

Texas Death Penalty Developments in 2012: The Year in Review

A Report by the Texas Coalition to Abolish the Death Penalty



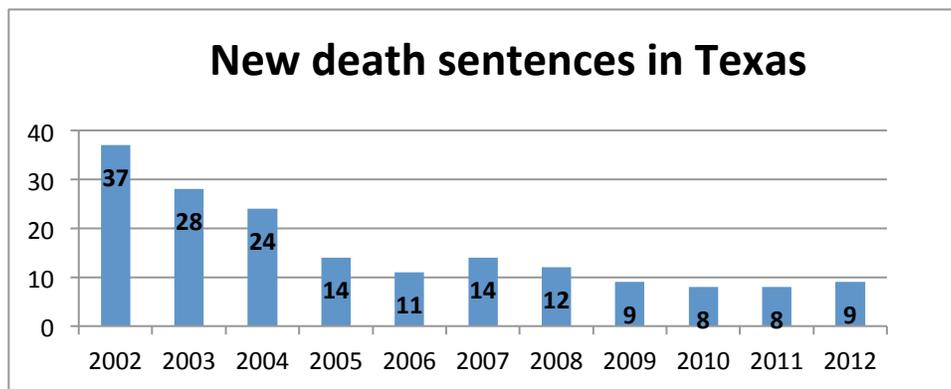
Texas Death Penalty Developments in 2012: The Year in Review

The Texas Coalition to Abolish the Death Penalty (TCADP) publishes this annual report to inform citizens and elected officials about issues associated with the death penalty in Texas during the past year. It presents information on new death sentences, executions, and stays; reduced sentences; U.S. Supreme Court developments; and other issues affecting the criminal justice system in the nation's most active death penalty state. The report is available online at www.tcadp.org/TexasDeathPenaltyDevelopments2012.pdf.

Death Sentences

New Death Sentences

New death sentences in Texas have dropped more than 75% since 2002 and remain near historic low levels in 2012. According to data compiled from news sources and the Texas Department of Criminal Justice (TDCJ), juries have condemned nine new individuals to death in Texas to date this year.¹ This represents a slight increase over 2011 and 2010, when new death sentences fell to their lowest number since the U.S. Supreme Court upheld Texas' revised death penalty statute in 1976.



More than half of the death sentences were imposed in the Dallas-Fort Worth Metroplex: Tarrant and Dallas Counties each accounted for two new death sentences this year and Johnson County accounted for one. A total of seven counties in the state of Texas accounted for the new death row inmates: Brazos (1); Dallas (2); Fort Bend (1); Johnson (1); McLennan (1); Smith (1); and Tarrant (2).

An analysis of data from 2008 to 2012 reveals that only 22 Texas counties have imposed death sentences over the last 5 years; of these, only 11 counties have done so in the last 2 years. Out of a total 46 death sentences imposed in this time period, Dallas County leads with 8; it is followed by Tarrant County, with 6 new sentences since 2008, Harris County with 5, and Travis and Brazos Counties, with 3 new sentences each. These five counties account for 54% of new death sentences since 2008. The other 17 counties imposed 1-2 sentences each. Altogether, these 22 counties represent just 9% of the 254 counties in Texas. View maps of new death

¹ The verdict in the capital murder trial of John Ray Falk, Jr. in Brazos County, in which prosecutors are seeking the death penalty, has been delayed indefinitely pending a legal dispute over jury instructions. The trial was moved from Walker County.

sentences by county from 2008 to 2012 and from 1976 to 2012 at <http://tcadp.org/2008-2012-new-death-sentences/>.

Texas' Highest Sentencing Counties, 2008-2012							
	2008	2009	2010	2011	2012	Total 2008-2012	Total Since 1976
Dallas	3	1	2	0	2	8	104
Tarrant	2	1	0	1	2	6	72
Harris	0	0	2	3	0	5	289
Travis	0	1	1	1	0	3	19
Brazos	0	1	1	0	1	3	17
Total:	5	4	6	5	5	25*	501

* Out of 46 sentences statewide since 2008

Among the highest sentencing counties in Texas, there were several noteworthy developments in 2012:

- Harris County did not impose any new death sentences this year – the same was true in 2008 and 2009. It accounts for 289 sentences overall since 1976. See *Resentenced to Death* below for additional information.
- Dallas County now accounts for 17% of new death sentences since 2008, even though last year it did not impose any new sentences for the first time in five years. 2011 was also the first time in 15 years that Dallas County prosecutors seeking the death penalty did not win a capital murder conviction. Dallas County juries imposed two new death sentences in 2012.
- This was the first new death sentence in McLennan County since 2004, out of 16 overall.
- This was the first new death sentence in Smith County since 2009 and the 23rd overall.
- Bexar County, which has sentenced the third highest number of people to death in Texas since 1976, has not imposed any new death sentences since 2009. See *Jury Rejections* below for more details.

Seven of the new death row inmates in 2012 are African-American, one is Hispanic, and one is a white female. Over the last five years, nearly 75% of all death sentences in Texas have been imposed on people of color – 46% African-American and 28% Hispanic. In the two highest sentencing counties overall, these patterns are even more pronounced:

- Of the eight men sentenced to death in Dallas County since 2008, five are African-American and two are Hispanic.
- In Harris County, 12 of the last 13 defendants sentenced to death are African-American. The thirteenth death sentence was imposed in October 2011 on Jaime Cole, who is Hispanic. The last death sentence imposed on a white defendant in Harris County occurred in November 2004, when serial killer Anthony Shore was sent to death row.

While African-Americans comprise only 12% of the population of Texas, they comprise 39.8% of death row inmates.² Hispanics comprise 29.1% of the death row population, and whites comprise 29.4%.

New Death Sentences 2008-2012, Race of Defendant						
	2008	2009	2010	2011	2012	Total Sentences by Race
African-American	3	3	4	4	7	21
Hispanic	6	3	1	2	1	13
White	3	3	3	2	1	12
Total People of Color	9	6	5	6	8	34
Total Sentences	12	9	8	8	9	46

New death sentences imposed this year reflect the continued arbitrariness of the death penalty, particularly when compared with those cases in which capital juries opted for life without parole or cases of death row inmates who received reduced sentences.

- On May 31, 2012, a Smith County jury sentenced Kimberly Diane Cargill to death for the June 2010 murder of her 39-year-old babysitter, Cherry Walker. Cargill is the first woman to be sent to death row from Smith County and one of ten female death row inmates in the state. The last woman sentenced to death in Texas was Melissa Lucio in Cameron County in 2008. Texas has executed three women since 1982.
- In Brazos County, Stanley Lamar Griffin was given the death penalty on June 29, 2012 for murdering a 29-year-old mother, Jennifer Marie Hailey, and assaulting her 9-year-old son in September 2010. Griffin’s trial marked attorneys’ first attempt to use a mental retardation defense against the death penalty in Brazos County, in light of the U.S. Supreme Court’s 2002 decision (*Atkins v. Virginia*) to bar capital punishment for individuals with intellectual disabilities.

As of November 16, 2012, TDCJ counted 289 death row inmates, which includes 10 women. This is the lowest the Texas death row population has been since 1989, according to research by TCADP. Texas holds the third-largest death row population in the nation, after California (726) and Florida (405).

See Appendix A for a list of new death row inmates in Texas.

Jury Rejections

Jurors rejected the death penalty during the punishment phase in four capital murder trials in 2012, resulting in sentences of life in prison without the possibility of parole. In each case, the jury determined that the defendant did not pose a future danger, the first question on the jury instructions. Over the last five years, death-qualified juries have rejected the death penalty in at least 20 capital murder trials. Four of these rejections occurred in Bexar County – including two this year – plus a fifth case that was moved from Bexar to Victoria County in 2010.

² See <http://quickfacts.census.gov/qfd/states/48000.html> for more information.

- On February 14, 2012, a jury in Williamson County rejected the death penalty for Bobby Ray Burks Jr., who was convicted of murdering Raul Vizueth Torres in 2010.
- On April 2, 2012, a jury in Angelina County rejected the death penalty for Kimberly Saenz, a former nurse, and instead sentenced her to life in prison without the possibility of parole. The jury convicted Saenz of killing five patients at the DaVita Dialysis Clinic in Lufkin by injecting their IV lines with bleach in April 2008. She is one of 28 women serving life in prison without parole, a sentencing option that went into effect in Texas in September 2005.
- On August 24, 2012, a jury in Bexar County rejected the death penalty for Lorenzo Thompson. He was convicted of the 2010 capital murder of Vanessa Pitts, an Air Force basic training graduate he robbed at a gas station. Thompson claims her death was an accident. According to the *San Antonio Express-News*, it took the jury less than 30 minutes to determine that Thompson did not pose a future danger to society.³ He will serve a sentence of life without parole.
- On October 23, 2012, another death-qualified jury in Bexar County rejected the death penalty for James David Morrison, who was convicted of capital murder in the 2009 deaths of Krystle Moten and her mother Laura Moten. Both women were related to Morrison's ex-girlfriend Candice Moten, who survived the shooting but miscarried her unborn baby, who she named Angel.

According to the *San Antonio Express-News*, the trial spanned five weeks of jury selection and more than three weeks of testimony. In the punishment phase, Morrison's attorneys presented mitigating evidence, "including testimony by video deposition ... from a retired Gary, Indiana police officer who found Morrison, as a baby, in a gas station trash can in 1979."⁴ The jury spent less than two hours determining that Morrison does not pose a future danger to society. He was sentenced to life in prison without the possibility of parole.

Resentenced to Death

One inmate was resentenced to death this year. On March 6, 2012, a Harris County jury imposed another death sentence on Carl Wayne Buntion, now 68 years old. He was convicted of the 1990 shooting of Houston police officer James Irby. Buntion's original death sentence was overturned because of flawed instructions to jurors, which prevented them from giving full consideration to mitigating evidence.

Other Case Developments

On March 1, 2012, just days after his capital murder trial in Fort Bend County had begun, Richard Allen Howe pled guilty to the 1989 murder of Mina Ann Bomar. The jury selection process for this case, in which prosecutors sought the death penalty, lasted months. Prosecutors had already called more than 20 witnesses in their case against Howe. The *Fort Bend Star* reports that at the conclusion of the evidence, Howe changed his plea of "not guilty" to "guilty" and waived his right to appeal.⁵

³ "Jurors quickly reject death penalty for Thompson," *San Antonio Express-News*, August 24, 2012.

⁴ "Jury rejects death sentence," *San Antonio Express-News*, October 23, 2012.

⁵ "23 year old murder case ends in guilty plea," *Fort Bend Star*, March 7, 2012.

According to the *Star*, the case had gone unsolved until December 2002, when DNA from the crime scene was entered into a DNA database and matched to Howe, who was incarcerated at the time. He has been in the custody of the state for other crimes since being charged with the murder of Bomar in 2002. Howe was sentenced to life in prison.⁶

Executions

The State of Texas carried out 15 executions in 2012, a slight increase from 2011, when 13 executions took place. It accounted for 35% of U.S. executions this year, a smaller percentage than in the past, but still nearly three times as many as any other state.⁷ Texas has executed a total of 492 people since 1982 – 253 executions have occurred during the administration of



Texas Governor Rick Perry (2001 - present), more than any other governor in U.S. history.

Of the 15 men executed in Texas this year, seven were African-American, four were Hispanic, and four were white.

Dallas County accounted for one third of the executions carried out this year (five total). Two inmates were convicted in Bexar County and two in Montgomery County. Only one inmate convicted in Harris County was put to death this year – Preston

Hughes III, executed on November 15, 2012 – out of 103 Harris County inmates currently on death row. Other counties of conviction were Cherokee, Gregg, Jefferson, Polk, and Tarrant.

Some executions involved decades-old cases while others resulted from cases that were tried within the last 10 years. Among those executed in 2012, the following cases illustrate the arbitrary administration of the death penalty in Texas:

- Yokamon Hearn was executed in Texas on July 18, 2012. He was convicted in Dallas County of the 1998 carjacking and murder of 23-year-old stockbroker Frank Meziere. He was the only person among the four young people charged with this crime to receive the death penalty, even though one of the co-defendants, Delvin Diles, fired 4 of the 10 gunshots. Diles received a deal under which he pled guilty and received life imprisonment.

Hearn, who was African-American, was 19 years old at the time of the crime. He received ineffective assistance of counsel during both his trial and the appeals process. Hearn's trial lawyers failed to investigate readily available and compelling mitigating evidence that could have been used in the sentencing phase to persuade the jury not to impose the death penalty, including the fact that both of his parents were severely impaired throughout his life and he was the victim of extreme neglect; he experienced mental health problems as a young child; and he had brain damage due to his mother's drinking during her pregnancy, which caused him to have severe impairments in day-to-day functioning.

⁶ Ibid.

⁷ In 2011, Texas accounted for 30% of U.S. executions. In 2010, it accounted for 37%. From 2005 to 2009, it accounted for 45-62% of all executions nationwide.

- The State of Texas executed Marvin Wilson on August 7, 2012 after the U.S. Supreme Court declined to grant him a stay based on evidence of his intellectual disabilities. Wilson was sentenced to death for killing a police informant, Jerry Williams, in Beaumont in 1992. His attorneys pointed to a test that established his IQ at 61, well below the threshold of 70 that suggests mental impairment.

Although the U.S. Supreme Court ruled in 2002 (*Atkins vs. Virginia*) that it is unconstitutional to execute the mentally retarded, the State of Texas continues to use unscientific guidelines to determine which defendants with intellectual disabilities are protected from execution. These guidelines, called “the Briseño factors” after the decision that announced them, were developed by the Texas Court of Criminal Appeals and rely on stereotypes about mental retardation that exclude all but the most severely incapacitated from their constitutional protection against execution.

- The State of Texas put Cleve “Sarge” Foster to death on September 25, 2012 for the 2002 murder of Nyaneur Pal, known as Mary Pal, in Fort Worth. Foster, a former army recruiter, was convicted under the Texas Law of Parties. His co-defendant, Sheldon Ward, was acknowledged to be the triggerman. Ward died of cancer in 2010 while on death row. The U.S. Supreme Court declined to stay the execution, although three Justices (Ruth Bader Ginsburg, Elena Kagan, and Sonia Sotomayor) indicated that they would have stopped it. Last year, the Court stayed Foster’s execution three separate times in order to consider questions about the constitutional right to effective assistance of habeas counsel and related claims of ineffective assistance of counsel and innocence.

- On October 10, 2012, the State of Texas executed Jonathan Marcus Green for the 2000 rape, abduction, and murder of 12-year-old Christina Neal in Montgomery County. The execution was delayed nearly five hours due to prolonged legal wrangling over Green’s mental competency. He reportedly suffered from schizophrenia, including severe hallucinations, for which he received no medication. In 2010, Green received a last-minute stay of execution due to issues surrounding his competency.

U.S. Executions in 2012	
Texas	15
Mississippi	6
Oklahoma	6
Arizona	6
Ohio	3
Florida	3
South Dakota	2
Indiana	1
Delaware	1
Total	43

Earlier in the week of the execution, a federal judge granted a stay on an appeal from Green’s attorneys challenging a state district judge’s determination two years ago that their client was mentally competent for execution. According to the *Associated Press*, “U.S. District Judge Nancy Atlas ruled ... that

attorneys for Green weren’t properly allowed at a state competency hearing to present testimony from mental health professionals who treated him.”⁸ The Texas Attorney General’s office appealed to the U.S. Court of Appeals for the Fifth Circuit, which then lifted the stay. The U.S. Supreme Court refused to intervene. Green is among more than 25 documented cases of people who have been executed in Texas despite being diagnosed with a severe mental illness. The Fifth Circuit Court, which considers cases from Texas, Louisiana, and Mississippi, has never found a death row inmate incompetent for execution.

⁸ “Texas inmate executed for killing 12-year-old girl,” *Associated Press*, October 10, updated October 11, 2012.

See Appendix B for a complete list of executions carried out in Texas in 2012. Seven executions are scheduled already in 2013, including two from Dallas County.

Stays of Execution/Dates Withdrawn

Six inmates scheduled for execution in 2012 received reprieves. In addition, three execution dates were withdrawn – one later resulted in an execution (Bobby Hines), one resulted in a stay (Anthony Bartee), and one resulted in a rescheduled date for 2013 (Rigoberto Avila).

- On January 25, 2012, the U.S. Supreme Court granted a stay to Donald Newbury, who was scheduled to be executed on February 1. The stay was based on a related case that the Justices heard in October 2011 regarding death row inmates' initial appeals (*Martinez vs. Ryan*) and the lack of legal assistance that was provided to Newbury. Newbury's current lawyers argued that their client should be granted a stay until the Court's decision in the *Martinez* case, which originated in Arizona. (See *U.S. Supreme Court Developments* below for more information on the status of the case.) Newbury was convicted of killing Irving police officer, Aubrey Hawkins, in 2000 after escaping with six other prisoners. The ringleader of that escape, George Rivas, was executed on February 29, 2012 for the murder of Officer Hawkins.
- Steven Staley received a stay of execution on May 14, 2012 from the Texas Court of Criminal Appeals, which did not provide a reason for the reprieve. At issue is Staley's competency to be executed. He was diagnosed as a paranoid schizophrenic after he arrived on death row in 1991. At times over the last few years, he has been forced to take anti-psychotic drugs against his will. Staley believes that the drugs are poisoning him. State officials argue that this forced medication is necessary in order to render him competent to be executed.
- Anthony Bartee received a firm stay of execution on May 2, 2012, when the 5th U.S. Circuit Court of Appeals declined to overturn the stay granted to him earlier in the day by a federal judge in San Antonio. This effectively allowed his May 2 execution date to expire. Bartee was convicted and sentenced to death for the 1996 murder of David Cook in San Antonio. He was originally scheduled to be executed on February 28, 2012, despite the fact that the Bexar County Criminal Investigation Laboratory had not tested pieces of DNA evidence that were collected from the crime scene. Even after being ordered to test this evidence by State District Judge Mary Román in 2007 and 2010, neither the Bexar County crime lab nor the Department of Public Safety lab in Austin have performed the ordered tests on all available evidence. Bartee has consistently maintained that although he was present at the house, he did not kill Cook.

On February 23, Judge Román withdrew the February 28 execution date in order to conduct DNA testing on two strands of hair found in the hands of the victim. She later set a new execution date of May 2 before the DNA testing had been completed or analyzed. When the testing was completed in mid-April, it indicated that the hairs found in Cook's hands belonged to Cook. Judge Román entered the findings as unfavorable, opining that this evidence would not have made a difference in the outcome of the trial had it been available to the jury.

Bartee's attorneys argue that there is still potentially exonerating evidence that must undergo DNA testing. They filed a lawsuit against the Bexar County District Attorney, charging that office with violating their client's civil rights by denying access to post-conviction DNA testing. Chief U.S. District Judge Fred Biery granted the temporary stay of execution in May in order to further examine the civil rights claim. According to the *San Antonio Express-News*, testing has been conducted on drinking glasses and cigarettes collected at the crime scene and revealed the DNA of three people – two men and one woman so far unidentified. The additional evidence will be sent through state and federal databases while this case remains in federal court.⁹

- In May, prosecutors withdrew a June 6 execution date for Bobby Hines pending the outcome of DNA testing. He was convicted of the 1991 murder of Michelle Wendy Haupt in Dallas. In September, the Dallas County District Attorney's Office reported that the tests confirmed Hines' guilt and rescheduled his execution.¹⁰ Hines was put to death on October 24, 2012.
- On July 27, 2012, the Texas Court of Criminal Appeals granted a stay of execution to Marcus Druery. Druery was scheduled to be executed on August 1 for the 2002 murder of Skyler Browne in rural Brazos County. Serious questions surround his mental competency; the State's own mental health professionals repeatedly have diagnosed him as schizophrenic. The Court granted the stay in order to review his attorneys' request for a full and fair competency hearing.
- On August 22, 2012, the U.S. Supreme Court granted a stay to John Balentine just one hour before his execution was scheduled to take place. This is the third last-minute reprieve Balentine has received in recent years. He was sentenced to death for the 1998 murders of his ex-girlfriend's brother, Mark Caylor, Jr., 17, and two other boys, Kai Geyer, 15, and Steven Watson, 15, in Amarillo. The Court stopped the execution to review a petition from Balentine's lawyer that contends his legal representation at trial and in the early stages of his appeal was deficient. See *U.S. Supreme Court Developments* below.
- On October 18, 2012, the U.S. Supreme Court agreed to consider a review of the case of Anthony Haynes, who was scheduled to be put to death that day for the 1998 murder of off-duty police officer Sgt. Kent Kincaid in Houston. According to the *Houston Chronicle*:

Should the high court review Haynes' case, it will also consider whether claims such as his can be considered in federal courts when they have not been heard in state courts. Haynes' claims of insufficient counsel were not heard in state courts because they were not presented in a timely manner mandated by Texas law.¹¹

The Court granted a stay on the same basis to John Balentine. See *U.S. Supreme Court Developments* below.

A comparable number of stays have been granted in recent years (five stays and one date withdrawal in 2011).

⁹ "Decision adds to scrutiny of death penalty cases," *San Antonio Express-News*, May 26, 2012.

¹⁰ "Prosecutors: DNA confirms guilt of man convicted of killing Dallas woman in '91," *Dallas Morning News*, September 6, 2012.

¹¹ "Houston cop killer Anthony Haynes granted stay of execution," *Houston Chronicle*, October 18, 2012.

Reduced Sentences/Inmates No Longer on Death Row

Three inmates received reduced sentences in 2012 (six inmates were removed from death row last year).

- On August 1, 2012, Delma Banks, Jr., who spent three decades on death row for the 1980 shooting death of 16-year-old Richard Whitehead, accepted a life sentence and was removed from death row. He will be eligible for parole in 2024 under an agreement with Bowie County prosecutors. The U.S. Supreme Court overturned Banks' death sentence in 2004, ruling that prosecutors suppressed evidence and deliberately covered up their mistakes for decades. An all-white jury convicted Banks, who is African-American, when he was 21 years old. There were no witnesses or any physical evidence connecting him to the crime. Prosecutors relied primarily on the testimony of a paid informant and a known drug user who had been extensively coached; this information was never revealed to the defense. Banks came within 10 minutes of execution in 2003 before receiving a stay from the Supreme Court.
- In another case spanning more than three decades, Anthony Pierce was removed from death row this fall after Harris County prosecutors agreed to a life sentence in light of evidence of his low IQ. He was convicted of the 1977 murder of fried chicken restaurant manager Fred Johnson. According to the *Houston Chronicle*, Pierce spent more time on death row than all but two of its current residents and was convicted of capital murder and sentenced to death on three occasions, most recently in 1986.¹² His first two convictions were overturned as a result of problems with the jury selection process. In 2010, a panel of judges on the U.S. Court of Appeals for the Fifth Circuit overturned the sentence from his last trial, ruling that jurors did not hear mitigating evidence as required by law.
- On November 7, 2012, the Texas Court of Criminal Appeals agreed with a state-appointed psychologist that Roosevelt Smith, Jr. is mentally impaired and ineligible for execution under Supreme Court guidelines. Smith, an evacuee from Hurricane Katrina, was sentenced to death for the murder of 77-year-old Betty Blair in 2005 at her home in Pasadena (Harris County). He is the 13th person to be removed from death row in Texas since 2002 in accordance with the U.S. Supreme Court decision *Atkins vs. Virginia*, which prohibits the death penalty for persons with intellectual disabilities.

In addition to these reduced sentences, two death row inmates died in prison this year. Santos Minjarez died in custody on January 14, 2012 as the result of septic shock and multiple organ failure. He was convicted of the 2001 abduction, rape, and murder of Rosa Maria Rosado in San Antonio. Ramon Hernandez, who also was convicted of the crime and sentenced to death, was executed on November 14, 2012.

On July 20, 2012, Selwyn Davis was found unresponsive in his cell and later pronounced dead. He was sent to death row by a Travis County jury for the 2006 murder of his ex-girlfriend's mother, Regina Lara. At the time his death was reported, the cause was unknown.

¹² "DA's office plans to not seek execution of man on death row since 1978," *Houston Chronicle*, August 30, 2012.

Potential Wrongful Executions

Carlos DeLuna

An article published May 15, 2012 in the Columbia University *Human Rights Law Review* shed new light on the case of Carlos DeLuna, who was executed by the State of Texas on December 7, 1989 for the 1983 murder of convenience store clerk Wanda Lopez in Corpus Christi (Nueces County). From the moment of his arrest to the night of his execution, DeLuna maintained his claim of innocence. Reinforcing previous investigations, *Los Tocayos Carlos: An Anatomy of a Wrongful Execution* seeks to answer whether Texas executed the wrong person for this crime.¹³ Cataloguing in minute detail everything that went wrong in DeLuna's case, this groundbreaking article by Columbia Law School Professor James Liebman and a team of students also provides compelling evidence of the identity of the real killer, Carlos Hernandez, a violent and dangerous man who was well-known to law enforcement yet was ridiculed by prosecutors as a "phantom" of DeLuna's imagination during his trial.

Los Tocayos Carlos represents one of the most thorough depictions of a criminal investigation and its aftermath in U.S. history. Among the many issues calling into question the reliability of DeLuna's conviction are:

- A single cross-ethnic eyewitness identification conducted at night, at the crime scene, while the suspect was in the back seat of a police squad car;
- No corroborating forensics and a sloppy crime scene investigation;
- Grossly inadequate representation at the trial and appellate levels, including failure of his court-appointed attorneys – one of whom had never tried a criminal case in court, let alone a capital murder case – to present any witnesses or mitigating evidence during the sentencing phase; and
- Prosecutorial failure to turn over potentially exculpatory evidence to the defense.

Cameron Todd Willingham

On October 24, 2012, the family of Cameron Todd Willingham and their attorneys announced at the Texas State Capitol that they had filed a petition for a posthumous pardon with the Texas Board of Pardon and Paroles, seeking to clear his name. Willingham was executed by the State of Texas in 2004 for setting a fire that killed his three young daughters in Corsicana in 1991. At least nine fire experts have since determined that the finding of arson was based on faulty evidence and flawed science. A report by the Texas Forensic Science Commission in 2010 admitted "flaws" in the science used to convict Willingham, but found that arson investigators did not commit misconduct or negligence in relying on outdated standards at the time.

U.S. Supreme Court Developments

On March 20, 2012, the U.S. Supreme Court ruled in *Martinez vs. Ryan*, a case from Arizona, that if a state habeas corpus lawyer provides ineffective assistance of counsel in failing to investigate and raise a claim that trial counsel provided ineffective assistance, the federal courts in federal habeas proceedings now can consider the claim that trial counsel was ineffective. As a result of the decision, the Court granted the petition of Donald Newbury, whose execution the Justices stayed in January, and remanded it for consideration. (See *Stays of Execution* above.)

¹³ *Los Tocayos Carlos: An Anatomy of a Wrongful Execution*, the article and accompanying materials, including video clips, police records, and notes from 100 witness interviews, can be accessed at www.thewrongcarlos.net.

The Court also remanded the case of Texas death row inmate Ivan Cantu, whose 2011 execution date had been withdrawn.

Since the *Martinez* decision, the courts have applied the ruling to some cases, but not others, rejecting the appeal of Yokamon Hearn, whose first federal proceeding ended in 2003, and allowing his execution to proceed, while granting stays of execution to John Balentine and Anthony Haynes. Some lower courts have held that the ruling does not apply to Texas because defendants have multiple opportunities to claim their lawyers failed them.

On October 29, 2012, the U.S. Supreme Court announced that it will hear arguments in the case of Texas death row inmate Carlos Trevino in order to determine whether defendants in Texas can raise claims of inadequate trial representation in federal court if they were effectively prevented from raising such a claim in their state appeal by the further failure of their appellate lawyers. The key question in the Trevino case is whether the Court's decision in *Martinez* applies to inmates in Texas.

Legislative Developments

Outside of Texas, on April 25, 2012, Connecticut Governor Dannel Malloy signed into law legislation that ends the use of the death penalty in that state. Connecticut joins four other states that have abandoned the death penalty in recent years. In the statement released by his office, Governor Malloy noted, "As our state moves beyond this divisive debate, I hope we can all redouble our efforts and common work to improve the fairness and integrity of our criminal justice system, and to minimize its fallibility."¹⁴ There are now 17 states without the death penalty, plus the District of Columbia.

Other Developments

Lethal Injection

On July 9, 2012, the Texas Department of Criminal Justice announced that it would no longer administer executions using the three-drug protocol that had been in place since 1982, when Texas carried out the nation's first lethal injection. Instead, the State now carries out executions using just one drug, the sedative pentobarbital. On July 18, 2012, Yokamon Hearn was the first Texas inmate put to death by this new protocol.

New Voices

Individuals and institutions with diverse experiences relating to capital punishment emerged as "new voices" in opposition to the death penalty this year.

- During the Texas State Democratic Convention, which took place June 7-8, 2012 in Houston, delegates voted to endorse abolition of the death penalty in the 2012 Texas Democratic Party Platform. The new Death Penalty section of the platform cites wrongful convictions, evidence of wrongful executions, and the disproportionate application to the poor and minorities as part of the call to abolish the death penalty, and it concludes with this recommendation:

¹⁴ "Without Fanfare, Malloy Signs Bill Abolishing Death Penalty," *Hartford Courant*, April 25, 2012.

In order to promote public confidence and fairness in the Texas Criminal Justice System, Texas Democrats call for the passage of legislation that would abolish the death penalty in Texas and replace it with the punishment of life in prison without parole.¹⁵

- In May, Grant Jones, who served as the District Attorney for Nueces, Kleberg, and Kenedy Counties from 1983 to 1991, told the *Corpus Christi Caller-Times* that he had changed his mind on the death penalty:

“One of the benefits of our judicial system is the appeal system to correct our mistakes,” Jones said. “The problem with the death penalty is once it’s carried out and there is a mistake you can’t go back and correct it. The death penalty no longer serves as just punishment when attempting to determine absolute truth.”¹⁶

Jones was the District Attorney at the time of Carlos DeLuna’s trial, though he did not prosecute the case himself.

Conclusion

While new death sentences and executions remain near historical low levels in Texas, troubling questions persist regarding the arbitrary determination of who receives the ultimate punishment. This year, cases involving individuals with comparable backgrounds or who presented similar legal arguments received vastly different treatment by the criminal justice system. In addition, people of color remain disproportionately impacted by the death penalty: in the last five years, nearly 75% of all death sentences have been imposed on African-American or Hispanic defendants.

The death penalty also remains geographically isolated, as the number of Texas counties devoting resources to costly death penalty trials dwindles each year. Just five counties account for 54% of new death sentences in the last five years. In 2012, the Dallas-Forth Worth Metroplex was a major outlier both in new death sentences and executions. Dallas County now accounts for nearly 20% of new death sentences since 2008.

The risk of wrongful conviction and evidence of wrongful executions also continue to cast doubt on the fairness and accuracy of the system. TCADP urges concerned citizens and elected officials at the state and county level to confront the realities of this irreversible punishment and reconsider the efficacy and cost of the death penalty as a means of achieving justice.

¹⁵ See <http://txdemocrats.org/2012/platform.pdf> for the full text of the platform.

¹⁶ “Columbia Human Rights Law Review releases study on Corpus Christi man executed in 1989,” *Corpus Christi Caller-Times*, May 15, 2012.

Appendix A: New Death Sentences in 2012

Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
Andrus	Terence Tramaine		M	Black	Sentenced on 11/14/2012	Fort Bend	10/15/2008
Cummings	Ricky		M	Black	Sentenced on 11/07/2012	McLennan	03/2011
Nelson	Steven	02/18/1987	M	Black	10/16/2012	Tarrant	03/03/2011
Cade	Tyrone	11/30/1972	M	Black	09/06/2012	Dallas	03/27/2011
Griffin	Stanley	04/26/1965	M	Black	07/02/2012	Brazos	09/19/2010
Harris	Roderick	06/12/1984	M	Black	06/13/2012	Dallas	3/2009
Cargill	Kimberly	11/30/1966	F	White	06/07/2012	Smith	6/2010
Soliz	Mark	01/27/1982	M	Hispanic	03/28/2012	Johnson	06/29/2010
Rockwell	Kwame	12/07/1975	M	Black	01/30/2012	Tarrant	02/23/2010

(Sources: Texas Department of Criminal Justice, Texas Defender Service, *Waco Tribune*, *Houston Chronicle*)

Appendix B: Executions in 2012

Execution	Last Name	First Name	Age	Date	Race	County
492	Hughes	Preston	46	11/15/2012	Black	Harris
491	Hernandez	Ramon	41	11/14/2012	Hispanic	Bexar
490	Swain	Mario	33	11/08/2012	Black	Gregg
489	Roberts, Jr.	Donnie	41	10/31/2012	White	Polk
488	Hines	Bobby	40	10/24/2012	White	Dallas
487	Green	Jonathan	44	10/10/2012	Black	Montgomery
486	Foster	Cleve	48	09/25/2012	White	Tarrant
485	Harris	Robert	40	09/20/2012	Black	Dallas
484	Wilson	Marvin	54	08/07/2012	Black	Jefferson
483	Hearn	Yokamon	33	07/18/2012	Black	Dallas
482	Adams	Beunka	29	04/26/2012	Black	Cherokee
481	Hernandez	Jesse	47	03/28/2012	Hispanic	Dallas
480	Thurmond	Keith	52	03/07/2012	White	Montgomery
479	Rivas	George	41	02/29/2012	Hispanic	Dallas
478	Hernandez	Rodrigo	38	01/26/2012	Hispanic	Bexar

(Source: Texas Department of Criminal Justice)



Texas Coalition to Abolish the Death Penalty

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