he was a threat,¹⁵⁹ a threat to the high priests of the Sanhedrin and a threat to Pontius Pilate, the consummate political crony and crooked judge.

The human flaws displayed by both when executing the Son of Man, should give all of us reason to reflect on whether other, less sinister human flaws can result in imposing the death penalty on an innocent defendant in modern times. I respectfully argue that that they can and inevitably they will.

IV. The Bridge: Executing Humans Despite Our Inherently Human Flaws.

The bridge that connects the death of Jesus to capital punishment lies in the fact that we as humans are imperfect.¹⁶⁰ Both Pilate and his allies in the Sanhedrin exhibited just about every sinister human imperfection imaginable.

How does that translate into relevance for modern day death penalty jurisprudence? Since we as imperfect humans administer, organize and supervise our criminal justice system, the manner in which we evaluate guilt and innocence is also imperfect.¹⁶¹

There is no way to guarantee that judges, witnesses, prosecutors, defense attorneys, police and jurors can avoid the human frailties that we all have.¹⁶² Over the past 100 years at least “fifty-three capital defendants have been released

¹⁵⁶ See Wiseman, *supra* note 18, at 731 (discussing the “circus-like race to execute death row inmates...”).

¹⁵⁷ See Osler, *supra* note 14, at 28 (“The Bible itself takes pains to point out the innocence of Christ, an implicit criticism of this inherent risk of the death penalty.”).

¹⁵⁸ See *supra* note 16 and accompanying text.

¹⁵⁹ See *supra* note 61 and accompanying text.

¹⁶⁰ See *supra* note 3 and accompanying text.

¹⁶¹ See Risinger, *supra* note 1, at 764 (discussing “the magnitude of the problem of factually wrongful conviction[s] and wrongful acquittal[s].”).

¹⁶² See *supra* note 3 and accompanying text.

from death row,” thanks to evidence that documented their innocence.¹⁶³ That is not to say the jurors and judges in those cases displayed the blood lust of the Sanhedrin or the political cowardice of Pilate.¹⁶⁴ It provides clear evidence however, that when we as humans take it upon ourselves to decide life or death we do so with the knowledge that no human entity can guarantee with absolute certainty that no human imperfection compromised the verdict.¹⁶⁵

Even if those involved in administering justice are thorough and fair in performing their duties, perfection in doing so is impossible.¹⁶⁶ They are not God.¹⁶⁷ They are only human.¹⁶⁸ One need not have an evil intent, like Pilate and the Sanhedrin, to possess the frailties and weaknesses all humans have based on their being human.¹⁶⁹

While Jesus is certainly not the only person to be sentenced to death despite his innocence,¹⁷⁰ his story is possibly the most well known.¹⁷¹ It is a story that Christians celebrate every year during the Easter season. It is indeed ironic that while we Christians celebrate the death and resurrection of Jesus as proof positive that He is the Son of God, we have not done a very effective job in understanding and communicating the corollary lessons that are contained in the manner Jesus died.¹⁷² Specifically, that if the Son of God, Jesus Christ, can be crucified thanks in part to the human frailties of those responsible for administering justice at the time, Pilate and the Sanhedrin, it can happen to anyone.

If Saint Mary, the Mother of God, can be victimized by a criminal justice system cursed with human imperfections it can happen to other mothers. These mothers may not have given birth to the Son of God. Their son or daughter may have indeed committed the crime for which they were convicted.

¹⁶³ Risinger, *supra* note 1, at 736.

¹⁶⁴ See discussion *supra* Part III.

¹⁶⁵ See *supra* note 3 and accompanying text.

¹⁶⁶ See *supra* note 3 and accompanying text.

¹⁶⁷ See *Psalms* 11:7 (“For the Lord is righteous, he loves justice; upright men will see his face.”).

¹⁶⁸ See discussion *supra* Part II.

¹⁶⁹ See discussion *infra* note 177.

¹⁷⁰ See, e.g., Braithwaite, *supra* note 8, at 508-09 (discussing the trial of Socrates).

¹⁷¹ See Braithwaite, *supra* note 8, at 508.

¹⁷² See *supra* note 29 and accompanying text.

Yet, who is to say they love their son or daughter any less than the Blessed Virgin loved her Son. Who is to say the agony felt by Saint Mary at the sight of her Son on the cross is any less than the agony of a mother in the 21st Century awaiting the execution of her innocent son or daughter.

This is not to say we should ignore the agony felt by individuals who lost a loved one to murder.¹⁷³ Frankly, my sympathies first and foremost are reserved for these individuals and their beloved¹⁷⁴ who were deprived of the gift of life by the butchers who killed them.¹⁷⁵ As Commission member Kathleen M. Garcia eloquently noted, “I have as much compassion for those perpetrators as they had for their unfortunate victims.”¹⁷⁶

Nonetheless, the bigger picture requires us to ask ourselves whether we, as imperfect humans, possess the tools to decide whether another human should live or die, even when that human acted inhumanly toward his murder victim.¹⁷⁷ Whether the capital murder defendant was legitimately convicted of capital murder or erroneously convicted of capital murder I respectfully argue that we, as flawed human beings, do not.¹⁷⁸

V. Conclusion.

The sentencing and execution of Jesus provides us with a powerful lesson regarding the dangers that are inherent in executing those convicted of a crime.¹⁷⁹ No story exhibits more clearly the dangers of what happens when humans, as imperfect as we are, make decisions that are literally the difference between life

¹⁷³ See Report, *supra* note 25, at 93 (“[O]ur capital punishment system has served those charged and convicted of capital murder very well; however, it has failed miserably to serve the law abiding citizens of New Jersey – most importantly the survivors of murder victims.”).

¹⁷⁴ See Report, *supra* note 25, at 56-61 (discussing the “interests of families of victims”).

¹⁷⁵ See Report, *supra* note 25, at 62-65 (discussing the mental trauma and other harm suffered by family members of murder victims).

¹⁷⁶ See Report, *supra* note 25, at 94.

¹⁷⁷ See Report, *supra* note 25, at 51 (discussing wrongful convictions based on “problems with . . . forensic evidence which were ultimately found to not be valid. . .”).

¹⁷⁸ See Report, *supra* note 25, at 53.

¹⁷⁹ See *supra* note 14 and accompanying text.

and death.¹⁸⁰ It is a very dangerous task and one that in my opinion should be left to the Almighty, not the humans who work in our criminal justice system.¹⁸¹

Without question, New Jersey's death penalty statutes, contained safeguards that minimized the chance that an innocent defendant would be executed.¹⁸² Minimization however is not enough. Until someone can guarantee with 100% certainty that justice is rendered 100% of the time in our criminal courts, especially in death penalty cases, the potential that we can execute an innocent victim will always exist.¹⁸³ This means that 100% of innocent defendants are acquitted and 100% of guilty defendants are convicted. There is simply no way anyone, with any degree of reasonableness, can guarantee such.¹⁸⁴

It is not enough to reduce the possibility of executing an innocent defendant.¹⁸⁵ It must be eliminated.¹⁸⁶ If we cannot guarantee an innocent person will never be convicted of a crime in non-capital cases,¹⁸⁷ it's a safe bet we cannot do so for capital cases.¹⁸⁸

Today, debate still rages on over potentially innocent defendants who have been executed.¹⁸⁹ This is symptomatic of the lack of certainty that is present in the death penalty when it comes to the potential of executing the innocent.¹⁹⁰

If the sentencing and execution of Jesus of Nazareth has taught the world anything, it is this: assuming the role of God and determining when and how a

¹⁸⁰ See discussion *infra* note 183.

¹⁸¹ See Report, *supra* note 25, at 36 (discussing members of the clergy, both Christian and non-Christian, who "uniformly urged abolishing the death penalty.").

¹⁸² See discussion *supra* note 45.

¹⁸³ See Report, *supra* note 25, at 54 ("You can reduce but you cannot eliminate, the risk of human error in the death penalty system.").

¹⁸⁴ See Report, *supra* note 25, at 54 ("No set of procedures can completely guard against human error.").

¹⁸⁵ See Report, *supra* note 25, at 54 ("Some say that death row exonerations are rare enough that we should not end the death penalty because of innocence. Some say that with the proper procedures...against wrongful convictions, you can reduce the risk to an acceptable rate. But I ask you: What is acceptable?").

¹⁸⁶ See discussion *supra* note 181.

¹⁸⁷ See, e.g., discussion *supra* note 35.

¹⁸⁸ See discussion *supra* note 4.

¹⁸⁹ See, e.g., Pete Yost, *New Doubts on Ethel Rosenberg Guilt*, NEWARK STAR LEDGER, Sept. 12, 2008, at 10. (discussing the possibility that Ethel Rosenberg, a woman who was convicted and executed for allegedly giving government secrets to the Soviet Union in the 1950's may have been convicted pursuant to perjured testimony and thus erroneously executed).

¹⁹⁰ See *supra* note 33 and accompanying text.

person is to die is a very dangerous business.¹⁹¹ It is a role we as humans are ill equipped to carry out.¹⁹² Thus, in order to eliminate the possibility of executing an innocent capital murder defendant, life imprisonment without the possibility of parole for the convicted murderers of today is a prudent and necessary alternative to the death penalty.¹⁹³

¹⁹¹ See Report, *supra* note 25, at 1 (“The penological interests in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake.”).

¹⁹² See Report, *supra* note 25, at 52 (“Abolishing the death penalty will not ensure {that} no innocent person will be convicted, but it would ensure that no innocent person will be killed by the State.”).

¹⁹³ See *supra* note 26 and accompanying text.