

Report details the railroading of defendants to the death chamber in Texas

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A report released earlier this month documents gross injustices and legal abuses in death penalty cases in the state of Texas. The report, published by the *Chicago Tribune*, examines the state with by far the most executions of any in the US. Over the past five years under Governor George W. Bush, the presumptive Republican candidate for president in the November elections, Texas has executed 135 individuals. The most recent execution was that of Gary Graham, who was killed yesterday despite clear evidence pointing to his innocence and the fact that he never received a fair trial.

According to the report, many of the 131 executions that have taken place under Bush have been “compromised by unreliable evidence, disbarred or suspended defense attorneys, meager defense efforts during sentencing and dubious psychiatric testimony.” From the details and case studies provided, it is clear that state killings in Texas proceed with scant concern for the guilt or innocence those condemned.

One of the most common features of death row cases in Texas is the lack of adequate or competent defense. Of the 131 cases, the *Tribune* found that in 43, or approximately one third, the defendant was represented at trial or at the initial appeal by a lawyer who had previously been, or would later be, disciplined. Attorney misconduct included failing to show up for trials, lying to defendants and judges and dismissing a defendant's legal claims without the latter's permission or knowledge.

Many lawyers failed to thoroughly argue their clients' cases. In 22 of the 131 cases, no witnesses were called by the defense during the sentencing phase, when the decision to administer the death penalty is made. In an additional 18 cases, only one witness was called.

It is generally the poor who suffer most from

incompetent defense. Unable to pay for their own attorney, they are often assigned inexperienced lawyers who have neither the time nor the desire to research their case. Local judges assign the court-appointed lawyers. These judges have been criticized for selecting defense counsel based on personal relations and expediency, rather than the quality of the lawyer. The overloaded judges are often more interested in getting the trial over with than in determining the guilt or innocence of the defendant.

The report gives a number of examples of inadequate defense. One Texas attorney, Joe Cannon, was the court-appointed lawyer for three persons executed under Bush. Though Cannon was never sanctioned, he was notorious for sleeping through trials and speeding through cases in order to please judges.

Another lawyer, Ronald Mock, has served time in jail for mishandling criminal cases. A special investigator concluded that Mock's defense in one case was so inadequate that it contributed to “a breakdown in the adversarial system of justice.” Mock was one of the lawyers for Gary Graham.

The gross inadequacy of the legal defense for persons facing execution is fostered by the Texas judicial system. Court-appointed attorneys are low-paid, forcing them either to work extensive hours or cut the time they give to each case. Many experienced attorneys refuse to defend court-appointed cases, thus putting the burden on overworked and inexperienced lawyers, as well as those who lack the competence to defend higher-paying cases.

Inept defense is only one side of the death penalty in Texas. The other is corrupt prosecutors. The *Tribune* report found that many of the 131 executions under Bush were based on testimony from unreliable sources. Twenty-three cases involved the use of jailhouse

informants, who often receive compensation for their testimony. This compensation generally comes in the form of special treatment or leniency for their own sentences, but sometimes involves monetary remuneration.

At least 29 cases involved the testimony of psychiatrists who, based on a description of the defendant's past, were asked to predict the likelihood that the defendant would commit future crimes. Often the psychiatrists never personally examined the person being judged. The American Psychiatric Association has condemned this form of testimony as untrustworthy and unethical. Nevertheless, some individuals have made a living off this practice.

One case described in the report was that of David Wayne Stoker, a carpenter who was executed in 1997 for allegedly murdering a convenience store clerk in 1986. The prosecution's case was based on the testimony of a jailhouse informant, Carey Todd. For his services, Todd was given \$1,000 as part of a "crime-stopper program." He also had drug charges against him dropped. During the trial, a police chief and an investigator for the district attorney lied about their purchase of Todd's testimony.

During the sentencing phase, James P. Grigson was called by the prosecution to testify on the likelihood that Stoker would commit new murders if he were not executed. Grigson, nicknamed "Dr. Death," has made his living by declaring defendants permanent sociopaths. During the 1980s he made upwards of \$150,000 dollars a year, charging prosecution attorneys \$150 an hour for his services. In 1995, Grigson was expelled from the American Psychiatric Association. Grigson testified against 16 of the 131 persons executed under Bush.

The ability of Stoker, like many others, to combat the prosecution's purchased testimony was hindered by his incompetent defense. One of his lawyers had practiced for less than a year, while his other lawyer later gave up his law license in the face of disciplinary action. He later pled guilty to forgery.

The *Tribune* report also details the use of medical reports from doctors who had botched or falsified autopsies for the prosecution. With regard to one doctor, Ralph Erdman, a special investigator stated, "If the prosecution theory was that death was caused by a Martian death ray, then that was what Dr. Erdmann

reported."

Despite all of these problems, the *Tribune* report found that defendants are rarely given new trials. The appeals process suffers from the same problems of inadequate defense as the initial phase. The Court of Criminal Appeals, dominated by right-wing judges, has rarely sided with the defense, even when evidence came to light that, in one instance, the defendant's lawyer slept through the trial, and, in another, a psychiatrist testified that the defendant was more likely to commit future crimes because he was Hispanic. Since 1995, when Bush took office, the Court of Appeals has granted only eight new trials and six new sentences, while upholding 270 death sentences.



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