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Introductory Address: Wrongful Convictions

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ESSENTIALS TO JUSTICE: A RIGHT TO COUNSEL SYMPOSIUM

**INTRODUCTORY ADDRESS: WRONGFUL
CONVICTIONS***

*By: Ndume Olatushani and Anne-Marie Moyes
Introduction: Reverend Charles Fels*

REVEREND FELS: In the year 1765, William Blackstone began to publish his magisterial commentary on the laws of England. When he came to the criminal justice process in England in the eighteenth century, he wrote, "It is far better to acquit ten guilty men than it is to convict a single innocent person for a crime he did not commit." Benjamin Franklin and Thomas Jefferson raised the ante. They said, "It is far better to acquit a hundred guilty people than to convict a single innocent person." And they were put in the shade by the great Jewish Rabbi, Maimonides, who said, "It is far better to let a thousand guilty go free than to convict a single innocent person." Throughout the generations, we, as a moral people, know that it is repugnant to our souls to convict the innocent and yet we know we do it. My name is Charles Fels. I am a recovering lawyer and a priest in the Episcopal Church. I have served as a federal prosecutor, a state prosecutor and a criminal defense attorney and I know from personal experience the importance of quality legal representation for both sides in a criminal case.

And it has been my somber privilege to meet, to know and to introduce not one, not two, but three men who were falsely convicted and sentenced to die and were finally released.

This afternoon, you and I are deeply privileged to be with Ndume and his wife, Ann Marie, as they tell us

* Edited for readability.

their story of what it is to live Blackstone's nightmare. Ndume was convicted of a murder in Memphis, a town he had never visited, represented by, no doubt, well-intended lawyers, who in Shelby County, Tennessee, with a fifty percent black and white population, managed to succeed in picking an entirely one hundred percent white jury. At the end of the first part of the proceedings, when Ndume, to his astonishment, was found guilty, these lawyers began to work on their preparations for the death penalty phase of the case. They gave it their best shot in three hours and failed to call a number of witnesses who had important testimony to give as they had failed to call important witnesses in the first half of the case. This is no surprise. Blackstone's nightmare becomes reality when lawyers are not qualified to do the job they have been hired to do. Sentenced to death, Ndume spent twenty-seven years in prison, nineteen years on death row in a cell that is six feet by ten feet and when you go home tonight, you might pace that out in your smallest bedroom and see what it feels like. He was blessed with a great internal strength that led him to art, and if you have the chance to see his paintings, you will see this explosion of righteous colors depicting an Africa he has never yet visited except in his spirit and in his soul. He experienced a miracle.

Ann Marie, graduate of Johns Hopkins, went to Germany for a year and when she returned, she was appalled by the disparity between black and white, rich and poor in America and she became dedicated to work on death row in California and came to know Ndume as an artist and then as a human being. And she studied her case, his case. And she invited Gottlieb Cleary, some of you know that famous New York firm, to represent Ndume pro bono and she herself decided to acquire a legal education. And went to Vanderbilt, which gives me great pleasure because I went to Vanderbilt and my wife Susan went to Vanderbilt. And unlike me, Ann Marie was first in her

class at the end of three years and became a public defender, what a noble call for a highly credentialed lawyer, and she did it to help Ndume, and she was the one that found the missing piece that had led to his wrongful conviction and she was the one that helped sustain him through the arduous process of Tennessee's direct appeal, post-conviction appeal and that well known writ of error, Coram Nobis.

Today is a gift for you and for me, but I hope it will frame the next two and a half days because for the next two and a half days, we are studying what we need to do to fulfill the mandate of the life and the witness of Clarence Gideon. And if it stands for anything at all, it stands for this: whether it's ten or a hundred or a thousand who are released, it is a moral imperative in America to never convict an innocent man.

It's a privilege to be able to introduce Ndume and Ann Marie, husband and wife, and have them share with us today what it is to live the nightmare and what it is finally to live the dream. Welcome.

MS. MOYES: Thank you so much for having us here today. Ndume and I feel very lucky to share our story often with different groups of people. I think it's so important that we tell and retell these stories of wrongful conviction because they really help us to think about what goes wrong in our criminal justice system and hopefully, prompts us all to work harder for the reforms that need to happen. I'm going to speak for a little while to tell you the story about Ndume's case, but I'm going to try to not keep it too long because I know you want to hear from Ndume. But I think his comments will be more meaningful if you hear the details of exactly what happened that led to his wrongful conviction.

So let me tell you first a little bit about the crime. Ndume was convicted of a felony murder. That just means it was a

murder that took place in the course of a felony. So what happened is several individuals went into a grocery store in Memphis early on a Sunday morning, Sunday October 2nd. One of the perpetrators went up to the storeowner, who happened to be working at the cash register. What they didn't know is that he was armed and so when they realized he was armed, there was a moment of panic, several shots were fired in the store and one of them killed the storeowner. Witnesses in the store -- there were about ten people in the store -- described the perpetrators as two black men and one black woman. And soon the police got a big lead. They found the getaway car that had been used in the perpetrators abandoned near the store and they figured out that that car had been stolen from the Hertz Rental Car Agency at the St. Louis Airport. So immediately, the Memphis police started looking at suspects from the St. Louis area. Ndume is from St. Louis. He was born and raised there. He had a minor criminal record. There was nothing in his background that made him stand out from the thousands of other black men in St. Louis, but for some reason that has never been explained to us, they ended up zeroing in on him as a possible suspect.

So what case did the prosecution come up with to convict him? This was their case. Of the ten witnesses in the store, they were unable to find anybody who could make a positive identification of Ndume, but they brought in one witness, Tommy Perkins, who said that Ndume looked like the person he had seen for just a few seconds as he was leaving the store and the perpetrators were coming in. He admitted on the stand that he was not more than eighty percent sure of his identification. Two individuals, Elizabeth Starks and Dennis Williams, were boyfriend and girlfriend at that time, and they said that Ndume and several friends of his had stayed at their house that weekend. They identified the get-away car and said they had seen Ndume and his companions in the get-away car.

They said that these individuals were talking about robbing a store but they had no firsthand knowledge of what had actually transpired in the store. Beverly Batts was an acquaintance of Ndume. She had a criminal record herself but she testified that Ndume confessed to her that he committed a murder in Memphis. She knew no details of it. She just said he had made the statement to her. And finally, the police said that they found a palm print of Ndume's on the exterior of the get-away car on the roof of the car. So, that was the State's case.

Ndume had an alibi defense. Miraculously for him, he thought, when he was first suspected of the crime, is that he remembered exactly where he was that weekend. His mother's birthday is October 1st. He has a large family. He's one of eleven children. And that weekend they threw a big party for his mother's birthday. So that was that Saturday night that the party took place. So even him being at the party Saturday night was a strong alibi because the State's case had him in Memphis that entire weekend. Even if he was in St. Louis on Saturday night, that in itself was very exculpatory. There were about thirty alibi witnesses who all insisted that he was in St. Louis at this party and other people who saw him even throughout the day on Sunday. There was a gardener who had done some work on a property Ndume owned. He said he went by Ndume's house Sunday morning, right around the time the crime was committed. He went by Ndume's St. Louis house and Ndume was there and paid him some money that he owed him.

Despite that alibi, the all-white jury convicted Ndume. As Reverend Fels mentioned, the prosecution was able to empanel an all-white jury. This was before *Batson*. *Batson* was pending before the Supreme Court at the time of Ndume's trial, so the prosecution actually used each one of their preemptory strikes to eliminate African Americans from the jury pool. No preemptories were used against

white, potential white jurors.

And also as Reverend Fels mentioned, Ndume's trial counsel admitted in post-conviction that he did zero preparation for the penalty phase of the trial until the guilt phase was over. So then he had about three hours to do that preparation. The only thing that he did was he talked to Ndume's mother and mildly prepped her to testify. She basically got on the stand and pleaded for Ndume's life. The trial lawyer waived opening statement. And as I said, he called just one witness, Ndume's mother, and he made a very meager closing argument in which he said something to the effect of "it's not my role to tell you whether Ndume is a good enough man to live. That is your decision." So he was not the most effective advocate. The jury obviously unanimously voted to impose the death penalty.

So at this point, the appeals process began. Ndume's conviction and sentence were upheld on direct appeal but prior to post-conviction review, a huge miracle happened. Ndume had been appointed a post-conviction lawyer who was a solo practitioner in Memphis who really didn't want to do a lot of work on the case and when he realized that I was starting to agitate for some real representation to happen and some real investigation to happen, he did some pretty unethical things to try to get off the case. But it ended up being a great opportunity for us because we knew the court was going to appoint new counsel; we wanted to just make sure it was the right counsel this time. So I started a phone campaign where I just called anybody I knew with any sort of reasonable reputation in the post-conviction field and when they said no, I can't take it, I would say well, who[m] do you think I should talk to. And that just went on for a few months.

At one point, I talked to somebody at the NAACP Legal Defense Fund in New York and there was an effort at the time in New York to recruit big New York law firms to take death penalty cases in the south. And so they agreed to

pitch Ndume's case as one of the cases they were pitching to New York firms. And miraculously, Cleary Gottlieb Steen and Hamilton, a firm of, I'm not sure how many lawyers worldwide, I think they have five hundred lawyers in their New York office, but they agreed to take the case pro bono. So that was huge. And one of the pleasures of going through the appeals process with Ndume, I mean it was always frustrating because until the very end, despite how strong I felt like our claims were, you know, it was -- it felt hard to get a fair hearing before the courts, but it was always very satisfying to walk into the court with the Cleary team. There would be, you know, one or two prosecutors on one side and there would be the five lawyers and the two paralegals and, you know, the whole, you know, with their boxes and stuff and so that was always satisfying.

So in post-conviction, we received the police file for the first time, and I'm sure as many of you are aware, you know, you rely on the prosecutor to give you *Brady* material at the time of trial, but in most jurisdictions when you start post-conviction, they will turn over that file. That's not universally true, but in Tennessee and most jurisdictions, including Memphis, they will turn over that file. So this was the big explosive moment in the appeals process that we found a lot *Brady* material in the file. We found a lot of evidence that all pointed to an alternate group of suspects that had no connection at all to Ndume. The withheld evidence all pertained to this group of people. We actually started calling them the Brown Gang just because that's sort of a short name and then the courts ended up, you know, taking on that moniker. And so that's what they have been referred to. But it was comprised of Michael Brown, his brother Eric Brown, their cousin by marriage, Charles Keller, and two women. Only one of [the women] is pictured here, Betty Jo Ford, and Darvi Cunningham. And this is a group of people that committed a lot of criminal

activity together. They stole cars. They engaged in prostitution, a host of different things.

And this is the evidence that was withheld. There were two eyewitnesses that identified members of the Brown Gang. There was an eyewitness in the store who saw the shooting at close range who identified Michael Brown as the shooter. There was a witness outside the store. He was a young man, a teenager, and he actually had seen the perpetrators changing the license plates and thought, "something fishy is going on here." And he went back and told his mother what he had seen, and she said well, you need to walk back there and you need to pay real close attention so that if you ever need to report something to the police, you can. So he walked by again and really gave it his attention. When the police said they were going to show him a photo array, he said he was confident he would be able to pick out the two individuals he saw changing the license plate. And, when he was shown an array of twenty-four pictures that included Ndume's picture, he immediately picked out Michael Brown and his cousin Charles Keller as the two men who were changing the license plate. The police then began investigating the Brown Gang. What they found out is consistent with the getaway car that had been stolen from the Hertz Rental Car Agency at the St. Louis Airport. The Brown Gang had a history of stealing rental cars from the Hertz Agency. And they were -- when the Memphis police contacted the St. Louis Airport police and said who are your suspects in this string of car thefts that you had, they got a fax back that said Michael Brown, Eric Brown, Charles Keller and a couple other names at the bottom.

Then not only that, but the police, they were able to figure out that one of the other rental cars that the Brown Gang had stolen had been recovered by the Memphis police in Memphis. So they went to the address where this previous rental car had been recovered and they decided to

canvas the neighborhood. And they found a neighbor who said well, not only did I see them in this previous car that the police recovered, but he actually said I saw them in the getaway car. And the getaway car was distinctive because it had a piece of chrome missing from the front fender. And before the police showed him a picture of the car or brought him out to the impound lot to look at the getaway car, he mentioned that specific feature of the car. So he positively identified the car and said he had seen the members of the Brown Gang in the car just weeks before the crime happened.

There were items in the car that also further implicated the Brown Gang. They had a reputation for traveling up the highway between Memphis and Chicago and stopping at truck stops along the way and engaging in prostitution. And in the car, there were receipts from exactly that route showing that they had stopped at some truck stops along the way. So that was also consistent with their pattern of criminal activity.

So when we found all of this stuff, I thought wow, this is it. I mean how can a court look at all of this and say this isn't a winning *Brady* claim.

Oh, sorry, I missed one thing. In addition to the Brown Gang, there were a couple other things we found in the police file that undermines some of the other evidence. The palm print was always a big problem for us because it's physical evidence and how do you explain that. But in the police file, there was actually an initial report that they had done when they were first looking into Ndume as a suspect. And their initial print report said that his prints came back negative but then in the margin of what looks like different handwriting, there's a notation saying "no palm prints submitted." So their explanation was that early on in their investigation -- when they initially compared the prints -- they didn't have a palm print of his and so that's why the prints initially came back negative. So one thing we found

out in our own investigation is that, and this is kind of complicated, but at the time they did their initial comparison, they had obtained a print file from an agency in St. Louis that definitely had a palm print. So that agency told us anybody that requested his print file would have gotten the entire range of prints and it made no sense that they wouldn't have gotten the palm print. So there's every reason to believe when their print report initially came back negative that they did indeed have a palm print at that time. But maybe more importantly, in the police file, there was a report where the police had done an inventory when they took the prints from the car., And according to their own inventory, they didn't take a print from the area of the car where they claim they matched Ndume's palm print. So we felt like this was pretty circumstantial evidence that there was something fishy going on, that there was some fabrication.

I know you all know the *Brady* standards. You have to show that the evidence was withheld, that it was exculpatory. And then, you know, the thing that always makes it difficult is showing that it was material, in dealing with the subjectivity of the courts and what can be their sort of results-oriented jurisprudence. So when we went through post-conviction, the state courts denied the *Brady* claim. And basically what they said is there was no reasonable probability of a different outcome because the remaining evidence of guilt was still too strong. That was disappointing, but fortunately, the court did give sentencing relief. And at the time, that was pretty devastating for me. You know, I think in -- I don't know if any of you practice in, you know, the capital, the capital world, but I think we often, in that setting, look at, you know, overturning the sentence as the big victory and all the lawyers around us were just, you know, just celebrating like this was the big thing, we got him off of death row. And at the time, I felt just really disappointed because I felt like so much more

needed to happen. But in retrospect, I think it happened the way it just had to in the sense that you know, death penalty cases are so politically charged., And I think that it's hard, you know, especially on the state level, for courts to overturn not just a sentence but a conviction. And once the death penalty was off the table and we started litigating his case as a regular case and not a capital case, I think it left more room, more maneuverability for a court to do the right thing. So the death sentence was overturned, not because of ineffective assistance of counsel, the court said that Ndume's lawyer was perfectly effective in his three hour preparation for the penalty phase. But the state had withheld evidence pertaining to one of the aggravators and so based on that, the death sentence was overturned. The state postured for little while like they were going to re-seek death. We had a few dates for a resentencing hearing but ultimately, when it really came down close to our final hearing date, they ended up conceding to a life sentence without demanding any concessions for Ndume. So he was allowed to continue the appeal process. So after nineteen, twenty years on death row, he was resentenced to life imprisonment.

So this was the point where I decided that I needed to investigate the case. There had been tremendous resources brought to bear on this case and Cleary Gottlieb did an amazing job. But they didn't have the ability to write a check for hundreds of thousands of dollars, which is what it would have cost to do the investigation that I did. So over a period of about three years, after I graduated from law school, I investigated Ndume's case mostly on the weekends, and I traveled all around the country tracking witnesses down.

I talked to Tommy Perkins. Basically, he said that when the police did the identification process with him, instead of showing him an array of pictures, they showed him only photos of Ndume. And so they did a very -- a

highly suggestive identification process which is very improper. And then right before he went into court, they actually cautioned him and said, you know, he might have changed his appearance in some ways and don't let him fool you by that. You know, you need to just go in there and make an identification even if he looks different.

Beverly Batts, we uncovered some information that she had previously made a false accusation against Ndume's niece for a crime that she herself committed. You know, there's a string of things we found out about her. She had a history of committing perjury. The prosecutor in Ndume's case had actually promised to expunge her record if she testified against him. She had a history of mental illness of dissociative personality disorder. So we felt like that was pretty significant in impeaching her reliability.

But I think what it all boiled down to in the investigation is, you know, that Dennis Williams and Elizabeth Starks were saying that Ndume was at their house that weekend and, you know, that he was in the get-away car and somehow we had to undermine their testimony. I went to talk to Dennis Williams and he very immediately recanted. He said that he had identified Ndume in advance of trial under a lot of police pressure that he was very scared that he was going to be charged himself. Both he and Elizabeth had been given immunity in exchange for their testimony, so they both were definitely scared that they had been in the get-away car themselves that weekend, they had been around the perpetrators. But that was helpful that he recanted his testimony.

We made multiple attempts to speak to Elizabeth Starks but she would never speak to us. She was very hostile. But I started thinking, and this is what got me thinking, as I looking at the police reports one day and I noticed that -- I knew that, East Dison was Elizabeth's mother's house because I had been by there looking for her. And the police reports, you can see a little clip there that

shows, you know, “we went to 575 East Dison and located Elizabeth Starks.” But one day I was looking at the police reports and I noticed on page 224 that when the police were describing Betty Jo Ford as a member of the Brown Gang, her background, they mentioned Dison as a former address of hers. And all of a sudden, this light bulb went off in my head and I'm like oh, my God, they're connected. Like that would explain everything. So I went and talked to a couple of people and I ended up determining that yes, there was a strong connection between them. They had been friends since childhood. They held themselves out as cousins to people. People said when you saw one, you always saw the other. They were inseparable.

These are three witnesses we put on in a Coram Nobis hearing that confirmed the strong connection between Elizabeth Starks and Betty Jo Ford. So basically, you know, we were able to show through that connection not only that Elizabeth Starks had a huge motive to lie and point attention away from the perpetrators, her friends, the Brown Gang, and toward someone else, but it also just further implicates the Brown Gang. because somebody was at her house that weekend. According to tips the police had gotten, the perpetrators were at her house, and she has the connection to the Brown Gang. It just further reinforces that the Brown Gang were indeed the real perpetrators.

So fortunately in Tennessee, there was a mechanism to bring this new evidence before the state courts through a Coram Nobis petition. And on December 9th, 2011, we had our big moment and the Tennessee Court of Criminal Appeals vacated Ndume's conviction. They said Elizabeth Starks had been significantly impeached and discredited. They said the sole witness, -- eyewitness, to make an identification had likewise been significantly impeached and multiple pieces of evidence implicated the Brown Gang. Then several months later on June 1, 2012, Ndume was released. He actually did end up taking an Alford Plea.

That was a difficult decision, but he was down in the Shelby County Jail. After his conviction was overturned, he was moved down there and he was there for about a month. And Memphis is a difficult place. It's very different from where I practice in Nashville. You know, as soon as his conviction was overturned and we were anticipating going back to Memphis, I thought well, certainly, they will let him out on bond, you know, he can get a bond. He served so much time, and in a weird twist of events, he had gone up for parole and been granted parole right before his conviction, the overturning of his conviction became final, and sort of made that parole decision moot and ineffective. So he had just gotten parole, , but it didn't become effective and then he was whisked out of there back to the county jail and I thought, how could a court not give him a bond., But we're talking with people in Memphis and they say "oh, well, there's a good chance they'll re-seek the death penalty just as a way to make sure that he can't get out on bond.," And it was just such a different world down there and we were, you know, counseled by people that I trust that there was a good chance he would spend two to three more years down in the Memphis County Jail trying to call their bluff and have them finally admit there was no case left to be tried. So, Ndume decided that the Alford Plea was the best thing for him to do.

So now what I'm going to do is show you a video, the moments Ndume walked out of the Memphis County Jail, and then after that, I will turn it over to him.
(Video Playing)

MR. OLATUSHANI: Good afternoon, everybody. Every time I see that video, I can't tell you guys what type of emotions there that actually raised for me. You know, we often hear this, you know, people say a picture is worth a thousand words, but I'm telling you even when you look at that video, it belies everything that I really -- I mean

everything that was really going on inside of [me] emotionally and also what is still happening to me right now. Today, I've been home now a little over, almost two and a half years, and I still wake up every day as happy as I was -- as happy as I was when I walked out of that Memphis County Jail. When you look at that -- when you look at that, you know, kind of look at that picture, one of the things that happened when they was -- you heard them talking about, we was talking about the letter. I was actually supposed to get out two days before I actually walked out of there, so they was able to squeeze two more days out of me and so, but like I said, every time I see it, it, you know, it's just another reminder, you know, of how grateful I really am.

I will start out by telling you guys that even though I spent right at twenty-eight years in prison, and certainly a whole lot was taken from me the time that I was sitting there, but I'm telling you I stand before you guys a fortunate man. I really am. It's truly a miracle that I'm actually here. Obviously, you guys know the system and you know how serious that it really is to be sitting on death row and for me to actually be here, you know, with a lot of work just like Anne-Marie said, on her part and other people, it really is a miracle. The one thing Anne-Marie didn't say about -- what she was saying about the law firm and how they decided to take my case was the story goes that the lawyers at Cleary that decided that they was going to, you know, opt in and try to help, you know, with cases coming out of the south or whatever, and they said that they was two cases came before mine and they was like this, no, this case is too bad and all, send us another one; and they got the second case, and after that, they said they decided, listen, we agreed that we was going to do a case so the next case come across our desks, we're just going to have to take it and so lucky, -- lucky for me, it was my case.

As you see, it was up there, they did over seventeen

thousand hours on my case over a period a little over seventeen years that they worked on my case and, you know, like I said, it was a miracle, you know, that my case came when it actually did. I think the one thing, and I'm sure a lot of you guys, you know, practicing attorneys, you did, you know, probably had the occasion to go inside the jail or a prison and visit a client or whatever case it is, and a lot of these places that you go to, you go to these prisons, I mean you got these manicured lawns, you know, flowers. If you go there, you can go there in the wintertime, you're liable to see some flowers. This is how, you know, pretty they make it and, you know. But I think the thing that you don't know is when you're sitting, like Reverend Fels said, in a six by ten foot cell twenty-three hours of the day, only -- every time I came out of my cell, I'm being shackled and chained like some imaginary monster to be moved from right here no further than this point up here to be put in the shower and take another ten to fifteen minutes to unchain me and shackle me just to give me a ten minute shower more or less depending on which officer was actually taking me out to give me the shower that, you know, that in the unit too, I don't know if any of you guys have been there, I know you have, that, you know, you in this unit and you can't walk more than fifty feet and not be turning in a circle. That's how small this unit is.

And the only time -- the only time that a person comes out of there is you either going to court or God forbid, you got to be going to the prison infirmary or outside hospital for something that may have went wrong. But other than that, these are the only times that you would actually come out of that unit. And what they had is this outside, supposedly outside, rec yard that we would get an hour outside a day to come out, is really was just probably about a fifteen by, maybe fifteen, foot cage, a concrete wire cage, that we would actually be brought out, you know, to just come out in the yard so for like twenty years, I'm

standing in this cage, I'm looking outside, I can see there's grass, but I don't even get a chance, for twenty years, I don't even get access to, you know, to touch grass, let alone walk on it. And I say this, you know, to, like again, to say in my own situation it's truly a miracle that I stand before you guys hopefully, you know, a whole person given everything that I had to, you know, just kind of deal with.

You know, one of the things that I think that when this thing happened to me, I was completely angry about what happened and I can't -- I ain't going to even tell you what I wanted to tell them people when we was in court when they actually did what they did, but you probably can imagine what I wanted to say. But for the first couple of years, I was really angry about, you know, what had happened to me and—but unfortunately, what happened, the worst thing, the worst possible thing that could have happened to me, was the thing that actually knocked me down where I was able to pick myself back up and begin to just put my best foot forward and, you know, get -- get on that road to getting to where I am right now.

And that is that the worst possible thing that can happen to a person sitting in prison is that the people come and tell you, you need to make a phone call home because you know if they come and tell you this, something really bad has happened at home and so you never want to get this phone call -- people coming and telling you about this phone call. And so for me, they came, I'm in my cell, they came and the guy came and told me that I needed to come downstairs because I needed to make a phone call home and so, you know, when I'm, you know, getting geared up for this thing, I'm thinking, you know, I'm thinking all these worst possible scenarios about what's going to happen when I get out of here on this phone but the one thing that didn't come to my mind was that when I get down there that my mother wasn't going to be on the other end. And so when I get down there, it was my sister on the other end

telling me about my mother had been killed in a car accident and like I said, even before that happened, I was in a place that I was, angry as hell, you know, and pretty much, you know, at the bottom as far as I was concerned, but that knocked me. I'm talking about that laid me out. I'm talking about I couldn't be hurt no more at that point. I'm flat on the ground and so it was that thing that happened like I said that began to allow for me to pick myself up and begin to try to put the pieces back together, because one of the things – the thing that -- one of the things that -- the last thing that I said to my mother before this happened, she was leaving out of the visiting room and I just jokingly said to her “oh, girl, I wouldn't know what to do if I didn't have you in my life.” And that was really true I'm talking about because she was with me when I felt like the world was against me. And she just kind of jokingly said, “Oh, you're going to know exactly what to do when the time comes,” and I can't imagine that either one of us knew that that was going to be the last time we see each other but it was. And so -- and, you know, when I get this, - - when I get this news, I'm telling you for the first three days, if my eyes was open, I was crying. If I wasn't crying, I was sleeping. I wasn't -- them was the only things I was doing because I was trying to pick myself back up.

But the thing that happened, I was laying down in bed and I'm telling you as clear as we sit here, my mother just came to me and said “Get up,” and when she said it, I jumped straight up, because I'm telling you this is how it really was, and I'm thinking man, this nightmare is actually over, but obviously I woke up to the same thing so -- but like I said, it was the thing that she said to me that kept ringing in my ears about that I'm “going to know exactly what to do.” And so it was then, and it certainly didn't happen overnight, but it was then, like I said, that I began to try to move forward and maintain everything that this system was trying to take from me or trying to, you know,

rob me of in terms of my humanity, dignity and everything, because this is what this whole process is. I'm sure you guys know that in order for somebody to be at a place where you trying to, I mean just methodically or consciously think about taking somebody's life, you got to first dehumanize them. You got to make them something less than human. And that's what this whole -- the whole death penalty process is I'm talking about. I sit on -- I mean from where I sit, I seen people commit suicide, I seen people come in that wasn't on medication and that still on medication because of this whole process. And so that's what I began to do is like I said, is just to try to pull myself back together.

And one of the things that happened, and you guys will walk out of here, you will see some of my artwork out there, one of the things that happened, it was a guy on death row with me, he was an artist, and I actually commissioned him to do a portrait of me because I wanted to send it to my mother. And she didn't get a chance to see it and she probably wouldn't have recognized me anyway from his interpretation. But what happened, he did this portrait, but by the time I got it, you know, my mother had passed away. [Jason – Ndume is pointing to photo on projector screen of his mother, but it seems unclear in text what he's saying. I think this edit makes it at least understandable.] But one of things that once he did this portrait, when I said it looked nothing like me, it looked nothing like me, but I had to pay him and so I still had to pay him. And so I'm in this little cell, in this little space, and every time I looked at it, I'm, you know, kind of beating myself up about, you know, almost feeling like a sucker, I had to pay, you know, this money for this portrait. But the thing that I kept telling myself was that, you know, where I'm sitting at, man, I could have actually did a better job myself and kept my money. And so one of the -- and I didn't immediately start, you know, drawing then, but as I -- like I said, I was trying

to go through this fire that I did start drawing and once I started drawing, I just, you know, stuck with it and, you know, and started painting and hopefully, you know, became a pretty good artist, but I know I still got some work to do, but art in a lot of ways saved my life though. It really did. Like he said, you can see a lot of my work. It's a lot of color in my work.

And because I was sitting in this environment, I mean if it were -- was some paint on the wall, most of the paint looked like the color of this ceiling if it was painted, you know, in places where it should have been., I began to try to, you know, just bring this color and imagination into my life that allowed for me to, like I said, you know, begin to just try to get through this fire that I had found myself in. And, you know, and I think that one of the things -- one of the things that I learned through that process is that, and maybe this is just me and how I kind of, you know, kind of coped with what I had to deal with, I think that -- well, I know that life going to certainly knock us down, ain't no question about that., Everybody ain't going to get knocked down like I did, but we are going to always run into these where we kind of get knocked down in life and the thing about, I think what's important is not that we got knocked down but how we picked ourselves back-up. Because I think, you know, that if somebody came and knocked one of you guys out of your chair right now, I mean that's kind of on them, but if a person come back and you lying there for more, talking about woe you, well then, that's kind of on you at that point. And so I just think that, you know, whatever, you know, whatever we go through and the thing that I went through in life, you know, I mean I survived it because like I said, I seen a lot of, you know, a lot of people that still on death row, good friends of mine, that certainly, you know, weren't able to handle it or are still not handling it in the way that I actually was.

I had a lot of good people in my life, family and

people that helped shore me up when I was weakening and you know, just kind of beaten down by the system. But I think that, you know, like I said, that whatever you guys do – let me say this here too real quick before I say that, and that is that one of the things that really, you know, that really made a difference to me while I was sitting there when those lawyers came on my case and they seen me as a human being as opposed to just somebody just on paper that they was coming there trying, you know, work to save my life, like she said, just to get me off death row, and, you know, and just kind of have, you know, say that they did what they, you know, came to do. I mean these were people that I'm certainly good friends with right now. I talk to some of them regularly. That really made a difference in my life when I had, you know, lawyers, you know, seeing me as who I was and not, you know, like I said, this case on paper, you know. And they dealt with me like that because the one thing that Anne-Marie didn't say when she said the lawyer, prior to them coming on, that were doing these unethical things just to trying to get off my case, he actually, Stephen Leffler, I don't know what he doing in Memphis now if he still down there, but he actually filed a motion in court telling the court that they needed to re-evaluate my indigent status because Anne-Marie and some other people had raised five thousand dollars and had paid investigators to do some stuff on my case. And so when he found this out, he actually went and finagled copies of the checks from them and went and filed a motion with the court telling the court that they needed to re-evaluate my indigent status. And like she said, it was the best that happened that he actually did that, but I mean that's the type of lawyer that I was dealing with.

And so like I said, when I had, you know, David and other people from Cleary come in and treat me like a human being, then it really made a difference. And I say that, you know, simply to say you guys, as public

defenders, I know that you, you know, you probably got a lot of work on your desk but it really made a difference when people sit down with me and treated me like a human being and I would encourage you guys to do the same thing whoever you're working with, you know, just try to treat them like human beings.

But the thing that I was fixing to say too is that, about like I say, just going through this fire, that the thing that helps me keep getting up doing the work that I do and hopefully trying to make a difference in people not ending up not only in the situation that I did but also too just this whole, you know, criminal justice system generally that -- I think that the thing that, you know, I believe is, you know, whatever fires that we go through that if we get through to the other side, it ain't meant for us. It was meant for other people. I mean like I said, I survived it and certainly, I didn't do it by myself, but, you know, like I said, it's certainly given me the ability and just the will to come out here and do some of the work that I'm doing and I mean the work that I'm doing, I'm so fortunate. Like I said, the work that I'm doing, I work for the Children Defense Fund and my whole sole focus is on this issue of this cradle to prison pipeline issue. And I get a chance to work with a lot of young kids in high schools, you know, wherever, you know, I'm allowed to go speaking with them and just trying to educate them about this system because a lot of them look like the very people that I was seeing as I sit nearly three decades seeing younger and younger people coming in with more and more time and, you know.

I think that, like I said, some of the work that I was doing in prison, because I was one of the people that I chose not to have a TV in my cell for the first ten years that I was in prison because I didn't want to get lost in the space of this just little small space into this TV. Like I said, once I began to pick myself back up, I wanted to make sure that I was doing everything that I possibly could to make sure

that the people that was trying to murder me, that they -- it certainly wasn't going to happen because I laid down in the fight. And so like I said, I chose not to have a TV, but as I went through, you know, I was one of the people that chose to read. I'm sure I, you know, read, you know, probably a few thousand books the time I was sitting in prison. I took some college courses, became a certified paralegal. I did everything that I possibly could to prepare myself to come out and, you know, be a productive person as much as I possibly could. And like I said, but it certainly didn't happen -- I couldn't have did it by myself. I really couldn't have.

And like I said, I think it's important that whatever work that you do and whoever you're working for makes a difference when you treat them like human beings and it really do. And I don't know how much time we got.

PROFESSOR RADICE: I think we wanted to field some questions so we probably have maybe seven minutes for two to three questions. I would love to hear from students too.

AUDIENCE MEMBER: It's actually a question for both of you. You are a paralegal and a lawyer working in capital habeas work. Did you do anything about the prosecutors that hid the evidence, and is there any recourse on prosecutorial misconduct?

MR. OLATUSHANI: Well, I mean I'm sure you guys know that prosecutors operate with impunity. I mean these are the most powerful people in the system in terms of just they position and when you got a system that's, you know, failed to hold them accountable, unless you got a prosecutor coming in there saying yeah, I did it, so what, then it's really hard to, I'm sure you guys know, to try to hold they feet to the fire. Every now and then it happens

but I think that -- I'm sure you guys know about the case out of Texas where the prosecutor and that judge, they end going on trial and was found guilty for what he did in the case where they wrongfully convicted a person but that's the only case that I know about that.

MS. MOYES: I think one downside to the Alford Plea is that kind of ties your hands a little bit about what you can do. Then the other thing in Ndume's case is so much time passed by the time he got out, that the individual prosecutors that were involved in the misconduct in his case weren't practicing anymore. So there was no room left for sort of professional consequence for them. But I do think it's interesting what people are brainstorming about doing in this area because I do think that we so need to hold prosecutors more accountable than they are being held. And I know recently I read about some effort to create like a national data base where, you know, any time something like this happens, we all can report it and then, you know, you realize somebody's individual history and that maybe over time it would be a way to hold people more accountable. But I think that's a real flaw, you know, in our current system and there have to be some reforms and improvements to create more accountability than currently exists.

AUDIENCE MEMBER: I want to first say thank you to both for telling your story. It's amazing. And it also takes a lot of courage. And so I want to thank you both for being here today. And I couldn't help but think when I was listening to you, I have so many people, clients and prisoners that I know, that are serving long sentences or serving death sentences. I wonder, are you working with any prisoners right now because I think that they could be really inspired and sustained by your story and your thoughts about how you made it through some many

decades.

MR. OLATUSHANI: Yeah, actually I do. One of the reasons I became a certified paralegal once I got off death row was I wanted to be able to go back on death row and work and see those guys over there and let them know that as long as you alive, everything and anything is possible. You just got to keep getting up. And so, but yes, part of the work that I do is I work with, you know, guys coming home from prison. A fine example, I mean just out of the system where I was sitting down to lunch with a guy who had spent thirty-eight years in prison, you know, just got out and I guess now he had been home almost a month, walked out of there after thirty-eight years almost eighty years old, seventy dollars in his pocket, and people telling him in order for him to get some type of benefits that he need to at least show that he didn't work for ninety days before he can get any type of Social Security benefits. So part of the work that I do, yes, working with, you know, guys coming home, but yeah, we also too work with guys inside as well too. In fact, I'm working with a group of people where we fixing to start this organization where we working with guys in prison, but also too just trying to prepare for something for them when they come home.

MS. MOYES: And I know Ndume too has, just because of so many contacts that I have professionally, my colleagues are sometimes aware of his story and have asked, "Would Ndume be willing to go talk to a client of mine, he's really struggling about whether to take this plea that involves a lot of time?" So he's always been willing to do that, but I know if you had any ideas about, you know, ways to make that broader, , I know that's something he's interested in.

MR. OLATUSHANI: Anyway I can, yeah. I told

guys before I left prison that -- like I said, I was one of them people that I was always an advocate because one thing that I knew while I was -- even while I was sitting on death row that I knew that I was fortunate than a lot of people that was around me, even some people even outside, I mean because surely you guys know, you got people outside of here outside of prison that's in probably worse prisons than people that's physically confined. I'm just talking about from a mental standpoint. So I always knew that I fortunate even sitting there, you know, and I was one of them people that I was always advocating not only for myself but for other people as well too. So, and I told the guys before I left that once I get out of here, I will be out here doing the work, that I ain't going to be talking about what people ain't doing, I'm going to be doing it myself..

PROFESSOR RADICE: I think we have time for one more.

AUDIENCE MEMBER: Again, I would like to thank you for being here. As somebody who has to deal with the system every day and sometimes in the middle of the night has thought about blowing the place up, you told us about how your mother visited you and told you to get up and get going, and I understand that and I understand that video of you being happy to come out and I understand how that can last for a while. I want to know how it is that you manage everyday now not to want to blow the damn thing up having been treated the way you've been treated?

MR. OLATUSHANI: Yeah, that's a good point. You know, the thing that -- the thing that, you know, kind of worked for me in terms of just getting back on track was that being able to let go of that anger and let go of the anger that I had for the people that did what they did to me. I think that a lot of people when you, you know, talk about

forgiveness and that type of stuff that, you know, people think that's -- I mean it's really for us. I mean just like standing up here, I mean as long as I stand up here and hold onto this here, I can't never get up there to that door and walk out of here. See what I'm saying? And that's what I chose to do is just kind of let go of that doorknob so to say and just begin to try to walk through the doors that was, you know, that was taking me forward rather than holding me back or having me looking back so, you know. I think that -- I mean anger is a human emotion first off. I'm still -- I'm mad about some stuff. I'm mad about some stuff. But I just try to -- one of the things that I learned sitting, you know, sitting in the small space was that, I mean we should be mad about stuff because that's what -- that's when we get motivated to do something and I just learned to just try to channel my anger into positive stuff. And so, you know, part of that mean, you know, kind of letting go of, you know, whatever feelings or emotions that I had toward the people or, you know, how it just kind of played out so, but I'm mad as hell about the system. I'm trying to work with you guys to change it.

PROFESSOR RADICE: Thank you so much, Ann Marie and Ndume. What an incredible way to start off this conversation. I know Penny said I did a ton of work but I can't tell you how many times when things went wrong, the person I called, and he's actually on my speed dial on my phone right now, my cell phone, is Mark Stephens and so I would like to invite him up here to introduce our next speaker.

