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A Poison in Nation's Blood

“As far as I’m concerned, there has not been one innocent person executed since I’ve been governor.” So said Texas Gov. George W. Bush Wednesday as he toured a Los Angeles school. So he’s insisted repeatedly; the statement becomes ever harder to believe.

Gary Graham’s death Thursday night by lethal injection made him the 135th inmate executed since Bush took office in 1995. This execution—the fourth in Texas in just 12 days—has pushed the issue of capital punishment to the center of the national political stage, where it should be.

Gary Graham was no choirboy. Though he steadfastly denied killing Bobby Lambert 19 years ago in a holdup outside a Houston supermarket, Graham pleaded guilty to a weeklong binge of robbery, rape and theft. But his murder conviction rested on the testimony of just one witness, who saw the 1981 killing through her car windshield from 30 to 40 feet away. Graham’s court-appointed lawyer made no attempt to impeach her, nor did he present any witnesses for the defense. So the jurors who sentenced Graham to die never knew that two other witnesses said Graham wasn’t the shooter and four others reported that the killer was at least 3 inches shorter. Three of the jurors have since filed affidavits stating they would not have sentenced him to death had this evidence been presented.

One legal scholar concludes that of the 648 people put to death nationwide since 1976, “not one . . . has been executed on evidence this frail.”

Given these grave doubts about Graham’s guilt, the refusal Thursday by the Texas Board of Pardons and Paroles to delay Graham’s execution is as appalling as it is typical of Texas, Florida and other states whose death chambers are in almost continuous use. The U.S. Supreme Court later refused 5 to 4 to stay the execution.

The accumulating horror stories—of defendants, often poor minority members, represented by incompetent or drunk lawyers, of eyewitnesses fingering the wrong man, of DNA tests not conducted and of judges who couldn’t care less—reveal Graham’s experience as less the exception than the rule in too many states. Little wonder that public support for capital punishment is eroding for the first time since 1976. A new Field Poll finds that Californians, who still back the death penalty, now overwhelmingly favor a moratorium on executions to ensure that the innocent are not put to death. California’s capital appeals process is fairer than that in Texas, but Gov. Gray Davis cannot afford to ignore the growing doubts about how the death penalty is applied.

Neither can George W. Bush. Texas is scheduled to execute an average of one man every week through election day, making the death penalty a presidential campaign issue that won’t go away.