

2nd Place Creative Nonfiction

Burying Ernest Basden
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The usher handed me a printed program as I rushed into the funeral home. We were late; Pat was parking the car. “You must be the minister,” the well-dressed man posited. “What?” My mind was trying to make sense of his declaration that sounded more like a question. “Well, I did go to seminary,” I thought to myself as I stared at the usher, wondering how he knew. I opened up the program in my hand; yep, there was my name: Cindy Adcock, Officiating. Rose had asked me the day before to say a few words at her brother’s funeral. Ernest was my third client to be executed, but my first to have a funeral. I had imagined a small room with a few people saying “a few words” about Ernest. I looked through the open double doors. The room looked like a church sanctuary, and it was packed! I took a deep breath and headed down the hall in search of Rose. I reminded myself of my execution mantra: expect the unexpected and roll with it.

Ernest was scheduled to be executed on December 6, 2002, at 2:00 a.m. All executions are scheduled for 2:00 a.m. in North Carolina. Urban legend is that this early morning hour was designated long ago to limit inmate unrest, as well as public demonstration. Maybe so, but the late hour is brutal on those involved in an execution, especially the witnesses and the family and friends of the inmate. For those trying to stop the execution, exhaustion mixes with hope to stave off despair.

I awoke on Wednesday, December 4, to a grey sky. A winter storm was on its way. I went downstairs and flipped through the Raleigh News & Observer until I got to the latest weather report: It is not yet officially winter, but the Triangle is bracing for its first brush with icy weather today and Thursday.

Forecasts call for snow and sleet starting by mid-afternoon, changing to a mix of sleet and freezing rain tonight. The storm could produce a quarter-inch of ice or more on roads by Thursday morning, when more rain or freezing rain is expected.¹

“Great. The unexpected,” I mumbled to myself.

I began to ponder the possible scenarios. What would it take for the State of North Carolina to call off the execution? Maybe the Executioners won’t be able to get to the prison? Then a panic set in. What if I can’t get to the prison? What if my co-counsel, John and Matthew who live even further away, can’t get there? And what about Ernest’s family? Eight of his nine brothers and sisters, along with nieces and nephews, planned on being at the prison for their first contact visit with Ernest in a decade. They would be devastated if they were unable to tell Ernest goodbye, as would I.

I first met Ernest on February 2, 1995, at Central Prison in Raleigh. Of all my clients, he was the least needy. For one thing, he was sane. Ernest’s problems stemmed from his self-medication of depression with alcohol and drugs. Once he was locked up, he got clean and became a new man. Or, as he might say, Jesus saved him from his evil ways.

¹ <http://groups.yahoo.com/group/HomelessNews/message/3302>

Ernest also had a strong support system. He had reconnected with his family, most of whom were quite normal -- whatever that means. A family member visited him every week, despite the 90 mile drive and the harsh visiting conditions of a small closet-sized room, with steel stools and a Plexiglas barrier separating visitor from inmate. They had missed only five or six visits over ten years.

Rose was Ernest's most tireless advocate, laboring since his arrest in 1992 to get needed evidence at every stage of litigation. But her work was largely in vain. Ernest's trial lawyers did not use any of the records she obtained, nor did they prep the witnesses she secured. On appeal, we had no success in getting a court to listen to the evidence. For us all, the post-conviction process had been a roller-coaster ride of hope and despair, hope and despair, hope and despair.

We now clung to one last hope: the Governor could commute Ernest's death sentence to life without the possibility of parole. We knew this hope was a long shot. Governor Mike Easley was the former Attorney General and had presided over ten executions. He had pushed for upholding the death sentence of numerous inmates, including Ernest Basden. In addition, he had just commuted earlier in the year the death sentence of Charlie Alston, who was possibly innocent. What were the chances of a second commutation? Yet, we felt we had an unusually strong case for a life sentence.

First, there were the facts around the crime:

- There were more culpable co-defendants. Sylvia White wanted her husband, Billy, dead. She convinced Lynwood Taylor, Ernest's nephew, to kill Billy. Together, they devised a plot, but Lynwood, local drug dealer and police informant, did not want to pull the trigger himself.
- As one court described him, Ernest was a manipulated rube,² chronically depressed and a heavy user of alcohol and drugs. Lynwood plied Ernest with drugs and alcohol and convinced him to help for a small amount of money.
- Ernest lacked the mental state required by law for a first degree conviction much less the death sentence. On the fatal night, Lynwood tricked Billy into meeting him and drove an intoxicated Ernest to the designated remote plot of land. When Billy arrived, Lynwood introduced himself and then walked away. Ernest got out of the car, picked up a shotgun, and shot Billy twice.

Then, there were the circumstances surrounding the trial and sentencing:

- Lynwood and Sylvia were given more lenient treatment by State officials; both avoided the death penalty. The State permitted Taylor to plead guilty to first-degree murder four years after the crime; he received a sentence of life imprisonment. Similarly, the State allowed Sylvia to plead guilty to conspiracy to commit murder and second-degree murder, four years after the crime. She too received a sentence of life imprisonment, despite the fact that the State had recently convicted her of the 1973 unrelated murder of her four year old stepson (Billy's son and namesake), who she suffocated with a plastic bag.

² *Basden v. Lee*, 290 F.3d 602, 612 (4th Cir. 2002).

- Ernest's lead trial counsel bowed out shortly before trial because he was dying of leukemia. He had done little work on Ernest's case, but the court refused to delay the trial. New counsel was completely ineffective, most notably for allowing Ernest to testify for the State in Sylvia White's baby-killing case without benefit of his testimony.
- Many of the jurors gave affidavits and videotaped interviews that they did not intend for Ernest to actually be executed. They were convinced by the foreman that a death sentence would be overturned. They just wanted to send a strong message of condemnation.

- Ernest was a model prisoner and served as liturgist for death row.

- Ernest had a dedicated family undeserving of the weight of Ernest's looming execution. Part of convincing the Governor to grant clemency is building public support. We kicked off the public campaign on November 20 at the Broken Eagle Eatery in Kinston, North Carolina, where Rose worked. Over thirty of Ernest's family members and friends greeted John and me. We asked for their help to get the word out about the injustices in Ernest's case, to write letters to the Governor in support of clemency, and to get others to do the same.

Rose and her daughter Sonya were Ernest's best spokespeople. Rose could tell the story of the injustices in Ernest's case like no one else. Though she had no public speaking experience, Rose agreed to embark on a speaking tour of Eastern North Carolina.

Rose never declined an opportunity to talk about Ernest's case. At each stop, she would rise, introduce herself, and begin the heart-wrenching story of her brother's case, pushing through the tears streaming down her face. Her audience was always spellbound.

Sonya, who looked considerably younger than her eighteen years, would comfort her mother and provide the much needed tissues. She would then stand and speak. Sonya was amazingly poised as she described her friendship with her uncle and why she thought he should not be executed. She had visited her uncle since she was ten-years-old and only knew him as a death row inmate. Sonya told one reporter, "He's the best uncle in the world,' . . . recalling the way they tease each other because she is a Duke sports fan and Ernest roots for UNC. 'I believe in him so much. He's just a good man.'"³

The letters poured into the governor's office in support of clemency for Ernest.

The final stop of our tour was at the Governor's Office, just a couple of days before the impending execution. John, Matthew and I, along with former NC Supreme Court Justice Harry Martin, who had become a supporter of Ernest's cause, met in the rotunda of the North Carolina Capitol. We were joined by Rose, Denny, Sonya and Ernest's older brother Leonard. As we waited, I saw the lawyers from the Attorney General's Office arrive. They were there to meet with the Governor as well, to argue for going forward with the execution.

The Governor's counsel greeted us and led us into an ornate room just outside the Governor's Office. Knowing that he had the Governor's ear, we walked him through the petition. Governor Easley soon emerged from his office and invited the lawyers in.

I had been in this inner sanctum twice before, once before Easley. Two years earlier, Larry Moore and I had sat in the same room and urged Easley to commute the death sentence of Willie Fisher. The Governor was not convinced, and Willie was executed. I wondered if the Governor remembered that meeting, as I smiled and shook his hand.

The Governor took his seat behind his desk; I quickly assessed the most appropriate seat

³ <http://www.indyweek.com/indyweek/two-families-plead-for-relatives-lives/Content?oid=1188110>

for me. One by one we argued as lawyers do for sparing a man's life, a perverse conversation that should never be had. We then brought in the family.

Rose did not hesitate. She stepped up to the Governor and pleaded for mercy for her brother. Leonard summed it up, "The judicial system in this just hasn't been fair. The man without money is the one on death row."⁴ The Governor looked uncomfortable. Our time was up.

As I passed the Governor going out the door, he shook my hand and said "Good luck." "Luck? What does luck have to do with this?" I screamed to myself.

It was raining when I went to bed early on December 4th. I was awoken in the middle of the night by the sound of tree limbs breaking and transformers blowing. Our electricity had gone out. I snuggled closer to Pat in bed and tried not to think what the next 24 hours might bring.

When I woke again, the sun had risen. I blew into the air and saw my breath. I sat up, looked out the window, and saw a winter wonderland. Everything in site was covered with ice. Unbeknownst to us, we were experiencing an ice storm of historic proportions. New records were set across the Carolinas and Virginia on power outages and their durations, traffic accidents, school closing durations, and fatalities resulting from an extreme weather event. Some dubbed it "Hugo on Ice" because the storm broke the previous record for regional power outages set by Hurricane Hugo in 1989. Raleigh recorded the most freezing rain from a single storm since 1948, more than doubling its previous record for freezing rain totals.⁵

Pat went downstairs to turn on the gas fireplace and stove to give us a little relief from the arctic air. My cell phone had no service, so I could not communicate with my co-counsel, the prison or Rose. Thanks to a gas water heater, I was able to take a hot shower before putting on layers of clothing.

All I knew to do was to strike out for the prison. I pulled on my hiking boots and carefully slid to the car. Pat stayed behind to care for his elderly mother and our dogs.

My slow 30 mile trek to the prison took me through a surreal white landscape. Those trees that were not snapped into pieces were arched to the ground by the weight of the ice. It was lonely on the road, which was a good thing. There were no signs of electricity, until I reached the prison. As I pulled into the de-iced driveway, I saw the lights on inside the visitor center, which sat between the road and the prison. "Damn. I guess they are up to an execution."

Ernest's family had beaten me there and were already visiting him in small groups. I circulated amongst those waiting, to see how they were doing. Eventually, John and Matthew, and even the two law students who had worked on the case, made it to the prison. John literally had to 0020chain-saw his way out of his driveway.

⁴ <http://www.clarkprosecutor.org/html/death/US/basden812.htm>.

⁵ <http://www.nc-climate.ncsu.edu/climate/winter/dec2002ice.html>;
<http://www.ncuc.commerce.state.nc.us/reports/part2ice.pdf>

The lawyers finally took a turn to visit with Ernest. The visits took place in a small concrete, steel and glass cell and in the presence of a guard who sat by the door taking notes. It was like being in a fishbowl or more aptly, a research lab.

Ernest was in good spirits. He was enjoying his visits, and no doubt had taken prescribed drugs to relax. Most of the day was lighthearted. After all, there was still hope that he would not be killed that night. We joked about how the Governor should grant clemency because of the weather, if for no other reason.

Darkness set in early. So did hunger. We had put so much energy into getting to the prison that we hadn't thought about needing to leave it. The students volunteered to venture out in search of food. Though we were in the middle of the city, it took them over two hours to return. "We couldn't find anything open, until we saw a pizza place with its lights on," Matt reported. "They had a generator and were pumping out the pizzas, but they were low on ingredients." He opened a box; the sauce was ranch dressing. We dug in.

Outside the prison gate, about a dozen protesters braved the bitter cold to stand vigil. I bundled up and headed up the hill to see if Pat was among them. It was hard to identify anyone because they all were covered head to toe, but I recognized the big purple parka. I grabbed Pat and asked a guard if I could bring him in. The guard stepped aside and let us pass. A banner attached to the fence read: "The death penalty makes us all murderers."

We still had not heard from the Governor's counsel. Why was he waiting so long to tell us his decision? Was it a good sign? Maybe he just wanted to wait until the evening news had been put to bed. Or was it a bad sign? If it were good news, wouldn't he want to relieve our pain?

Around 9:00, John's phone finally rang. The room fell silent. It was hard to breathe. "Yes sir," I heard John say. "I understand. Thank you for your consideration." John closed his phone and shook his head. There would be no clemency. The shock was palpable. The wailing began.

This moment may be the hardest moment in death work for an attorney. The emotional pain is intense. I could literally feel it in my gut. Yet, you have responsibilities: to your client and to your client's family and others on the legal team who have invested so much in the fight for life. Thus, you tamp down your own sorrow, to make it through the night.

I headed for Rose, who was sobbing. She gave me one of her legendary bear hugs. "I am so sorry," I said through my own tears.

We needed to tell Ernest. John, Matthew and I bundled up and walked toward the main building. When we entered the visiting cell, Ernest was waiting on the other side of the rear door. Our eyes met, and I tried to crack a smile, while we waited for the steel door between us to slide open. Ernest stepped in, and John broke the news: "The Governor denied clemency, Ernest." Ernest was the only one not crying. "Don't worry," he said as he hugged us. "I am ready to die. I appreciate all you have done for me."

Ernest's family was standing outside the cell door. We needed to step out and let them have their final visit. We would return for ours.

The execution was still three hours away. I wanted to run, to escape, to go anywhere else and weep in private, but there was nowhere to run, at least nowhere with electricity. When I reached the front door of the prison, I walked past the visitor center straight to the group holding vigil. Most of the few left were my friends. I thanked each of them for their support, as I tried not to break down.

In our last visit with Ernest, he called us his "dream team," and urged us to "continue the

fight.” I had no plans to witness Ernest’s execution; I had seen enough clients die. Besides, I knew John and Matthew would do it. But not witnessing made it even harder to say goodbye to Ernest. I would never see him again. This healthy man was about to be killed. Before the guards took Ernest away, I hugged him tightly, kissed him on the cheek, and said “I will never forget you.”

The lawyers and family were ushered into the prison mailroom, located downstairs from the execution chamber. We passed the time by praying, singing and telling stories about Ernest. At 1:30, the warden came for the witnesses: John, Matthew, Rose and Ernest’s brother Gerry. I moved to the couch to sit next to Sonya. We agreed that she would be my adopted little sis. As the clock ticked to 2:00 and beyond, I held her and rocked.

At 2:25, Rose burst through the prison mailroom door, looking like she was going to explode. Her face was beet red and as puffy as a cabbage patch doll. She was trying to hold in her pain and anger as the tears ran down her cheeks. John and Matthew didn’t look much better. Rose blurted out that she wanted to speak to the media.

Still crying, Rose’s pain was obvious as she approached the podium at the 2:30 a.m. press conference in the visitor center. “I just want you to know, my brother went with courage and dignity,” she pronounced. “The State of North Carolina did not hurt my brother. He is in heaven.” Pointing to her red, puffy face, she added, “this is who the State hurt; they have created more victims.”

The images of the last few days flooded my mind as I walked onto the stage of the funeral home on December 8. Ernest lay in front of me in a flag draped coffin. His family sat in the front rows of the packed house. Organ music was playing, followed by his niece Kristin singing a solo. I moved deliberately to the podium, led a prayer and spoke from the notes that I had scribbled in pencil under the blankets early that morning: “We are all more than our worst deed and Ernest Basden was much more. What I want to share with you today is what I believe Ernest taught us.” I proceeded to share lessons in forgiveness, hope, faith, death and continuing the fight against the violence of the death penalty.

After I sat down, Ernest’s brother James came up as the “family spokesperson.” He proceeded to sing/speak “Let it Be,” by the Beatles, in an endearing off pitch manner. He struggled to remain composed, as did I.

At the end of the service, I stepped down, walked to the center aisle and led Ernest’s casket to the waiting hearse. Our truck was designated the lead vehicle of the funeral procession, immediately behind the police escort. “Seriously,” I remarked sarcastically to Pat. “They killed him and now they are helping honor him.” The long procession slowly weaved through town, turning right, just past the Walmart, into the cemetery.

The sky was a clear blue. Ernest was waiting gravesite in his casket. As I approached, Rose handed me Ernest’s Bible and asked me to read the marked scripture, his favorite. After I read it, I kissed the Bible and lifted it to the heavens, as if I were releasing Ernest to God.