

# The Black Rage Defense

PAUL HARRIS<sup>†</sup>

What is the “black rage defense”? The simple answer is that it is a legal strategy which exposes environmental hardships to explain why a person commits a crime. This article is an attempt to provide a more complex answer by tracing the defense through history and analyzing its recent application in two high profile cases. After a brief overview, part one discusses the inception of the defense in 1846, its use by Clarence Darrow in the famous 1925 trials of Dr. Ossian Sweet, and its exploration in the 1940’s novels of three influential African-American authors.

Part two describes the modern development of the black rage defense in the 1970’s, and part three explains its expansion to a white ex-convict who robbed six saving and loan institutions and a Native American who killed a policeman.

Parts four and five bring the black rage defense up to the present by analyzing two cases. The first is the murder case of Milwaukee teenager Felicia Morgan. A recent federal district court opinion reversing Morgan’s conviction has been appealed by the attorney general.<sup>1</sup> If the Court of Appeals affirms the case, it may end up in the United States Supreme Court.

The second case involves the 1998 trial of an African-American inmate who killed a white guard in a New Jersey prison. This trial dramatically shows the power of the black rage defense in the context of death penalty litigation.

## I. OVERVIEW

The law, through its rules of evidence, precedent and dogma, attempts to deny the effect of race and class on it. The concept of the colorblind courtroom is still the prevailing myth in the American Legal

---

<sup>†</sup> Paul Harris received his Juris Doctor from the University of California at Berkeley in 1969. He is the author of *Black Rage Confronts the Law*, Charles Garry Professor of Law at New College of Law. He practices with the Center for Guerrilla Law in San Francisco, which can be found on the Internet at <http://www.guerrillalaw.com>.

<sup>1</sup> *Morgan v. Krenke*, 72 F.Supp. 2d 980 (E.D. Wis. 1999).

System.<sup>2</sup> The black rage defense challenges that myth by thrusting social and economic reality into established legal doctrine.

It is important to understand that this defense is not an independent, free standing defense. Contrary to confused reports by the media, pundits, and some judges, no lawyer is arguing for a rule of law that says that because a person of color has suffered racial oppression it is a defense to his crime. The innovation of the black rage defense is that it takes standard legal categories such as insanity, diminished capacity, self-defense, duress and provocation, and uses “social reality” evidence - discrimination, harassment, and poverty - to bolster these defenses.<sup>3</sup>

By expanding the traditional legal defenses, people are educated to society’s role in crime. Whether the black rage defense is used in plea-bargaining, in trial, in mitigation proceedings or on appeal, it sheds light on the destruction of the human spirit caused by racial and economic injustice.

Much of the media has distorted the black rage defense. Last year the popular television show *The Practice* had an outrageously inaccurate and manipulative episode in which an “expert” testified that black men, and black men only, could not control their violent urges due to the effects of racism. The critically acclaimed show, *Law and Order*, ran and reran, an episode based on a real life case in which a black stockbroker murdered his white boss. Although it is not as intellectually dishonest as *The Practice*, the script is negatively weighted against the black rage defense. In fact, this defense has a long and effective anti-racist history in America.

## II. HISTORY OF THE BLACK RAGE DEFENSE

---

<sup>2</sup> See e.g., *People v. Taylor*, 7 Cal. Rptr. 2d 676 (App. 4th 1992), “One of the guiding principles in this courtroom, indeed in every courtroom, is that race, creed, color, religion, national origin, none of these things count for or against anybody. These are neutral factors ...” *Id.* at 682; see also, Jeffrey Brand, *The Supreme Court, Equal Protection, and Jury Selection: Denying that Race Still Matters*, 1994 WIS. L. REV. 511 (1995).

<sup>3</sup> Many state-of-mind issues in a case are a potential vehicle for the use of this kind of evidence. A simple example is as follows: leaving the scene of a crime can be evidence of “flight.” A prosecutor is entitled to a judicial instruction stating that flight can be considered “consciousness of guilt.” In defense, evidence of fear of police violence or fear of not getting a fair trial could be presented as the reality of life for minority and poor people, thereby establishing an innocent reason for fleeing. The examples of the use of social reality evidence are limited only by the imagination and courage of a person’s advocate.

In 1846, one of the most publicized criminal cases of the time involved the black rage defense. In that case, a 16-year-old boy named William (Bill) Freeman was convicted of stealing a horse. Freeman, the son of the ex-slave, was sent to an adult prison. A year later facts were discovered proving that Bill was innocent, but he was not released. He served five years at the state penitentiary in Auburn, New York where he was beaten so badly he lost his hearing in one ear. When he had finally served out his sentence, his spirit was broken and he was mentally deranged. The boy who had been described as “a lad of good understanding and of kind and gentle disposition” was obsessed with taking revenge on those who had caused his imprisonment.<sup>4</sup> Mistakenly focusing on the Van Nest family, the richest white people in Cayuga County, he went to their farm and killed the husband, wife, and their two-year-old son.

Bill was defended by William Seward, the ex-Governor of New York, and abolitionist, later to be Abraham Lincoln’s Secretary of State. He was prosecuted by the son of former President Van Buren. The trial was described in the papers as “one of the most interesting and extraordinary criminal trials that ever occurred in our country.” Bill’s legal defense was insanity. The heart of the case was an effort to show that the horrible prison environment and the conditions under which blacks suffered had caused William Freeman to go crazy.

Bill was convicted of first-degree murder. The conviction was later reversed, but 23 year old Bill died, demented and chained, in his stone-walled cell. Seward had been successful in introducing the reality of racism into the courtroom. The case was considered so important that the U.S. Congress passed an Act in 1848 entering the report of the proceedings into the Clerk’s Office of the District Court of the United States for the Northern District of New York.

The next historically recorded and clear use of the black rage defense took place in Detroit in 1925, in a case that has been written about many times. Esteemed African American doctor Ossian Sweet and

---

<sup>4</sup> The *William Freeman* case, as well as most of the other trials discussed in this article (*Dr. Sweet, James Johnson, Stephen Robinson, Felicia Morgan and Patrick Hooty Croy*), are written about extensively in Paul Harris, *Black Rage Confronts the Law*, (N.Y.U. Press 1997). Using transcripts, media reports and interviews with the participants, the author discusses the legal strategies and places the cases in their political context.

The book also recreates cases such as the Colin Ferguson mass shooting on the Long Island Commuter train, the Los Angeles riot cases of 1992, the Inez Garcia self defense case and many others. It analyzes the state of the law, the misuse of the defense, its potential in civil cases and how to effectively use the environmental hardship defense.

his wife had moved into an all white neighborhood. For two days after they moved in, an angry crowd of over 500 whites surrounded the house. Dr. Sweet's 22 year old brother Henry eventually fired a rifle into the mob killing one man and wounding another. Everyone in the house - Dr. Sweet, his wife, two brothers and seven friends - were arrested and charged with murder.

The NAACP recruited Clarence Darrow and renowned civil liberties lawyer Arthur Garfield Hays for the defense along with three local African American attorneys, Cecil Rowlette, Charles Mahoney and Julian Perry. This legal team thrust racial reality evidence into the traditional doctrine of self-defense.

The rule in a self-defense case is that one can use deadly force if one has a reasonable belief of imminent harm of serious bodily injury. In the Sweet case, Henry had fired before the crowd attacked. In order to show that his actions were reasonable, the defense put on evidence of the history of white mobs beating and killing black people, especially in the context of attempts to move into segregated white neighborhoods. The evidence also was particularized to Dr. Sweet's and Henry's personal experiences and knowledge of such incidents.

The all-white jury hung. The prosecution, amidst national publicity, decided to retry only Henry Sweet. Judge Frank Murphy, later to be a Justice of the U.S. Supreme Court once again presided. This time the jury acquitted and all charges were dismissed against the other ten defendants. Henry Sweet returned to college and later became a lawyer.

In the 1940's, three profound works of literature by African American writers explored the black rage defense. Though they did not use that phrase, their discussions of environmental hardship were the essence of these works. Richard Wright's novel, *Native Son*, is the most famous and an example of the interplay between racism, poverty and homicide. Ann Petry's book, *The Street*, explores the effect on a woman of racial injustice and sexual oppression. International best-seller, *Knock on Any Door* by Willard Motley, foreshadowed the expansion of the black rage defense to a white bank robber's trial in the 1970's, through his portrait of a young Italian-American driven by police brutality, parental abuse and poverty to kill a policeman.

Bigger Thomas in *Native Son* and Nick Romano in *Knock on Any Door* are both executed by a vengeful state. Fortunately, the history of the black rage defense in the 1970's resulted in far better results for its proponents.

### III. MODERN DEVELOPMENT OF THE BLACK RAGE DEFENSE

In 1971 three cases (two criminal and one civil), marked the modern development of the defense, and its description as “the black rage defense.” In Detroit an autoworker named James Johnson shot and killed three men at a Chrysler factory. His insanity defense combined his individual psychiatric problems with the poverty and racism he suffered growing up on a Mississippi plantation, and the discrimination he experienced at the Chrysler auto plant. As the defense exposed the oppressive working conditions in the Detroit auto plants, Johnson’s case gained the support of the community, minority workers and revolutionary organizations.

James Johnson was acquitted and served five years in a mental hospital for the criminally insane. The trial received national publicity, including a favorable article and photo in *Newsweek*. His two young radical lawyers Ken Cockrel and Justin Ravitz went on to distinguished legal, judicial and political careers. A legal strategy rooted in the anger and despair caused by racism had been successful and had motivated lawyers nationwide to rethink their cases and to risk criticism as they fought to shatter the myth of the colorblind courtroom.

One such attorney was a young labor lawyer in Detroit named Ron Glotta. Seeing the applicability of the environmental hardship defense to workers’ compensation cases, he brought a claim on behalf of James Johnson arguing that in effect “Chrysler had pulled the trigger” by creating a “plant culture” which would inevitably lead to a worker exploding. Admidst a conservative and media outcry the Workers Compensation Referee agreed with the argument. He made the following findings of fact and law: (1) Johnson had a pre-existing mental tendency toward schizophrenia and paranoia, but this mental condition was “nondisabling” - that is, Johnson was able to perform his job adequately; (2) his condition was significantly aggravated by the long-term work environment, including being unfairly assigned undesirable work at the oven, being passed over for a better job for which he was qualified, being addressed by a foreman as “nigger” and “boy,” being denied his medical benefits, being suspended improperly for taking a legal vacation, and being suspended under clouded circumstances; (3) these job-related actions caused his breakdown on July 15, 1970.<sup>5</sup>

After his release James Johnson was interviewed by the *Detroit Free Press*: “I think your mind has something like a release valve, like a pressure cooker on a stove. If it doesn’t get released, it’ll explode, blow up the kitchen and you with it. I don’t know why mine didn’t get

---

<sup>5</sup> *Id.* at 118.

released, I just lost control completely. All I wanted to do was to go to work, come home and get my paycheck once a week. It was either that job or welfare.”<sup>6</sup>

The other trial establishing the black rage defense took place in federal court in San Francisco where Stephen Robinson was charged with bank robbery. Under the legal rubric of temporary insanity, the defense was based on the facts that Robinson had been discriminated against in his profession as a draftsman, was burdened with a sick wife and child and was too proud to accept welfare. Robinson, with an unloaded gun, tried to rob a bank in his own neighborhood, where he had often cashed his veteran’s checks. As he was being put in the police squad car Robinson had suddenly stood up straight; his hands handcuffed behind his back, his nose bleeding from the struggle with the police and called out to the crowd, “Why are black people without jobs or homes when there is so much money in America’s banks?”<sup>7</sup>

Robinson was acquitted by an all white jury. Influenced by the seminal book *Black Rage* by psychiatrists Price Cobbs and William Grier, people referred to the case as the “black rage defense” and with the organizational efforts of the National Lawyers Guild the defense began to be written about and discussed on a national level.

#### IV. EXPANSION OF THE BLACK RAGE DEFENSE

Over the next 20 years the environmental hardship was expanded to include people other than African-Americans. This took place at the same time as the development of the battered woman defense and cultural defenses. All of these legal strategies were grounded in the use of “social context” and “social reality” evidence.<sup>8</sup>

One example of the expansion of the black rage defense was the trial of white ex-convict John Zimmerman who admitted to robbing six savings and loans. The traditional defense asserted was insanity, but the legal strategy employed was environmental hardship. Zimmerman had grown up under harsh conditions in a tough working class neighborhood. He joined a gang at 15 for protection, but the violence frightened him. He began using heroin as self-medication. He spent most of the next 15

---

<sup>6</sup> *Id.* at 123-24.

<sup>7</sup> *Id.* at 36.

<sup>8</sup> An outstanding article on the battered woman defense and cultural defense is by Holy Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Court?*, 70 N.Y.U.L. REV. 36 (1995). See also Maria Ramos, *Cultural Considerations in Domestic Violence Cases: A National Judge’s Benchbook* (1999).

years in penal institutions. After his terrifying incarceration in San Quentin he was released into a drug rehabilitation program where he flourished. But the program closed for lack of federal funds. Alone and on the street Zimmerman began having disorienting LSD flashbacks and started using heroin to tranquilize himself. The savings and loan robberies soon followed.

In opening statement the defense lawyer told the jury that the trial would give them “an insight into prison life, an insight into the plague of drug abuse sweeping our country, and an insight into John Zimmerman.”<sup>9</sup> During the intense trial the jurors eventually understood the relationship of societal neglect of the poor and imprisoned and John Zimmerman’s criminal acts. The jury acquitted; the judge, a recent Reagan appointee, told them they had been sold “a bill of goods!”<sup>10</sup>

Zimmerman was transported from San Francisco to Los Angeles where he was tried for the one bank robbery he had committed in that jurisdiction. Represented by a public defender who also used an environmental insanity defense Zimmerman was again acquitted.

The black rage defense as expanded in Zimmerman’s case was able to have the social reality evidence admitted because it went to the circumstances making up the defendant’s “insanity.” The drug counselor, the psychologist and the lay witnesses were all allowed to testify, by a hostile judge, because their evidence was clearly relevant.

Social reality evidence can also be used to expose racism in non-psychiatric cases. In the early 1990’s the Patrick Hooty Croy murder case was a stunning example of the power of social reality evidence when used properly. Croy, a Native American, had been convicted of murdering a policeman during a shootout. He was given the death penalty. After seven years on Death Row at San Quentin Prison his conviction was reversed. At retrial, the judge accepted a brief arguing the admissibility of cultural evidence (which cited the black rage defense). Native American experts were allowed to testify to the historical and present day racism in Northern California.

Their testimony was relevant to Croy’s state of mind when he fled from the scene of an alleged convenience store robbery even though he had not been involved. His knowledge of the unfair manner in which the police treated Indians provided an innocent reason for his “flight,” rebutting the jury instruction that flight can be evidence of guilt.

The expert evidence and Croy’s testimony also was relevant to the self-defense issue. After Croy, his sister and cousin drove away from

---

<sup>9</sup> Harris, *supra* note 4, at 232.

<sup>10</sup> *Id.* at 239.

the convenience store a five-mile police chase ensued. Croy and his relatives were surrounded in the hills by over 50 law enforcement personnel. Pinned down by massive gunfire, Croy's cousin was shot and his sister was shot in the back. Croy retreated to his grandmother's cabin where he was shot twice from behind. He whirled and fired one bullet, killing the off-duty officer who had shot him. The prosecution alleged that Croy's failure to surrender to the police was evidence of his intent to kill the police. Croy's attorneys raised self-defense. Since the law allows evidence which shows a "reasonable fear" of imminent, serious bodily injury, Croy testified to his experiences as a target of racist police abuse and his knowledge of the historical massacres of Indians in the region of Northern California. The jury empathized with Croy's life experience as a Native American, and he was acquitted.

#### V. RECENT EXAMPLE OF THE BLACK RAGE DEFENSE

Two legitimate criticisms of the black rage defense have been raised in recent years. One points out that since the law of insanity and diminished capacity has become more restrictive in federal court and in many states, chances of success are more difficult. Two, the argument is made that the public is fed up with hearing people of color blaming racism for their plight and are sick and tired of people blaming society and claiming they are "victims." In the legal arena the attack against social reality evidence has been symbolized by Alan Dershowitz's book, *The Abuse-Excuse*.

Although these criticisms have some validity they do not mean we should abandon the black rage defense and its progeny. However, we must be more selective and creative in its use, avoiding stereotypes and rhetoric."<sup>11</sup>

Two recent high profile cases show how the defense can be used properly and can make a positive impact both in the courtroom and in society. The first example is the Milwaukee murder trial of seventeen year old Felicia Morgan who was convicted of shooting another teenager, Brenda Adams, ostensibly in an attempt to steal her coat. Morgan's conviction was reversed by a federal district court in November of 1999.<sup>12</sup> Judge Lynn Adelman held that expert and lay evidence of post traumatic stress disorder caused by environmental

---

<sup>11</sup> A critique of the inappropriate use of the Black Rage Defense, as well as the criteria to be analyzed before launching such a strategy is found in Harris, *supra* note 4, at 154-62, 274.

<sup>12</sup> *Morgan v. Krenke*, 72 F.Supp. 2d 980, 1025-26 (E.D. Wis. 1999).

conditions had been unconstitutionally excluded from the guilt phase of the trial.

Felicia Morgan was represented at trial and on appeal by Robin Shellow. Shellow has an amazing practice in Milwaukee where she has represented and helped scores of children, teenagers and young adults who have committed crimes of violence. Understanding the life her clients struggle through, she has repeatedly thrust class oppression and racism into the courtroom. She has not fallen victim to rhetoric but, as the 92 page appellate opinion in Morgan's case shows, she crafts legal arguments which allow the legal system to look at the oppression, desperation and suffering so rampant in our inner cities.

Felicia Morgan survived a nightmarish childhood which most of us could not endure. The trial judge excluded evidence of this environmental hardship from the guilt phase, stating that it would open the "floodgates" and "thousand of children, thousands of defendants would come to court saying they had posttraumatic stress disorder and therefore we should have a different standard for them in regards to their responsibility."<sup>13</sup> However, he did allow the evidence as mitigation in the sentencing proceedings. The judge seemed to be influenced by the power of those facts, as he rejected the prosecutor's proposed 60-year punishment and crafted a sentence that allowed parole in 13 years.

Felicia Morgan's sentencing is also an example of how a black rage defense can have a positive impact on the victim's family, giving meaning to what looks to be a senseless act of violence. Because such a defense exposes the societal factors that contribute to the criminal act, the stereotype of the defendant as a selfish, heartless, useless person is undermined. As the defendant's life is examined, the judge, the jury, even the victims understand what drove the defendant to the brink of despair and pushed her over the precipice into destruction. In Felicia's case, the combination of parental abuse and the daily consequences of living in a neighborhood virtually written off by the government had an impact on everyone involved. At the sentencing hearing, Brenda Adams' sister and father made statements. Their words were filled with anger and pain, but also with compassion. Brenda's sister Yolanda expressed the view of many people when she said that poverty is not an excuse for crime,

to prepare myself for this occasion last night I stayed awake watching tapes of the proceedings and clips from the news, and for the first time I saw my sister taken out in a body bag. And I asked God why? Poverty is not an excuse to

---

<sup>13</sup> Harris, *supra* note 5, at 208.

maim, mangle or murder anybody. I don't care who you are, what you come from or how your life was. I didn't have a good time growing up either, and my environment was far from being nurturing sometimes. But I chose a different route. Felicia, I've had a hard, hard time trying to come to grips with this. Hating you will not bring my sister back. You receiving life will not bring my sister back, but the restitution is for you to be rehabilitated, reformed.<sup>14</sup>

Due to the nature of the defense, Brenda's sister was able to see and to say that there were two victims - her sister and Felicia. And understanding Felicia's life, she was able to forgive her and to ask the judge not to impose a life sentence.

After Brenda's sister finished, her father addressed the court:

I don't forgive and forget. I am a very hateful person. But I will forgive you . . . I want to see if she can do something for herself. If she can get a college education in 10 or 15 years, I want the Court to set aside the first-degree intentional homicide sentence and give her a second chance at life.<sup>15</sup>

The black rage defense can also help the defendant understand her destructive behavior and feel genuine remorse. Felicia's words to Brenda Adam's father were the result of the self-examination and insight that had taken place during the case: "I will finish my education, and I want you to know that a day ain't going to go by that I don't think about the situation I'm in or that your daughter is gone. If I could change back the hands of time I would take her place, but I can't."

Another relevant, highly publicized case was the murder trial of Stephen Beverly. This trial shows how creative lawyers can fit the black rage defense into prevailing law and educate the public.

## VI. THE BLACK RAGE DEFENSE AND THE DEATH PENALTY

The night of July 29, 1997 was particularly tense at Bayside State Prison in New Jersey. A prison guard had threatened to separate convict Stephen Beverly from his cellmate and lover Favours Ali because their relationship was against the rules. A prison informant said Beverly had

---

<sup>14</sup> *Id.* at 210.

<sup>15</sup> *Id.*

told him that if he and Ali were separated there “would be a blood bath.”<sup>16</sup>

The next morning Corrections Officer Fred Baker entered Beverly and Ali’s cell and told them to pack up their belongings as he was moving them to different units in the prison. A visibly shaken and angry Beverly asked this officer, who had made his life miserable for the past months, for boxes to pack his few possessions. Officer Baker responded: “No, I don’t give boxes to niggers.”

After the officer and Ali left the cell, Beverly went directly to the yard, dug up a shank, tightened the hood of his sweatshirt around his face, and returned to find Officer Baker on the phone. Rushing up to him, Beverly violently stabbed Baker in the back one time. The officer was mortally wounded. He staggered down the stairs and used his walkie-talkie to call for help. As another officer reached him he moaned, “Beverly stabbed me.” Officer Baker then lost consciousness, dying soon afterward.

Meanwhile, Beverly had run over to his cellmate Ali, embracing him. He then went back to his cell area where he quietly surrendered. As the officers took him into custody they heard him say: “I did it. I killed the motherfucker. This didn’t have to happen. I wrote the administration letters, they didn’t do anything. I contacted everyone about my problem and no one did anything. I didn’t have to do it this way. I didn’t have to do it.” Beverly was stripped naked, strapped into a “restraint chair” (which looks like an electric chair) and had a helmet and face shield put over his face. He was kept in this condition for the entire day, urinating on himself, and being interrupted only by regular visits from a female nurse, as he yelled, in the midst of panic attacks, “I can’t breathe.”

Stephen Beverly was charged with first-degree murder and faced the death penalty. A few days later Beverly’s lawyer, Jorge Godoy, sat in his Public Defender’s office. There were only six other attorneys, a small support staff, and an already large caseload. He knew that there had to be hidden reasons behind Beverly’s ferocious attack. If he were to save his client’s life he would have to put together a team of lawyers, investigators, psychiatrists, and prison experts. They would have to discover the underlying causes of this homicide and fashion them into a legal defense. He was aware of a legal strategy called the “black rage defense,” and began to research its applicability.

---

<sup>16</sup> All facts and quotes asserted in the description of this case are from interviews with the defense attorneys Jorge Godoy and Mark Catanzaro and case documents reviewed by co-counsel Paul Harris.

Beverly's state of mind when he stabbed Officer Baker did not satisfy the New Jersey legal test of insanity. However, Public Defender Jorge Godoy's understanding of prison life and racism motivated him to probe deeper into Beverly's life and to research the legal possibilities. The investigation led Godoy and private co-counsel Mark Catanzaro to conclude that a black rage defense fit within the state's passion/provocation rule which would reduce murder to manslaughter.<sup>17</sup> The defense team was realistic; the chance of getting a manslaughter verdict was slim. But this strategy allowed Beverly's story to be told, provided a forum to expose the prison's racism and flowed seamlessly from the guilty phase to the penalty phase. As the investigation unfolded, hopes rose that Beverly's life could be saved from the state-sanctioned murder he faced.

In any black rage defense, one must establish the particular, concrete interplay between the defendant and the oppression he/she faced. General evidence of racism, sexism, and poverty which is not tied into the facts will not suffice and may even cause a backlash. Empathy grows out of the understanding of another's life. Rhetoric is an excuse for the failing to do the hard work of investigation, and of spending time listening to one's client.

The legal team must merge the defendant's history with specific factors that led up to the crime. If racism and poverty work like "water torture," then the last drops of water on the defendant's forehead, driving him to the explosion, must be resurrected in detail.

Stephen Beverly was in prison for assault. His years in other prisons had been marked by problems. However, in his last year at Bayside Prison he had developed a reputation as a quiet inmate who kept to himself and did not cause

---

<sup>17</sup> The following is from the brief in support of a motion in limine by Mark Catanzaro and Paul Harris: "The requirement to give the passion/provocation manslaughter jury instruction is strongly supported in New Jersey law. Numerous murder convictions have been reversed for failure to give this instruction to the jury. *See State v. Erazo*, 126 N.J. 112 (1991), *State v. Coyle*, 119 N.J. 194 (1990), *State v. Mauricio*, 117 N.J. 402 (1990), *State v. Kelly*, 97 N.J. 178 (1984), *State v. Guido*, 40 N.J. 191 (1963), *State v. Vigilante*, 257 N.J. Super. 296 (1992), *State v. Bishop*, 247 N.J. Super. 382 (1990).

The trial was also positively influenced by the work of Craig Haney, Prof. of Psychology at the University of California, Santa Cruz, who testified to, among other things, the effect of prison conditions on the reasonableness of Beverly's response to the provocation. Also, Dr. Robert T. Latimer's (Newark, New Jersey) psychiatric evaluation of Beverly was invaluable.

For briefs and further information you may contact Jorge Godoy at (856) 453-1568, 14 East Commerce Street, Bridgeton, NJ 08302.

problems. He was well liked by his fellow inmates and was “an excellent worker.” His good behavior at Bayside was a result of his developing maturity and the stable, loving relationship he had with his cellmate Favors Ali. Ali was gay, and although Steven was not a homosexual, under the confining conditions of prison life he began a loving relationship with Ali. They became emotionally bonded and in the prison vernacular were considered man and wife. They lived together in their cell for a year without any problems from the institution until Officer Baker arrived on the cellblock.

A history of tension between defendant and victim is relevant to what constitutes adequate provocation. Officer Baker treated Beverly and his cellmate Ali with contempt calling them “homos” and “faggots.” He humiliated and degraded them and created a poisonous atmosphere among some of the other guards resulting in cell-searches in which their few precious personal belongings were trashed.

Investigation uncovered corroboration of the prisoners’ allegations that Bayside State Prison was a quagmire of racial prejudice dragging down guards and convicts alike. The Ku Klux Klan was reported to have recruited among the prison employees, and guards behaved as if in sympathy with the Klan. In a show of contempt for the Government some guards actually wore the American flag patch on their uniforms upside down.

The defense produced evidence of harassment during the six weeks leading up to the stabbing, describing specific instances on the dates of July 23, 26, 27, 28, and 29. Although Beverly and Ali filed formal grievances, by the morning of July 30 Stephen Beverly had lost all hope of the administration caring about the small amount of dignity he had been able to protect. His passions inflamed, he was now faced with the forced and spiteful separation from the one person in the world with whom he had a supportive relationship. An hour later the threat of administrative segregation and being called “nigger” caused those passions to burn Beverly up and consume Officer Baker in its awful fire.

The jury rejected the passion/provocation defense and convicted of first degree murder. But in the penalty segment of the trial Stephen’s words echoed through the courtroom: “It didn’t have to happen this way. I contacted everyone in the administration about my problem and no one did anything.”

The jury spared his life. It was unanimous on two mitigation factors: “the Bayside administration permitted and fostered an environment in which racism flourished” and the administration did not

properly respond to Beverly's complaints "so as to minimize or eliminate the anger and frustrations which caused Steven Beverly to commit the offense."

An editorial in the Atlantic City mainstream newspaper, *The Press*, reflects how the black rage defense can have a positive effect on the public's consciousness of injustice.

The jury heard a parade of inmates come to witness stand to tell of a prison system that tolerated racial slurs, beatings and threats. Correction officers enter a dangerous environment every day and deserve the respect of the community. The victim's family deserves better than to see Fred Baker and his colleagues put on trial for doing their job. Like the jury, we don't buy the defense argument that prison conditions drove Beverly to kill. In convicting Beverly of murder, the jury agreed that the act was calculated and premeditated. But in sparing Steven Beverly's life, the jury is sending a clear message that New Jersey's state prison system crossed the line. Despite the nature of the horrendous crime, the jury refused to issue the death penalty. The state Department of Corrections should take the verdict to heart. Jurors saw and heard about shocking conditions within the walls of Bayside State Prison. Let the Beverly verdict serve notice that those conditions are unacceptable to the citizens of New Jersey.<sup>18</sup>

When Jorge Godoy first considered a black rage defense, people said, "you've got to be crazy." Now, he says the entire "culture" of his office has changed. Attorneys, legal workers, secretaries - all who participated in uncovering the reality of Stephen Beverly's life in prison and helping to communicate it in a public forum have experienced the expanding of legal horizons. They now understand the truth of Godoy's exhortation: "if we think it, we can do it."

The black rage defense is an anti-racist strategy. It assumes that people of different races, cultures and classes can understand and empathize with each other if given the chance to hear the evidence. It combines our political understanding of the real world with the legal knowledge gained in our sometimes dry and difficult years in law school.

---

<sup>18</sup> Editorial, *Beverly's Life Sentence/ A Telling Verdict*, THE PRESS OF ATLANTIC CITY, Nov. 16, 1998, at A8.

Its effective use requires us to listen to our clients, see the strengths in them, and dignify their struggles as their advocates in a frightening legal system. Through our imagination, preparation and audacity we can save people's lives and help change the world.