

# FROM CAPITOL HILL

## The Bottom Line: White Life Is More Valuable Than Black Life

By Alfreda L. Madison

In 1978, Warren McClesky, a Black man, was one of four persons who took part in the armed robbery of the Dixie Furniture Store in Atlanta. McClesky confessed to participation in the robbery but denied killing the White policeman.

McClesky has received the death sentence. His case was recently argued before the U.S. Supreme Court by Jack Boger of the NAACP Legal Defense Fund. The state of Georgia was represented by Assistant State Attorney General May Westmoreland.

The McClesky case represents a major phase in the Legal Defense Fund's 20-year fight against the institution of the death penalty. This involvement grew out of the belief that the

racial discrimination permeating the criminal justice system has worked particular evil in the area of capital punishment.

Since reinstitution of the death penalty, statutes have substantially been revised in the death sentencing process, but studies show that racial discrimination exists. This bias operates most egregiously against Black defendants accused of crimes against Whites.

Julius Chamber, Executive Director of Legal Defense Fund, explains why there is not an outcry from the Black community over the discriminatory practices in implementing the death penalty. He says, "as the most frequent victims of crime in the United States, Black people are most vitally preoccupied with the quality of justice delivered to the

citizens. As an economically disadvantaged class, we are not always afforded effective means to communicate our indignation. Perhaps for this reason the Black community has not fully lent its voice against the increasing popularity of the death penalty -- a system which strikes our troubled youth most often, and most unfairly."

Blacks still realize that racial bias has not disappeared in this country. Studies show that the post-civil rights manifestations are no less pervasive or insidious, only more subtle.

Chambers says, "The lower courts have refused McClesky's claim, holding that he must show evidence of individual discrimination in his own case, no matter how powerful the statistical studies. At this time, as in the past, it falls to the Black community to remind the American public of its commitment to the principle of equal protection criminal justice."

In presenting the McClesky case before the United States Supreme Court, Attorney Boger related several studies to show that, in Georgia, the race of the murder victim is a main determinant of who lives and who dies among Georgia's pool of potential capital defendants.

The Baldus study, which covers a period of the last seven years, shows that those accused of murdering Whites are nearly eleven times more likely to receive a death sentence than those who kill Blacks. When indicated for White-victim murder, Black defendants receive a verdict of death nearly three times as often as do White defendants. In taking into consideration all related circumstantial evidence, the study shows that race is the overriding determinant.

The study, by Doctors William Bowers and Glenn

Pierce, found discrimination by race of victim in capital sentencing in Florida, Georgia, Texas and Ohio from 1973 through 1977. The study by Professors Samuel Gross and Robert Mauro based on the period from 1976 through 1980 found the same strong pattern of discrimination by race of victims in Georgia, Florida, Illinois, Oklahoma, North Carolina, Mississippi, Virginia and Arkansas. In each case this disparity could not be explained by the legitimate considerations that the researchers examined: the commission of another felony in the course of the homicide, the killing of two or more victims, the relationship of the victim to the killer or use of a gun.

Chief Justice William Rehnquist, running true to his all-time form of racial bias, sharply questioned Mr. Boger about the validity of the studies, which showed that only McClesky, among 17 convicted murders of police officers in Fulton County, had been sentenced to die. Rehnquist asked, "Don't you have to show that this particular jury would have dealt differently with McClesky had the victim been Black or that this particular prosecutor discriminated?" Boger or argued that intentional discrimination was the only conclusion that could be drawn from the data.

Justice Sandra O'Connor seemed greatly troubled. She stated that Boger seemed to feel that the Court was wrong in 1972 when it suggested that judges and juries should have more discretion in order to eliminate bias and that now, "we should allow less discretion." Boger's response was that the court need only to declare that Georgia has failed the test, and must revise its law.

Mary Westmoreland argued that the Georgia law needs no revision. She questioned the studies' validity. She said, "each

case is unique. You can't find two cases sufficiently similar in all respects to show racial disparities." Westmoreland said that the question in this case is whether there was intentional discrimination, and she said there was none. She said that the jury was expressing the community's moral outrage at a particular offense.

Justice Stevens asked Westmoreland why murderers of Blacks did not receive the death penalty as often. Westmoreland responded that White-victim cases were systematically worse, involving more rapes and robberies. Black-victim cases involved more family disputes or barroom brawls.

Concerning Westmoreland's argument that the jury was expressing the community's opinion, Judge Nathaniel Jones, who was previously chief counsel for the NAACP, stated some time ago that the Constitution does not operate one public opinion, but on constitutional mandates.

This case will be decided in the summer, NAACP Defense Fund lawyers say the decision will depend on the Supreme Court's swing votes.

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single President's Day to accommodate the King day.

Mecham's opposition to King holiday led one black community leader in Phoenix to accuse him of having a "racist mentality."

The Rev. Warren Stewart Sr. said that in a recent meeting Mecham held with community leaders, "he said some of his best friends were black." Stewart interpreted the statement as "the type of jargon that you hear from whites who are apologetic of being accused of racism and do not want to confront their

racist thinking."

Mecham's spokesman, Ron Bellus, said the governor-elect did not mean the statement that way and that he was simply trying to illustrate his belief that race is not at issue in relation to the King holiday.

But the matter has caused enough controversy to take attention away from Mecham's other campaign issues, including his plan to begin a voluntary drug-testing program for state employees and his proposal to cut the state policy by 300 officers.

State GOP Chairman Burton Kruglick, replying to criticism of Mecham over the matter, said, "The blame is Babbitt's blame for what he did and the way he did it."

As to the possible impact on attracting minorities to join and support the Republican Party, Kruglick said, "I don't believe we have to make up for anything."

"Our doors are going to be open for blacks, Hispanics." He also said he believes the Democrats have exploited Hispanics by taking them for granted.

In his meeting with community leaders, Mecham refused to discuss the King holiday issue, saying his mind was made up. He also has declined to say whether he would sign a King holiday bill if the Legislature passes one in 1987.

Mecham's press secretary, Ron Bellus, said, "It's unfortunate that this has really been blown out of proportion."

But Hamilton said Mecham's handling of the issue showed "a lack of understanding of state government, a lack of sensitivity."

Republicans "seems so totally insensitive to issues that affect the minority community. They had a perception that this was an issue that affected four or five black people who live in a certain part of town," Hamilton said.



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