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High Court Stays Texas Execution as Ashcroft Pushes Death Penalty

by Bonnie James

In a dramatic 11th-hour move, the U.S. Supreme Court stayed the March 12 execution of a Texas death row inmate who has a strong claim of innocence in the murder that led to his conviction 23 years ago. Just 10 minutes before Delma Banks, Jr. was to have received a legal injection—which would have made him the 300th person to be put to death by the State of Texas since executions were reinstated there in 1982—the Court acted to stop the judicial murder, at least until the Justices can consider his request for a full-scale hearing on his claims. Banks, an African-American who was 21 years old at the time of the murder, has challenged his conviction on the grounds that his trial was marred by prosecutorial misconduct, ineffective counsel, and racial discrimination in jury selection.

While features of the Banks' case differ in no significant way from many other death row cases, it is of note that several prominent jurists and law enforcement figures rose to his defense. An *amicus curiae* (friend of the court) brief supporting Banks' attorneys' request for a *Writ of Certiorari* (a decision by the Supreme Court to hear an appeal from a lower court) was submitted to the Court by former FBI Director William S. Sessions and former Appeals Court judges the Hon. John J. Gibbons and the Hon. Timothy K. Lewis. They were joined by Thomas P. Sullivan, a former U.S. Attorney in Illinois who served as co-chair of the Illinois Governor's Commission on Capital Punishment. The work of that commission led, on Jan. 11, to the commutation to life in prison, by then Illinois Gov. George Ryan, of all 167 death row sentences in the state (see *EIR*, Jan. 24, 2003). Today, only 12 states and the District of Columbia have no death penalty; Illiois has declared a moratorium.

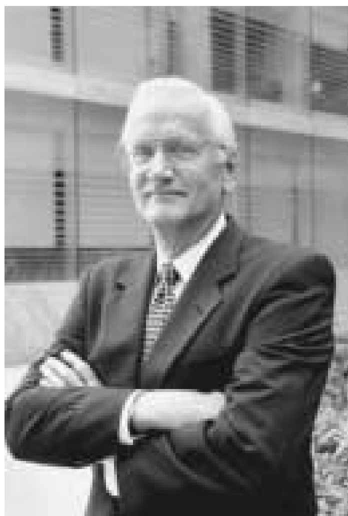
Public Confidence Undermined

That a figure of the standing of Sessions—former "top cop" in the nation, as FBI director (1987-93) under Bush 41; former judge for the U.S. District Court for the Western District of Texas and chief judge of that court (1980-87); and U.S. Attorney for the Western District of Texas (1971-74)—should publicly step forward in the Banks case, is a reflection of the intensity of the debate over capital punishment in the United States today. As the *amicus* brief states, "The questions presented in Mr. Banks' petition directly implicate the integrity of the administration of the death penalty in this country. . . . In recent years, mistakes and inequities in the capital punishment system have been the source of much analysis and discussion." It cites a recent study which found that, of 4,578 capital offense cases, serious errors were identified in nearly 70% of trials that led to death penalty sentences! And, it notes that there have been more than 100 death row inmates exonerated since the death penalty was reinstated in 1976. "These and similar revelations have sparked a spirited public debate over whether the death penalty is fairly administrated," it says.

In the Banks case, there were two leading flaws: One, the prosecutors concealed significant exculpatory evidence from the defense; and two, Banks received "abysmal representation" from his court-appointed attorneys. However, as the *amicus* notes, the issues in the Banks case are more universal than peculiar to it: "Because the constitutional issues raised in Mr. Banks' petition call into question the reliability of the guilty verdict and death sentence in this case; and because similar flaws infect the reliability of death sentences around the country, thus substantially undermining public confidence in our capital punishment system; this Court should grant review."

Ashcroft Wields the Executioner's Axe

Barely had the ink dried on the Justices' stay in the Banks case, when Attorney General John Ashcroft's Department of Justice carried out the execution of a decorated veteran of the first Gulf War, Louis Jones, Jr., at the Federal penitentiary



Former FBI Director Judge William Sessions (left) and three other well-known judges or prosecutors acted to win a stay of a Texas execution, the latest blow in the slow death of the death penalty. Delma Banks' (right) execution was stayed, to investigate several constitutional violations in his trial two decades ago.

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near Terre Haute, Indiana, on March 18. Jones became the third Federal death row inmate to be put to death since the U.S. government resumed executions in June 2001, under the Bush II/Ashcroft Administration. Jones had appealed to President Bush to commute his sentence to life in prison, based on disclosures—not made at the time of his trial in 1995—that he had been exposed to nerve gas when his unit demolished a munitions plant during the 1991 Gulf War, and that he suffered from Gulf War Syndrome, which, according to testimony on appeal, had caused severe brain damage and altered his personality.

It is ironic, that just as the death penalty is coming under increasing scrutiny throughout the states of the United States; and moratoria are under discussion or, in the case of Illinois, already in place; the Federal government is stepping up its campaign to impose the ultimate sanction in Federal cases. According to the Moratium Campaign, "Ashcroft is aggressively seeking the death penalty for Federal cases by overriding local Federal prosecutors' recommendations and is seeking the death penalty for cases in states where there is no death penalty." It seems that Ashcroft, a follower of the late University of Chicago Prof. Leo Strauss, who promoted the legal doctrines of his sponsor, Nazi jurist Carl Schmitt, recognizes "states' rights" only when it is convenient for his fascist agenda.

Incredibly, Ashcroft's co-thinkers attempt to draw a comparison between the use of Federal power to override the states in death penalty cases, and the government's role during the Civil Rights struggles of the 1960s: According to a senior Justice Department official quoted recently in the *Washington Post,* "Someone who commits a Federal death penalty crime should be treated the same, no matter where they committed the crime. States do not have the option of opting out of the Federal death penalty law any more than they had the option of opting out of Civil Rights laws in the 1960s."

Moreover, the Ashcroft DOJ has arrogated to itself the ability to seek the death penalty for a wide range of crimes, including murder of a Federal judge or law enforcement official, treason, espionage, or even drug trafficking. There are now 27 defendants awaiting death in the Federal system.

Ashcroft reportedly enjoys reviewing each and every case eligible for the Federal death penalty. Indeed, according to the Moratorium Campaign, this so-called Christian fundamentalist is "twice as likely as former Attorney General Janet Reno to ignore the recommendations of local prosecutors to seek a lesser sentence." Since taking office, Ashcroft has reversed the recommendations of Federal prosecutors at least 28 times, even at times ignoring deals previously made by his staff.

As *EIR* has documented, Ashcroft has spearheaded the drive to rip up the U.S. Constitution, using the pretext of the "war on terrorism." Presidential candidate Lyndon LaRouche has called for his immediate removal. The time to act is now, before he kills again.

Interview: Dr. Najeeb Al-Nauimi

'Is Guantanamo a Land Where No Law Applies?'

Dr. Najeeb bin Mohammed Al-Nauimi is the former Justice Minister of Qatar; now Chairman of the Committee for the Defense of the Detainees at Guantanamo, he personally represents 93 of those being held in the U.S. military prison in Guantanamo Bay, Cuba. He was interviewed in EIR*'s May 31, 2002 issue. On May 15, Dr. Al-Nauimi was a guest on "The LaRouche Show," where he was interviewed by Michele Steinberg, Edward Spannaus, and members of a LaRouche Youth Movement panel.*

Steinberg: Dr. Najeeb, when you came here, among other things, you were seeking the ability to have contact—meet—your clients, who are detained in a gulag in Cuba. Can you tell us how they got there, and what you have found since you've been in the United States?

Dr. Al-Nauimi: Yes. I have, in fact, formed this committee in March last year; and the aim of the committee, in fact, is to try to defend, and seek access to meet the detainees, and make some kind of legal presentation for them, and to follow up on behalf of their families. You know, their affairs, the way they're living, being treated, and their location, and whether they've been tortured, or they've been not, or the way they've actually been taken as well.

So, what we did from the beginning: In fact, these detainees were really tainted with one color, which is "these groups belong to al-Qaeda, and belong to Taliban, and they are actually the enemy combatants captured during the war." And this is not the truth. The painting of one color was wrong, because the majority of them are innocent. They were captured in the streets of Pakistan, walking around, or in a mosque, or in a library, or a shop, and they were detained, and transferred by plane to Guantanamo; and we have seen the way they were treated on the plane. They were chained on the plane's floor, and their hands tied, and their eyes closed, and that is, in fact, a breach of international law—anti-torture law—which America has actually signed and ratified it.

From that day we have been corresponding with the President, and then the Department of Defense, and then we talked to Defense. And we were waiting, in fact, two ways—either they have to release them, or they have to actually put them on trial. And in fact, after a long media campaign, and a dialogue discussion, they realized that there *are* many of them who are innocent, and they have no links to any terrorists.