

## Fact Sheet: Innocence

*"Perhaps the bleakest fact of all is that the death penalty is imposed not only in a freakish and discriminatory manner, but also in some cases upon defendants who are actually innocent."*

- Supreme Court Justice William J. Brennan Jr., 1994

### INNOCENT PEOPLE ARE ON DEATH ROW AND MAY HAVE BEEN EXECUTED:

- More than 118 people have been exonerated from death row since 1972, including 21 from the state of Florida and 18 from the state of Illinois. (Death Penalty Information Center)
- In the 25 years from 1973 to 1998, there were an average of 2.96 Exonerations per year. In the five years since 1998, thru 2003, that average has risen to 7.60 Exonerations. (Death Penalty Information Center)
- In the U.S., as of June 2002, 108 people including 12 death row inmates, have been exonerated by use of DNA tests. ("DNA Testing and the Death Penalty." 2002, ACLU.)
- The system of capital punishment is flawed at both the state and federal level. On the federal level, 3.5% of persons whom the Attorney General has attempted to execute have been innocent. In one example of state-level problems, Illinois (prior to Governor Ryan's blanket commutation) had an error rate of at least 4.5%. (American Civil Liberties Union)
- A study identified 23 instances in the last century in which a person with an extraordinarily strong case of innocence had been executed by the government (H. Bedeau & M. Radelet, "Miscarriages of Justice in Potentially Capital Cases" Stanford Law Review, 1987). Since 1987, eight cases have been reported.

### RECENT CASES OF EXONERATION:

- In 1985, Kirk Bloodsworth was convicted and sentenced to death in Maryland for sexually assaulting and killing a nine year old girl. His arrest was based on an anonymous caller reporting to the police that he had seen Bloodsworth with the victim that day and the concurrence of five eyewitnesses who said they had seen Bloodsworth with the victim. At trial, testimony was given, stating that Bloodsworth had said he had done something to affect his relationship with his wife and that he had mentioned a bloody rock (that was previously shown to him during interrogation). The only physical evidence presented was a shoe print, matching his size, left at the crime scene. Bloodsworth's death sentence was overturned in appeals and converted to two life sentences, and in 1992 DNA testing was found to exclude Bloodsworth as the perpetrator. Bloodsworth was pardoned in 1993, and became the first death row inmate released through DNA testing, after having spent eight years on Maryland's death row. (The Innocence Project)
- Verneal Jimerson and Dennis Williams were sentenced to death in Illinois as a part of the "Ford Heights Four," a group of men convicted of murdering a young couple and raping the woman in 1978. The state's chief witness claimed to have been present in the house where the couple was killed, and pinpointed Jimerson, Williams, and two others as the perpetrators. The witness recanted, and the charges against Jimerson were dropped. The other three defendants, however, were placed near the scene of the crime that night (which was in the neighborhood they resided in) and were indicted anyway. After her recantation, the witness was convicted as an accomplice to perjury, and in 1985, agreed to again testify according to her original story. Jimerson was subsequently sentenced to death. It was not until David Protess and a group of students from Northwestern University researched the case that police files were uncovered, documenting tips that named other possible suspects. Through their research, biological testing, including DNA testing, was performed, wherein the four defendants were excluded as perpetrators. They were released in 1996 after Williams and Jimerson has spent 18 and 11 years, respectively, facing the death sentence. (The Innocence Project)
- Frank Lee Smith was sentenced to death in Florida in 1986 for the murder and rape of an eight year old girl during an attempted burglary. His conviction was based on the eyewitness testimony of the victim's mother, who claimed to have seen Smith through the front window of her house. Two neighbors also claimed to have seen Smith directly following the incident and their reports were used to compile a composite sketch which was used to arrest Smith. The testimony of these eyewitnesses, as well as the presentation of Smith's criminal record, earned Smith the death sentence by a unanimous jury. Smith was granted a stay of execution in 1990 and the Florida Supreme Court ordered an evidentiary hearing in 1998, based on defense claims of new evidence. One of the eyewitnesses had changed her story, and an investigation by the defense had led to another suspect. In January of 2000, while the renewed investigation continued to take place, Smith died of cancer, still on death row. It was not until December of that year that prosecutors and the FBI obtained DNA evidence that exonerated Smith of the crime. Frank Lee Smith spent a total of 14 years on death row and died in prison for a crime he did not commit. (The Innocence Project)

- In 1991, Ray Krone was arrested and subsequently convicted and sentenced to death for the killing of a Phoenix, Arizona woman in the restroom of a bar. Krone, who had no prior criminal record, was arrested based on a statement by the victim's friend that he was supposed to have helped her close the bar (where she worked) that night. Although saliva and blood were found on the victim's body at the scene of the crime, no DNA testing was originally performed, and the only physical evidence presented at trial were the bite mark imprints left on the victim's body that supposedly matched a Styrofoam impression made by Krone. Convicted in 1992 and sentenced to death, Krone received a new trial four years later, and was sentenced to life in prison. Finally, in 2002, DNA testing was performed on the blood and saliva present at the crime scene, and Krone was exonerated. He had spent a total of 10 years in prison, four of which were spent awaiting execution. (The Innocence Project)

#### **RECENT CASES WITH STRONG POSSIBILITY OF INNOCENCE:**

- Texas executed Gary Graham on July 22, 2000 despite claims that he was innocent. Graham was 17 when he was charged with the 1981 robbery and shooting of Bobby Lambert outside a Houston supermarket. He was convicted primarily on the testimony of one witness, Bernadine Skillern, who said she saw the killer's face for a few seconds through her car windshield, from a distance of 30 -40 feet away. Two other witnesses, both who worked at the grocery store and said they got a good look at the assailant, said Graham was not the killer but were never interviewed by Graham's court appointed attorney, Ronald Mock, and were not called to testify at trial. Three of the jurors who voted to convict Graham signed affidavits saying they would have voted differently had all of the evidence been available. (Death Penalty Information Center)
- Florida convicted Leo Jones on March 28, 1998 - Jones was convicted of murdering a police officer in Jacksonville, Florida. Jones signed a confession after several hours of police interrogation, but he later claimed the confession was coerced. In the mid-1980s, the policeman who arrested Jones and the detective who took his confession were forced out of uniform for ethical violations. The policeman was later identified by a fellow officer as an "enforcer" who had used torture. Many witnesses came forward pointing to another suspect in the case. (Death Penalty Information Center)

#### **CAPITAL CASES INVOLVE A HEIGHTENED RISK OF ERROR:**

- The death penalty has become a politicized issue that is commonly used in campaigns for judges and district attorneys who are elected to their positions. Those judges and prosecutors are motivated to sentence as many defendants to death as they possibly can to maintain a record of being "tough on crime."
- Due to the high emotions surrounding murder cases, there is great pressure on law enforcement officials to solve homicides quickly. Such pressure may lead to misconduct by the investigators and prosecutors.
- During the jury selection process, any person opposed to capital punishment is dismissed by the prosecutors. Not only do these "death-qualified" juries exclude an extremely large proportion of the population, but they are also more likely to convict during the guilt/innocence phase of the trial. (S. Gross, "The Risks of Death: Why Erroneous Convictions are Common in Capital Cases," 1996)
- Due to the scarce resources of a criminal defendant's attorneys, they often must decide whether it would be better to risk the client's conviction, yet save his life, by spending more time preparing for the sentencing phase. If this preparation occurs at the expense of an investigation that could yield evidence that would produce an acquittal, it heightens the risk of a wrongful conviction. (R. Dieter, "Innocence and the Death Penalty: The Increasing Danger of Execution the Innocent," Death Penalty Information Center, 1997)