

DNA evidence exonerates two Texas inmates imprisoned since 1988

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Last week the Texas judiciary finally released Christopher Ochoa, who was wrongfully convicted of murder and sentenced to life in prison in 1988. Richard Danziger, who was convicted along with Ochoa for the same crime, is still interned in the Skyview psychiatric prison in Rusk, Texas. He is currently seeking his release, though he has been unable to care for himself since a severe beating from a fellow inmate in 1991 left him with brain damage.

Former Texas governor and current President George W. Bush has vouched for the integrity of the judicial system over which he presided, however repeated reports have shown that it is plagued with inadequate counsel for defendants, prosecutorial misconduct and false convictions. The Ochoa and Danziger cases bring into sharp relief the injustices of the Texas criminal justice system. The two would still be facing prison for the remainder of their lives were it not for the intervention of a group of law students in the Wisconsin Innocent Project, a law program that specializes in the investigation of potentially false convictions.

Ochoa and Danziger were both given life sentences for the 1988 rape and murder of Nancy DePriest, a 20-year-old mother and employee at a North Austin Pizza Hut restaurant. DePriest was killed by Achim Joseph Marino, whose confession to the crime in 1996 eventually led to Ochoa's release. In 1988, however, Austin police decided to pin the crime on Ochoa and Danziger and proceeded to ensure that they were convicted.

The two friends worked at another Pizza Hut, and a few days after DePriest's murder decided to pay respects to DePriest by drinking a toast at the scene of the crime, though Ochoa was reportedly uneasy about doing so. Danziger spoke about the crime with a

security officer stationed there, who judged the behavior to be suspicious and called the local police.

Ochoa was brought to the police station and questioned by investigator Hector Polanco and others. The officers denied Ochoa the right to a lawyer, though he requested one, on the pretense that he had not been officially charged with a crime. Polanco proceeded to physically and mentally assault the timid 22-year old, throwing chairs around the room and threatening Ochoa with the death penalty.

Ochoa was led to believe that he faced only two options: life in prison or death. Polanco intimidated him by showing him pictures of death row and indicating on Ochoa's arm the exact spot where lethal chemicals would enter his bloodstream if he did not confess. He was told that he would be given up as "fresh meat" for other inmates and that he would never hold his mother again. Ochoa later testified, "I thought I was going to get the death penalty. He kept threatening me with that ... 'You're going to get the needle for this. We got you.'"

Ochoa's current attorney Bill Allison says that police "violated every rule of taking down a statement that you can violate.... The invocation of asking for a lawyer should have stopped the interrogation at that point." According to Allison, moreover, a tape-recording of the interrogation has since mysteriously disappeared.

It is impossible to reconstruct Ochoa's mental state during this interrogation, but by all accounts he was a mild-mannered and soft-spoken young man, an ideal target for intimidation. A Mexican-American, Ochoa managed his high-school football team, edited its literary magazine and graduated with honors in 1984. His classmates described him as reserved, someone who was quiet and generally kept to himself. Without a lawyer and confronted with what amounted to a death

threat from Polanco, he confessed to the killing. Polanco fed him information about the crime in order to make his confession more believable and more damning. As a condition for the deal, Ochoa did one more thing: he agreed to finger Danziger as his accomplice.

Polanco's actions were not isolated occurrences. His is the sort of “investigative” work fostered and encouraged by the Texas justice system. He has been accused repeatedly of violations of the law—everything from coercing false testimony to beating a suspect. In 1992, the Austin Police Department finally fired him after he gave false testimony at a murder trial, but he was eventually rehired and awarded \$350,000 after he brought charges against the department for discrimination.

Danziger's former girlfriend, Donna Angstadt, has described her experience with Polanco and Sgt. Bruce Boardman as “the most horrific ... experience I've ever been through in my life. I had nightmares about this forever.” Such coercive forms of investigation go hand in hand with the systematically abysmal legal services available for poor Texans charged with crimes. These problems exist throughout the United States, but are especially endemic in Texas.

Though Danziger maintained his innocence throughout, both were tried and convicted. Ochoa privately told his friends and family that he was innocent. He says his lawyer told him that if he publicly stated that his confession was false his fate would be sealed. At Danziger's trial, Ochoa repeated the detailed information that Polanco fed him earlier. Without an alibi, Danziger could only assert his innocence against the false testimony of Ochoa and the onslaught of the prosecution. The jury took only seven and a half minutes to deliberate and sentenced him to life in prison.

A year later, Danziger was in a hospital having brain surgery after being repeatedly kicked in the head by another inmate wearing steel-tipped boots who had mistaken Danziger for someone else. In 1997 he was confined to a psychiatric prison. Danziger's sister describes him as constantly nervous and fearful, and he has had problems recognizing his close relatives. Ochoa, on the other hand, wanted to kill himself by 1996. In a poem provided by his mother, he wrote, “ I look for my future somewhere / It's so dark out there I

can't see / Don't see it as hard as I stare.”

It is likely that Ochoa and Danziger would have spent the rest of their lives in prison if it were not for the 1996 confession of Marino. Even so, it took five years before the new evidence was to have any effect. In 1996, after a “religious awakening,” Marino—in prison for other crimes—contacted the Austin police, a local newspaper and the ACLU about his involvement in the murder, all to no avail. He told them that he was released from prison in 1988 with an intense hatred of people, that he raped and murdered DePriest, that he knew neither Ochoa nor Danziger. In February 1998, Marino sent a letter to then Texas Governor George W. Bush, again asking that the lawyers of Danziger and Ochoa be contacted. The Bush office, however, filed the letter away, apparently without notifying anyone.

After learning of Marino's confession in 1998, Ochoa contacted a lawyer at the Wisconsin Innocence Project. The students uncovered DNA evidence indicating that Marino was the sole killer. At the time of the crime, DNA testing was not available, and testing of the evidence was not deemed necessary once the prosecution achieved a conviction. Ochoa has been released and Danziger's lawyers are seeking to have his conviction overturned.

After the truth had come out, Bryan Case, an assistant district attorney for Travis County, Texas, stated, “It's a bad feeling knowing [the justice system has] failed. But it's a good feeling fixing it.” In reality however, nothing has been “fixed.” Both men have spent the prime years of their lives behind bars, and Danziger has left behind a part of his brain and a portion of his sanity. Moreover, given the rampant prosecutorial misconduct and inadequate defense that characterize the judicial system in the United States, it is certain that many more innocent people like Ochoa and Danziger are languishing in the nation's prisons.



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