Reasonable Doubts:

Is the U.S. Executing Innocent People?

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A Preliminary Report
of the

GRASSROOTS INVESTIGATION PROJECT

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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 Illinois*[1]

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

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[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 trail. 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 lease 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]

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[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.