

A PUBLIC DEFENSE AND CAPITAL PUNISHMENT
PERSPECTIVE: AN INTERVIEW WITH STEPHEN BRIGHT,
PROFESSOR OF LAW

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INTRODUCTION

Stephen Bright is a Visiting Professor of Law at Georgetown University Law Center and the Harvey L. Karp Visiting Lecturer in Law at Yale Law School.¹ His area of expertise includes capital punishment and criminal law.² He currently teaches a class titled Race and Poverty in Capital and Other Cases at Georgetown Law and a similar course at Yale Law School.³

In his early career, Professor Bright was a trial attorney at the Public Defender Service in Washington, D.C. and a legal services attorney at the Appalachian Research & Defense Fund of Kentucky.⁴ From 1982 to 2005, Professor Bright served as the director of the Southern Center for Human Rights. He also served as its president and senior counsel from 2006 to 2016.⁵ Since its founding in 1976, the Center has worked with “civil rights organizations, families, and faith-based organizations to protect the civil and human rights of people of color, poor people, and other disadvantaged people facing the penalty” or incarcerated in the South.⁶ The attorneys at the Center provide individual and class action representation “challenging unconstitutional and unconscionable practices within the criminal justice system.”⁷

Professor Bright has spent a significant portion of his career representing clients in capital cases. He has tried cases throughout the South, including before juries in Alabama, Georgia, and Mississippi.⁸ Professor Bright also worked as an appellate attorney, where he argued

¹ *Stephen Bright*, GEO. UNIV. L. CTR., <https://www.law.georgetown.edu/faculty/stephen-bright/> (Last visited Apr. 11, 2025); *Stephen B. Bright*, YALE L. SCH., <https://law.yale.edu/stephen-b-bright> (Last visited Apr. 11, 2025).

² *Professor Stephen B. Bright*, AM. L. INST., <https://www.ali.org/profile/5139> (Last visited Feb. 11, 2025).

³ *See Curriculum Guide*, GEO. UNIV. L. CTR., <https://curriculum.law.georgetown.edu/course-search/> (Last visited Feb. 7, 2025); *Stephen B. Bright*, *supra* note 1.

⁴ *Stephen Bright*, *supra* note 1.

⁵ *Id.*

⁶ *History*, S. CTR. FOR HUM. RTS., <https://www.schr.org/who-we-are/history/> (Last visited Feb. 7, 2025).

⁷ *Id.*

⁸ *See Stephen Bright*, *supra* note 1.

before state and federal appellate courts, as well as appearing before the United States Supreme Court four times.⁹ In his cases before the Supreme Court, Professor Bright litigated issues pertaining to racial discrimination in jury selection and a poor person's right to a mental health expert while facing the death penalty.¹⁰ The Supreme Court decided for his clients in all four of his cases.¹¹

Professor Bright is the co-author, with James Kwak, of the book, *The Fear of Too Much Justice*.¹² The book discusses the impact of poverty and race on the criminal justice system and its negative effects on defendants and the pursuit for justice.¹³ Professor Bright has received the ABA's Thurgood Marshall Award, Agitator (and Newsmaker) of the Year from the Daily Report in 2003 for his contribution in bringing about creation of a public defender system in Georgia, and Lawyer of the Year in 2017 for his successful representation of Timothy Foster before the Supreme Court, winning a *Batson* claim for racial discrimination in jury selection.¹⁴ In this interview, Professor Bright discusses the importance of robust public defense practices, his experiences working with clients, and capital punishment in America.

INTERVIEW¹⁵

1. *How did you decide to work in criminal law? And what made you work in defense, rather than prosecution?*

I went to law school to be a poverty lawyer and to be a civil rights lawyer. And one of the things that I found out in law school was that I was really interested in criminal law and really interested in being between people and the jail cell. And, I actually started out in legal services but when I had the opportunity to come up here and be a public defender, I did that. I never thought about being a prosecutor. Where I felt like the need was the greatest was for people to represent poor people accused of crimes. So that's what I did.

2. *And what was your favorite part of defense work?*

I think what attracted me to it and what I liked about it was the clients. I enjoyed getting to know people and being responsible for their freedom;

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² STEPHEN B. BRIGHT & JAMES KWAK, *THE FEAR OF TOO MUCH JUSTICE: RACE, POVERTY, AND THE PERSISTENCE OF INEQUALITY IN THE CRIMINAL COURTS* (2023).

¹³ *Id.*

¹⁴ *Stephen B. Bright, supra* note 1; *Foster v. Chatman*, 578 U.S. 488 (2016).

¹⁵ This interview has been edited for clarity and brevity.

and being responsible for getting them through the system, whatever shape we could get through; and being their advocate. I think that's what's attractive about being a criminal defense lawyer.

3. *Did you have any experiences with your clients that really stick out to you that you remember?*

I represented people for over 40 years so there have been a lot of experiences. One of the clients that I recall often is Tony Amadeo. I argued his case in the Supreme Court in 1988. And we won. Ultimately, after a lot of litigation, we avoided the death penalty on remand. He ended up serving 38 years in prison. While he was there, he got a degree. Back in those days you could go to college and get a degree. He graduated summa cum laude from Mercer University. He became a really accomplished woodworker and carpenter. He did all sorts of work in the prisons. Finally, after 38 years, he got paroled. We worked on that. He went back to his home in Texas. Eventually, after having struggled a little bit when he first got there, he ended up being the manager of a ranch in Texas. He did that for the nine years that he was out. I visited him there at the ranch. They had a lot of cattle, deer, turkeys, and he just thrived at that. He was doing great. And unfortunately, last year, he had been on dialysis while he had been in prison, and when he came out he had put in for a kidney transplant. And he had called me last May and said that he had been approved and he was going to get it and we were all excited. He went in and had the transplant. He called me and said there were some little issues with it and had to go back in, but he was just overjoyed. And then, [snaps] his heart gave out, and he died. And I think that the transplant was just too much. He was only in the free world for nine years, but he made the most of those nine years. We had hoped to have a lot more time.

4. *How old was he then?*

Sixty-three. I was looking forward to him being able to travel. He actually came up here [to Washington, D.C.], right after he got out. He came to a dinner we have every year at the Southern Center for Human Rights, and he spoke at the dinner. I remember that Cory Booker was there, and he was bowled over by what a great speech Tony gave. Tony said that four months before "I was sitting in a prison cell, and here I am now in Washington, D.C., giving a speech." It was really remarkable.

5. *Are there any other clients that you still keep in touch with?*

I was in Georgia this weekend and saw Jimmie Horton, who was a client of mine. When I met Jimmie Horton, 42 years ago, he was on death row in Georgia for the murder of the District Attorney in Macon, Georgia.

So, he was in big trouble. But we managed to get habeas corpus relief in his case. Again, after he got habeas relief, we were able to avoid the death penalty. He served less time than Tony, 32 years, and he was paroled. He married a woman while he was in prison. A lot of people are very cynical about prison romances and so forth, but they have been married over 30 years now. They're very happy together, and so he's doing well.

So here are people that were at one time thought to be so beyond redemption that they ought to be executed, and now here they are. Tony was, and Jimmie still is, in the community, leading these productive lives.

6. *What do you think is the most pressing issue you came across while working as a defense attorney?*

I think the most pressing issue is the use of the death penalty. We've learned a lot in our course about how the courts talk about finality, finality, finality. Judgments ought to be final and death sentences carried out. But the courts seem to have totally lost out on the finality of the death penalty, the finality of death. That when you execute someone, that's the end. You can't go back. You can't free them if they're innocent, you can't do anything. I think for the courts to have such an extreme penalty that's so final and so irrevocable, is extremely upsetting and disheartening. It is arrogant to think that the legal system is so infallible that it can decide who lives and who dies. And of course, it's not. Obviously, we're seeing all these innocence cases right now, like Robert Roberson¹⁶ in Texas last week [Mid-October, 2024], and Marcellus Williams¹⁷ in Missouri before that. And lots of others that are out there, where we don't even know if these people are guilty. And we're still executing them. And that should be troubling to anybody. I mean, it's one thing if somebody commits some terrible crime. But we don't even know sometimes if the people convicted are guilty of the crimes. Of course, the question of whether someone who is guilty ought to be executed or not, I mean, that's not a legal question, that's more of a maybe a theological question or philosophical question. But it's not a question for the legal system to address, and it doesn't do a good job with it.

Beyond that, I think poverty and race are the two most pervasive issues in the criminal legal system. People who are poor are given poor legal representation and get treated terribly by the system. And then, of course, race just runs like a river through everything.

¹⁶ For more information, see *What to Know About Robert Roberson On Death Row in Texas for a Crime That Never Occurred*, INNOCENCE PROJECT, <https://innocenceproject.org/what-to-know-about-robert-roberon-on-texas-death-row-for-a-crime-that-never-occurred/> (Feb. 20, 2025).

¹⁷ *Missouri Executes Marcellus Williams Despite Prosecutor's Opposition*, EQUAL JUST. INITIATIVE (Sept. 25, 2024), <https://eji.org/news/missouri-executes-marcellus-williams-despite-prosecutors-opposition/>.

7. *Given your experience in death penalty cases and arguing in front of the Supreme Court, do you think the criminal justice system has improved in treating people through the system?*

I think it has improved in some ways. The best example of that is that there are more public defender programs now. There are more capital defender offices. There has been a decline in the number of death sentences since 2000, where we went from about 300 death sentences a year to 25 a year. That's almost all attributable to the right to counsel and the fact that people are better represented. So that's an improvement.

The problem is that there's just so many areas where the right to counsel is not being recognized and where people are still really poorly represented in all kinds of cases, not just death penalty cases. The prisons are full of people who had totally inadequate legal counsel at their trials. And that should be disturbing to anybody because the system is an adversary system. If you take away the lawyers on one side, then obviously it's not an adversarial system. It's just like shooting a duck in a barrel for the prosecution.

A person gets a lawyer, maybe a totally incompetent lawyer, but a lawyer at trial and for one on appeal. But there are critical other areas of review: state post-conviction; federal habeas corpus; and all the areas where people can get out of prison like compassionate release, parole, clemency; there is no right to a lawyer, at any of those stages. The government of course, has a lawyer and that's really not fair. Particularly because many of the people in the criminal system are intellectually limited, some are totally illiterate, and some are mentally ill. They can't possibly represent themselves. The Supreme Court cases saying that people can represent themselves are ridiculous because the idea that some mentally ill person can represent themselves is preposterous. Some very profoundly mentally ill people are sentenced to life without parole or to death, or long prison terms, and they have no right to lawyer.

8. *Do you think that there is a role that public defenders can play in helping with these issues?*

I think that public defenders are right in the crux of where these battles are being fought. That's why I think it's so important to have public defenders. Unfortunately, a lot of places still don't have public defender offices and a lot of places have public defenders that are stretched so thin, they have such low resources and high caseloads that they can't really represent clients properly. A lot of places don't have public defenders at all. Then in a lot of cases a public defender may represent one client, but there may be co-defendants. They're represented by court appointed lawyers, often who are not capable of representing them. So, I would say it's still a minority of poor people who are capably represented in their

cases, whether they have a trial or not.

9. *There are things that public defenders and lawyers can do by just representing people. Do you think there's a way for lawyers who feel like the system itself is flawed to balance the goals of representing a client and using advocacy to create change?*

I think there are all kinds of ways of trying to change the narrative and make people more concerned. One thing that public defenders must do is try to expand public defenders' offices. They go to places that don't have the resources, but if you establish public defenders' offices and good people go there and stay there long enough they will usually eventually get more resources. Then they can do a better job, bring more people in, get more investigators, social workers, the people they *need*. The more they can advance things in that direction, the better off things will be. But there are a lot of other ways of reaching out and helping people understand the need for counsel. The other thing is they can be a part of setting up non-profit, public interest organizations like many that exist now to sort of fill in the gaps.

I was at a prison conference recently and heard about a lot about great work by the Illinois Prison Project in getting people commutations, getting people out on parole, things like that. Illinois is a huge state and there are hundreds of thousands of people who need their help and they're only able to help a small number. But they're doing some good. These programs need to expand so they can do more.

The other thing I didn't say about the right to a lawyer is sentence reduction and review. We now have some laws that enable people that have excessive sentences to go back to court and seek to review their sentences, but again they don't have a right to a lawyer. So, a lot of people can't do that. One of the things my former organization, the Southern Center for Human Rights, does now is represent people with excessive sentences to get their sentences reduced. There's a tremendous need for people to do that. The need is far greater than there are programs to deal with it, but more people are responding to that need now.

10. *Do you have advice for young advocates getting into criminal space or appellate litigation space?*

For the people getting into the criminal space, they need to remember that the most important people in your case are not nine Supreme Court Justices, but rather it's twelve people on the jury and your local district attorney and local judges. What people need to realize is that where we need the most help is at the grassroots, the community level, at the individual level. The courts are individual, one person at a time. That's what people need to do.

With regard to appellate lawyering, it's critically important that people have lawyers to handle their appeals. One of the things we've learned is that the Supreme Court of the United States is not the only source of good Constitutional Law. We have the state Supreme Courts that interpret their state constitutions in ways that are helpful. Even in a state like Texas, we've seen laws passed for open file discovery and the Junk Science Bill. Unfortunately, they're not applying it very well because Robert Roberson would have gotten relief if they had. They gave some other fellow relief under that same junk science law on Tuesday, and then they denied Roberson on Wednesday.¹⁸ They had the same expert. At least the law is there and in some other cases it has results. Like the bite mark evidence. There were people being convicted on this ridiculous bite mark evidence, and people were able to show that it was complete junk science which got a lot of people out of prison.

11. Do you have advice for someone who is interested in criminal law but also sees BigLaw as their alternative?

My advice to people is always go where the problems are and where the need is the greatest. Eli Wiesel said in his Nobel Prize speech, "Our lives are not our own. They belong to those who need us desperately." There are real desperate needs out there, and it's very fulfilling to respond to those needs and try to help people.

But, there's no question that a lot of very important work has been done by people in private practice. Professor [Cliff] Sloan from Georgetown is a good example. He was at Skadden Arps, and he represented Bobby Moore in his death penalty case, which went to the Supreme Court, not once, but twice.¹⁹ Not only did he get Bobby Moore off death row and get him parole, but he also established precedent that resulted in a number of people in Texas coming off death row. The question is whether once people go to a law firm are they going to be able to carve out the time and is the firm going to let them carve out the time? And there are certainly examples of firms that have put lawyers with great resources onto all kinds of public interest cases where the need is great. There are also, I'm sorry to say, many firms that are also very stingy about that. They don't want lawyers to do pro bono work and they don't support them very much. One of the things people must figure out is whether they are going to go somewhere they can do that pro bono work.

¹⁸ See *supra* note 16.

¹⁹ *Moore v. Texas*, 586 U.S. 133 (2019); *Moore v. Texas*, 581 U.S. 1 (2017); see also *Ex parte Moore*, 587 S.W.3d 787 (Tex. Crim. App. 2019).

12. *What keeps you up at night?*

With regard to the work I've done in criminal law, the danger the Supreme Court poses to so many important precedents; and the Court's willingness to overrule precedents. There is concern about whether the Court will uphold a Florida law that allows the death penalty in non-homicide cases, whether it would overrule its precedent.²⁰ There is also concern about a lot of other Eighth Amendment areas. I just spent the weekend with my client Jimmie Lee Horton, who, had it not been for federal habeas corpus, would have been executed.²¹ That would have been a great miscarriage of justice had that happened. Today, somebody in the same situation that he was in would not get relief. That's very disturbing and that keeps me up at night.

13. *What are you most excited about?*

I'm most excited about my students and the work they're doing. I was just at a conference and saw one of my students from 30 years ago. She spent 27 years at a prison law office, and she is still representing prisoners in her private practice. I have so many students that are doing different things all over the country, and they're doing great work. I'm really happy about it and really proud of them.

²⁰ See *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

²¹ See *Horton v. Zant*, 941 F.2d 1449 (11th Cir. 1991).