



Jeff Deskovic

Exposing The Death Penalty, Part 1

In my effort to raise awareness about the problem of wrongful convictions, as well as seeking legislative changes to make the criminal justice system more accurate, I have always included abolishing the death penalty amongst the reforms I advocate. My reasoning is simple: any system of justice that results in wrongful convictions will, if it has a death penalty as a sentencing option, inevitably execute innocent people. This past March 17 New Mexico legislatively abolished the death penalty citing, amongst other issues, that very real possibility. In this three-part series I will review likely wrongful executions, near-misses, ongoing cases of potential wrongful execution, systemic deficiencies, along with one case example wherein innocent people were wrongly convicted and sentenced to death before being cleared. And then, I will look at modern-day recognition that the death penalty risks the execution of innocent people.

Likely Wrongful Executions

There are a variety of cases wherein it is very likely that innocent people have been executed, as established by facts, circumstances, and statements from people involved, in one way or another, which can show a reasonable basis upon which to believe that the executed individual was likely innocent. These case summaries are taken from the Death Penalty Information Center.

Ruben Cantu

A two-part investigative series by the **Houston Chronicle** casts serious doubt on the guilt of a Texas man who was executed in 1993. Ruben Cantu had persistently proclaimed his innocence and was only 17 when he was charged with capital murder for the shooting death of a San Antonio man during an attempted robbery. Now, the prosecutor and the jury forewoman have expressed doubts about the case.

Moreover, both a key eyewitness in the state's case against Cantu, and Cantu's co-defendant, have come forward

to say that Texas executed an innocent man. Juan Moreno, who was wounded during the attempted robbery and was a key eyewitness in the case against Cantu, now says that it was not Cantu who shot him and that he only identified Cantu as the shooter because he felt pressured, and was afraid of the authorities.

Moreno said that he twice told police that Cantu was not his assailant, but that the authorities continued to pressure him to identify Cantu as the shooter after Cantu was involved in an unrelated wounding of a police officer. "The police were sure it was (Cantu) because he had hurt a police officer. They told me they were certain it was him, and that's why I testified. . . . That was bad to blame someone that was not there," Moreno told the **Chronicle**.

In addition, David Garza, Cantu's co-defendant during his 1985 trial, recently signed a sworn affidavit saying that he allowed Cantu to be accused and executed even though he wasn't with him on the night of the killing. Garza stated, "Part of me died when he died. You've got a 17-year-old who went to his grave for something he did not do. Texas murdered an innocent person."

Furthermore, Sam D. Millsap, Jr., the Bexar County District Attorney who charged Cantu with capital murder, said he never should have sought the death penalty in a case based on testimony from an eyewitness who identified a suspect only after police showed him Cantu's photo three separate times. And, Miriam Ward, forewoman of the jury that convicted Cantu, said the jury's decision was the best they could do based on the information presented during the trial. She noted, "With a little extra work, a little extra effort, maybe we'd have gotten the right information. The bottom line is, an innocent person was put to death for it. We all have our finger in that."

Larry Griffin

A year-long investigation by the NAACP Legal Defense and Educational Fund has uncovered evidence

that Larry Griffin may have been innocent of the crime for which he was executed by the State of Missouri on June 21, 1995. Griffin maintained his innocence until his death, and investigators say his case is the strongest demonstration yet of an execution of an innocent man. The report notes that a man injured in the same drive-by shooting that claimed the life of Quintin Moss says Griffin was not involved in the crime, and the first police officer on the scene has given a new account that undermines the trial testimony of the only witness who identified Griffin as the murderer.

Based on its findings, the NAACP has supplied the prosecution with the names of three men it suspects committed the crime, and all three of the suspects are currently in jail for other murders. Prosecutor Jennifer Joyce said she has reopened the investigation and will conduct a comprehensive review of the case over the next few months. "There is no real doubt that we have an innocent person. If we could go to trial on this case, if there was a forum where we could take this to trial, we would win hands down," stated University of Michigan law professor Samuel Gross, who supervised the investigation into Griffin's case.

Joseph O'Dell

New DNA blood evidence has thrown considerable doubt on the murder and rape conviction of O'Dell. In reviewing his case in 1991, three Supreme Court Justices said they had doubts about O'Dell's guilt and whether he should have been allowed to represent himself. Without the blood evidence, there is little linking O'Dell to the crime. In September, 1996, the 4th Circuit of the U.S. Court of Appeals reinstated his death sentence and upheld his conviction. The U.S. Supreme Court refused to review O'Dell's claims of innocence and held that its decision regarding juries being told about the alternative sentence of life-without-parole was not retroac-

tive to his case. O'Dell asked the state to conduct DNA tests on other pieces of evidence to demonstrate his innocence but was refused.

David Spence

Spence was charged with murdering three teenagers in 1982. He was allegedly hired by a convenience store owner to kill another girl, and killed these victims by mistake. The convenience store owner, Muneer Deeb, was originally convicted and sentenced to death, but then was acquitted at a re-trial. The police lieutenant who supervised the investigation of Spence, Marvin Horton, later concluded: "I do not think David Spence committed this crime."

Ramon Salinas, the homicide detective who actually conducted the investigation, said: "My opinion is that David Spence was innocent. Nothing from the investigation ever led us to any evidence that he was involved." No physical evidence connected Spence to the crime. The case against Spence was pursued by a zealous narcotics cop who relied on testimony of prison inmates who were granted favors in return for testimony.

Leo Jones

Jones was convicted of murdering a police officer in Jacksonville, Florida, and was executed. Jones signed a confession after several hours of police interrogation, but he later claimed the confession was coerced. In the mid-1980s, the policeman who arrested Jones and the detective who took his confession were forced out of uniform for ethical violations. The policeman was later identified by a fellow officer as an "enforcer" who had used torture. Many witnesses came forward pointing to another suspect in the case.

Gary Graham

On June 23, 2000, Gary Graham was executed in Texas, despite claims that he was innocent. Graham was 17 when he was charged with the 1981 robbery and shooting of Bobby Lambert



outside a Houston supermarket. He was convicted primarily on the testimony of one witness, Bernadine Skillern, who said she saw the killer's face for a few seconds through her car windshield, from a distance of 30-40 feet away.

Two other witnesses, who both worked at the grocery store and said they got a good look at the assailant, said Graham was not the killer, but were never interviewed by Graham's court-appointed attorney, Ronald Mock, and were not called to testify at trial. Three of the jurors who voted to convict Graham signed affidavits saying they would have voted differently had all of the evidence been available.

Cameron Willingham

After examining evidence from the capital prosecution of Cameron Willingham, four national arson experts have concluded that the original investigation of Willingham's case was flawed and it is possible the fire was accidental. The independent investigation, reported by the **Chicago Tribune**, found that prosecutors and arson investigators used arson theories that have since been repudiated by scientific advances.

Willingham was executed earlier this year in Texas despite his consistent claims of innocence. He was convicted of murdering his three children in a 1991 house fire. Arson expert Gerald Hurst said, "There's nothing to suggest to any reasonable arson investigator that this was an arson fire. It was just a fire." Former Louisiana State University fire instructor Kendall Ryland added, "[It] made me sick to think this guy was executed based on this investigation.... They executed this guy and they've just got no idea - at least not scientifically - if he set the fire, or if the fire was even intentionally set."

Willingham was convicted of capital murder after arson investigators concluded that 20 indicators of arson led them to believe that an accelerant had been used to set three separate fires inside his home. Among the only other evidence presented by prosecutors during the trial was testimony from jailhouse snitch Johnny E. Webb, a drug addict on psychiatric medication, who claimed Willingham had confessed to him in the county jail. Some of the jurors who convicted Willingham were troubled when told of the new case review. Juror Dorinda Brokofsky asked, "Did anybody know about this prior to his execution? Now I

will have to live with this for the rest of my life. Maybe this man was innocent."

Prior to the execution, Willingham's defense attorneys presented expert testimony regarding the new arson investigation to the state's highest court, as well as to Texas Governor Rick Perry. No relief was granted and Willingham was executed February 17, 2004.

Coincidentally, less than a year after Willingham's execution, arson evidence presented by some of the same experts who had appealed for relief in Willingham's case helped free Ernest Willis from Texas' death row. The experts noted that the evidence in the Willingham case was nearly identical to the evidence used to exonerate Willis.

Near Misses

There have been a variety of cases where innocent people have come frighteningly close to being executed. These cases also show, clearly, how innocent people can be wrongfully convicted, sentenced to death and executed.

Kenneth Foster

Foster and several of his friends went on a crime spree in Texas in 1997. Eventually the crime spree ended, but Foster never parted company with one of his friends, Maurecio Brown. On the way home, Brown left the car to talk to a woman. An argument ensued that soon involved her boyfriend. Brown claimed that the victim reached into his jeans, which he interpreted as reaching for a gun. Brown pulled out his gun and killed the victim some 100 yards in front of the car that Foster was in.

Foster had no idea that Brown would do this and the crime was not a part of their criminal conduct; he had simply made the mistake of not parting company with him. Nonetheless, he had been sentenced to death. Based upon a groundswell of grass roots support, extensive media coverage and editorials, national and international support, Foster's death sentence was commuted on noon of the day that he was scheduled to be executed, August 30, 2007.

Ron Williamson

Ron Williamson was wrongfully convicted of murder in Oklahoma in 1998, along with his co-defendant Dennis Fritz. Williamson received the death penalty, whereas Fritz received life in prison. The Innocence Project

summarizes his case this way:

An inmate that Fritz was paired with eventually came forward and stated that Fritz had confessed to the murder. This jailhouse snitch gave a two hour taped interview revealing what Fritz had allegedly confessed to him. This confession came one day before the prosecution would have been forced to drop the charges against Fritz. Another informant testified that she had heard Williamson threaten to harm his mother as he had the victim. Williamson was also seen at the bar the night of the murder, according to a witness named Glenn Gore. Additionally, police had statements from Williamson regarding a dream he had about the crime.

Forensic testing was performed on various items of evidence. Seventeen hairs were recovered and were "matched" to both Fritz and Williamson. The semen evidence suggested that the perpetrator(s) were non-secretors, as Fritz and Williamson are. Fritz could not remember his exact whereabouts during the day of the crime due to the amount of time, five years, that had passed. DNA testing revealed that neither Fritz nor Williamson deposited the spermatozoa found in the victim. Further testing proved that none of the many hairs that were labeled "matches" belonged to them. The profile obtained from the semen evidence matched Glenn Gore. At one point, Williamson had come within 5 days of execution.

Earl Washington

Washington was arrested for murder and rape in Virginia. The Innocence Project summarizes his case this way: He had an IQ in the range of 69. Following questioning for two days, police claimed that he had confessed to five different crimes. The state dismissed the confessions of the first four because of the inconsistencies. They charged him with the fifth murder, however, despite not knowing the race of the victim, the address of the apartment where she was killed, or that he had raped her.

Washington also testified that Ms. Williams had been short when in fact she was 5'8", that he had stabbed her two or three times when the victim showed thirty-

eight stab wounds, and that there was no one else in the apartment when it was known that Ms. Williams' two young children were with her in the apartment on the day of the crime.

Only on the fourth attempt at a rehearsed confession did authorities accept Washington's statement and have it recorded in writing with Washington's signature. He only picked out the scene of the crime after being taken there three times in one afternoon by the police, who in the end had to help him pick out Williams' apartment. The confession proved to be the prosecution's only evidence linking Washington to the crime.

Psychological analyses of Washington reported that, to compensate for his disability, Washington would politely defer to any authority figure with whom he came into contact. Thus, when police officers asked Washington leading questions in order to obtain a confession, he complied and offered affirmative responses in order to gain their approval. At trial, only the State's psychologist testified, claiming that Washington was competent when his statement was given.

The prosecution's case hinged on Washington's statements as well as his identification of a shirt given to the police by the victim's family six weeks after the crime. A forensic analyst conducted serology testing on evidence from the crime scene and detected a rare plasma protein. Once Washington, who does not possess the rare protein, became a suspect, an amended forensic report was prepared (without additional testing being conducted) that said testing for the rare protein was "inconclusive."

DNA testing in 1993 proved his innocence, but his death sentence was merely commuted in 1994. It took 6 more years before he was allowed to have more sophisticated DNA testing, which ultimately resulted in his being pardoned based upon innocence. At one point, Washington came within 9 days of execution. ■

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