

New Studies Build the Case for Abolition of Capital Punishment

by Marianna Wertz

The issue of capital punishment has now burst onto the front pages of the national media, the result of two important new studies and the highly charged Gary Graham case in Texas (see box). Pressure for a national moratorium on executions is rising, forcing Congress to act, at least to guarantee DNA testing for all capital defendants, legislation which is expected to pass either before the summer recess or, at latest, next year.

The issue began percolating after the Jan. 31 announcement by Illinois Gov. George Ryan, that he was imposing a moratorium on executions, because he could not in good conscience condone the fact that 13 death-row inmates had been found innocent in Illinois in the past 13 years. Ryan, a pro-death penalty Republican, is Illinois campaign director for the Presidential campaign of George W. Bush. Unlike Ryan, however, Bush is proud of his record execution of 134 men and women in his five-year tenure as Texas Governor, and has declared that he will not impose a moratorium in Texas, where, he insists, no innocent person has ever been executed.

Following Ryan's announcement, the New Hampshire state legislature, with a conservative Republican majority, voted on March 9 to impose a moratorium, although Democratic Gov. Jeanne Shaheen vetoed it. Several large cities, including Philadelphia and San Francisco, have passed resolutions calling on their state legislatures to impose a moratorium on executions. Thousands of religious, political, and civil rights leaders have signed a call for a moratorium on executions being circulated by Equal Justice USA (www.quixote.org/ej), with the effective graphic depicted here. And national moratorium legislation was introduced in the House of Representatives in March by Rep. Jesse Jackson, Jr. (D-Ill.), and in the Senate by Russ Feingold (D-Wisc.) and Carl Levin (D-Mich.)

Full Circle

The United States, the only remaining industrial power that imposes the death penalty, had a four-year ban from 1972-76, and today's motion toward a new moratorium has really brought the country full circle from three decades ago. On June 29, 1972, the U.S. Supreme Court, in *Furman v. Georgia*, declared capital punishment, as then practiced in the United States, to be in violation of the Eighth Amendment's prohibition against "cruel and unusual punishment." Four years later,

in the 1976 cases known as the *Gregg* decision, the court ruled that changed state laws included sufficient safeguards to make capital punishment "constitutional" once again, and it was reinstated.

After 24 years spent in a futile attempt to practice capital punishment in a "constitutional" fashion, this country is once again moving toward a moratorium on executions. Futile, because capital punishment is inherently wrong in a society based on the Judeo-Christian concept that man is created in the image of God, and that love—not retribution—is its guiding principle. The more we execute, the more mistakes we make.

Again today, the issues that led the court to ban the death penalty—that it was too severe for the crime, that it was arbitrarily imposed, that it offended society's sense of justice, and that it was not more effective than a less severe penalty—are at the center of hot debate, only this time coupled with the irrefutable proof, through DNA testing, that at least 87 innocent people have come close to being executed since 1976. Those were the fortunate 87, whose innocence was discovered *before* they were executed.

The 'Broken' System

On June 12, two studies were released, clearly timed to affect the growing debate in the context of the Presidential election campaign. Both studies seriously challenge George W. Bush's claim that there have been no innocent people executed on his watch.

A study by the *Chicago Tribune* begins, "Under Gov. George W. Bush, Texas has executed dozens of Death Row inmates whose cases were compromised by unreliable evidence, disbarred or suspended defense attorneys, meager defense efforts during sentencing and dubious psychiatric testimony, a *Chicago Tribune* investigation has found." Most importantly, the *Tribune* reports that this investigation, the first comprehensive examination of the 131 executions that took place up to the beginning of June under Bush's administration, found that the problems which led Illinois Governor Ryan to halt executions in his state, "are equally pronounced in Texas and that additional flaws undermine the state's administration of society's ultimate punishment."

Bush himself was confronted with the *Chicago Tribune* report after attending church with his parents in Maine. Bush said he disagreed with the report. "In every case, we've ade-

quately answered innocence or guilt. They've had full access to the courts. They've had full access to a fair trial."

The second study, "A Broken System: Error Rates in Capital Cases, 1973-1995," by faculty at the Columbia University Law School under the direction of James S. Liebman, examined appeals in *all* capital cases from 1973 to 1995. The study's Executive Summary begins: "There is a growing bipartisan consensus that flaws in America's death-penalty system have reached crisis proportions. Many fear that capital trials put people on death row who don't belong there. Others say capital appeals take too long. This report—the first statistical study ever undertaken of modern American capital appeals (4,578 of them in state capital cases between 1973 and 1995)—suggests that *both* claims are correct."

The study was commissioned in 1991 by the chairman of the U.S. Senate Committee on the Judiciary, to calculate the frequency of relief in *habeas corpus* cases. In late 1995, the study was expanded from a simple count of cases and their outcomes, to a search for information that might help explain why relief is granted in so many capital cases.

What the Columbia study found is breathtaking. (The following is from the study's Executive Summary.)

- Nationally, during the 23-year study period, the overall rate of prejudicial error in the American capital punishment system was 68%. In other words, courts found serious, reversible error in nearly 7 of every 10 of the thousands of capital sentences that were fully reviewed during the period.

- Capital trials produce so many mistakes that it takes three judicial inspections to catch them—leaving grave doubt whether we *do* catch them all. After state courts threw out 47% of death sentences due to serious flaws, a later Federal review found "serious error"—error undermining the reliability of the outcome—in 40% of the remaining sentences.

- Of the 2,370 death sentences thrown out due to serious error, 90% were overturned by state judges—many of whom were the very judges who imposed the death sentence in the first place; nearly all of whom were directly beholden to the electorate; and none of whom, consequently, were disposed to overturn death sentences except for very good reason.

- To lead to reversal, error must be serious, indeed. The common errors, prompting a majority of reversals at the state post-conviction stage, are 1) egregiously incompetent defense lawyers who didn't even look for—and demonstrably missed—important evidence that the defendant was innocent or did not deserve to die; and 2) police or prosecutors who *did* discover that kind of evidence but suppressed it, keeping it from the jury.

- High error rates put many individuals at risk of wrongful execution: 82% of the people whose capital judgments were overturned by state post-conviction courts due to serious error were found to deserve a sentence less than death, when the errors were cured on retrial; 7% were found to be innocent of the capital crime.

- High error rates exist across the country. Over 90% of American death-sentencing states have overall error rates of



A leaflet supporting a halt to use of the death penalty, put out by the *Moratorium Now!* campaign by the group *Equal Justice U.S.A.*

52% or higher; 85% have error rates of 60% or higher; three-fifths have error rates of 70% or higher.

- Illinois (with 13 death-row exonerations in recent years) does not produce atypically faulty death sentences. The overall rate of serious error found in Illinois capital sentences (66%) is very close to—and slightly lower than—the national average (68%).

- Catching so much error takes time—a national average of nine years from death sentence to the last inspection and execution. By the end of the study period, that average had risen to 10.6 years. In most cases, death row inmates wait for years for the lengthy review procedures needed to uncover all this error. Then, their death sentences are reversed.

- This much error, and the time needed to cure it, impose terrible costs on taxpayers, victims' families, the judicial system, and the wrongly condemned. And it renders unattainable the finality, retribution and deterrence that are the reasons usually given for having a death penalty.

Mass Murderer G.W. Bush Executes Gary Graham

For weeks, GOP Presidential candidate George W. Bush has been telling the world that, in Texas, none of the 135 men and women executed under his administration has been innocent of the crime for which they were executed. Now, that has changed. On June 22, Governor Bush executed Gary Graham, also known as Shaka Sankofa, convicted 19 years ago of a murder which Graham said he did not commit.

Graham, Bush's 135th victim, faced death nine times in Texas, winning a reprieve the first eight because of the huge doubts about his guilt. His conviction was based exclusively on one eyewitness account, a woman who saw the shooting from inside her car, at night, in the course of less than a minute.

Two other eyewitnesses, employees at the Safeway who watched the shooter for 15-20 minutes inside the

store, said Graham was not the shooter. They were never called to testify, because Graham, poor and black, had an incompetent attorney. There was no physical evidence against Graham, and the gun found on him at the time of arrest was not the weapon used in the shooting.

Some of the original jurors in the Graham trial have recently said that, today, knowing what they now know, they would have voted against the death penalty.

Gary Graham was not an angel. He was involved in low-level street crime, and pled guilty to that. But he wasn't guilty of the crime for which he was executed. Graham told ABC News, "This system is a disgrace to any civilized country, when you talk about the innocent people that are being killed here."

George W. Bush said that he believes in the death penalty because it "saves lives." There are 15 more people on death row in Texas scheduled for execution before the November Presidential election. If he believes in saving lives, there are 15 he could start with right there. The 135 he has already taken, testify that he is the nation's chief executioner, and a mass murderer.—*Marianna Wertz*

What About Gore?

That George W. Bush is the nation's chief executioner is not in doubt. That's what you get if you vote for him. But what about Gore?

Washington Post columnist Richard Cohen, a death-penalty and Bush opponent, had an unusually (for him) insightful column on this question on June 13, titled "Al with His Finger in the Wind." "If Gore were an American Indian of yore," he writes, "his name would be Al Finger-in-the-Wind. How silent is he? As silent as the dead. Never mind that Gore won't open up on Bush; he won't even lend his name to a Senate effort [The Innocence Protection Act of 2000] to ensure that inmates have access to any DNA evidence that might prove them innocent. . . . Gore is the very model of the very modern leader—self-proclaimed and daring to take the public where it already wants to go. I understand. The politics of the issue are simple. Alas, so is its morality."

In a June 14 interview with the *New York Times*, where he was forced to deal with the issue publicly for the first time, Gore said, "If there is a study that shows a large number of mistakes, that has to make you uncomfortable."

Uncomfortable? I guess so, particularly if you are innocent and strapped to a gurney with lethal drugs running through your veins.

Gore continued, "There are many who bring an understandable passion to the new debate over capital punishment that arises from their fundamental moral opposition to the penalty itself. I deeply respect that position. I do not share it. . . . I do think that that penalty should be available."

Gore said, finally, that he would support a Federal morato-

rium "if there were, in the Federal courts, the kind of record that Governor Ryan found in Illinois. . . . I do not believe the evidence show that's the case." Sounds a lot like Bush, doesn't it?

In fact, Al and George, the evidence *does* show that's the case. Read the Columbia University study.

Interview: Robert Wilkins

Stop D.C. Sentencing Bill, Keep Parole

On June 26, the District of Columbia City Council is expected to open debate on legislation that goes even further in its harsh sentencing provisions than the Gingrich Congress mandated in the 1997 Revitalization Act, under which the Federal government bailed out and took over several arms of District administration. The Sentencing Reform Act of 2000, if voted up as written, would, beginning in August, abolish parole for all felonies, eliminate rehabilitative programs for youthful offenders charged with violent crimes, and lengthen prison sentences, allowing judges to impose even longer sentences than required under current law.

Incarceration levels in the nation's capital are already