

DEATH ROW, USA

A Roll of the Dice?

My view from the inside takes the form of a letter that I suspect many death row inmates would like to write to the President of the United States. Space does not allow said inmate to raise all the issues affecting and affected by capital punishment.

Dear Mr President

I am an African-American and one of the 2,785 (50% of whom are minorities) people on Death Rows across your country and I want to take this opportunity to bring a number of facts and issues to your attention as you contemplate aspects of the Crime Bill your administration is taking through Congress. As it stands you intend to increase by 50 the number of Federal crimes that attract the death penalty whilst at the same time restricting access to the appeals process. Why do you support the increase in the use of a measure discarded long ago by every other Western industrial democracy? *Gregg v Georgia* [1] signalled the resumption of executions, the first of which was the 'volunteer' Gary Gilmore in 1977, since when there have been 229 (March 1994).

Some facts Mr President - there are, on average, some 24,000 homicides a

penalty on the grounds that it was cruel and unusual and therefore unconstitutional. This was based on evidence of its capricious and arbitrary application. I would put it to you that this is still the case as there is ample evidence to suggest that geography, poverty, race of victim and offender and inadequate legal representation characterise the population on death row rather than the seriousness of the crime.

It was encouraging to note that at least one of the current Justices on the Supreme Court is now of the opinion that there has been no improvement since *Furman*; Justice Harry Blackmun in a dissenting opinion in a Texas death row case finished by saying that "From this day forward, I no longer shall tinker with the machinery of death... I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed... Because I can no longer state with any confidence that this Court is able to reconcile the Eight Amendment's competing constitutional commands, or that the federal judiciary will provide meaningful oversight to the state courts as they exercise their authority to inflict the penalty of death, I believe that the death penalty, as currently administered is unconstitutional." It is even

more significant when you consider that he was one of four dissenters in *Furman v Georgia* and one of the five who voted for reinstatement in *Gregg v Georgia*. It is a pity that the remainder of the Justices allowed themselves to be aligned to Hang 'em high Justice Antonin Scalia supporting its continued use. There is another factor that supports the contention of racial

disparity issue and that is the evidence that shows that African-Americans who kill white Americans are sentenced to death 4-6 times more than whites who kill blacks (*McCleskey v Kemp* [3]). Mr Schlup who had his execution stayed in Missouri on the 19.11.93 would have been only the second white man to have been executed for killing a black man since 1944.

I was sentenced to death when I was 18 for a murder committed when I was 17. I won't go into the details of my offence, suffice to say I am guilty and very ashamed at what I did and the effect

it had on the victim and victim's family but I wonder whether the State should be executing juveniles which is contrary to International Law and UN protocols yet the US Senate voted again in November 1993 to retain the US's right to sentence juveniles to death. Mr President, I understand that the only other countries that sentence juveniles to death are Iraq, Iran, Pakistan, Bangladesh and Nigeria. My lawyers are appealing my case on the basis that youthfulness as a mitigating factor was not taken into consideration at the sentencing phase of my trial. (*Graham v Collins*, [4]). Another case, *Dorsie Johnson*, brought on the same grounds as *Graham* was rejected by the US Supreme Court in July of this year. Mr Johnson is still waiting for an execution date - my new execution date will follow the setting of his. People do change, Mr President. I certainly have.

Another feature of my case, Mr President, was that the Prosecutor, the Judge and the Jury were all Whites, this despite the fact that the district from which the Jury was drawn is 40% African-American. The Prosecutor excluded all Blacks that were in the Jury pool. The US Supreme Court in *Batson-v-Kentucky* 1986 [5] set guidelines for jury selection that seem to be being ignored.

Gary Graham who I referred to above is appealing his sentence on the basis of a claim of innocence and received three stays of execution in 1993. Not every one on death row is innocent but some are and they find it almost impossible to have those claims heard. Mr President, even those who support the death penalty are very concerned at the implications of the US Supreme Court's judgement in the case of *Herrera v Collins* [6]. That judgment in effect said that once all legal routes had been exhausted it was possible for an innocent person to be executed. However they also went on to say that "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." This power which is vested in the Governors and Boards of Pardons and Paroles of all States brought little comfort to Mr Herrera who the State of Texas went ahead and executed last year without the Board of Pardons and Parole convening a Clemency hearing. The 18 member Board appointed by the Governor exchange the occasional telephone discussion and cast their votes by Fax - presumably the US Supreme Court had something more procedural than this in mind, especially when one



year in our country of which about 2% are finally prosecuted as Capital homicides. Of these less than 1% eventually attract the death penalty rather than the alternative sentences of life imprisonment and life without parole. Of these homicides some two thirds were caused by guns. It was good to see the Brady legislation enacted and whilst I applaud your measures to control access to handguns and limit assault weapons I am sorry that was done at the expense of increasing capital crimes. The US Supreme Court in *Furman v Georgia* [2] suspended the imposition of the death

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considers that the Texas Board have never ever recommended clemency in any Capital case.

Texas procedure bars the admission of newly discovered evidence that comes to notice more than 30 days after the end of trial. Virginia is even more restrictive allowing only 21 days and worryingly the US Supreme Court decided that this was not unconstitutional in the case of *Coleman v Thompson* [7] who was executed in May '92 despite the fact that compelling new evidence of Roger Coleman's innocence was presented two days late by his lawyers. Their error, his price. Have you read the findings of a report commissioned by Chairman Don Edwards of the House Judiciary Committee entitled "Innocence and the Death Penalty: assessing the danger of mistaken executions" [8]? This shows that at least 48 people have been released from prison since 1973 after serving time on death row. Hugo Bedau in his recent book "In Spite of Innocence" [9] catalogued a number of cases where people have been executed despite compelling evidence of their innocence.

I have regular correspondence with a penpal in London who I met through the organisation Lifelines [10] who keeps me informed about the death penalty debate in Europe and also the concern Europeans feel about our continued use of the death penalty. Did you know that there were only 700 homicides in Britain last year of which only 25 were committed by firearms? So much for our reliance on the deterrent effect of capital punishment or perhaps it is more honest to say that our justification for its use is simple revenge. A very expensive revenge Mr Clinton as a Capital trial in Texas costs in the order of \$2.3 million, three times what it costs to keep me in prison for 40 years. All this at the expense of budgets for social policy that could go some way to preventing crime.

I wonder whether any real thought is given to the families of murder victims or for that matter to the families of those on death row. My imprisonment is be-
reavement by instalments and being in the State of Texas has meant I have not been able to touch or hold my two young daughters for the best part of 12 years and will not be able to do so even on the day when I am eventually executed. Why? What have they done to deserve that? That is surely cruel and unusual.

Finally Mr President it is clear that politics, elected officials and justice are unhappy bedfellows. My penpal told me about a documentary that juxtaposes your



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Gubernatorial career and Presidential aspirations with the life and death of Arkansas death row inmate Rickey Ray Rector [11]. This programme depicts you as opposed to the death penalty during your first term as Governor then when re-elected after a term out of office enthusiastically endorsing the death penalty and issuing death warrants. Such was your conversion and enthusiasm that you interrupted your Presidential primary campaigning to officiate at the execution of Rickey, a person whose mental state was always in doubt even before he effectively gave himself a pre-frontal lobotomy by shooting half his head away. Here was a man who had such insight into the meaning of his imminent execution that he told his guard that he would eat the pudding from his 'last meal', the next morning - Rickey frequently saved his dessert in this way.

If this is what it takes to become President of the United States then there is not much hope of you taking note of this letter. Something has got to happen. The death penalty is not merely a vehicle for political campaigns when both Republicans and Democrats compete with one another about how many each will execute. It is not just the stuff of news headlines, it actually happens and at a rate that is accelerating. How can you help break this violent and vicious cycle when the young, the poor, minorities, the mentally ill and impaired and perhaps

even the innocent are sentenced to death? Jurisdictions around the world are abolishing the death penalty and here we are enthusiastically embracing it - to what effect?

I remain yours respectfully

- [1] *Gregg v Georgia* 428 U.S. 153, 1976
- [2] *Furman v Georgia*, 408 U.S. 238, 1972
- [3] *McCleskey v Kemp*, 481 U.S. 279, 1987
- [4] *Graham v Collins*, 113 U.S. 892, 1992
- [5] *Batson v Kentucky*, 476 U.S. 79, 1986
- [6] *Herrera v Collins*, 113 U.S. 853, 1992
- [7] *Coleman v Thompson*, 500 U.S. ?, 1991
- [8] *Innocence and the Death Penalty: Assessing the danger of mistaken Executions*. Staff report issued on October 21st 1993 by the Subcommittee on Civil and Constitutional rights Committee on the Judiciary. 103 Congress, First session. U.S. Senate
- [9] *In Spite of Innocence: Erroneous convictions in Capital cases (1993)*. Radelet, Bedau and Putnam. Northeastern University Press, Boston
- [10] Lifelines, c/o Tori Burbridge, 96 Fallowfield, Cambridge CB4 1PF
- [11] BBC TV documentary - Inside Story 13th October 1993

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