



Reason #1 to Support a National Moratorium on Executions

The National Death Penalty System is Seriously Flawed Resulting in Wrongful Convictions and Death Sentences

- More than two out of every three capital judgments reviewed by the courts during a 23-year period were seriously flawed. Experts reviewed all the capital cases and appeals imposed in the United States between 1973 and 1995 at the state and federal levels. They found a national error rate of 68%.

In other words, over two-thirds of all capital convictions and sentences are reversed because of serious error during trial or sentencing. This does not include errors that were not serious enough to warrant a reversal.

- The federal government would not tolerate an error rate of 68% for any other government function - such as product safety or processing social security claims. Yet it allows this margin of error in the system that can take a person's life.

Only a moratorium puts an immediate halt to the risk of an innocent person being executed.

- The error rate for capital cases is much higher than for other types of cases. At the direct appeal stage, serious or reversible error is detected in about 12 to 20% of the non-capital criminal cases that are appealed.
- High error rates exist throughout the country and are not limited to certain states. Over 90% of states that have the death penalty have error rates of 52% or higher. 85% have error rates of 60% or higher. Three-fifths have error rates of 70% or higher. This is not an isolated problem but is universal in all death penalty states.

Governor Ryan of Illinois declared a moratorium in his state after 13 people were released from death row because of innocence. Ryan wanted assurances that the system worked before resuming executions. Some death penalty proponents have argued that the problems in Illinois are exceptional. In fact, however the error rate in Illinois is 66%, slightly lower than the national average of 68%.

- Nearly 80% of the people whose convictions were reversed DID NOT get the death penalty at retrial.

The most common errors are incompetent defense lawyering (37% of state post-conviction cases) and prosecutorial suppression of evidence (16-19% of reversals at all levels). This reflects the fact that most people who are sentenced to death are poor and cannot afford to have a lawyer. Instead, they must rely on state - appointed representation, which is notoriously inadequate.

- Many of the People Convicted and Sentenced to Death Are Actually Innocent

During the period from 1973-1995, seven percent of the people who received a new trial after their conviction was reversed were found to be innocent of the crime for which they had been sentenced to die. For every seven people executed since the 1970's, one innocent person has been released from death row, with a total of 87 innocent people being released from death row. It is likely that other people were wrongfully executed whose innocence was not proven in time. There have been 23 documented cases in which innocent people have been mistakenly executed since the early 1900s. This number is likely low because of the difficulty of establishing innocence after a person has been executed.

Case Examples - People Released from Death Row

Ronald Williamson and Dennis Fritz were charged with the murder and rape of Deborah Sue Carter, which occurred in Ada, Oklahoma in 1982. They were arrested four years after the crime. Both were convicted and Williamson received the death penalty. In 1997, a federal appeals court overturned Williamson's conviction on the basis of ineffectiveness of counsel. The court noted that the lawyer had failed to investigate Glen Gore, who was a suspect and the last person with Ms. Carter before she was murdered. Recently, DNA tests from the crime scene did not match either Williamson or Fritz, but did implicate Gore. All charges against the two defendants were dismissed on April 15, 1999 and they were released.

Walter McMillian was released from Alabama's death row after having spent six years there because of perjured testimony and withheld evidence that indicated his innocence. He was convicted of the shooting death of a storekeeper. On the day of the murder he was with friends and relatives, many of whom testified to this at his trial. No physical evidence linked him to the crime, but three people who testified at his trial connected him to the murder.

Only sheer luck saved Walter McMillian. After listening to a tape recording of a key witness's testimony against McMillian, a volunteer lawyer flipped the tape to see if there was anything on the other side. Only then did he hear the same witness complaining that he was being pressured to frame McMillian. With that fortuitous break, the whole case against McMillian began to fall apart. All three prosecution witnesses recanted their testimony. On March 3, 1993, the County District Attorney joined the defense in a motion to dismiss the charges. Walter McMillian was finally freed.

Anthony Porter was released in February 1999 after Alstory Simon confessed to the crime for which he was to die. Porter came within two days of execution and had been measured for a body bag when the State's Attorney stayed his execution to look into his mental competency. With an IQ of 51, Porter could not assist in his own defense. He certainly would have been executed had it not been for the work of Northwestern University Prof. David Protess working with students from his journalism class, and investigator Paul Ciolino. They found the real killer and also learned that another witness, William Taylor, had been pressured by police to testify against Porter.

People Executed Who May Have Been Innocent

Joseph O'Dell was executed by the state of Virginia on July 23, 1997 despite DNA evidence that could have proven his innocence. The courts refused to allow the evidence to be tested because Virginia law says that any evidence found more than 21 days after trial is inadmissible in proving the innocence of a convicted person.

Willie Darden was executed on March 15, 1988 by the state of Florida for a crime he could not have committed. The conviction was based on a gun that could not be traced to Darden. Key witnesses were not allowed to testify in the case. The person who identified Darden stated that "all blacks look[ed] alike [to her]." Darden was the only African American in the lineup. Supreme Court Justice Harry Blackmun noted, "If ever a man received an unfair trial, Darden did."

Gary Graham (a.k.a. Shaka Sankofa) was executed by the state of Texas in June 2000 despite strong evidence of his innocence that was never heard by a jury. The only evidence to support Graham's conviction was the eyewitness identification of one woman who saw Graham at night through a car window from a distance of 30 feet for "about one second." Two other witnesses also at the scene looked at the same photo line-up and said that Graham was not the person they saw. Graham's trial attorney, however, did not call either of these witnesses at trial, nor did he challenge the state's witness. The gun found on Graham at the time of his arrest was not the murder weapon.

Capital Punishment Project
American Civil Liberties Union
122 Maryland Avenue N.E
Washington, D.C. 20002
capitalpunishment@dcaclu.org
<http://www.aclu.org/death-penalty>