

Reasonable Doubts:
**Is the U.S. Executing
Innocent People?**

October 26, 2000

A Preliminary Report
of the

GRASSROOTS INVESTIGATION PROJECT



EQUAL JUSTICE USA

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Introduction

“I cannot support a system, which, in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state’s taking of innocent life.”

– Governor George Ryan, on declaring a moratorium in Illinois¹

The administration of the death penalty in the United States is plagued by injustice. The proof has become irrefutable. Individuals are being sentenced to death for crimes they did not commit. While some of these individuals are being exonerated and released, others are likely being executed.²

Mounting evidence of unfairness has become so compelling that some death penalty supporters, such as Illinois Governor George Ryan, can no longer ignore it. In January of this year, Governor Ryan announced a moratorium on executions in the state, just days after Illinois’ thirteenth death row inmate was exonerated.³ In so doing, Illinois became the first U.S. jurisdiction to suspend executions while it examines the administration of the death penalty.

This report marks the first national effort to document and expose cases of people executed despite compelling evidence of their innocence since executions resumed in the U.S. in 1977. It is released in a climate that is increasingly hostile to efforts to re-open or investigate cases in which people have been executed for crimes they probably didn’t commit.⁴

The report highlights the cases of 16 individuals who were executed by the states of Alabama, California, Florida, Illinois, Missouri, Texas, and Virginia in the face of exculpatory evidence and evidence of rights violations. In all of these cases, the state and federal courts had every opportunity to interrupt the process and determine whether the original conviction was wrong, but they failed to do so. These cases are a part of an alarming trend in the administration of justice in the U.S. in which the

¹ January 31, 2000 Press Release, Office of Governor George Ryan. (See www.state.il.us/gov/press/00/Jan/)

² Once death row inmates have been killed, it becomes very difficult to absolutely prove their innocence. In these cases, the weight of the trial and appeals process has been stacked against them. New evidence has not been tested by a court of law. New witnesses have not had the opportunity to be examined and cross-examined.

³ Since Illinois reinstated the death penalty in 1977, more people on death row have been exonerated than have been executed. Nationwide, nearly 90 death row prisoners have been proven innocent. For every seven people executed, one is set free because they were found innocent. (Death Penalty Information Center, www.deathpenaltyinfo.org)

⁴ The rape kit in the case of Joseph Odell – executed in 1997 for a brutal rape and murder – was destroyed by the state on March 30 of this year. The Catholic Diocese of Richmond and members of Odell’s family had sought DNA testing after the state had refused Odell’s request for the testing just prior to his execution. The state successfully blocked the test, convincing the state Supreme Court that it was not in the state’s interest to prove that an innocent man had been executed. Currently, *The Boston Globe* and Centurion Ministries are seeking DNA testing of vaginal swab samples taken from Wanda McCoy, whose rape and murder resulted in Roger Coleman’s execution in Virginia in 1992. Coleman’s case is profiled in this report. Again the state is opposing new tests, arguing the public does not have a “right to know” the truth. In a hopeful sign, *The Boston Globe*, *The Atlanta Constitution*, CBS, and the *Macon Telegraph* have won the first court order in the country for post-execution DNA testing in the Georgia case of Ellis Wayne Felker. (See “Two Seek Post-Trial DNA Tests,” April 24, 2000, A-1 and “State objects to more testing; DNA work sought on executed man,” October 7, 2000, both in *The Richmond Times Dispatch*.) Clearly, the battle to re-examine cases where potentially innocent defendants were executed is only just beginning.

courts overwhelmingly favor efficiency and rigid procedural rules over justice and constitutional protection. This trend has created a system of arbitrary justice and has left a trail of arbitrary executions in its wake.

Methodology

This report is based on five months of research conducted by a network of activists and lawyers as part of the Grassroots Investigation Project. The Project is an ongoing effort to document and investigate cases where there is compelling evidence of innocence and due process violations. The researchers have employed a case study methodology, in which they have relied on individual cases to highlight widespread patterns and practices of the state that lead to the violation of rights and may lead to the execution of innocent people.

All 16 cases contained in this report were selected based on the compelling nature of the evidence of innocence. Additional criteria used to select cases included the exemplary nature of the cases; all of the cases demonstrate widespread and recurrent defects in the administration of the death penalty. Using criteria for review developed by the Center on Wrongful Convictions at Northwestern University School of Law, trial, appellate, and investigative documents were compiled and analyzed. This information, as well as information obtained through independent investigations in some cases, formed the basis of the case studies and the charts that were developed for each of the cases. (See appendix for charts on cases included in this report.)

This report represents only a small number of the actual cases in which people have been executed for crimes they probably did not commit. The project's research into such cases is ongoing.

Findings

In each of the 16 cases profiled in this report, there exists compelling evidence that the defendant was convicted of the crime he did not, in fact, commit. Viewed collectively, these 16 cases highlight patterns and practices in the administration of justice at the state and federal levels that violate constitutionally and internationally protected rights. Abuses that led to rights violations included the following.

Defense attorneys routinely failed to provide their clients with competent legal counsel.

In all 16 cases, the defendant was convicted and sentenced to death at a trial that did not conform to basic standards of fairness and due process. The lack of competent counsel undermined the right to a fair trial. There was compelling evidence that the defense attorneys failed to perform their duties to their clients with adequate competence. Defense attorneys, most of whom were appointed by the court, routinely failed to mount a defense, to investigate, to produce witnesses that could testify to the defendant's innocence or challenge the prosecution's evidence, to comply with court deadlines, to object to illegal or improper conduct, or to preserve evidence and issues for appellate review.

Prosecutors and police routinely engaged in misconduct during investigations and trials.

In all of the cases, there was compelling evidence of official misconduct and abuse committed at the investigation and trial stage. Suppression of exculpatory evidence was common. Prosecutors frequently relied on a single eyewitness or on jailhouse informants – sources shown to be unreliable. In some cases, witnesses were intimidated or offered deals for testifying. Confessions were obtained through coercion, force, threats, and even torture and then used to convict defendants despite the illegal means utilized to obtain the confessions. Line-ups were prejudicial and leading in many cases. In at least one case, evidence was probably planted.

Racial bias fueled the actions of police, prosecutors, defense attorneys, and judges.

People of color are disproportionately represented on U.S. death rows. Furthermore, the race of the victim is a principle determinant in sentencing offenders to death. The combination of an African American defendant and a white victim is most likely to result in a death sentence. In these 16 cases, only one of the crime victims was black and 16 were white. Nine of the executed men were African American.

In every case in which an African American was the defendant, racial discrimination was a determining factor in the conviction. In many cases, prosecutors excluded jurors based on race, a practice found to be an unconstitutional form of racial discrimination by the U.S. Supreme Court in 1986 (*Batson v. Kentucky*). In some cases, lawyers – both for the prosecution and defense – used racist language to inflame the jury. In at least one case, the judge and prosecutor were later found to have engaged in persistent racial discrimination.

State and federal appellate courts failed to intervene in cases with compelling evidence of innocence and evidence of rights violations.

In all of the cases, the decision of the trial court was appealed based on due process violations and, in some cases, on compelling evidence of innocence. In most of the cases, evidence of innocence was never heard in any court because it surfaced only after the original trial. In most cases, appeals were repeatedly denied without re-hearing, irrespective of the evidence. This was largely a result of strict appellate review standards and inflexible time limits. These include restrictions on federal courts' ability to review convictions as mandated by the 1996 Anti-Terrorism and Effective Death Penalty Act and state time limits for the introduction of new evidence after sentencing.

The existence of innocence claims and the evidence to support these claims render the related allegations of unfairness and lack of due process particularly alarming. In all of the cases, both state and federal courts had every opportunity to remedy the rights violations but did not. Both state and federal courts failed to protect the rights enshrined not only in state constitutions and the Constitution of the United States, but also in international law. Courts overwhelmingly favored procedure over justice and efficiency over fairness. And, in so doing, state and federal governments sanctioned state killing of men who were probably innocent.

Conclusion

The definitive nature of the death penalty requires the highest standards of due process and fairness. The findings of this report suggest that while such standards exist in law, they do not exist in practice. Death penalty states, through the police, the state prosecutors' offices, court-appointed defense attorneys, and the judicial system, routinely fail to exercise necessary diligence to ensure the protection of the rights of the accused. Federal courts, which have been limited by the Anti-Terrorism and Effective Death Penalty Act of 1996, fail to exercise the necessary oversight to provide remedies for rights violations in death penalty cases. As such, state governments, with the acquiescence of the federal government, are executing people under the guise of due process and fair trials, despite compelling evidence of innocence.

Recommendations

There is an emerging national consensus that the administration of the death penalty in the U.S. is in dire need of reform. After many years of deep cuts to indigent defense funding and radical restrictions on prisoner appeals, the pendulum is beginning to swing in the other direction. Reforms are now being proposed at the state and national level. Measures like the Innocence Protection Act,⁵ now pending before Congress, could lessen the risk of executing innocent people by increasing compensation, training, and oversight of defense counsel and by making DNA testing available to death row prisoners.

The proposed reforms, however, only address the first finding of this report. They do not address the reluctance of state and federal appellate courts to review and/or intervene when faced with cases with compelling evidence of innocence or rights violations. Furthermore, the proposed remedies do not address racial bias and prosecutorial misconduct.⁶ Officially, neither the state nor federal governments acknowledge that innocent people are being executed. The necessary first step to meaningful reform is a time-out on executions that allows time, space, and resources for independent evaluations of the state and federal governments' administration of the death penalty.⁷

⁵ On February 11, 2000, Senator Patrick Leahy (D-VT) introduced the Innocence Protection Act in the Senate (S.R. 2073). Reps. Ray LaHood (R-IL) and William Delahunt (D-MA) introduced the same bill in the House (H.R. 4167). This legislation would allow prisoners on death row to request DNA testing on evidence from their case that is in the government's possession and provide mechanisms to guarantee defendants access to a professional and experienced lawyer. Laws allowing DNA testing have also been introduced in various states.

⁶ A recent Columbia University study revealed that state and federal courts found grave constitutional error in two-thirds of the cases they reviewed between 1973-1995. Of these errors, 19% involved police or prosecutors suppressing exculpatory evidence and another 19% involved coerced confessions, use of jailhouse informants, exclusion of black jurors, and other official abuses of power. (See *A Broken System: Error Rates in Capital Cases, 1973-1995*, James Liebman, Columbia University School of Law, June 2000, available at www.thejusticeproject.org)

⁷ Currently, legislation is pending in Connecticut, Kentucky, Missouri, New Jersey, Ohio, and Pennsylvania that would impose moratoria while issues of fairness are studied: HB5051 in Connecticut, SB325 in Kentucky, SB838 in Missouri, A1853 in New Jersey, HB733 in Ohio, SB952 in Pennsylvania. Over the last two years, 14 states have considered bills that would impose a moratorium on executions while issues of fairness are studied.

Similar national legislation has been introduced in Congress that would temporarily halt state and federal executions and would commission a national inquiry. On April 24, 2000, Senators Russ Feingold (D-WI) and Carl Levin (D-MI) introduced into the Senate the National Death Penalty Moratorium Act of 2000 (S.R. 2463). It would impose a moratorium on state and federal executions and establish a National Commission on the Death Penalty to review current administration and make recommendations for ensuring it is imposed fairly and with due process. On February 11, 2000, Rep. Jesse

Based on the findings of this report, the Grassroots Investigation Project of Equal Justice, USA recommends the following in order to protect the rights of individuals and to ensure that innocent people are not executed:

- **State and federal governments should impose immediate moratoria on executions and should constitute independent bodies to study the administration of the death penalty.**
- **State and federal governments should investigate alleged cases in which people have been executed for crimes they did not commit.**
- **State and federal governments should consistently provide compensation to individuals, or the families of individuals, who have been wrongfully convicted or wrongfully executed.**

Jackson Jr. introduced into the House the Accuracy in Judicial Administration Act of 2000 (H.R. 3623). This House bill would impose a seven-year moratorium on executions to allow death row prisoners time to explore potentially exculpatory evidence, including DNA.

The Cases

Brian K. Baldwin (Alabama)

ALLEGATION

On June 18, 1999, the State of Alabama, with the acquiescence of the federal government, executed Brian K. Baldwin in the electric chair. The state and federal governments failed to ensure Baldwin's right to a fair and impartial trial, his right to be free from torture, and his right to be free from racial discrimination. State torture and an unfair, racially discriminatory trial resulted in his execution.

CRIME

On March 14, 1977, 16-year-old Naomi Rolon was murdered. Prior to her murder, Rolon had picked up Brian Baldwin, age 18, and Edward Horsley, age 17, in North Carolina and proceeded to drive with them to Alabama. Baldwin and Horsley had recently escaped from a youth detention center. In Alabama, Baldwin stole a truck.¹ Horsley drove off with Rolon. Horsley later returned alone and on foot. Baldwin and Horsley were arrested, tried, and convicted for the murder of Naomi Rolon.

SALIENT ISSUES

- After Baldwin had been arrested, his parents were not informed of his whereabouts until after he had been convicted of capital murder.²
- Police repeatedly beat and intimidated Baldwin until he signed a confession.³
- Baldwin's confession failed to name the correct weapon and failed to provide an accurate description of the murder.⁴ The confession was later altered to fit the facts, as revealed by Baldwin's co-defendant.⁵
- Baldwin's trial lasted a total of one and one-half days, including jury selection, jury deliberation, and sentencing.⁶
- Baldwin's trial attorney failed to undertake an independent pre-trial investigation, to prepare his client to testify, to call any defense witnesses, to introduce exculpatory forensic evidence, or to object to the improper actions of the prosecution.⁷
- Forensic evidence suggested Baldwin's innocence, but was not introduced at trial.⁸
- Brian Baldwin was in the courtroom in handcuffs throughout jury selection⁹

¹ Affidavit, Travis Durant (owner of stolen truck)

² Affidavit, James Baldwin (father of Brian Baldwin)

³ Affidavit, Deputy Nathaniel Manzies, Wilcox Co., AL; affidavits of Raymond Portis, Harris Mason, and H.B. Williams re: Charles Peoples

⁴ Clemency Petition, p. 9, 10

⁵ Id. p. 10, 11

⁶ Clemency Petition, p. 16

⁷ Id. p. 16

⁸ State of Alabama Dept. of Toxicology Report, p. 3 #11; p. 4, Baldwin's clothing

⁹ Affidavits of Geneva Andrews, Elizabeth Richardson, Willie Lambert re: handcuffs in courtroom

- Throughout the trial, the prosecutor repeatedly suggested that Baldwin had committed sexual assault, although Baldwin was never charged with sexual assault.¹⁰
- After the trial, the state withheld a complete record of Baldwin’s trial from the defense and claimed to have lost key evidence, thereby hindering his appeal.¹¹
- Eleven years before his own execution, Baldwin’s co-defendant confessed to the crime and exonerated Baldwin.¹²
- African-Americans were intentionally excluded from the jury, in a county where 46% of the residents were African-American.¹³ An all-white jury convicted Baldwin.
- An Alabama court later found that the prosecutor and judge in Baldwin’s trial and appeal had, over a period of time and including the period of Baldwin’s trial, practiced “deliberate racial discrimination.”¹⁴

TRIAL

Brian Baldwin was convicted by an all-white jury of Naomi Rolon’s murder in a trial that lasted for only one and one-half days. The prosecution successfully excluded all African-American persons from the jury and Baldwin’s court-appointed attorney did not object. Intentional exclusion of jurors solely on the basis of race has since been found to be unconstitutional (*Batson v. Kentucky*, 1986). Baldwin’s conviction was based largely on his confession, a confession that had been obtained under torture.

Baldwin was both beaten and cattle-prodded to obtain information about the whereabouts of Naomi Rolon. When Rolon’s body was found, Baldwin was beaten and prodded again until he signed a confession that named the wrong weapon and the wrong method used to kill Naomi Rolon. In a separate confession, Horsley claimed Baldwin was the murderer, but supplied accurate information about the murder weapon and the attack. The information was added to Baldwin’s confession after the fact, as was the signature of a deputy who claimed to have witnessed Baldwin’s waiver of rights, but who was not present.¹⁵

Forensic evidence discovered shortly before Baldwin’s execution showed that the deadly blows were the work of a left-handed assailant. Horsley, not Baldwin, was left-handed.¹⁶ Also, Horsley’s clothes and shoes were stained with blood, but Baldwin’s clothing tested negative.¹⁷ Years after Baldwin had been convicted and sentenced to death, Baldwin’s co-defendant, Edward Horsley, confessed in a letter that he, alone, was responsible for the murder of Naomi Rolon and that Baldwin knew nothing about the killing until Rolon’s body was discovered by police.¹⁸

Baldwin’s lawyer failed to provide competent counsel. According to Baldwin, his lawyer met with him for a total of 20 minutes, before the trial. Baldwin’s lawyer did no investigation of the case and presented no witnesses except Baldwin, whom he did not prepare for testifying. Baldwin’s attorney also failed to present the forensic evidence and did not object when the prosecution suggested that a

¹⁰ Clemency Petition, #4, p. 16

¹¹ Petition for *Writ of Certiorari*, #4, #5, #6 p. vi-viii

¹² Clemency Petition, p. 4, 5

¹³ Petition for *Writ of Certiorari*, p. iv-v, #2, #3

¹⁴ Clemency Petition, p. 17, Petition for *Writ of Certiorari*, p. ix #7

¹⁵ Clemency Petition, p. 7, 8

¹⁶ Affidavit, Dr. Burton, forensics

¹⁷ Clemency Petition, p. 11, 112

¹⁸ *Id.* p. 4, 5

sexual assault might have taken place, even though Baldwin had never been charged with sexual assault. Baldwin was found guilty of murder and sentenced to die.

APPEALS

The initial appeal, claiming Baldwin's trial was marred by improper procedure and racism, was assigned to the original trial judge in the case. He denied the appeal and upheld his earlier decision. The Alabama Court of Criminal Appeals accepted his ruling in its entirety and denied Baldwin relief.¹⁹ This action was later denounced in a brief signed by 33 prosecutors and judges across the country, including six justices of state supreme courts.²⁰ Despite the discovery of the suppressed trial record and irrespective of alleged violations of Baldwin's constitutional rights, the U.S. Court of Appeals for the Eleventh Circuit and the U.S. Supreme Court both denied relief.²¹

During the appeals process, complete transcripts of Baldwin's trial were withheld from his attorneys. A court recorder claimed no voice tapes of the trial had been made, although both the tapes and short-hand notes were discovered 20 years later. Both tapes and notes revealed discrepancies in the transcript provided by the state after Baldwin's trial.²² Baldwin was never provided with the opportunity to present this evidence in any court.

CONCLUSION

Brian Baldwin was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. Allegations of torture and racial bias by the State of Alabama, in violation of constitutional and international human rights, were sufficiently egregious to warrant a reversal of the trial court's decision. The initial appeal alleging improper procedure and racism was heard by the same judge who had convicted Baldwin, and against whom some of the allegations of racism and misconduct were being made. Nonetheless, the trial court's decision held. Both state and federal courts, including the U.S. Supreme Court, denied relief in spite of the numerous and egregious allegations of rights violations. Brian Baldwin was executed after sitting in the electric chair for one hour.

¹⁹ *Baldwin v. State*, p. 539 So.2d 1103 (Ala. Ct. App. 1988)

²⁰ Statement of Interest of *Amici Curiae* to 11th Circuit and Letters

²¹ Petition for *Writ of Certiorari*, p. ix #7

²² *Id.* p. vii-viii #6

Cornelius Singleton (Alabama)

ALLEGATION

On November 20, 1992, the State of Alabama, with the acquiescence of the federal government, executed Cornelius Singleton in the electric chair. The state and federal governments failed to ensure Singleton's right to a fair and impartial trial, free from racial discrimination. The unfair and racially discriminatory trial resulted in Singleton's execution.

CRIME

On November 12, 1977, Sister Ann Hogan was murdered while praying in a cemetery in Mobile, Alabama. Hogan was found buried under stones and logs in a wooded area adjacent to the cemetery. She died from strangulation and asphyxiation. Singleton was arrested, tried, and convicted for her murder.

SALIENT ISSUES

- There was no physical evidence placing Singleton at the scene of the crime or linking him to the murder.¹
- Singleton had no connection to the victim and no motive.²
- Eyewitnesses identified the man thought to be the killer as a white male with blonde hair.³ Singleton was an African-American man.
- No other suspects were investigated.⁴
- Cornelius Singleton had an IQ between 55 and 65. He was illiterate.⁵
- Singleton unknowingly waived his right to counsel.⁶
- Singleton signed a dictated confession, but did not understand what he was confessing to or the consequences of his confession.⁷ He was led to believe that he was confessing to stealing bed sheets.⁸
- The prosecutor had Singleton's girlfriend sit on his lap in the interrogation room while the prosecutor was dictating the confession.⁹
- In order to charge Singleton with a capital crime, the prosecution needed evidence of an additional crime. Police conducted a thorough search for a watch allegedly stolen from the victim, but failed to find it. A brief second search produced the missing watch, which was allegedly found on the mantel of Singleton's grandfather's house.¹⁰

¹ Whitman Narrative on case, p. 3

² Id.

³ Police Report, Statement of Cathy Barnes, November 19, 1977

⁴ Affidavits, Rosie and Terri Miller; Narrative, p. 2

⁵ State Parole and Probation report, p. 4

⁶ Motion to Suppress Evidence, Circuit Court of Mobile, AL, p. 5; Interview with Singleton, January 1, 1988

⁷ Trial Testimony Cathy Barnes, p. 207

⁸ Motion to Suppress Evidence, Circuit Court of Mobile, AL, p. 5; Interview with Singleton, January 1, 1988

⁹ Trial Testimony Cathy Barnes, November 1981, p. 206

¹⁰ Motion to Suppress, #2, p. 2; Affidavit, Officer Lofton

TRIAL

Cornelius Singleton, an African-American man, was convicted by an all-white jury¹¹ of capital murder based on a coerced confession, dictated by the prosecution. After his arrest, Singleton was interrogated for several hours. During that time, he unknowingly waived his rights to counsel.¹² His girlfriend was then brought to the police station and made to sit on Singleton's lap while the District Attorney reportedly dictated a confession, which he had Singleton repeat while another officer recorded it as if it was Singleton's own words.¹³ Throughout the interrogation, there was a discussion of a recent incident in which Singleton thought he was buying bed sheets from another resident in his boarding house. A neighbor had reported that her sheets were stolen. The discussion was confusing and disorienting for Singleton, who thought he was being questioned about the sheets. Singleton had an IQ between 55 and 65.

Singleton was taken to the cemetery where the murder took place and was questioned about details, despite his apparent lack of knowledge of the crime. According to Singleton, the victim's pager and some papers were on the ground and he was told to pick them up but refused.¹⁴ He was then returned to the police station where he was told to sign the confession.¹⁵ He could not read, but he signed the confession after being told that other charges pending against him would be dropped. In fact, no charges were pending. His girlfriend witnessed his signature.¹⁶

In order to secure a capital conviction, the state needed to convict Singleton not only of murder, but also of an aggravating circumstance, in this case, robbery. The state alleged the victim's watch was missing and undertook an extensive search of the home of Singleton's grandfather. The search failed to turn up the watch. A second, brief search subsequently was conducted and the watch was found in plain sight on his grandfather's mantel. The watch served as evidence that the victim had been killed during the commission of a felony robbery, which provided the necessary special circumstances for a capital conviction.

There was no evidence to link Singleton to the crime or the crime scene and no evidence that he knew the victim or had a motive to kill the victim. Eyewitnesses in the area described a suspicious white man with long blonde hair lurking around the cemetery on the day of the murder. There was some blood on the victim's blouse and the outline of a hand with fingers pointing downward on the back of the blouse. The state failed to investigate eyewitness accounts and failed to link the forensic evidence to Singleton.

Singleton's lawyers failed to investigate independently, failed to provide an adequate defense, and failed to challenge the selection of an all-white jury. Singleton was convicted quickly and sentenced to death, despite the lack of any clear evidence linking him to the scene of the crime or to the victim and statements that another man had committed the murder.

APPEALS

Appeals were based on the fact that Singleton's original attorney had failed to use his mental retardation for mitigation purposes at sentencing, according to Matthew McDonald, one of his last

¹¹ *Mobile Register*, "New Evidence Claims may Delay Execution," p. 1a, November 18, 1992

¹² Motion to Suppress, p. 5; Trial Transcript, p. 205

¹³ Trial Testimony Cathy Barnes, p. 207-208

¹⁴ Trial Testimony Cathy Barnes, p. 209; interview with Singleton, Jan. 1, 1988

¹⁵ Id. p. 208

¹⁶ Id. p. 208

lawyers. Singleton's appeals were denied.¹⁷ His conviction was then overturned when the US Supreme Court found part of the death penalty statute unconstitutional. He was retried in 1981 and again convicted and sentenced to death.¹⁸ He never met with the attorney who filed two of his appeals,¹⁹ and for many years while on death row, he never had an attorney. Before Singleton's execution, a church bus of people from Mobile went to the governor's office to plead for clemency. When they arrived they were told that the governor was busy and an aide would talk with them. All the people sat down in the capitol and refused to leave. Around 7:30 p.m., Governor Hunt, who was a minister and also had a retarded daughter, agreed to see a group of them. He did not grant clemency.

CONCLUSION

Cornelius Singleton was executed in spite of compelling evidence of innocence and numerous allegations of rights violations during the police investigation and the original criminal trial. The State of Alabama failed to protect Singleton's right to a fair and impartial trial and his right to be free from racial discrimination. Such rights violations are especially egregious in light of Singleton's mental incapacity. The state and federal appeals courts, including the U.S. Supreme Court, denied relief.

¹⁷ This is based on the information available to the researchers. The Grassroots Investigation Project regrets that it was unable to receive full documentation from Mr. Singleton's appeals.

¹⁸ *Mobile Press Register*, February 11, 1986

¹⁹ Interview with Singleton, January 1, 1988; Interview with Press, video, November 19, 1992

Freddie Lee Wright (Alabama)

ALLEGATION

On March 3, 2000, the State of Alabama, with the acquiescence of the federal government, executed Freddie Lee Wright in the electric chair. The state and federal governments failed to ensure Wright's right to a fair and impartial trial, free of racial discrimination. The unfair and racially discriminatory trial resulted in Wright's execution.

CRIME

Warren and Lois Green, a white couple, were shot and killed during an armed robbery at their Western Auto Store in Mount Vernon, Alabama. A woman entering the store later identified Theodore Otis Roberts as one of the robbers and he was arrested. The state identified a handgun belonging to Roberts as the murder weapon.¹ Months later, charges against Roberts were dropped and four other black men, including Freddie Lee Wright, were indicted in the case. Wright's three co-defendants named him as the shooter in the robbery, and he was tried and convicted of armed robbery and murder.²

SALIENT ISSUES

- Wright's first trial ended in a mistrial with eleven out of twelve jurors voting to acquit.³
- No physical evidence linked Wright to the crime.⁴
- Wright's co-defendants testified against him in exchange for receiving lesser sentences. Two of those co-defendants later recanted. One named another man as the killer.⁵
- The man who was originally arrested for the crime was never tried, even though his gun was identified as the murder weapon.⁶
- Key exculpatory evidence was suppressed by the prosecution.⁷
- The prosecution in Wright's second trial excluded all African-American persons from serving on the jury.⁸
- The detective who did much of the state's investigation admitted in court that he "bullshits his witnesses to get confessions" and that he lied to one of the co-defendants toward this end.⁹
- Two state Supreme Court justices voted to stay Wright's execution finding clear and convincing evidence of his innocence.¹⁰

¹ 11th Circuit Ct. of Appeals, p. 4: The Johnson Testimony; 5: The Stroh Affidavit; Clemency Petition, p. 16

² Clemency Petition, p. 8

³ 11th Circuit Ct. of Appeals, March 10, 1999, 2, B. Procedural history; Evidentiary Hearing, US District Ct., Oct. 1, 1996, p. 10, Lines 21-22

⁴ Clemency Petition, p. 8-9

⁵ Supreme Court of Alabama, dissent by Justice Johnstone, p. 3; Clemency Petition, p. 8

⁶ Supreme Court of Alabama, p. 3; Clemency Petition, p. 7-8; 11th Circuit Court of Appeals, p. 4: The Johnson Testimony

⁷ Clemency Petition, p. 19-20

⁸ 11th Circuit Ct. of Appeals, p. 8, #2; Clemency Petition, p. 2 #2, 10, #4

⁹ Evidentiary Hearing, p. 199, cross-examination of Detective Tillman

¹⁰ Supreme Court of Alabama Petition for *Writ of Certiorari*, dissent Johnstone and Cook, p. 4

TRIAL

It took two trials to convict Freddie Lee Wright. The first trial, with a mixed-race jury, voted eleven to one in favor of acquittal, resulting in a mistrial. An all-white jury convicted him of armed robbery and capital murder in the second trial.

The prosecution in Wright's first trial relied on the testimony of two of his co-defendants. One later recanted his testimony, saying the prosecutor threatened him with the electric chair if he did not name Wright as the shooter.¹¹ The other later provided a written affidavit saying that he, too, was pressured by the prosecution to name Wright.¹² This second co-defendant named another man as the killer. In exchange for their testimony, both men were allowed to plead guilty to lesser charges. One received a ten-year sentence and the other was permitted to serve his Alabama sentence concurrently with a sentence he had for another crime in Mississippi. The third man received a 25-year sentence but was later paroled. In spite of these witnesses' testimony at trial, a mixed-race jury voted eleven-to-one to acquit Wright of all charges, resulting in a mistrial. The same witnesses the state used to convict Freddie Wright were later deemed to be non-credible witnesses when they admitted that they had only fingered Wright to avoid the death penalty.

Wright's second trial took place before an all-white jury. The state's new witness was Doris Lambert, Wright's former girlfriend and the mother of their child. She claimed Wright had confessed his guilt to her, although in his first trial she had planned to testify for him, and was never called to the stand. The prosecution suppressed Lambert's history of drug addiction and mental illness.¹³ Also, Lambert reportedly received help regaining custody of her children in exchange for her testimony against Wright. Wright's lawyer claimed he had been unable to locate a key alibi witness, an insurance agent, with whom Wright did business shortly before the murders. The jury discounted the testimony of Wright's friends, who were with him in a club at the time of the murders. Wright was found guilty of capital murder and sentenced to death.

APPEALS

Wright's attorney continued to represent him in the appeals process, even after claims of ineffective representation were raised. Wright's attorney was subsequently disbarred. The District Attorney acknowledged that he should have disclosed evidence about Doris Lambert's psychiatric history and about deals made with Wright's co-defendants.¹⁴ In the course of denying Wright's *habeas corpus* petition, the U.S. District Court was critical of the state's conduct. The court also wrote that "numerous imperfections in the state court proceedings were revealed," that "some of these imperfections like the state's failure to disclose certain exculpatory materials – do not in any way deserve the blessing of this Court."¹⁵ However, it believed that a federal court was not the proper forum in which to re-try the case, so it denied relief and the Eleventh Circuit Court of Appeals affirmed. The Eleventh Circuit found that virtually all of these claims were procedurally barred from review because they had not first been presented to the state courts.¹⁶ Two Alabama Supreme Court Justices voted to stay Wright's execution citing evidence that "his conviction resulted from a lack of a

¹¹ Evidentiary Hearing, 1996, Cross examination of Roger McQueen, p. 149, Lines 8-22

¹² Evidentiary Hearing, 1996: Direct examination of Al Pennington; Reginald Tinsley letter, 1978

¹³ Supreme Court of Alabama, dissent, p. 3; Clemency Petition, p. 13-14

¹⁴ Clemency Petition, p. 17; Evidentiary Hearing, 1996, p. 117 – cross examination of DA Galanos

¹⁵ Id. p. 19,20

¹⁶ Id. p. 20

fair trial” and “the likelihood that we are sending an innocent man to his death.”¹⁷ Wright was, nevertheless, executed on schedule.

CONCLUSION

Freddie Lee Wright was convicted despite compelling evidence of his innocence and overwhelming evidence that he failed to receive a fair and impartial trial, free from racial discrimination. The State of Alabama withheld information from defense lawyers. It failed to provide Wright with competent legal representation. It excluded all African-American persons from the jury in order to secure a conviction – a practice later found to be an unconstitutional form of racial discrimination. (*Batson v. Kentucky*) Nonetheless, both state and federal courts, including the U.S. Supreme Court, upheld both Wright’s conviction and his death sentence.

¹⁷ Supreme Court of Alabama, dissent Johnstone and Cook

Thomas M. Thompson (California)

ALLEGATION

On July 14, 1998, the State of California, with the acquiescence of the federal government, executed Thomas Thompson by lethal injection. The state and federal governments not only failed to ensure Thompson's right to a fair and impartial trial, they intentionally disregarded a federal court ruling that Thompson's trial was unconstitutional. The unfair and unconstitutional trial resulted in Thompson's execution.

CRIME

On September 11, 1981 Ginger Fleischli was stabbed five times in the head and killed in Orange County, California. Fleischli had spent the evening with her former lover, David Leitch, Leitch's new roommate, Thomas Thompson, and Leitch's ex-wife. Fleischli went home with Thompson to an apartment Thompson shared with David Leitch, and had consensual sex with him. The next day, her body was found in a shallow grave. Both Leitch and Thompson were arrested and charged with Fleischli's murder, and Thompson was charged with rape. Thompson and Leitch were tried separately and convicted; Thompson was convicted of both murder and rape.

SALIENT ISSUES

- Both the Federal District Court¹ and the State Appeals Court² threw out the rape conviction, which was the special circumstances that made Thompson eligible for the death penalty.
- Both the Federal District Court³ and the State Appeals Court⁴ held that it was probable that Thompson would not have been convicted of rape or sentenced to death if his attorney had been competent.
- Seven former prosecutors, including an author of California's death penalty law, filed a brief on Thompson's behalf in the U.S. Supreme Court, citing the prosecution's manipulation of witnesses and facts in Thompson's trial and expressing doubt about Thompson's conviction.⁵
- Evidence that Leitch, the other man convicted of the murder, witnessed Thompson and the victim engaging in consensual sex the night of the murder was revealed to state investigators and Leitch's trial counsel prior to Thompson's trial, and was reiterated by Leitch under oath at his parole hearing in 1995. This evidence, which was inconsistent with the prosecution's theory that Thompson had raped and then murdered the victim to cover up the rape, was suppressed by prosecutors and only discovered by a defense investigator in 1997.⁶
- An eleven-judge panel of the Federal Appeals Court found that the prosecutor manipulated evidence and witnesses in Thompson's trial and later, at Leitch's trial, presented evidence that

¹ See *Thompson v. Calderon*, No. CV-89-3630-RG, slip opinion, p. 2 (C.D. Cal. Mar. 29, 1995)

² See *Thompson v. Calderon*, 120 F.3d 1045 (9th Cir. 1997) (*en banc*), rev'd, 118 S. Ct. 1489 (1998)

³ *Thompson*, No. CV-89-3630-RG, p. 10184-5, 10194-5

⁴ *Thompson*, 120 F.3d, p. 1048

⁵ Brief of *Amici Curiae* in Support of Petitioner, *Thompson v. Calderon*, 120 F.3d 1045 (9th Cir. 1997) (No.96-8707)

⁶ In re. Thomas M. Thompson, Petition for a *Writ of Habeas Corpus* and Emergency Application for Stay of Sentence of Death (July 3, 1997) p. 35. See also, Stephan Reinhardt, The Anatomy of an Execution: Fairness vs. "Process," 74 NYU Law Rev. p. 313, 347-348 (1999)

discredited its own previous case against Thompson.⁷ It ruled Thompson's death sentence erroneous and his trial unconstitutional.⁸

- The U.S. Supreme Court reversed the judgment of the Appeals Court, ruling that the court, in a series of errors, took too long to reach the decision to vacate Thompson's death sentence.⁹
- The evidence that Thompson was innocent of the special circumstances that made him eligible for the death penalty was barred by the Ninth Circuit Court from consideration because of the Anti-Terrorism and Effective Death Penalty Act of 1996.¹⁰

TRIAL

Thomas Thompson and David Leitch were tried and convicted separately, by separate juries. The prosecutor and judge were the same at each of the trials. Thompson was tried first, in 1983. At the preliminary hearing, the prosecution produced three jailhouse informants who testified that Thompson had confessed that he was hired by Leitch to help murder Fleischli, and after having consensual sex with her, Thompson had helped Leitch kill her. The prosecution subsequently rejected this theory and did not call these informants at trial.

At trial, the prosecution introduced a new theory – that Thompson had raped Fleischli and murdered her to cover up the rape. In this version of the murder, David Leitch solely helped Thompson dispose of Fleischli's body. The earlier testimony of the three jailhouse informants was discarded, and two new jailhouse informants testified that Thompson had confessed to the rape and murder.

Leitch had been arrested more than once for assault and had previously threatened to kill Fleischli, including ten days before she was murdered. Several defense witnesses, including a police officer, testified to Leitch's violent disposition, threats, and motive for the murder, but were discredited by the prosecution. The prosecution later used these same witnesses to convict David Leitch. Thompson was found guilty of both rape and murder, and because of the special circumstances of rape, was sentenced to death.

APPEALS

In March 1995, a federal court heard Thompson's appeal and reversed the rape conviction and the death sentence. The court found that there was no substantial evidence of rape or that Thompson had committed rape. The court also found that a competent attorney could have easily rebutted the circumstantial evidence used to convict Thompson and that Thompson's attorney was incompetent in failing to discredit a notoriously unreliable jailhouse informant. The court declined to reverse Thompson's murder conviction because of stringent legal hurdles for overturning convictions. However, it urged the state not to re-try Thompson on the rape, stating that the numerous inconsistencies in the case left the court with an "unsettled feeling."

In 1996, a three-judge panel of the U.S. Court of Appeals re-instated the rape conviction and the death sentence, finding that the incompetence of Thompson's attorney would not have made a difference in the verdict. In May 1997, additional evidence surfaced concerning Thompson's rape conviction. Two

⁷ Thompson v. Calderon, 120 F.3d, p. 10195-10205

⁸ Reinhardt, Anatomy of an Execution, p. 337

⁹ See Calderon v. Thompson, 118 S. Ct. 1489, 1494 (1998) (Kennedy, J., joined by Rehnquist, C.J., O'Connor, Scalia, and Thomas, JJ.), #97-215; p. 4369-70

¹⁰ Reinhardt, p. 349-51

years earlier at a parole hearing, David Leitch testified that he had walked in on Thompson and Fleischli having consensual sex the night of the murder. Although Leitch said he gave this same information to police in 1981, he was never called to testify in Thompson's trial. Leitch's attorney corroborated that Leitch had always maintained Thompson and Fleischli had engaged in consensual sex. The parole board failed to pass this information on to Thompson's attorneys in 1994, although they were required to do so by law.

Based on this new information, Thompson's attorneys appealed his case again, asking for a hearing by the entire bench of judges of the Ninth Circuit of the U.S. Court of Appeals. Although the court initially denied the request, on August 3, 1997, an eleven-judge panel of the U.S. Court of Appeals found that it had erred in denying the original request and acted on its own motion to reverse Thompson's rape conviction and vacate his death sentence. The court disclosed a series of internal clerical and procedural errors that had caused Thompson's earlier appeal for a full bench hearing to be mistakenly denied. The federal panel found that the prosecution acted egregiously in Thompson's trial by manipulating witnesses and evidence, arguing inconsistent motives, and, at Leitch's trial, ridiculing its own theory of prosecution used to convict Thompson. Because Thompson's murder conviction was linked to the rape conviction, the court referred the case back to the District Court to re-examine the validity of the murder conviction.

The State of California challenged the decision of the U.S. Court of Appeals. In a 5-4 decision, the United States Supreme Court overturned the lower court's decision, upholding Thompson's rape conviction and death sentence. The Court did this in spite of an unprecedented appeal by seven former prosecutors and an author of the California death penalty statute, which outlined substantial doubts about the prosecutor's conduct and about Thompson's guilt. The Supreme Court justified its decision based on the Anti-terrorism and Effective Death Penalty Act of 1996.

CONCLUSION

Thomas Thompson was executed despite a U.S. Court of Appeals ruling that Thompson failed to receive a fair trial and that the original criminal trial was unconstitutional. Thompson's constitutional rights and international human rights were again violated by the direct actions of United States Supreme Court when it overturned the Court of Appeals decision despite overwhelming evidence of Thompson's innocence and compelling evidence that he failed to receive a fair and impartial trial.

James Adams (Florida)

ALLEGATION

On May 10, 1984, the State of Florida, with the acquiescence of the federal government, executed James Adams in the electric chair. The state and federal governments failed to ensure Adams's right to a fair and impartial trial. The unfair and racially discriminatory trial resulted in Adams's execution.

CRIME

On the morning of November 12, 1973 at approximately 10:30 a.m., Edgar Brown was beaten with a fire poker in the course of an alleged robbery in his home. He died in the hospital the next day as a result of the beating. Adams was arrested, tried, and convicted of his murder.

SALIENT ISSUES

- The one eyewitness who saw and spoke to a person leaving the house where the murder was committed originally said that he was certain Adams was not the person.¹ At trial, this eyewitness testified that Adams “may or may not” have been the person to whom he spoke.
- One of the witnesses, Vivian Nickerson, borrowed Adams's car shortly before the murder. This witness had a masculine appearance and fit many of the characteristics described by the eyewitness, but she was never included in any photo array or lineup.²
- According to Vivian Nickerson's original sworn statement, Adams was at her house at the time of the murder while she used his car. At trial, she testified to a different time-frame, alleging that Adams arrived after the time of the murder. The defense failed to impeach her testimony by raising the inconsistency between her two statements.³
- According to the Florida State Crime Lab, hair found in the victim's hand was not from Adams. This evidence was released three days after Adams was sentenced and then suppressed by the state.⁴
- A small bloodstain on one of the dollar bills in Adams's possession was consistent with the victim's blood type, but also with 45 percent of people living in the United States.⁵
- The one positive identification of Adams as the driver of the car seen in the victim's driveway was made by a man who accused Adams of having an affair with his wife, for which he had threatened revenge.⁶
- At the trial, Adams's criminal record was used by the prosecution to prejudice the jury, and it was a determining factor in Adams's conviction and death sentence.⁷
- Prosecutors used Adams's prior rape conviction, which was likely unconstitutional because he was tried without a lawyer, as an aggravating circumstance in the penalty phase of his trial to secure the death sentence.⁸

¹ Application for Executive Clemency, p. 25

² Application for Executive Clemency, p. 21

³ Id. p. 22

⁴ Id. p. 22

⁵ Id. p. 4, also footnote #2

⁶ Id. p. 24

⁷ FL Supreme Court, Initial Brief of Appellant, on appeal from 19th Judicial Circuit Court of FL, p. 5

- At the penalty phase of the trial, Adams’s defense attorney did not present mitigating evidence or challenge the prosecution’s use of a racially-biased prior conviction.⁹
- Throughout the trial, Adams was referred to as “nigger” by both the prosecution and his own defense counsel.¹⁰
- Prior to closing arguments, a private conference was held at which both the trial judge and prosecutor agreed that there was “no pre-meditation,” which should have exempted Adams from a death sentence.¹¹
- The jury voted to convict Adams of capital murder. At sentencing, the vote for death was 7 to 5.¹²

TRIAL

James Adams was convicted of capital murder on circumstantial evidence and on evidence that was contradictory. On the morning of the crime, Adams’s car had been seen traveling to and from the victim’s house and had been parked in the victim’s driveway. One witness reported that he thought Adams was driving the car towards the victim’s house shortly before the robbery and assault. A second witness positively identified Adams as the driver of the car seen leaving the victim’s home. This witness reportedly stated that he would testify against Adams because he believed that Adams was having an affair with his wife. However, the only witness to see a person leaving the victim’s house at the approximate time of the crime provided a description that did not fit Adams. After viewing a police line-up in which Adams was included, this witness was “positive” that Adams was not the person with whom he spoke. At trial, the same witness who could not pick Adams out of a lineup testified that Adams may or may not have been the person he saw leaving the house.

Adams said he was at the house of a friend, Vivian Nickerson, from 10:00 a.m. until 3:00 p.m. on the day of the murder. Nickerson initially confirmed Adams’s alibi and stated that she had borrowed Adams’s car before 10:30 a.m. At trial, she changed her testimony to say that Adams did not arrive at her house before 11:00 a.m. Adams’s attorney did not question the inconsistency of her statements. Although the state crime lab found that strands of hair on the victim were not from Adams, the crime lab report was not released until three days after the trial.¹³

Race was a factor throughout the trial. During the trial, both the prosecution and the defense referred to Adams as “nigger.” The prosecution repeatedly raised Adams’s prior conviction for rape in terms of the race of the victim. The fact that Adams had raped a white woman – not that he had merely committed rape – was the aggravating circumstance used by the state to secure a sentence of death, despite the fact that Adams had never before been convicted of a crime punishable by death.

APPEALS

The Florida Supreme Court upheld Adams’s sentence in December 1976, and *certiorari* was denied on October 3, 1977. He received a stay of execution by the Florida Supreme Court in April 1978. The U.S. Supreme Court continued his stay so he could file his *writ of certiorari*, which was denied

⁸ Motion to Vacate Judgment & Sentence, April 1984, p. 9, 10

⁹ Petition for *Writ of Habeas Corpus* 11th Circuit, p. 6-7

¹⁰ Southern Coalition Report, Summer 1984

¹¹ Petition for *Writ of Habeas Corpus* 11th Circuit, 6, 7

¹² State File Record 45, p. 450

¹³ Motion to Vacate Judgment and Sentence, 19th Circuit, p. 8,C

October 30, 1978. He had a clemency hearing November 5, 1979. His first death warrant was signed January 9, 1980. The Florida Supreme Court denied a stay, but he obtained one from the Southern District Court in February of 1980. His *writ* was denied in an unpublished opinion, and in July of 1983 the Eleventh Circuit Court of Appeals affirmed the denial. On January 11, 1984, the U.S. Supreme Court denied *certiorari*, and on April 12, 1984, his second death warrant was signed. All relief was then denied in the courts, and on May 9, 1984, the U.S. Supreme Court vacated his stay. He was executed the next day.¹⁴

CONCLUSION

James Adams was executed despite undisputed evidence of racial discrimination and compelling evidence of innocence. James Adams did not receive a fair trial. His court-appointed lawyers failed to lodge a competent defense, the state withheld evidence, and both the prosecution and defense were racially-biased and used racist remarks, which served to bias the jury. Nonetheless, by denying all appeals, both state and federal appeals courts upheld both Adams's conviction and his death sentence.

¹⁴ State File Record 45, 450 Appellate History

Willie Jasper Darden, Jr. (Florida)

ALLEGATION

On March 15, 1998, the State of Florida, with acquiescence by the federal government, executed Willie Jasper Darden, Jr. in the electric chair. The state and federal governments failed to ensure Darden's right to a free and fair trial. The unfair and racially discriminatory trial resulted in Darden's execution.

CRIME

On the evening of September 8, 1973, in the course of a robbery at Carl's Furniture Store in Lakeland, Florida, James Carl Turman was shot and killed and his 16-year-old neighbor was wounded. The police estimated the time of the murder to be between 6:00 and 6:30 p.m. Darden was arrested for a traffic violation but then subsequently charged with, tried, and convicted of Turman's murder, assault, and armed robbery.

SALIENT ISSUES

- The wife of the victim, who was an eyewitness to the shooting, was never asked to identify Darden in a lineup, but was asked to identify him in the courtroom, where he was the only African American male present.¹
- The alleged murder weapon was never conclusively tied to either the murder or to Darden.²
- Numerous state witnesses independently corroborated various parts of Darden's testimony, in which he denied any involvement in the crime.³
- Although the police claimed the crime occurred sometime between 6:00 p.m. and 6:30 p.m., the victim's minister was called to the crime scene at 5:30 p.m. He was never questioned and never called to testify.⁴
- A witness, Christine Bass, could place Darden at her house from 4:00 p.m. to 5:30 p.m. on the day of the crime, at or about the time of the murder, but was never called to testify though she came to court every day during the trial.⁵
- Bob Brazen, at a nearby filling station, repaired a muffler on the car and reported to the police that Darden left his filling station at closing time, around 6:00 p.m.⁶
- John Stone, a witness to a crash Darden had soon after his car was fixed, went to call a wrecker for Darden. On the way, as he drove by the furniture store he noticed police cars in front with flashing lights. He estimated the time as around 6:00 p.m.⁷
- Darden, meanwhile, contacted a wrecker about his car, got a ride to his girlfriend's house and called the sheriff's department to report his disabled car and to say he would remove it in the morning.⁸

¹ U.S. Supreme Court, dissent by Justice Blackmun, *Darden v. Wainwright*, No. 85-5319, pp.11-12

² *Id.* at 12

³ *Id.* at 12

⁴ Affidavit, Rev. Sam Sparks, Oct. 10, 1986

⁵ Affidavit, Christine Bass, October 10, 1986

⁶ *Executing Justice: The Moral Meaning of the Death Penalty*, by Lloyd Steffen, Pilgrim Press, 1998, p. 13

⁷ *Id.* p. 13

⁸ *Id.*

- Darden, an African American male, was convicted and sentenced by an all-white jury.
- At trial the prosecutor repeatedly referred to Darden as an animal who should be on a leash and said he wished he could see Darden with his face blown off by a shotgun.⁹
- Darden was sentenced to death despite the fact that the trial judge found Darden’s own testimony about his innocence a mitigating factor.¹⁰
- The Florida Supreme Court’s “careful review of the totality of the record” consisted of three paragraphs.¹¹
- The Magistrate before whom Darden’s federal *habeas* proceedings were conducted recommended that Darden be granted *habeas* relief on the basis of prosecutorial misconduct.¹²

TRIAL

Darden, an African American, was convicted by an all-white jury of killing a white man. The state intentionally excluded all African-American persons from the jury. Intentional exclusion of jurors solely on the basis of race has since been found to be unconstitutional (*Batson v. Kentucky*, 1986). Jury selection in Darden’s case was improper, according to U.S. Supreme Court Justice Harry Blackmun in his dissenting opinion.¹³

Three witnesses – the victim’s wife, the neighbor who was wounded in the shooting, and another neighbor – provided conflicting descriptions of the suspect, but all later identified Darden. Initially, the victim’s wife had difficulty describing the suspect. She was never asked to identify Darden in a line-up. She identified him in court, where he was the only African-American male present. The neighbor injured in the shooting initially described the shooter as a man larger than Darden. Discrepancies in eyewitness accounts included whether Darden had a mustache and whether he was wearing a white or maroon shirt. Darden’s lawyer failed to raise these discrepancies at trial.¹⁴

The time frame was key to securing Darden’s conviction. Christine Bass had stated that Darden was in front of her house with a broken down car from 4 to 5:30 p.m. She came to court daily during the trial to testify and was never called. Other witnesses, Brazen and Stone, had noted the time when they had contact with Darden. Stone, in particular, saw police cars in front of the furniture store at about 6 p.m. Darden, himself, called the sheriff’s office to report an accident he had after his car was fixed. This was at 6:32 p.m., according to the sheriff’s report.¹⁵ Yet the state was able to get a conviction. Years later, the victim’s minister, who had been called to the crime scene at 5:30 p.m. and had arrived at 5:55 p.m., realized that this information was significant to the case. Both he and Christine Bass gave affidavits that would have strengthened Darden’s alibi.

The prosecutor used racist remarks and inflammatory statements to prejudice the jury. During trial, he repeatedly expressed a wish “that I could see [Darden] sitting here with no face, blown away by a shotgun.”¹⁶ In addition to evidence of Darden’s innocence and evidence of ineffective counsel, the prosecution’s racist and inflammatory statements should have been grounds for a re-examination of this case.

⁹ U.S. Supreme Court, Dissent by Justice Blackmun, p. 4-5, #2, 3; Appellate Counsel Summary of Case, p. 8-9

¹⁰ U.S. Supreme Court, Dissent by Justice Blackmun, p. 12 & 13

¹¹ Id. footnote 1, p. 2

¹² U.S. Supreme Court, Dissent by Justice Blackmun, footnote #3

¹³ Id. p. 13, II

¹⁴ U.S. Supreme Court, dissent by Justice Blackmun, p. 12

¹⁵ Summary of Case, p. 6

¹⁶ U.S. Supreme Court, Dissent by Justice Blackmun, p. 4-5

APPEALS

On its way through state and federal appeals, Darden's case was found sufficiently egregious to warrant review on numerous grounds. Darden was granted a stay of execution to allow the court time to consider his appeal. In all he received seven death warrants and six stays. He came within hours of death several times.¹⁷ In 1984, the Eleventh Circuit Court of Appeals voted 7-5 to grant *habeas* relief to Darden. This decision, however, was overturned by the U.S. Supreme Court, which remanded the case for further consideration. On remand, the Eleventh Circuit denied relief. In 1986, Florida Governor Bob Martinez refused to meet with the witnesses whose statements corroborated Darden's alibi. He kept signing the death warrants as Darden lost in the courts.

CONCLUSION

Willie Jasper Darden, Jr. was executed despite compelling evidence of his innocence. The state failed to provide Darden with competent legal counsel. Darden's state appointed lawyers did not identify or call important witnesses who had evidence of Darden's innocence. The state intentionally excluded all African-American persons from the jury – a practice later found to be an unconstitutional form of racial discrimination. While appeals courts did find evidence of prosecutorial misconduct sufficiently egregious to warrant further review and even to grant *habeas* relief, the decision of the trial court, in the end, was upheld.

¹⁷ *Executing Justice: The Moral Meaning of the Death Penalty*, by Lloyd Steffen, p. 9

Jesse J. Tafero (Florida)

ALLEGATION

On May 4, 1990, the State of Florida, with the acquiescence of the federal government, executed Jesse J. Tafero in the electric chair. The state and federal governments failed to ensure Tafero's right to a fair and impartial trial and right to be free from cruel and unusual punishment. The unfair trial resulted in Tafero's execution.

CRIME

Early on the morning of February 20, 1976, a Florida highway patrolman and his friend, a visiting Canadian constable, approached a car parked at a rest stop for a routine check. Jesse Tafero, Sonia Jacobs, their two children, and Walter Rhodes, a prison friend of Tafero's, were asleep in the car. Allegedly, the patrolman saw a gun on the floor of the car. He woke the occupants and had Rhodes and then Tafero get out of the car. At some point after that, both the patrolman and the constable were shot. After fleeing the scene in the patrolman's car, and then dumping the car, kidnapping a man, and stealing his car, the three were caught at a roadblock. Rhodes, Tafero, and Jacobs were all arrested. Rhodes turned state's evidence in exchange for a plea to a lesser charge. Tafero and Jacobs were tried and convicted of capital murder.

SALIENT ISSUES

- Jesse Tafero was convicted and sentenced to death largely on the testimony of one co-defendant, Walter Rhodes, who named Tafero as the shooter.¹
- In exchange for his testimony, Rhodes was allowed to plead guilty to second-degree murder, and avoid the death penalty.²
- The prosecutor justified Rhodes's plea bargain based on a polygraph test he alleged Rhodes had passed.³
- The summary of Rhodes's polygraph test was withheld from the defense by the state.⁴
- In a legal challenge by Tafero's other co-defendant, Sonia Jacobs, a federal appeals court found that withholding the polygraph test was unconstitutional.⁵
- Rhodes recanted his testimony on three separate occasions – in 1977, 1979, and 1982 – stating that he, not Tafero, shot the policemen. Ultimately, Rhodes reverted to his original testimony.⁶
- Gunpowder tests were performed by the state. A federal appeals court confirmed that the test results indicated that Rhodes was the only one to have fired a gun.⁷

¹ Jacobs v. Singletary, 952 F.2d 1282, 1285 (11th Cir. 1992), 1285

² Id. p. 285, B

³ Id. p. 1289

⁴ Id.

⁵ Id. p. 1289

⁶ *Sun-Sentinel*, October 3, 1992, "Threats, bribes changed testimony, inmate says"

⁷ *Jesse Joseph Tafero vs. State of Florida*, transcript of proceedings before FL Parole & Probation Comm., September, 1982, p. 225

- At both his trial and his sentencing hearing, Tafero’s lawyer failed to call or question any witnesses on Tafero’s behalf.⁸
- Two eyewitnesses, who were testifying for the state, said that while the shots were being fired, one officer was holding Tafero over the hood of the car.⁹
- The judge was a former highway patrolman, who had only retired from the police force three years prior to the trial. He wore his police hat to work as a judge. He did not allow Tafero to call witnesses and would not allow him hearings on this decision.¹⁰
- The jury in the trial was un-sequestered.¹¹
- Tafero’s other co-defendant, Sonia Jacobs, was likewise convicted of capital murder on the basis of Rhodes’s testimony. After Tafero’s execution, evidence that had been suppressed by the state, which pointed to both Jacobs’s and Tafero’s innocence, was discovered.¹² Jacobs’s conviction was eventually overturned.
- Tafero’s court-appointed trial lawyer was subsequently convicted of bribing a jury and sent to prison.¹³

TRIAL

Jesse Tafero was convicted largely on the basis of co-defendant Walter Rhodes’s testimony that Tafero had shot both officers. A jailhouse informant also testified against Tafero. Rhodes was allowed to plead guilty to a lesser charge in exchange for his testimony against his two co-defendants, Tafero and Jacobs, who were each tried separately. The prosecutor maintained that Rhodes had passed a polygraph test and thus a plea bargain was justified. Evidence discovered after the trial showed that Rhodes had not passed the polygraph test and that the state had suppressed the results of the test, which contained statements contradicting Rhodes’s trial testimony. Rhodes recanted his testimony on three separate occasions – in 1977, 1979 and 1982 – stating that he, not Tafero, shot the policemen. Ultimately, Rhodes reverted to his original testimony. A statement from a prison guard corroborating Rhodes’ recantations was also suppressed and found years later.

Ballistic tests indicated that one gun shot both policemen. Ballistic tests also showed that Rhodes definitely had fired a gun and that Tafero might have fired a gun or might have simply handled a gun after it was fired. The later scenario corroborated Tafero’s account that Rhodes had shot the policemen and then handed Tafero the gun so that he could drive the car. Rhodes was driving the car when it was finally stopped during a shoot-out at a police roadblock.

At the trial, one eyewitness testified that he saw a man in brown, Tafero, spread eagle on the hood of the police car when the shots were fired. A second eyewitness testified that he saw a man in blue, Rhodes, move from the front of the car to the rear just before the shooting. Neither witness could identify which man was the shooter.

⁸ Id. p. 218-219

⁹ Id. p. 225

¹⁰ Id. p. 217

¹¹ Id. p. 222

¹² *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992)

¹³ *Jessie Joseph Tafero v. State of Florida*, Record-on-Appeal from the Circuit Court of the 16th Judicial Circuit in and for Broward County, Florida, In the Supreme Court of Florida, p. 216-217

APPEALS

Tafero's conviction was affirmed on June 11, 1981. A motion for *error coram nobis* failed in 1983. In 1988, the Florida Supreme Court denied state *habeas* relief. Other state appeals were also denied in 1984, 1987, and 1990. The Eleventh Circuit Court of Appeals reviewed the case twice, in 1986 and 1989, and affirmed the conviction.

In Sonia Jacobs' 1992 appeal, evidence of the suppressed polygraph test, the prison guard's suppressed statement, and a physical re-creation of the crime scene presented a convincing scenario that Rhodes was the sole shooter. The new evidence resulted in the reversal of Jacobs' conviction. Had the evidence been found prior to Tafero's execution, it is highly probable that his conviction would have been likewise overturned.

EXECUTION

Jesse Tafero was executed in Florida's electric chair. During the execution, Tafero's head seemed to catch on fire. Flames and smoke were seen shooting out of his head, causing the state to interrupt the electric current three times. Witnesses to the execution claimed that Tafero continued to breathe and move after the first charge was interrupted. The state's execution was particularly cruel, and it served as a final violation of Tafero's right to be free from cruel and unusual punishment.

CONCLUSION

Jesse J. Tafero was executed despite evidence of his innocence that was finally heard by a United States court, but only after Tafero was executed. The Eleventh U.S. Circuit Court found evidence compelling enough to overturn the conviction of Tafero's co-defendant, Sonia Jacobs – a conviction based almost entirely on the evidence used to convict Tafero. Jacobs later accepted a plea bargain and was released. Immediately upon release, she reaffirmed her innocence. Both state and federal courts failed to protect Tafero's right to a fair trial. The state's suppression of evidence that was favorable to Tafero's defense and that corroborated his claim of innocence violated Tafero's constitutional and international human rights. The initial violation was compounded by the failure of state and federal courts to act to protect Tafero's rights to a fair trial and his right to be free from cruel and unusual punishment, a right violated in the course of his execution.

Girvies Davis (Illinois)

ALLEGATION

On May 17, 1995, the State of Illinois, with acquiescence by the federal government, executed Girvies Davis by lethal injection. The state and federal governments failed to ensure Davis's right to a free and fair trial. The unfair and racially discriminatory trial resulted in Davis's execution.

CRIME

On December 22, 1978, Charles Biebel, an 89-year-old man, was shot and killed during the course of a robbery in his mobile home in Belleville, Illinois. There were no witnesses to the robbery/murder and there was no physical evidence at the crime scene to help identify the murderer.¹ Girvies Davis was arrested, tried, and convicted of Biebel's murder.

SALIENT ISSUES

- Despite the fact that Davis was illiterate, he allegedly wrote a list of his crimes. He then signed written confessions for more than a dozen other crimes, including eleven murders. The jury was not told that he was illiterate.²
- Davis testified at a pre-trial hearing that he had signed the confessions under duress. He alleged that he was taken out of police car, unshackled, and told he could sign or make a run for it.³
- Before the trial, the prosecutor acknowledged that several of Davis's confessions appeared to be false.⁴
- The prosecution acknowledged that Davis was not the triggerman in the Biebel killing.⁵
- Davis's confession named Richard Holman as triggerman; Holman was never tried in relation to the murder.⁶
- The state presented no physical evidence to link Davis to the crime scene at the time of the crime.⁷
- Students at Medill School of Journalism at Northwestern University, working under Professor David Protess, found many inconsistencies in the confessions. One of the officers who took them down acknowledged that they were not read to Davis.⁸
- Davis refused to allow his lawyers to present evidence of his psychological disorders at his sentencing hearing, although this information might have helped avert a death sentence.⁹
- Three murders to which Davis had confessed were cited to the jury to gain a death sentence, even though prosecutors acknowledged that Davis could not have committed them.¹⁰

¹ Clemency Petition, p. 10

² Clemency Petition, p. 11-12

³ Clemency Petition, p. 17

⁴ Id. p. 13; Volume of Exhibits from Clemency Petition, exhibit 5, news article September 19, 1979

⁵ Clemency Petition, p. 9

⁶ Id.

⁷ Clemency Petition, p. 21-22

⁸ Center on Wrongful Convictions website, [www.Illinoisdeathpenalty.com/Girvies Davis](http://www.Illinoisdeathpenalty.com/Girvies%20Davis)

⁹ Clemency Petition, p. 32-33

¹⁰ Center on Wrongful Convictions website, [www.Illinoisdeathpenalty.com/Girvies Davis](http://www.Illinoisdeathpenalty.com/Girvies%20Davis); Clemency Petition, p. 33

- The prosecution systematically used preemptory challenges to exclude all African Americans from the jury. Intentional exclusion of jurors solely on the basis of race has since been found to be unconstitutional.¹¹ (*Batson v. Kentucky*, 1986)

TRIAL

Davis, known to the police as a small-time hustler and a thief, was picked up by the police and driven around East St. Louis in a squad car. He testified at a pre-trial hearing that he confessed to a large number of crimes under duress. He was then coerced into signing a series of confessions. Since he was illiterate, he could not read the confessions he signed. In his confession to the Biebel murder, he said he was outside the house when Richard Holman allegedly shot the victim. This confession was the only evidence linking Davis to the crime. Holman was never tried for the murder.

During the sentencing phase of the trial, the jury was never told that Davis was illiterate, nor was it told about the brain damage he had sustained when he was hit by a truck as a child. He was considered borderline mentally retarded and suffered from mental illness and alcoholism. Davis, whether out of shame or ignorance, did not allow his attorneys to present this information to the jury. Had they been able to do so, it might have helped him to avoid a death sentence.¹²

APPEALS

Davis's conviction and sentence were affirmed by the Illinois Supreme Court on February 18, 1983. Justice Joseph Goldenhersh voted to affirm the conviction, but dissented on the sentence on the grounds that there was no evidence that Davis, not Holman, had been the triggerman. Justice Seymour Simon dissented on both conviction and sentence. The St. Clair County Circuit Court dismissed Davis's petition for post conviction relief without a hearing. The Illinois Supreme Court unanimously denied his appeal on December 21, 1987. On January 13, 1994 the U.S. District Court and the Seventh Circuit Court of Appeals denied Davis's petition for federal *writ of habeas corpus*. His petition for a rehearing *en banc* by Seventh Circuit was denied on April 13, 1994.¹³

CONCLUSION

Girvies Davis was executed despite compelling evidence of his innocence. The state intentionally excluded all African Americans from the jury, a practice later found to be an unconstitutional form of racial discrimination. The only evidence against Davis was his confession, which he claimed was coerced. Many of his other confessions were found to be false. Other evidence, such as his illiteracy, brain damage, and mental impairments was not presented to the jury. Another man, thought to be the triggerman in this case, was never tried for the crime.

¹¹ Clemency Petition, p. 22

¹² Clemency Petition, p. 3

¹³ *Id.* at Girvies Davis, defendant case data

Larry Griffin (Missouri)

ALLEGATION

On June 21, 1995, the State of Missouri, with the acquiescence of the federal government, executed Larry Griffin by lethal injection. The state and federal governments failed to ensure Griffin's right to a fair and impartial trial. The unfair trial resulted in Griffin's execution.

CRIME

Quintin Moss was killed in a drive-by shooting while allegedly dealing drugs on a street corner in St. Louis, Missouri on June 26, 1980. Griffin was arrested, tried, and convicted for the murder.

SALIENT ISSUES

- Larry Griffin's lawyer was a recent law school graduate who had never tried a murder case. He failed to provide Griffin with competent legal representation. He failed to investigate adequately and thus did not find evidence of, or identify eyewitnesses who could testify to, Griffin's innocence.¹
- Three eyewitnesses were able to substantiate Griffin's claim of innocence.²
- The state's primary witness later recanted his testimony and discredited his identification of Larry Griffin, claiming the identification process was highly prejudicial.³
- Evidence suggests that, prior to testifying, the state's primary witness was promised a reduced sentence in exchange for his testimony. The jury was not provided with this information.⁴
- Investigations conducted after the trial revealed two new eyewitnesses who provided accounts of the incident that corroborated Griffin's innocence.⁵
- One eyewitness testified under oath that Griffin was not involved in the killing.⁶
- Another eyewitness, who knew both the victim and Larry Griffin, stated in a sworn affidavit that he saw the shooting, that he knew Larry Griffin, and that Griffin did not participate in the shooting.⁷
- Forensic evidence from the car and weapons failed to link Griffin to the murder.⁸
- The prosecution suppressed information about a witness who could testify that Griffin was not involved in an earlier attempt on the victim's life.⁹
- The "actual innocence" standard imposed by the U.S. Supreme Court in reviewing state court decisions resulted in Griffin's actual innocence claims not being heard by the courts despite substantial evidence of innocence.¹⁰

¹ Clemency Petition, p. 3, 14; Narrative on case, provided by appellate attorney Kent Gipson, p. 2, 34-37

² Id. p. 24

³ Id. p. 2-4, 18-20, 27

⁴ Id. p. 3-4

⁵ Id. p. 23-24, footnote, 24

⁶ Id. p. 6, 20-23, Narrative on case, p. 1, "Kerry Caldwell"

⁷ Id. p. 23-24; Narrative on case, p. 2

⁸ Clemency Petition, p. 39

⁹ Id. p. 39 (Trial Transcript, p. 243-246); Id. p. 7-8 *Herrera v. Collins*, 113 S. Ct. 853 (1993); *Schlup v. Delo*, 115 S. Ct. 851 (1995); clemency petition, p. 24-25

TRIAL

Larry Griffin was convicted of murdering Quintin Moss based largely on the testimony of one eyewitness, Robert Fitzgerald, who had been at the scene of the killing. Shortly after the murder, Fitzgerald made a positive photo identification of Griffin. He then testified at trial that he saw three black males in the car from which the shots were fired and that he could identify Larry Griffin as one of them. He testified that Griffin shot at the victim through the window of the car with his right hand. Griffin's attorney did not challenge this, even though Griffin was, in fact, left-handed. He did present evidence that Griffin had seriously injured his left arm a few weeks earlier, but without evidence that Griffin was left-handed, the relevance of the testimony was lost to the jury. Larry Griffin's fingerprints were not found on either the car or the weapons.¹¹ All other evidence against Griffin was circumstantial.

Griffin's lawyer failed to present a competent defense. In addition to missing important opportunities to challenge the state's case, he presented an alibi defense without investigation of the alibi. The prosecution conducted its own investigation and was able to discredit the alibi, showing that the alibi witness had erred about the day he and Griffin had been together, thus making it appear that the alibi had been fabricated.¹²

Post-trial investigations by Griffin's lawyers revealed police and prosecutorial misconduct prior to and at the trial. The prosecutor had cut a deal for one witness' testimony. The prosecution failed to reveal that there were two additional eyewitnesses who confirmed that Griffin was not involved in the murder. The first testified that he witnessed the shooting, and he did not recognize any of the three men who killed the victim. He knew Griffin and was certain that Griffin was not in the car with the shooters. The other witness, a 16-year-old member of a gang led by Griffin's brother at the time of the murder, also testified that Larry Griffin was not involved in the shooting and named the three men who were – all members of the gang led by Griffin's slain brother. He was able to describe the exact sequence of events leading to Moss's murder and to testify to the killers' motive. He also was able to identify correctly the place where the car and guns had been abandoned and later found by the police.

Fitzgerald, the eyewitness used by the prosecution to convict Griffin, also later provided information that helped support Griffin's claim of innocence. Fitzgerald admitted that he perjured himself at Griffin's trial when he positively identified Griffin in court. He also testified to the suggestive nature of the original police identification process. According to Fitzgerald, one of the investigating officers showed him a photograph of Griffin and told him, "We know this man is involved." Fitzgerald was then presented with five photos from which he identified Griffin.¹³

APPEALS

Griffin's trial lawyer also served as his lawyer in the initial appeals despite his inexperience and apparent incompetence. The conviction and sentence were affirmed in state appeals courts without rehearing – decisions upheld by the U.S. District Court and, initially, by the Eighth Circuit Court of Appeals. Due to the incompetence of the original lawyer in failing to identify and raise several constitutional claims, the Eighth Circuit vacated its earlier decision and remanded the case back to the

¹⁰ Clemency Petition, p. 12

¹¹ Id. p. 35-36 (Trial Transcript, p. 329-340)

¹² Id. p. 19 (Hearing trial, pp. 19-23)

¹⁴⁵ Id.

district court for further proceedings. The Eighth Circuit appointed a new lawyer, who amended Griffin's petitions to reflect the constitutional claims, including the claim that Griffin's first lawyer failed to provide competent counsel and thus, Griffin did not receive a fair trial. A limited evidentiary hearing was held by the Federal District Court, at which new evidence of Griffin's innocence was produced, including testimony from the two new witnesses, and Fitzgerald's testimony that he had perjured himself in his in-court identification of Griffin. Despite the constitutional claims and the new evidence of Griffin's innocence, the District Court again dismissed Griffin's petitions for relief. The Eighth Circuit affirmed the denial of all relief without permitting Griffin or his new lawyer to brief the court – a decision upheld by the U.S. Supreme Court.

CONCLUSION

Larry Griffin was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. Griffin's original lawyer lacked the necessary experience to undertake capital cases and failed to provide Griffin with competent counsel. He neither found nor presented evidence of his innocence or evidence challenging key prosecution witnesses. He also made a highly prejudicial error when he failed to confirm independently the information provided by the defense's alibi witness at trial. Although the Eighth Circuit Court of Appeals agreed that Griffin's original lawyer failed to provide competent counsel, federal courts, including the U.S. Supreme Court, upheld Griffin's conviction and death sentence. In so doing, the courts relied on the new, and unreasonably high, standard of review for cases claiming innocence, which had evolved during Griffin's appeals. With issues of innocence still unresolved, Griffin was executed.

Roy Michael Roberts (Missouri)

ALLEGATION

On March 10, 1999, the State of Missouri, with the acquiescence of the federal government of the United States, executed Roy Michael Roberts. The state and federal governments failed to ensure Roberts's right to a fair trial. The unfair trial resulted in Roberts's execution.

CRIME

Thomas Jackson, a guard at the Moberly Training Center for men, was stabbed to death during a prison riot on July 3, 1983. Roy Roberts was accused of holding Jackson, while other inmates stabbed him. He was tried and convicted of capital murder.

SALIENT ISSUES

- No physical evidence linked Roberts to the killing.¹
- Many inmates testified at Roberts's trial that he was elsewhere during the riot and did not take part in the killing.²
- The four eyewitnesses who testified against Roberts in the guilt phase of his trial did not identify Roberts, a large man who weighed over 300 pounds, in their initial statements.³
- All of the surviving guards who could identify who stabbed Jackson named another man as the killer. That man was tried and received a life sentence.⁴
- At trial, Roberts's lawyer failed to cross-examine three of the four eyewitnesses for the prosecution about their initial failure to identify Roberts.⁵
- None of the witnesses or the prosecution claimed Roberts had a weapon or that he had stabbed the victim.⁶
- Although the victim was covered in blood after he was stabbed in the eye, the heart, and the abdomen, Roberts's clothes had no blood on them.⁷
- A 17-page summary report by the investigator for the Department of Corrections released two weeks after the riot did not mention Roberts as a suspect and indicated there was not likely to be other identification of prisoner involvement.⁸
- Two days after this report, Officer Halley implicated Roberts in the murder despite no mention of him in his initial report.⁹
- An inmate who testified against Roberts recanted his testimony and stated that he had lied to get parole from the State of Missouri.¹⁰

¹ Clemency Application of Roy Michael Roberts, In the Offices of the Governor and the Missouri Board of Pardons and Parole, Feb. 1999, p. 4, 13-15

² Id. p. 7

³ Id. p. 7-13, Exhibit L, 4: Statement of Officer Hess, July 4, 1983; Exhibit J, 6 – Statement of Officer Wilson, September 13, 1983

⁴ Id. p. 3

⁵ Id. p. 4, 5

⁶ Id. p. 13, B

⁷ Id. p. 13

⁸ Id. p. 5

⁹ Id. p. 9

- Roberts passed a polygraph test in which he attested to his innocence just weeks before his execution.¹¹

TRIAL

Roy Roberts was convicted of capital murder for allegedly holding down a prison guard while other inmates stabbed him to death. No physical evidence ever tied Roberts to the crime. Although it was a bloody murder, the clothes Roberts was wearing on the day had no blood on them. Immediately after the riot, prison officials did a thorough search and confiscated all bloodied clothes from inmates. Roberts's clothes were not confiscated because they were not bloody.

Roberts was convicted based on what has been called "evolving testimony," that is testimony that evolves over time to fit the facts of the crime. No one implicated Roberts in the murder in the two weeks following it. None of the eyewitnesses mentioned Roberts as being anywhere near the victim, much less holding him down, as was later alleged in testimony, despite the fact that Roberts, a large man weighing over 300 pounds, stood out in a crowd.

Two weeks after the murder, the Department of Corrections submitted a 17-page internal investigative report. It failed to identify Roberts as a participant in the murder. It confirmed that no one knew who, if anyone, had held down the victim. Nonetheless, three guards later testified that Roberts held down the victim. All of these guards knew Roberts prior to the murder and yet failed to identify him as a participant in the murder immediately following it. One of these officers was hypnotized to bolster his memory, and still did not identify Roberts. Roberts's lawyer cross-examined only one of the eyewitnesses about inconsistencies between his initial statements and his trial testimony. This eyewitness maintained that he had simply forgotten to report seeing Roberts holding Jackson. Roberts's attorney never cross-examined the other three.

APPEALS

Roberts's appeals in the state courts were denied. In 1986, his direct appeal and his federal *writ of certiorari* were denied. Again in 1989, his *writ of certiorari* was denied by the court *en banc*. The U.S. Supreme Court denied his final petition for *certiorari* on Jan 11, 1999. Shortly before his execution, his attorneys filed a *writ* in the Missouri Supreme Court claiming that Roberts was innocent and that the execution of an innocent man violated due process. This petition was denied and an appeal was made to the U.S. Supreme Court, which was denied hours before his execution.

CONCLUSION

Roy Michael Roberts was executed despite compelling evidence of his innocence. There was no evidence that Roberts stabbed the victim. There was very little evidence that he participated in the murder. There was substantial evidence of his innocence. In fact, there is some evidence that he was innocent of the crime that put him in prison in the first place.¹² Roberts's court-appointed lawyers failed to challenge the little evidence that there was against Roberts, an omission that rendered his assistance to Roberts ineffective and Roberts's trial unfair. Nonetheless, Roberts was executed.

¹⁰ Affidavit, Richard Hays, investigator with statement from Michael Dunn, February 26, 1999

¹¹ Report from Don Dunlap & Associates, certified polygraphists, February 20, 1999

¹² Clemency Petition, p. 3, footnote 2

Odell Barnes, Jr. (Texas)

ALLEGATION

On March 1, 2000, the State of Texas, with acquiescence by the federal government, executed Odell Barnes by lethal injection. The state and federal governments failed to ensure Barnes's right to a fair and impartial trial. The unfair trial resulted in Barnes's execution.

CRIME

Helen Bass was murdered on November 30, 1989. She had been shot, bludgeoned, and stabbed. She was found face down on her bed, nude. A rifle butt was found in her room and a kitchen knife covered in blood was found on the floor just inside the door to her house. The room was in shambles. Her jewelry box and two purses appeared to have been dumped and scattered. Other belongings were discovered near a fence outside her house. Barnes was arrested, tried, and convicted for the murder.

SALIENT ISSUES

- The original defense attorneys appointed by the state failed to investigate, and thus failed to discover and present evidence of Barnes's innocence.¹
- The original defense attorneys failed to have evidence that was used to convict Barnes tested by defense experts.²
- Counsel who took over the case for federal appeals sought analysis of the crime scene, fingerprint identification, DNA testing, and additional time to conduct a factual investigation. All these requests were denied.³
- Counsel in federal appeals nonetheless carried out independently funded investigations that yielded substantial evidence that raised doubts about Barnes's guilt.
- Blood on Barnes's coveralls, part of the evidence used to secure his conviction, contained a preservative found in test tubes used to store blood. The expert opinion of the chemist, hired by the defense, was that it did not come from "original, legitimate crime scene evidence . . . deriving from natural bleeding from a normal human being."⁴
- The primary eyewitness and his sister saw a man jump a fence near the crime scene one and one-half hours before the victim returned home.⁵ The witness told his sister that the man was not Barnes, but testified at trial that it was Barnes.⁶
- The two main witnesses for the prosecution were implicated in the crime by independent witnesses.⁷

¹ Petition for a *Writ of Certiorari* in the case of Odell Barnes, Jr. v. Gary Johnson, Supreme Court of the United States, October Term, 1999, p. 13

² Successor Application for *Writ of Habeas Corpus, Ex parte* Odell Barnes, Jr., Court of Criminal Appeals, State of Texas and in District Court of Wichita County, Texas, 89th Judicial District, January 21, 2000, p. 2

³ Petition for a *Writ of Certiorari, Odell Barnes, Jr. v. Gary Johnson*, Supreme Court of the United States, October Term, 1999, p. 4

⁴ Successor Application for *Writ of Habeas Corpus, Ex parte* Odell Barnes, Jr., Court of Criminal Appeals, State of Texas and in District Court of Wichita County, Texas, 89th Judicial District, January 21, 2000, p. 19

⁵ Successor Application for *Writ*, 9

⁶ Petition for *Writ of Certiorari*, p. 12 #6

⁷ Id at Slip op. p. 12

- The fingerprint on the murder weapon was analyzed by the state and was found not to be Barnes's fingerprint.⁸ A defense expert identified the fingerprint as belonging to one of the state's main witnesses.⁹
- A lamp on which Barnes's fingerprint was found, and that the state claimed had been recently acquired by the victim, had been in the victim's home for at least five years.¹⁰ Barnes had been in the house numerous times and had helped move furniture.¹¹
- Evidence suggests that one of the state's witnesses cut a deal with the District Attorney on two drug charges pending against him in exchange for his testimony, although this was not revealed to Barnes's original trial lawyers.¹²

TRIAL

Barnes was convicted of Helen Bass' murder. The prosecution's case against Barnes consisted primarily of circumstantial evidence. Two witnesses were presented to link Barnes to the murder weapon. There was substantial evidence implicating one of these witnesses in the murder. The other witness agreed to testify in exchange for a deal on two drug charges, despite a state policy prohibiting such deals. There was no other evidence that the gun had been in Barnes's possession or that he had used it. Two small spots of blood were found on coveralls in Barnes's car. The blood was consistent with the victim's blood type, which is also the blood type of 50% of the African-American population in the U.S. Another witness for the prosecution testified that he had seen Barnes jump a fence at the victim's house one and one-half hours before she returned from work, even though he had earlier told his sister that it was not Barnes. This witness admitted he was at least 45 yards away. Barnes's mother testified that she had brought the victim home that night and returned to her home whereupon her son arrived within five minutes.

Defense attorneys appointed by the state failed to carry out their own investigation or to test independently the forensic evidence. At trial, they did not present evidence of Barnes's innocence or challenge the prosecution's witnesses.

APPEALS

Initial appeals at the state level were handled by Barnes's original state appointed lawyers. Both the District Court of Wichita County and the Court of Criminal Appeals affirmed the trial court's decision and upheld Barnes's conviction and sentence. Part way through the appeals process, new attorneys took over the case. Finding that independent investigations and forensic testing had never been done, they asked courts for funds and time to investigate. In Texas, new evidence must be introduced within 30 days of the original sentencing. They were repeatedly denied, but performed an investigation using volunteers and private funding, which uncovered substantial evidence of innocence. They also uncovered evidence of prosecutorial misconduct, perjury, and constitutional violations. Nevertheless, state and federal courts denied relief.

⁸ Successor App. For *Writ*, p. 16

⁹ *Id.*

¹⁰ *Id.* p. 19

¹¹ *Id.* p. 18

¹² *Id.* p. 29

CONCLUSION

Odell Barnes was executed despite compelling evidence of his innocence that was never heard by any court in the United States. His original court-appointed defense attorneys failed to provide him with adequate legal counsel. They neither found nor presented evidence of his innocence or evidence challenging key prosecution witnesses. Once the opportunity had been missed at the trial level, state and federal appeals courts refused to hear new evidence – evidence that had been suppressed by the prosecution and that had gone undiscovered by the defense. In many cases, inflexible time limits and increasingly rigid thresholds for review, such as those imposed by the Federal Anti-Terrorism and Effective Death Penalty Act, lead to violations of constitutional protections and human rights. Odell Barnes's was one such case. Despite the fact that he did not receive a fair trial and in spite of evidence of his innocence, no appeals court would hear his case.

Robert Nelson Drew (Texas)

ALLEGATION

On August 22, 1994, the State of Texas, with the acquiescence of the federal government, executed Robert Nelson Drew. The state and federal governments failed to ensure Drew's right to a fair and impartial trial. The unfair trial resulted in Drew's execution.

CRIME

On February 21, 1983, Jeffrey Mays was stabbed to death. He had been traveling with a friend and three hitchhikers they had picked up. Two of the hitchhikers, Robert Drew and Ernest Puralewski, were arrested, charged, and convicted of capital murder.

SALIENT ISSUES

- Drew's co-defendant, Ernest Puralewski, pleaded guilty to the murder in exchange for a lesser sentence. He later confessed that he, alone, killed Jeffrey Mays.¹
- Puralewski signed a sworn affidavit fully exculpating Drew.²
- The murder weapon was owned by and in the possession of Drew's co-defendant, Puralewski, when Puralewski was arrested.³
- Drew was convicted largely on the testimony of one eyewitness, Bee Landrum.
- Landrum later admitted that he did not see what happened and recanted his original testimony.⁴
- Landrum took two polygraph tests; the first was inconclusive and the second showed "no deception."⁵
- The state withheld a tape-recorded interview with Landrum made hours after the killing in which he admitted not having seen the murder. The tape was suppressed for more than five years after the trial.⁶
- Both the prosecution and the defense acknowledged that Drew's knife was not the murder weapon and did not cause fatal wounds.⁷
- Puralewski pleaded guilty to one count of capital murder and was sentenced to 60 years.⁸

TRIAL

Robert Drew was tried and convicted largely on the testimony of one man, Bee Landrum, who claimed to be an eyewitness to the murder. Landrum's testimony was extremely shocking, powerful, and graphic. He claimed he could see all the people at the crime scene and that he saw Drew pull the

¹ Application for *Writ of Habeas Corpus*, p. 5

² Id. p. 5, 10, 11-12

³ Id. p. 9

⁴ Petition for *Writ of Certiorari*, October, 1993, p. 11-12, B

⁵ Application for *Writ of Habeas Corpus*, p. 17-18

⁶ Petition for *Writ of Certiorari*, p. 12-13, C

⁷ Petition for *Writ of Habeas Corpus*, p. 9

⁸ Id. p. 10

victim's head back and slash his throat. He even re-enacted the killing for the jury.⁹ A tape-recorded interview with Landrum, made several hours after the murder in which he admitted that he had not seen the killing, was not offered into evidence at trial. Drew's co-defendant, Ernest Puralewski, who was awaiting his own trial for capital murder, refused to testify at Drew's trial. Drew was sentenced to death.

APPEALS

In March 1984 Drew filed a motion for a new trial based on Puralewski's confession and affidavit exonerating Drew.¹⁰ The motion was denied without opinion, a decision affirmed by the Texas Court of Criminal Appeals. According to the court, the motion, filed 101 days after sentencing, was 71 days too late and thus no court in Texas could hear the motion or grant relief.¹¹ A petition for *writ of habeas corpus* was filed in state court based on new evidence of Drew's innocence, including evidence that had been suppressed by the state. It was denied.¹² Drew filed a petition for *writ of habeas corpus* in federal district court on June 14, 1988. This court denied relief, and the Fifth Circuit Court of Criminal Appeals affirmed. Drew's execution was stayed November 25, 1992 by a timely filing of a *writ of certiorari*. The U.S. Supreme Court denied review on June 28, 1993. Drew had another execution date for October 14, 1993, which was set aside by a new *habeas* application in state court. It went on to the Court of Criminal Appeals and was denied in an unpublished order, September 30, 1993. Drew filed a second petition for *habeas* challenging the bias of the state trial judge. Three days later the federal district court dismissed that petition. The Fifth Circuit affirmed on October 11, 1993. Drew filed a petition for *certiorari* in the U.S. Supreme Court, which denied review. He received a temporary injunction on October 13, 1993, just six hours before his execution, to resolve pending issues. Ultimately, all relief was denied, and he was executed.

CONCLUSION

Robert Nelson Drew was executed despite evidence that he did not receive a fair trial. Because of a strictly imposed time limit, Texas courts refused to grant Drew a new trial despite substantial evidence of his innocence that only became available after the trial. The state withheld evidence of Drew's innocence and discredited their sole eyewitness, whose testimony was essential in securing Drew's conviction. The withholding of evidence rendered Drew's trial unfair.

⁹ Id. p. 9

¹⁰ Application for *Writ of Habeas Corpus*, p. 12; Motion for Remand for Fair Hearing on Evidence of Innocence, Application For *Writ of Habeas Corpus*, Additional Evidence, July, 1994, all

¹¹ Id. p. 12; Memorandum in Support of Plaintiff's 1st Original Petition For Declaratory and Injunctive Relief and *Writ of Mandamus*, October 5, 1993, p. 5

¹² Id. p. 15, footnote #10

Gary Graham (Texas)

ALLEGATION

On June 22, 2000, the State of Texas, with the acquiescence of the federal government, executed Gary Graham by lethal injection. The state and federal government failed to ensure Graham's right to a fair and impartial trial in which all the facts could be presented. The unfair trial resulted in Graham's execution.

CRIME

On May 13, 1981 at approximately 9:30 p.m., Bobby Grant Lambert was shot and killed, execution-style, as he walked across the parking lot of a Safeway store in Houston, Texas. Gary Graham was arrested shortly after the murder for unrelated crimes, and was then charged with Lambert's murder, for which he was tried and convicted.

SALIENT ISSUES

- No physical or circumstantial evidence placed Graham at the crime scene.¹
- The prosecution's case against Graham consisted almost entirely of the testimony of a single eyewitness who saw him through her car window from 30 to 40 feet away.²
- In a reportedly suggestive identification procedure, this witness failed to identify Graham in a photo array. She subsequently identified him in a line-up in which he was the only person who also had been in the photo array.³
- None of the other four eyewitnesses identified Graham as the killer or placed him at the crime scene.⁴
- In the police line-up, which included Graham, one eyewitness specifically excluded Graham.⁵
- Graham's physical appearance differed in important respects from the descriptions provided by several witnesses.⁶
- Two witnesses, who saw the man thought to be the killer at close range, have provided affidavits in which they assert that, having viewed Graham's photograph, they are positive that he was not the shooter.⁷
- Graham's court-appointed trial lawyer did not interview or present at trial the other eyewitnesses or Graham's alibi witnesses.⁸
- The Houston Police Department's firearms expert found that the bullet that killed the victim was not, and could not have been, from Graham's gun.⁹

¹ Original Petition for *Writ of Habeas Corpus*, October 1999, p. 3

² *Id.* p. 3

³ *Id.* p. 7-9

⁴ *Id.* p. 3-7

⁵ *Id.* p. 4

⁶ *Id.* p. 3-7

⁷ *Id.* p. 3-7

⁸ *Id.* p. 3

⁹ *Id.* p. 10

- On appeal to the U.S. Court of Appeals for the Fifth Circuit, the court found that “there is a large body of relevant evidence that has not been presented to the state court” and sent the case back to the state of Texas for an evidentiary hearing.¹⁰
- The state of Texas dismissed Graham’s application for such an evidentiary hearing.¹¹
- Graham returned to federal court, but the Anti-Terrorism and Effective Death Penalty Act of 1996, which subjects cases to a much higher threshold for federal review, had been enacted by Congress in the interim, and thus the Fifth Circuit refused to review the decision of the state court.¹²
- The Supreme Court of the United States refused to review the contradictory decisions.¹³
- Despite substantial evidence of innocence, Governor George W. Bush refused to grant Graham a 30-day stay of execution and the Board of Pardons and Paroles denied clemency.

TRIAL

Gary Graham was convicted based on the testimony of one eyewitness, Bernadine Skillern, who witnessed the crime from 30 to 40 feet away while she sat in her car in the store parking lot at 9:30 at night. She remembered the killer as being clean-shaven with a short afro. She failed to identify Graham in a photo display. However, Graham’s photo was the only one fitting her description, and she remarked that it might be him. The next day she viewed a line-up in which Gary Graham was the only person she had seen previously in the photo array. She then identified him as the killer. The jury did not hear evidence that Skillern had failed to identify Graham in her initial review of photos. In fact, she testified that she initially did identify him, despite the police report that said she did not.

There were four other eyewitnesses in the parking lot or the store that night. Two were called for a line-up, but failed to identify Graham. They were not asked specifically if Graham was the shooter. The other two witnesses were certain that Graham was not the shooter. They had seen a man, whom they described as the killer, waiting in front of the store. Neither of these witnesses was ever heard by the jury that convicted Graham or by any judge reviewing his appeals at either the state or federal level.

Lambert was killed by a .22 caliber bullet. Although Graham had a .22 caliber pistol, according to the Houston Police Department’s firearms expert, it was not the gun used in the killing. Thus, no forensic evidence linked Graham to the murder. The jury was never given this information.

No motive for murder was established at trial. During a ten-day period following Lambert’s murder, Graham did commit a dozen aggravated robberies; he pled guilty to all charges. These crimes bore no similarity to the murder, but were similar to each other. Lambert had not been robbed and he and Graham did not know each other. Lambert, a white man, had faced federal drug trafficking charges in Oklahoma City after his arrest in 1980. He was forced to testify before a federal grand jury about the persons for whom he was transporting drugs. He was killed soon after he testified. Lambert’s attorneys informed Graham’s counsel before the execution that they had reason to believe that Lambert was killed by the drug organization with which he was involved.

¹⁰ Clemency Petition , p. 16-17

¹¹ Id. p. 17

¹² Id. p. 17-18

¹³ Id. p. 17-18

Graham's court-appointed trial attorney failed to investigate, interview, or call to the stand Graham's alibi witnesses or the four eyewitnesses who could have testified for the defense. Evidence of Graham's innocence was never heard in a court of law.

APPEALS

Graham's court-appointed trial attorney failed to produce evidence of Graham's innocence at trial, as well as at his first state and federal *habeas corpus* proceedings in 1988 and 1993. Only after a second round of state and federal appeals in 1993 was the evidence of innocence presented. State courts refused to re-examine the case and denied the application without a hearing. In Texas, new evidence must be introduced within 30 days of sentencing. Graham was then required to show evidence of actual innocence in order to qualify for federal review. On appeal to the U.S. Court of Appeals for the Fifth Circuit, the court found that "there is a large body of relevant evidence that has not been presented to the state court" and sent the case back to Texas for an evidentiary hearing. Texas again refused to hold an evidentiary hearing. Graham immediately returned to the Fifth Circuit, but the Anti-Terrorism and Effective Death Penalty Act of 1996, which subjects cases to a much higher threshold for federal review, had been enacted by Congress in the interim, and thus the Fifth Circuit refused to review the decision by the state court.

CONCLUSION

Gary Graham was executed despite compelling evidence of his innocence and evidence that he did not receive a fair trial. A substantial body of exculpatory evidence existed. Initially, Graham's court-appointed lawyer failed to seek and find such evidence. His later defense counsel did investigate and did find this evidence. By then, the trial and initial appeals already had been completed. Defense lawyers were barred from ever presenting the evidence in any court by both state and federal courts. Texas courts repeatedly refused to hear new evidence, despite eventually being directed to do so by the Fifth Circuit Court of Appeals. The Anti-terrorism and Effective Death Penalty Act (AEDPA), enacted in 1996 in the final stages of Graham's appeals, then limited federal jurisdiction over the case. In Graham's case, as in an increasing number of other cases, rigid thresholds for review and inflexible time limits for appeals, such as those imposed by the AEDPA, lead to violations of constitutional protections and human rights. Both state and federal courts, including the U.S. Supreme Court, denied Graham relief. In spite of substantiated allegations that Graham never received a fair trial and compelling evidence of his innocence, Graham was executed.

Richard Wayne Jones (Texas)

ALLEGATION

On August 22, 2000, the State of Texas, with the acquiescence of the federal government, executed Richard Wayne Jones by lethal injection. The state and federal governments failed to ensure Jones's right to a fair and impartial trial. The unfair trial resulted in Jones's execution.

CRIME

On February 19, 1986, Tammy Livingston was abducted, robbed, and then stabbed 19 times and murdered. Her body was left in a field and, later, set on fire. The next day, a woman was arrested while trying to cash checks belonging to the victim. Under interrogation, the woman said she had obtained the checks from her boyfriend, Richard Jones. Jones was arrested that evening and was subsequently charged with and convicted of the crimes.

SALIENT ISSUES

- After 12 hours of interrogation and 21 hours in custody without food or sleep, during which police exerted undue influence by threatening Jones and his pregnant girlfriend with the death penalty if he did not confess, Jones confessed.¹
- He signed the confession under duress, only after he was told that his girlfriend's release was contingent upon his signing the statement.²
- Jones's girlfriend signed two statements implicating Jones, but alleged that police changed her words when writing them down.³ She claimed the police told her that Jones had fled, and she was going to have to take the rap for the murder.⁴
- Three eyewitnesses to the abduction provided a description of the suspect as a clean-cut, white male with reddish-brown hair, who was wearing a red shirt the night of the murder. Jones had blonde hair, a mustache, and was wearing a brown and gray plaid shirt the night of the murder.⁵
- Two of the three eyewitnesses to the abduction failed to identify Jones in a line-up. Their failure to identify him was omitted from the police report.⁶
- One eyewitness identified Jones, even though he did not fit her original description.⁷
- Despite the bloodiness of the murder, only two small spots of blood were found on Jones's jeans, and no blood was found on his shirt.⁸
- According to Jones, his sister admitted to him that she and her boyfriend, Walt Sellers, committed the crimes.⁹

¹ *Writ of Habeas Corpus*, August 12, 2000, p. 10-12, 20; In Re Richard Wayne Jones, Application for Reprieve From Execution, Commutation of Death Sentence, and Conditional Pardon, p. 12-13, Exhibit #2, Jones Affidavit, p. 5

² *Writ of Habeas Corpus*, p. 12

³ Id. p. 9-10, Clemency Petition, p. 18-19, Clemency Exhibits, #3 – Grand Jury Testimony, Yelena Comalander

⁴ In Re Richard Wayne Jones, Application for Reprieve From Execution, etc. p. 14

⁵ *Writ of Habeas Corpus*, 2000, p. 20-21

⁶ Id. p. 20-22

⁷ Id.

⁸ Id. p. 13, 15-16

- From the time he was arrested, Jones maintained that Sellers was the actual killer.¹⁰
- Two witnesses gave sworn statements that they heard Sellers implicate himself in the murder.¹¹
- Witnesses corroborated Jones’s testimony that Sellers had tried to sell items belonging to the victim.¹²
- Jones had an IQ of 75 and was considered borderline retarded.¹³
- DNA testing was requested and denied prior to execution.¹⁴

TRIAL

Richard Wayne Jones was convicted of Tammy Livingston’s murder largely on the basis of his coerced confession. While in police custody, Jones was denied food and sleep for 21 hours, and was threatened with the death penalty for himself and his girlfriend if he did not confess. The circumstances under which he confessed were coercive, particularly for a man who was diagnosed as being border-line mentally retarded and had grown up in state schools – the last of which had been closed down for brutality.

The evidence was overwhelmingly circumstantial and contradictory. Although there were three eyewitnesses, only one identified Jones in a police lineup. Jones, however, did not fit her original description of the abductor. A second witness failed to identify Jones in a police line-up.

Jones’s sister, a drug addict, admitted to Jones that she and her boyfriend, Walt Sellers, committed the crimes. Sellers was never investigated as a possible suspect, despite his convictions for similar crimes during the period of 1985 to 1987. Sellers was arrested with a dagger one month after the murder. The Fort Worth Police confiscated the dagger and had it in their locker room at the time of Jones’s pre-trial investigation, but never subjected it to forensic testing. It was later destroyed.¹⁵ Three witnesses provided sworn statements that Sellers had been in possession of the victim’s property shortly after the murder. After Jones’s trial and conviction, two other witnesses gave affidavits in which they stated that Sellers told them he knew Jones was innocent.

APPEALS

Jones’s trial lawyer filed his initial state appeals, which were denied. On November 1, 1993, Jones filed an application for post conviction *habeas corpus*. After an evidentiary hearing, the trial court recommended relief be denied. The Court of Criminal Appeals adopted the recommendation, May 25, 1994. After obtaining new counsel, Jones was allowed to return to state appeals courts to raise issues, such as lack of effective trial counsel, which had not been raised by Jones’s original lawyer. Jones filed a petition for *writ of habeas corpus* in federal district court on August 12, 1994. It was dismissed because several state issues were not resolved. He reapplied for state relief and was denied again with the Court of Criminal Appeals adopting the denial. The Fifth Circuit Court of Appeals affirmed his

⁹ *Writ of Habeas Corpus*, 2000, p. 13-14

¹⁰ *Writ of Habeas Corpus*, 2000, p. 3,14; Supplement and Exhibits – Clemency Petition Supplement #4, Letter to wife from Jones, p. 2-3

¹¹ *Writ of Habeas Corpus*, 2000, p. 17-19, Exhibit B, C; Clemency Petition, Exhibits 10, 11 – Gravelle & Miller

¹² *Writ of Habeas Corpus*, 2000, p. 16-17; Clemency Petition, Exhibits 6, 7, 8 – affidavits: Daffern, King, Christian

¹³ *Writ of Habeas Corpus*, 1993, p. 22-23: Cognitive Dysfunction

¹⁴ *Writ of Habeas Corpus*, 2000, p. 22-24

¹⁵ *Writ of Habeas Corpus*, 2000, p. 17, 18, footnote # 9

conviction in an unpublished opinion on April 7, 2000. The U.S. Supreme Court denied hearing his case.

CONCLUSION

Richard Wayne Jones was executed despite compelling evidence of his innocence that was never sufficiently considered by any court in the United States. He was convicted largely on the basis of a confession obtained under coercion and duress. Both the state and federal courts failed to protect Jones's right to a fair trial by sanctioning the trial court's use of the coerced confession to convict Jones. State and federal appeals courts denied the legal challenge to Jones's conviction and the evidence of innocence uncovered after his conviction. Despite being subjected to police coercion, in violation of his constitutional and international human rights, and irrespective of evidence of his innocence, Jones was executed.

Frank Basil McFarland (Texas)

ALLEGATION

On April 29, 1998, the State of Texas, with the acquiescence of the federal government, executed Frank Basil McFarland by lethal injection. The state and federal governments failed to ensure McFarland's right to a fair and impartial trial by not providing effective counsel, withholding exculpatory evidence, permitting perjured testimony, making deals with witnesses, and using jailhouse informants. The unfair trial and refusal of the state to hear new evidence resulted in McFarland's execution.

CRIME

On February 1, 1988, Terry Hokanson, a shoeshine girl at a topless bar, was seen near a parking lot by three boys. She called for help, stumbled, and fell to the ground. She had been stabbed repeatedly. Before she died, she told the boys that she thought she had known her assailants, but realized she did not know them when she accepted an invitation to get in their car and go partying. She was quite conscious. She gave her name and other details to a police officer, who inadvertently arrived at the scene of the crime while on routine patrol. McFarland was arrested over a month later.

SALIENT ISSUES

- The state withheld evidence regarding the victim's dying declarations at the crime scene: Three boys found her and two of these boys spoke with her. The one who did not was the only one to testify at trial.¹⁶
- The two boys who spoke with the victim gave sworn oral statements and written statements just after the murder that were suppressed by the state and discovered seven years later through a Freedom of Information request.¹⁷
- All three boys saw a white car in the area; only one testified and he mentioned a white car.¹⁸
- Six state witnesses (5 police officers and one police dispatcher) testified that the boys said they saw a blue car, thereby perjuring themselves. McFarland's car was blue.¹⁹
- DNA testing by an FBI specialist on hair found in the victim's hands was inconsistent with that of McFarland or his co-defendant.²⁰
- DNA testing on hairs found in McFarland's car was consistent with those from a rabbit skin coat worn by the victim. Semen in victim was consistent with McFarland and 6% of the Caucasian population in the U.S.²¹
- The state's star witness had warrants out for his arrest for parole violation. After McFarland was convicted, they were dismissed. This witness gave testimony about why he returned to testify and about a conversation he had with McFarland's co-defendant. This testimony was rebutted in affidavits by the witness' own mother and a witness to the conversation, Larry

¹⁶ First Amended Application for *Writ of Habeas Corpus*, April 1996, p. 34 and Appendix A, B

¹⁷ Id. p. 34-35, Appendix A-D

¹⁸ Id. p. 40

¹⁹ Petition for *Writ of Certiorari*, motion for certificate of probable cause to appeal, 1997, p. 12

²⁰ Petition for *Writ of Habeas Corpus*, p. 28

²¹ Id. p. 28, 29

York. Neither was called to testify. The star witness had previously been a police informant.²²

- Another state witness had a pending arrest warrant which was later dismissed; when the warrant was recalled, the reason given was “key witness in a murder prosecution in Texas.”²³
- McFarland’s co-defendant was murdered a month after Hokanson. Throughout McFarland’s trial, prejudicial statements were made by the prosecution that McFarland might have been involved in this murder. The actual murderer was convicted years later and had no connection to McFarland.²⁴
- The police officer that spoke with the victim before her death was hypnotized to “enhance” his recall of her statements.²⁵ He then claimed she had said, “two white men she met at the club had raped and stabbed her.”²⁶
- Another police officer testified that the victim did know McFarland previous to the murder; she did not name him before she died, bolstering the defense position that her assailants were unknown to her.²⁷
- The deceased co-defendant’s girlfriend gave hearsay testimony that she had heard her boyfriend talk about the fact that he and McFarland killed a girl. She had not mentioned this in earlier statements.²⁸
- The state presented evidence about McFarland’s character and acts of misconduct that should have been deemed inadmissible in the guilt/innocence phase of the trial.²⁹
- Defense counsel failed to present evidence that the victim knew McFarland previously, that McFarland’s girlfriend also had a rabbit skin coat and had been in his car, and that two witnesses could have impeached star witness testimony.³⁰

THE TRIAL

Michael Wilson, McFarland’s co-defendant, was killed a month after Terry Hokanson. Two witnesses came forward and testified that Wilson had “confessed” to his involvement in the Hokanson murder and had implicated McFarland as the killer. One was Wilson’s girlfriend, Rachel Revill, who was an illegal immigrant, and the other was Mark Noblett, a known police informant who was able to walk away from an arrest warrant a day after the trial ended.³¹ Noblett gave perjured testimony about Wilson’s confession that could have been rebutted by his own mother and Larry York, who were not called to testify. Both Revill and Noblett were questionable witnesses.³² The prosecution used Wilson’s murder in the trial to suggest the possible involvement of McFarland in another violent crime, although McFarland was never formally charged.

Of the people who spoke with the victim before her death, two boys who had provided sworn statements during the investigation were never called by the state to testify. Furthermore, the state

²² Id., 51-53 and Petition for *Certiorari*, motion for certificate of probable cause to appeal, p. 14, Appendix F

²³ Petition for *Writ*, p. 60

²⁴ Id. p. 64

²⁵ Id. p. 65

²⁶ Id. p. 68

²⁷ Petition for *Writ*, p. 49

²⁸ Petition for *Writ*, p. 18-19

²⁹ Id. p. 48

³⁰ Id. p. 46, 49, 50

³¹ First Amended Petition for *Writ of Habeas Corpus*, p. 53, A

³² Id. p. 30

failed to turn the boys' statements over to the defense as exculpatory evidence. Neither boy ever mentioned a blue car, only a white car. Yet, five police officers and a dispatcher testified at trial that the boys had seen a blue car. A police officer used hypnosis to elicit quite different testimony from the original sworn statements.

Forensic evidence showed that McFarland was in a group of 6% of Caucasians in the U.S. who could have left semen in the victim. Hair in her hands was not from Wilson or McFarland, according to tests available at that time. The hair from a rabbit skin coat found in McFarland's car could have been from the victim's coat. It was not until sentencing that it was brought out that McFarland's girlfriend had a similar coat.

McFarland was convicted and sentenced to death.

APPEALS

In 1993, McFarland had an execution date and no lawyer because Texas law at that time did not require the state to provide legal representation after his first automatic appeal. He contacted the now defunded Texas Resource Center, and they agreed to help him find counsel. State and federal courts, including the Fifth Circuit Court of Appeals, denied him both appointment of counsel and a stay of execution without the filing of a *habeas* petition. Hence, he filed a *pro se writ of habeas corpus*.³³ The U.S. Supreme Court stayed the execution and ordered federal courts to appoint him *habeas* counsel.³⁴ State courts and the Court of Criminal Appeals denied both the petition for *writ of habeas corpus* and requests for discovery on November 15, 1995.³⁵ Petition for *writ of certiorari* was filed in 1995 and a Motion for Certificate of Probable Cause to Appeal in April 1998. All were denied and McFarland chose not to file a Clemency Petition.

CONCLUSION

Frank McFarland was executed despite compelling evidence of his innocence and evidence that his trial was unfair. His trial counsel failed to raise issues that would have been exculpatory. This occurred at the same time that the state suppressed evidence favorable to McFarland. Perjured testimony from police officers, key witnesses, and the use of an informant enabled the state to gain a conviction and death sentence.

³³ Petition for *Writ of Habeas Corpus pro se*, p. 1

³⁴ See *McFarland v. Scott* 114 S. Ct 2563 (1994)

³⁵ Petition for *Writ*, p. 5-6

Roger Keith Coleman (Virginia)

ALLEGATIONS

On May 20, 1992, the State of Virginia, with the acquiescence of the federal government, executed Roger Keith Coleman in the electric chair. New evidence, including evidence that another man committed the crime, failed to stop his execution. The state and federal governments failed to secure Coleman's right to a fair and impartial trial. A missed deadline barred appellate review and resulted in his execution.

CRIME

Wanda McCoy was attacked in, or just outside, her home on March 10, 1981. She was then raped and murdered. There was little sign of a struggle and, as she seldom opened the door when she was home alone, it was assumed she had allowed her attacker to come into the house. Roger Coleman, her brother-in-law, had access to the house and immediately became a suspect. Coleman, who worked in a mine, had reported to work that night but had left when his shift was dismissed. A fingerprint was found on the front screen door and a pry mark on the front door molding, and bloodstains inside the house.¹ The victim had broken fingernails, cuts on the hands, and a dark, dusty substance on her body. The autopsy report recorded wounds to her chest and throat, but did not mention defensive wounds on her hands or a bruise on her arm. Limited forensic testing was done.

SALIENT ISSUES

- Coleman had a well-documented list of his whereabouts on the night of the murder and several alibi witnesses who gave affidavits.²
- The state's own timeline of events the night of the murder suggested it was unlikely Coleman could have committed the murder.³
- Physical evidence from the crime scene – including soil on McCoy's hands, an unanalyzed fingerprint on the front screen door of her house, and a pry mark on a door molding – contradicted the prosecution's theory that the victim willingly allowed her murderer to enter her home, a theory used to convict Coleman.⁴
- The prosecution claimed that there was little sign of a struggle. However, the victim had defensive wounds, including cuts on her hands, broken fingernails, and a bruise on her upper arm but the defense did not introduce this evidence.⁵
- Testing of semen did not rule out Coleman but later forensic opinions based on more sophisticated DNA testing indicated a second person may have participated in the crime.⁶

¹ Crime Scene Report, Exhibits to 2nd Petition for *Writ of Habeas Corpus*, p. 24

² Clemency Petition, Exhibit 6: Affidavits by Sandra Ratliff, Gary Ratliff, Johnny Stiltner, Ronald Perkins; Exhibit 7: Coleman's corroborated timeline for night of the murder

³ Clemency Petition, exhibit 7: Prosecutor's account of Coleman's whereabouts the night of the murder

⁴ 2nd Petition for *Writ of Habeas Corpus*, see footnote 1; Clemency Pet., Exhibit 9: Affidavit of James McCloskey, p. 15-16, #35, #36

⁵ *May God Have Mercy*, John C. Tucker, p. 74-75

⁶ 2nd Pet. for *Writ of Habeas*, Exhibit V: Forensic Science Assocetty Smithiates, November 1990, p. 5, #2, #3

- At trial, the prosecution presented evidence given by a jailhouse informant who alleged Coleman had confessed to the crime. The informant was released from jail soon after testifying.⁷
- Another man later stated that he had killed Wanda McCoy. This man had a history of violence and rape.⁸
- Coleman's chances to appeal his conviction in state and federal courts were restricted when his lawyers missed a deadline for filing his original appeal in state court by one day.⁹

THE TRIAL

There was intense pressure in the community for an arrest in the McCoy murder, and police were frustrated at the lack of evidence tying Coleman to the crime.¹⁰ Coleman had been convicted of attempted rape several years earlier despite his denial of involvement and having an alibi.¹¹ He served almost two years in prison and was released with a record as a sex offender. This affected his trial for the McCoy murder. Furthermore, McCoy's husband had immediately named Coleman as a likely suspect because of his access to the McCoy household as Wanda's brother-in-law. An expert for the state examined two hairs taken from the victim's body, compared them with Coleman's, and found they were consistent with his hair type.¹² Coleman's attorney did not present effective challenges to this testimony.¹³ The state presented a seemingly impossible series of events between Coleman's arrival at the mine and the victim's husband's discovery of her body, but the prosecution was able to point out some uncertainties in testimony of alibi witnesses. Blood type testing did not rule Coleman out, nor did it show he had a role in the murder. A jailhouse informant claimed Coleman had confessed to him while Coleman was in the county jail awaiting trial. No other suspect was asked to provide hair or blood samples for comparison with those recovered from the victim's body.¹⁴ Roger Coleman was convicted and sentenced to death.

APPEALS

Confusion and disagreements about deadlines in the state courts led to a judge's order refusing the state *habeas corpus* petition. Coleman's lawyers had 30 days under Virginia law to file an appeal to the refusal. Their calculations were different than those of the state. They sent the appeal by regular, not certified mail, and it arrived after the 30-day deadline. Coleman's appeal was, therefore, dismissed without review. This ruling crippled Coleman's subsequent attempts to have his claims heard. The U.S. Supreme Court supported the state's position that the missed deadline precluded federal review of his *habeas* claims.¹⁵ Clemency was refused partly because of the certainty with which the courts refused the appeals. Before Coleman's scheduled execution, Governor Douglas Wilder agreed to grant clemency if Coleman passed a polygraph test. Coleman failed the test just hours before he was executed.¹⁶

⁷ Clemency Pet., McCloskey Affidavit, Exhibit 9, p. 12-13, Section B

⁸ Id. p. 2, #3; Clemency Pet., Exhibit 21, statement of Betty Hurley; Exhibit 22, statement of Betty Smith; 2nd Pet. For *Writ of Habeas*, Exhibit I, statement of Teresa Horn; Exhibit L, statement of Linda Mullins

⁹ *May God Have Mercy*, John C. Tucker, p. 114-116

¹⁰ Clemency Pet., Exhibit 37, p. 1, Frank Hinkle statement, #5

¹¹ *May God Have Mercy*, John C. Tucker, p. 25

¹² 2nd Pet. for *Writ of Habeas*, Exhibit T, Report of Morris Clark, p. 5, #11

¹³ Id. p. 8, 9, #19, #20

¹⁴ *May God Have Mercy*, John C. Tucker, p. 52

¹⁵ Id. p. 190, 191

¹⁶ *May God Have Mercy*, John C. Tucker, p. 305-314

CONCLUSION

Roger Keith Coleman was executed despite compelling evidence of his innocence. Coleman's attorneys had made claims about a biased jury, ineffective assistance of counsel, and exculpatory evidence withheld by the state, all of which would have been constitutional violations. The merits of these claims were never considered because his lawyers missed a deadline by one day. He was executed without full review. As U.S. Supreme Court Justice Harry Blackmun observed in his dissent, "one searches the majority's opinion in vain for any mention of . . . Coleman's right to a criminal proceeding free from constitutional defect or his interest in finding a forum for his constitutional challenge to his conviction and sentence of death."¹⁷

PRESENT SITUATION

A Virginia court was asked in 2000 to order new DNA testing on physical evidence. An independent laboratory is still holding the samples, and the State of Virginia has demanded their return. Fearing that the state may never make appropriate use of the samples, the lab has refused to release them. A state court hearing is scheduled for December.

¹⁷ See Footnote 15

Appendices

(Case Charts)