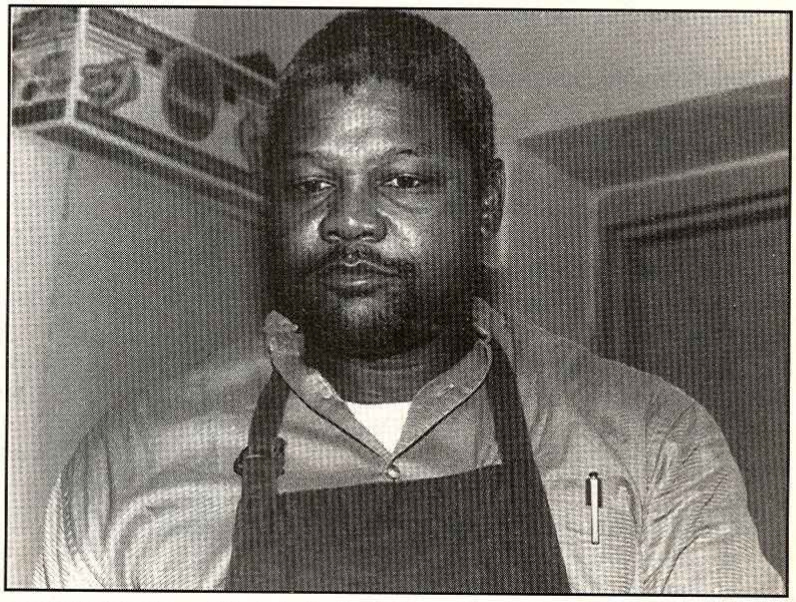
'An innocent man may be executed even in one of the fairest and most accurate systems of justice ever known.'

Fourteen Years on Death Row
An Interview With Joseph Green Brown

JOSEPH GREEN BROWN spent 14-1/2 years on death row in Florida. He had been convicted on a murder charge in 1974, but after a finding that the prosecutor in Brown's case had knowingly allowed perjured testimony by the state's main witness—who later recanted—the U.S. Court of Appeals for the 11th District reversed the conviction. This happened only 15 hours before the time set for Brown's execution. The Hillsborough County prosecutor's office decided there was no longer a case against Brown and therefore did not seek a new trial. Brown—who prefers to be known as Shabaka—was released in 1987. This interview took place last November in the offices of CURE (Citizens United for Rehabilitation of Errants) at St. Aloysius Church in Washington, D.C., where Shabaka is head of food services for the Father McKenna Center, a drop-in center for homeless people. The interviewer was George M. Anderson, S.J., an associate editor of AMERICA.



Joseph Green Brown (Shabaka) in the kitchen of the Father McKenna Center (at St. Aloysius Church in Washington, D.C.), where he is in charge of food service.

PHOTO: CHARLES SULLIVAN

WHEN YOU WERE RELEASED from prison after over 14 years on death row, was the adjustment to the outside world difficult?

There were two immediate adjustments that were hard. One was just being able to open and close a door at will. That took a couple of weeks. The second one I became aware of while I was waiting for friends to pick me up to drive me to Gainesville. When they arrived and I got into the car, a lawyer friend who had helped me, Susan Cary, wanted me to put on a seat belt. I can laugh about it today, but I remember I looked at her real strange, and my voice turned cold. I said, "I fought a long time trying to keep people from strapping me into the electric chair, and you're asking me to strap myself into the car seat." It was a month before I could put on a seat belt. Overall, it took me almost five years to decompress from the experience on death row.

Some people couldn't believe I was still alive. Another friend, also an attorney, was looking at me very intently one day. I'd seen that look in other people's eyes too. I said to her, "Why are you staring at me like that?" She said, "Shabaka, you're supposed to be dead."

At your original trial, you had anything but adequate legal representation. Your attorney was a young court-appointed lawyer filling in for a public defender. He had been involved in only three jury trials. Would you comment on that?

It's true, my trial lawyer had been out of law school only three years. After I was convicted, the same lawyer had to handle my automatic appeal, but he left the appeal halfway through. Then I had to represent myself, because the State of Florida was not bound constitutionally to provide another lawyer, even though the appeal was still pending. So from July 1977 until November 1981 I represented myself.

What happened in November 1981?

Richard Blumenthal, a lawyer then in private practice—he's currently attorney general for the state of Connecticut—

agreed to take on my appeal after Deborah Fins at the N.A.A.C.P.'s Legal Defense Fund showed him a copy of the transcript of the case. At the time he accepted my case on a pro bono basis, he believed in capital punishment; and he still does in some circumstances. But he was appalled at the injustices he saw in the way my case had been handled, so he agreed to take it.

After he had been working on the appeal for three years, he was elected to the Connecticut state legislature. He continued representing me, and in fact, after helping to obtain my release in 1987, he invited me to come to Connecticut to testify before the legislature against a proposal that would have made it easier to impose the death penalty there, and which would also have removed the balance of mitigating and aggravating circumstances that existed in the state's statutes at the time. He used my case as an example of how errors could be made in imposing the death penalty.

After you were released in 1987, was it hard to find a job?

It was like being constantly denied the chance to make a living, because there was a 15-year gap in my résumé. Employers wanted to know what I'd been doing all that time. I was let go from a couple of jobs because they said I misrepresented myself on the application. There was always the same question, "Have you been convicted of a felony in the last seven years?" But you've still got to make a living. If you tell them the truth, people look at you funny. They don't know whether to take a chance or not. They think, "Did he or didn't he? Or maybe it was just a smart lawyer who got him off."

Were there times when you just said yes about having a prior felony record?

Yes. Back in 1992, for example, I got a job with a transportation company here in Washington. It was the same year the District of Columbia tried to get the death penalty reinstated. I contacted radio station WOL, and they invited me to tell my story. I'd already testified at the District Building that evening. Someone from the transportation company heard me on WOL and they offered me the job.

In the first years I was out, part of my livelihood came from speaking engagements. I still do some speaking, but not as much. The movement to abolish capital punishment does good things, but it tends to use people up.

How did you happen to find the job here at St. Aloysius at the Father McKenna Center?

I was talking to Charlie Sullivan, the director of CURE, and he mentioned that there was an opening downstairs at the McKenna Center working with the homeless as manager of food services. It's something I like doing, working with people and making a little contribution.

I've heard that some of the homeless men who come to the McKenna Center have said they're in favor of the death penalty. What reason do they give?

I've talked to a couple of them who believe in the death penalty. A lot of people don't realize that my people, black people, are very conservative when it comes to the justice system. In part, that's because crime affects us most, so there's a desire to hit back.

Do you feel that as it's presently set up, there's a lot of racism in the criminal justice system?

Racism plays a big part in it. You can't expect a country like this with a long history of slavery to overturn it in a night's time. If you'd been at my trial in Florida, you'd have thought you were at a K.K.K. meeting and I was the guest of honor. I was the only black person in the whole court room.

Even the jury?

The jury was all white. Some of the jurors even talked in a racist way in the jury room. We found out about that several years later, when then-Governor Bob Graham was about to sign my death warrant and set the execution date for Oct. 18, 1983. He signed it, even though by that time the Florida Assistant Attorney General had doubts about my guilt. A former juror heard on the radio of the Governor's signing the death warrant, and he contacted my attorneys. He was one of several jurors who had voted for mercy rather than death in the second part of the bifurcated trial. (The first phase of the trial is to determine guilt or innocence, and the second part is about whether or not to recommend death.) The jury has to be unanimous about its decision in the first phase, but not in the second.

How long did your trial last?

Jury selection started on a Monday, and the verdict was returned Friday night. So the trial lasted only four days. The sentencing phase began the following Monday. The jury deliberated an hour, at most, in the sentencing phase and came back with a recommendation of death. I was sentenced that Wednesday. I was the ninth person in Florida to be condemned to death under the revised capital punishment statute that the Supreme Court said was acceptable.

Once you were at the Florida State Prison at Starke, what was the daily routine on death row?

I was in total isolation in a six-by-eight foot cell. I could take five steps forward and then turn around and take five steps back. I was in that cell 24 hours a day, except twice a week when, weather permitting, I was allowed out for two hours of exercise outside. Every other day I was permitted to take a shower. I had exactly seven minutes for the shower. If you took more time than that, you were given what they call a disciplinary report, which means they'd take away the few little things you had for 30 days, like mail privileges and TV. I had a small black and white TV set, one of 250 that had been donated to the prison and which they put into the cells.

Any time I left my cell, I'd be strip-searched and have handcuffs put on my hands behind my back. Then I'd be

strip-searched again when I got back to the cell. The whole thing was geared toward dehumanizing the person.

What were some of the things that helped offset the isolation?

For me, the only thing that really helped was getting a letter. Any time I got a letter, it made me feel warm inside, because it was a way of reaffirming that I wasn't as isolated as the prison wanted me to be. Most of the mail was legal mail, but I had a pretty good pen pal. I was allowed a visit a week, and there was one friend who visited. I didn't want family members to visit—I don't know if it was a psychological thing or fear or what.

How did you come to have a pen pal?

It was through a prison ministry program in Ohio. I started writing to them. They sent a minister to visit me, Alan Sanford. He came right to the cell. We only spoke five or ten minutes that first visit, but we stay in touch even now, writing to each other and talking on the phone.

'They beat me, even though they were going to kill me in less than 24 hours.'

Did you find comfort in prayer during your time on death row?

I had my Bible, and I did find comfort in that and in prayer. I had a lot of talks with God. I don't know whether to call it prayer or shouting matches. [Laughs] God gets you into some lively conversations. I talked to him the way I'm talking to you right now.

One day I was talking to God. I felt angry. I don't know why, but I picked up my Bible and happened to read Psalm 34, "The poor man cried, and the Lord heard him and saved him out of all his trouble." Another was Psalm 27, "The Lord is my light and my salvation." As soon as I read it, it was as if a cloud had been lifted off me. I was at peace. I didn't have a worry in the world. Just peace.

Were there other parts of the Bible that were meaningful besides the psalms?

Ezekiel. He waited for a sign from God. That's the way I was. Somehow I knew I wasn't going to be killed. I don't know how I knew it, but I did.

Was the sense of God's peace, when you read those two psalms, lasting?

A lot of times, he wanted to lead me, but I wasn't ready yet. It took me a long time to grow spiritually. My first three and a half to four years, I survived primarily from the strength I gained out of my anger. I was one angry young man, angry with everybody, including the trial lawyer. Some people were worried about me during that period, because they thought I might kill myself and make it easier that way for the state of Florida.

That anger didn't disappear until the trial lawyer left my case during the appeal, and I started hitting the books on my own. The first thing I did was to get my G.E.D. I wrote the school and they sent the exam. I passed it on the first try. Then I began studying law. I could have as many law books as I wanted, and I'd stay up till 2 or 3 A.M., scrunched up by the dim light of the TV screen to read. [Laughs] That's why I don't see well today.

Did you have any contact with the Catholic chaplain at the prison?

There were two, but I never bothered with them after a bad experience with one of them in 1982. My brother died, but I didn't learn about it until three weeks later, when my mother wrote wanting to know why I hadn't called home to find out what happened. It turned out that she'd called the prison and spoken to the chaplain about my brother's death. When I asked him why he hadn't informed me of it, he said he forgot.

I've been told that you also had a bad experience in regard to another brother, who needed a kidney transplant. What happened?

That was my youngest brother, who lived in Georgia. His doctor came to examine me for the kidney transplant, which I wanted to have done. But the prison authorities denied me permission to be taken to the hospital in Georgia where my brother was. So the doctor said they'd even move my brother to the Chance Teaching Hospital in Gainesville, Fla., which is only 50 miles from the Florida State Prison. That's where sick prisoners are taken for treatment. But the authorities denied permission again. Nine days later, my brother died. He was 42. If I hadn't been on death row, he'd probably be alive today. It's as if he took my death sentence instead of me.

Were there particular indignities you were subjected to on death row?

One time was just before I was to be executed. They came to measure me for a burial suit. While I stood there, they put the tape measure around my chest, and around my waist, and then they measured the inseam. They did it

in such a mechanical way, as if I were an inanimate object. I thought to myself, no, no, this is enough. It was like a ritual about killing me. I struck out, and then the guards hit me in the mouth. That's how I lost my front teeth. They beat me, even though they were going to kill me in less than 24 hours. But I wanted them to know I was a human being, with feelings.

What were the guards like in general?

We had the good and the bad. The majority were all right. There was a kind of unspoken rule, you do your job and we'll do ours and won't bother you. There were some young guards who'd stick their chests out and think they were big shots because they had a uniform on. They didn't last. But even with the ones who were all right, whenever the governor signed a warrant for an execution, they'd place bets with each other, big money, over whether the condemned man would receive a stay of execution.

Did you get to know the other men on death row?

I got to know everybody. There were 96 people on death row at that time, in three tiers of cells on either side. We could yell back and forth. Some I got to know because they'd take one floor at a time for outdoor exercise.

Did you become friends with any?

You try not to do that. One of them might pass your cell on the way to his execution. So you try not to develop any kind of close relationship with the other prisoners. Getting too close to them would also mean getting close to their families in the visiting room. The State of Florida killed 16 while I was there. I knew all of them. I came close to being number 17.

In 1993 you were invited to be on a panel in New York City sponsored by the American Bar Association. There was an appeals court judge there who was involved in your case. Would you comment on that?

That was Judge Phyllis A. Kravitch, who was one of the judges on the Federal Court of Appeals for the 11th Circuit in Atlanta. She wrote the opinion in my case. I finally got a chance to meet her and thank her and to shake her hand. I was surprised. She looked like a little grandmother. She said it was good to finally meet someone she'd only known on paper. Judge Rosemary Barkett was also there. She's the chief justice on the Florida Supreme Court. She used my case as a prime example of what can go wrong in the criminal justice system.

In that regard, Norman Redlich, the former dean of the New York University Law School who moderated the panel discussion, said that there had been blatant instances of prosecutorial misconduct at the initial trial stage of your case. What do you think would happen today, especially in view of the new time limitations for filing habeas corpus petitions at the Federal level?

If habeas corpus appeals—requests by state inmates for a Federal court review of the constitutionality of their convictions—had been handled then the way they are now, with the new time limits in the bill that Congress passed this past spring, I'd be dead. The way it is at present, the time for filing a habeas petition in order to introduce new evidence has been shortened drastically. And the state appeals process has also been curtailed. Just across the Potomac River from here, in Virginia, in fact, a condemned person has only 21 days after his trial to submit new evidence of his innocence. After that the court won't hear it. But you can't even get a copy of the transcript of the trial in 21 days.

'Did I believe in Shabaka's innocence? Yes, I did.'

• • •

Two months after this interview, the interviewer spoke by phone with Richard Blumenthal, who is now Attorney General of Connecticut. Mr. Blumenthal made the following comments from his office in Hartford.

"At the time I accepted Shabaka's case as an attorney in private practice, my position on capital punishment was—and still is—that under some circumstances it may be warranted. But I believe that every person deserves vigorous and competent representation. That's why, after reviewing the record and finding that there were injustices in his trial and in the subsequent appeal, I sought to have his conviction overturned. Did I believe in Shabaka's innocence? Yes, I did.

"Even for the most ardent advocate of capital punishment, Shabaka's story has to be profoundly sobering and indeed shocking, because it shows that an innocent man may be executed even in one of the fairest and most accurate systems of justice ever known. In this instance, however, there were very significant shortcomings in the operation of the system, due to the incompetence of counsel representing Shabaka and mistakes made by prosecutors, some of them very likely deliberate." March 5 was the 10th anniversary of Shabaka's release from death row.