

# A Personal Perspective on the Failure of the Death Penalty Experiment\*

by Gary "T" Graham\*\*

*Where evil men would seek to perpetuate an unjust status quo, good men must seek to bring into being a real order of justice . . . . The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.*

— Dr. Martin Luther King, Jr.

## I. "THE DEATH PENALTY EXPERIMENT HAS FAILED"

U.S. Supreme Court Justice Harry Blackmun nodded his head in favor of executions for almost 22 years before reversing his stance on the constitutionality of the death penalty. In mid-February, dissenting in the death penalty case of Bruce Edwin Collins [sic],<sup>1</sup> (Collins, [sic] who was scheduled to be murdered by the state of Texas on Feb. 22, got a reprieve until a federal judge reviews his appeal) Justice Blackmun condemned capital punishment in an eloquent 22-page statement, "From this day forward, I no longer shall tinker with the machinery of death."<sup>2</sup> Not since 1991, when Justice Thurgood Marshall resigned from the bench, has a justice consistently opposed the death penalty.

Blackmun, in his dissent, noted that he as well as other justices have struggled throughout the years to establish safeguards to ensure fairness in capital punishment cases. That, however, has not occurred, contended Blackmun who wrote, "Rather than continue to coddle the court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed."<sup>3</sup>

The High Court's senior justice and oldest member, at 85, also voiced concern that race remains a major factor in death penalty cases. He cited a 1987 capital case (*McClesky* [sic] *vs. Kemp*)<sup>4</sup> from Georgia that found Blacks who kill Whites are sentenced to death at almost 22 times the rate of Blacks who kill other Blacks, and more than seven times the rate of Whites who kill Blacks.<sup>5</sup>

"Despite the [sic] staggering evidence of racial prejudice infecting Georgia's capital-sentencing scheme, the majority turned its backs... apparently troubled by the fact that Georgia had instituted more procedural and substantive safeguards than most other states . . . but was still unable to stamp out the virus of racism."<sup>6</sup>

Years after McClesky's [sic] murder, statistics continue to show a deadly pattern of racism that claims as its primary victims young Black, Latino and Native American males.

The deadly racism found in the administration of capital punishment illustrates that it is nothing more than a carry over attitude from slavery; it is of a piece with all those historic means by which the government has sought to deny the equality and essential dignity of

\* [Editor's Note: The text of this article is reproduced unedited.]

\*\* Texas death row inmate currently awaiting a new execution date.

<sup>1</sup> [Callins v. Collins, 998 F.2d 269 (5th Cir 1993), *cert. denied*, 127 L. Ed. 2d 435 (Feb. 22, 1994) (No. 93-7054) (Blackmun, J., dissenting).]

<sup>2</sup> [*Id.* at 438.]

<sup>3</sup> [*Id.*]

<sup>4</sup> [481 U.S. 279 (1987).]

<sup>5</sup> [Callins, 127 L. Ed. 2d at 445 quoting McCleskey , 481 U.S. at 325.]

<sup>6</sup> [*Id.*]

people of color. For just as slaves were denied their dignity and human identities by being forced into bondage and treated like animals, so are people of color today robbed of their dignity and humanity by being sentenced to death in far greater numbers than whites.

The message is that white lives are more valuable than the lives other races. It is a message that violates equal protection of the law and diminishes the American creed. And abolishing the death penalty is a step toward correcting this problem and protecting the oppressed and underprivileged in this country.

The other Supremes should take a cue from Justice Harry Blackmun and move "with all deliberate speed" to correct this national disgrace. Each and every one of the state-ordered murders carried out is a grave crime against humanity that repeats, rather than repeals the original murder. Pledging ourselves to live by laws born of fear and ignorance, rather than divine love and true justice, we condemn ourselves to wander indefinitely in the spiritual wasteland that is the modern world.

## II. A PERSONAL PERSPECTIVE

The police dog. The fire hose. The lynch-mob's rope. The burning cross. The assassin's bullet. The bomb. All are instruments of brutal intimidation and death employed throughout the history of America by demented-minded individuals and hate groups seeking to obstruct and deny justice for people of color. It was this cancerous disease of racism that prompted the late Dr. Martin Luther King, Jr. to say that he did not expect to live much longer, and that America is a sick society "filled with false accusations, jostling winds of hatred and raging storms of violence."

A quarter of a century has passed since Dr. King's assassination, and this nation is sick still. The same mind that fired the bullet that killed Dr. King in Memphis, President Kennedy in Dallas, Medgar Evers in Mississippi, and other champions of freedom and justice, pulled the trigger that fired the bullets that rang through the Houston home of Rev. Jew Don Boney in the early morning hours of Sunday, January 9, 1994.

Fortunately, Rev. Boney and his wife were out of town visiting the Martin Luther King Center in Atlanta when the gunfire erupted. They returned home the following day, Monday, January 10, only to find bullet holes riddled through their private sanctuary.

Rev. Jew Don Boney, chairman of the Houston Chapter of the Black United Front and a long time community activist, is best known for his uncompromising fight against discrimination and racial injustice, especially in the Houston police force and within the judicial system in Texas. He organized and spearheaded the campaign to free an innocent black man, Clarence Lee Brandley, from Texas' death row a few years ago; and as one of the organizers and coordinators for the Gary Graham Justice Coalition, Rev. Boney has been one of the driving forces behind the campaign to secure justice (for a second time) and prevent officials in Texas from injecting poison into my veins and ending my life, for I am yet another innocent black man entrapped on death row in Texas.

A couple of months before the bullets loaded with racism shattered the windows and walls of his home, Rev. Boney received a telephoned death threat from a white caller which said, "We are going to execute you too, and soon," because of his persistent efforts to expose the injustice in my case which has become apparent to much of the world due, in large part, to his devotion to my cause.

A right-wing victims rights group calling itself, ironically, "Justice for All," has held public rallies demanding my execution and violently smashing videos and records produced by some of the Hollywood personalities who support my cause for justice. Life-threatening phone calls and letters from various hate groups have also been directed at other individuals deeply involved in the struggle to secure justice in my case. Susan Dillow, another coordinator for the Gary Graham Justice Coalition, recently received a death threat, which named her youngest daughter as well. "I hope you taste your own blood," it said in part. Mrs. Dillow says, "it was

grisly and really obscene." A few months ago, I, too, was the recipient of a hateful letter from the Ku Klux Klan that arrived in the form of a warning: "We say 'win your freedom,' so we can get our hands on you! Remember when we do that, you were warned. Take our advice, stay in your nice, safe jail cell!" And another letter, addressed to one of my attorneys, Anthony Haughton, simply read: "Niggers Beware!"

But through it all everyone have [sic] maintained their courage and the determination to right this unjust and unacceptable wrong. And we remain confident that justice will prevail for our movement because we possess the most formidable weapon of all — the conviction that we are right. Our cause is a noble one and we stand together as a coalition of dedicated, united people, marching forward without rest toward a just goal and nothing will stop us short of victory.

Rev. Boney, Susan Dillow, Anthony Haughton, and other courageous men and women like them, are making great sacrifices, individually and collective, [sic] to expose injustice and the festering sores of racism — that deadly disease that Dr. King predicted would end his life.

Since being wrongly convicted and sent to death row, I have studied my share of books, especially on the civil rights movement of the 1960's. And I must say, sadly, that America is sick still today.

At the time of my arrest at the age of 17 I was, quite frankly, a rather callous youth. But, as callous as I was, even I was moved to tears by some of the sad, heartbreaking stories associated with the civil rights era: The Emmit Till story. The church bombing that killed the little black girls in Birmingham, Alabama. The story of the northern college kids (freedom riders) who came south and were brutally murdered, to only name a few.

All of them were victims of a cancerous mind known as race prejudice. And reading about it in history books, it all seemed so far removed from me. But no more. However, I am worried not. No, not for self, anyway. My worry comes — and so does my righteous outrage — when I think of history possibly repeating itself. As I cannot — and do not — separate Rev. Jew Don Boney from Medgar Evers or any other black leader of the 60's. And nor do I see a difference in the disease of that time and the disease of this time.

On Thursday, March 17, 1994, Rev. Boney and over a hundred of my determined supporters packed the courtroom in Houston where a three-judge panel of the U.S. Fifth Circuit Court of Appeals conducted "oral arguments" on my federal petition. Here, my attorneys are appealing for the court to examine the ineffective assistance of counsel provided by my trial attorneys and to reexamine whether the U.S. Constitution forbids the execution of a person, who, in light of post-trial evidence, is believed to be innocent. We are asking that my case be sent back to the federal district court for a full evidentiary hearing. The panel is expected to render a decision in a couple of months on whether I am entitled to such a hearing where all of the witnesses and evidence of my innocence of the 1981 capital murder of Bobby Lambert can be thoroughly examined.

The Texas Court of Criminal Appeals, which on December 1, 1993, heard "oral arguments" on the civil lawsuit filed by my attorneys, aimed at forcing the Texas Board of Pardons and Paroles to afford me a full "due course of law" hearing where the evidence of my innocence can be presented to an unbiased factfinder, has yet to rule on the jurisdictional validity of civil court Judge Pete Lowery's [sic] order requiring the board to hold a clemency hearing on my case.

**We must remain vigilant while we await further word from the courts.**

On April 29, 1993, I was facing a very serious execution date — the first of three which I survived in 1993. Fortunately, Governor Ann Richards of Texas, in spite of her trepidation, granted me a 30-day reprieve. At that time she made clear her reason for doing so in her official proclamation: "I believe questions have been raised that warrant further examination in this case. However, in granting this thirty (30) day reprieve, I pass no judgement on the guilt or innocence of Gary Graham."

Despite the Governor's declaration, no clemency or court hearing has yet to be convened where the evidence of my innocence can be properly and fairly examined. Instead, at every opportunity, the media has dissected and manipulated the facts of my case to reach their own conclusions. I have only one plea to the world, let the evidence be heard!

Apart from her one-time intervention and single public statement, Governor Richards has taken a completely hands-off approach for fear of jeopardizing her reelectability. Thus, giving credence to the words of the Rev. Jesse Jackson that "the politicians will always ask the question 'Is it expedient?', then the question 'Is it popular?', but the prophets ask 'Is it right?'."

If the noble question (Is it right?) were asked in my case, I certainly would not be facing death today. But, instead, the expedient, the popular, and the politically safe questions have been asked.

Just like in Simi Valley, the judiciary in Texas is unwilling and seems incapable of protecting victims of racism and injustice who find themselves seeking justice from the courts. Something is terribly wrong in this country when so much of the kind of evidence unearthed by my attorneys can be so easily ignored by the Governor, the courts, and the clemency board.

And this denial of justice to me — a black man — quite frankly, is a defiant one, not quiet and behind closed doors; but in the face of mass public protest. Given this blatant defiance, tell me, what prudent mind can turn its face or shut its eyes and say, institutionalized racism exists no more in America? And that racism, inequality, and denial of due process of law fall beneath our lofty creed. Our? Did I say "our," when I, like so many disadvantaged and oppressed people in America, am part of the excluded? Forgive me, please.

I am doing well and I am strong. Maintain your faith, love, and solidarity. I remain,  
**Struggling in the eye of the storm of injustice.**