



## Reason #2 to Support a National Moratorium on Executions

### Police and Prosecutorial Misconduct Are Common in Death Cases

- A newly released study documents that prosecutorial misconduct is one of the most common factors contributing to wrongful convictions. Columbia University Law Professor Jim Liebman and colleagues recently released a study examining all the capital cases in the United States from 1973-1995. Sixty-eight percent of all cases contained serious error warranting reversal. Of those 68% of reversals, 19% were due to prosecutorial misconduct, making it the second most common factor contributing to reversible error in capital cases.
- The risk for police misconduct is increased in death cases. Police misconduct can be as subtle as an implied threat or as overt as the Rodney King beating. In high profile cases, especially those involving children, police officers or other prominent people, there is tremendous pressure to solve the case quickly. Police often develop a theory of the crime and seek evidence to support that theory instead of pursuing all possible leads. As Frank Friel, former head of Philadelphia's organized-crime homicide squad says, "When you see the shortcomings in a case you hedge. You block out anything that doesn't fit."

Keeping blacks off death penalty juries is a common form of official misconduct. When the U.S. Court of Appeals for the Eleventh Circuit reversed the death sentence of Jimmy Lee Horton in September of 1991, it censured the District Attorney of the case. In a succession of death penalty cases he had used his preemptory strikes to keep blacks off the juries of black defendants. He even instructed the county clerk how to under-represent blacks and women in the jury pool and not get caught.

- Some people are sentenced to death on the basis of untrustworthy testimony from jailhouse snitches. To obtain convictions, prosecutors sometimes rely on the testimony of jailhouse informants who claim to have heard the defendant confess to the crime while incarcerated.

Incarcerated people have a powerful motive to fabricate testimony because it is a bargaining chip for reduced charges or lighter sentences. Because of the strong inducement to lie, prosecutors are required to inform the defense when deals with informants are made. Sometimes they do not.

For example, Warren McCleskey was convicted and sentenced to death when a cellmate testified that McCleskey had confessed to him. The snitch had been offered a deal for the testimony but when asked if there were any deals, the prosecutor said there were not. Ten years later, the lie was revealed.

Unfortunately, it was too late for McCleskey. His case had already been through the federal court system and the Supreme Court held that he was not entitled to any additional appeals. On September 25, 1991, the state of Georgia executed Warren McCleskey.

- Prosecutors rely on the testimony of co-defendants, who also have strong motivation to lie. For example, Justin Lee May was convicted of capital murder based on testimony made by his co-defendant, Richard Miles.

In exchange for testifying that May pulled the trigger, Miles was allowed to plead guilty to a non-capital offense. Four days before the execution, Miles recanted, stating, "While I was present and an eyewitness to the offense, Justin Lee May was not present, nor did he participate in any manner. All of my testimony was untrue. The police told me that I could be executed if I didn't cooperate, so I decided that if I didn't point the finger at May I would be executed."

Fortunately for May, the Fifth Circuit stayed his execution giving him time to bring forward the new evidence of his innocence.

- Prosecutorial misconduct was part of what led Governor Ryan to impose a moratorium on executions in Illinois. *Chicago Tribune* reporters conducted research on prosecutorial misconduct in Illinois. They identified 381 murder cases reversed on prosecutorial misconduct grounds, such as withholding exculpatory evidence, improper argument, and suborning of perjury, among others.

## Case Examples: Misconduct by Police or Prosecutors

**Kurt Bloodsworth** was wrongfully convicted after police and prosecutors failed to investigate or disclose evidence of another suspect who was the actual killer. It took nine years and two trials in which he was wrongfully convicted before his innocence came to light.

Bloodsworth was convicted of a high profile kidnapping, rape and murder of a young girl. The conviction was based on the eyewitness testimony of some boys playing in the area where the girl was killed.

Three days after the conviction, police and prosecutors learned about a suspect named David Rehill. Hours after the murder, Rehill had showed up at a mental health clinic with scratches on his face and told a therapist that he was "in trouble with a little girl." Rehill resembled the police composite and looked like Bloodsworth, who was already behind bars.

It took the police six months to interview Rehill. Even after they interviewed him, they never placed him in a lineup or checked his alibi.

Despite the fact that the state had known about Rehill for two years, the information was withheld from Bloodsworth until two days before his second trial. His attorneys did not have time to investigate and did not request a continuance. Like the first jury, the second jury never knew there was another suspect.

After two wrongful convictions, Bloodsworth was finally exonerated after DNA evidence proved that he could not have committed the crime.

**Gary Gauger** was wrongfully convicted of murdering his parents in 1993 on the basis of a false confession obtained by police after he was held for 16 hours without food or access to an attorney. He was sent to Illinois's death row.

The police wrote out a version of the murder and tried to convince Gauger that he had killed his parents while in a blackout state. Gauger refused to sign the "confession" but it was introduced at his trial and was virtually the only evidence against him.

Gauger's attorney did not prepare for the trial, and told Gauger's sister that "death penalty cases are won on appeal." Fortunately for Gauger, a Northwestern University law professor took over his case and Gauger's conviction was reversed. The real killers were discovered when FBI agents, listening to wiretapped conversations during an investigation of a motorcycle gang, heard the killers describe killing the Gaugers.

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