

Texas execution in 2000 based on false evidence

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Texas death row inmate Claude Howard Jones was put to death in 2000 at the age of 60. DNA tests now show that the only piece of physical evidence used against him in his capital case—one human hair—did not actually belong to him. The discovery carries huge legal significance, as there has previously been no clear-cut case in modern US history in which a death row inmate has been executed based solely on demonstrably false evidence.

Claude Jones was convicted in 1990 for the 1989 murder of Allen Hilzendager inside an East Texas liquor store. Jones was executed by lethal injection on December 7, 2000, after exhausting all of his appeals. His was the last execution presided over by George W. Bush, Texas governor at the time. By the time Bush resigned his office on December 21, 2000 to assume the US presidency, he had presided over 152 executions in the state.

According to witnesses, a truck carrying Jones and another man, who turned out to be Kerry Daniel Dixon, pulled up in front of the liquor store in Point Blank, 80 miles east of Houston, on November 14, 1989. According to two witnesses on the other side of the highway, one of the men went inside while another waited in the truck. Neither witness, however, could identify which man went inside and ultimately shot and killed the victim.

The only physical evidence retrieved at the scene of the crime was a single, one-inch strand of hair. At first, the hair expert at the Texas crime lab thought the hair sample was “unsuitable for comparison” using the limited technology available at the time. This method, now considered obsolete, involved visual examination under a microscope of two hairs side by side to determine whether they match.

The hair expert eventually changed his mind and

examined the sample, comparing it to hair samples from Claude Jones and Danny Dixon, and determined that the strand of hair found inside the liquor store belonged to Jones. This was the only physical evidence presented by the prosecution in its case against Jones. The only other evidence presented by the prosecution at trial was the testimony of Dixon’s friend Timothy Jordon, who reportedly supplied the murder weapon, and who later said he had been coerced into testifying by the prosecution in return for a lighter sentence.

A three-year lawsuit by the Innocence Project and the *Texas Observer* finally resulted in court-ordered DNA testing of the hair sample in question, which had been stored in a plastic evidence bag in the courthouse in Coldspring, Texas for more than two decades. The sample was subjected to mitochondrial DNA testing and was determined to have come from the victim, Allen Hilzendager, and not from either Jones or Dixon.

While this DNA testing method was not available at the time of Claude Jones’s trial, it was in wide use before his final appeals in 2000. While the new testing does not definitively prove Jones’ innocence, it does mean that he was convicted based on clearly false evidence. Under Texas law, a death penalty conviction cannot be secured without corroborating physical evidence that the suspect was directly responsible for the crime.

“I have no doubt the conviction would’ve been reversed with these results,” commented Barry Scheck of the Innocence Project. He added, “The DNA results prove that testimony about the hair sample on which this entire case rests was just wrong. This is yet another disturbing example of a miscarriage of justice in Texas capital murder prosecutions. Unreliable forensic science and a completely inadequate post-conviction review process cost Claude Jones his life.”

In the course of the appeals process, Jones' defense attorneys were unable to convince any court in Texas to have the crucial hair sample retested. At the same time, prosecutors and judges continued to point to the hair expert's determination that the sample belonged to Jones as evidence of his guilt.

Writing to the Texas Board of Pardons and Paroles in 2000 asking for clemency in Jones' case, the condemned man's attorney at the time argued, "[T]he state of Texas runs the risk of executing a man despite the availability of modern technology that might exonerate him." However, the four-page memo presented to then-Governor Bush by his legal advisers made no mention of the availability of a DNA test in Jones' case.

As in the overwhelming majority of death penalty cases that came before George W. Bush during his six years as Texas governor, he denied clemency and Claude Jones was executed that evening. Bush claimed to support delays in executions if relevant new DNA tests could be performed, but he relied in this case and others on short summaries and cursory briefings from his legal advisers and signed death warrant after death warrant after only minutes of consideration and no independent investigation.

In 2000 alone, 40 death row prisoners were executed in Texas. As governor, Bush refused to grant clemency to two female death row prisoners. Karla Faye Tucker died by lethal injection on February 3, 1998, the first woman executed in Texas since the Civil War. Bush sadistically mocked her impending execution, imitating her in a high-pitched voice, "Don't kill me! Don't kill me!"

Bush has consistently maintained that no innocent person has been sent to his or her death under his watch and has not commented on the revelations surrounding Claude Jones's execution. However, the case points to the likelihood that among the 464 individuals executed in Texas since the US Supreme Court reinstated the death penalty in 1976, there have been numerous wrongful convictions and that innocent people have been executed.

In Claude Jones' case, the Texas death penalty machine sought to deny him justice even after his death. Following his execution, Jones' family tried repeatedly to gain access to the disputed sample to have it tested. Their efforts were blocked in particular by San

Jacinto County District Attorney Bill Burnett, who rejected an Open Records Act request for access to the hair sample for DNA testing and went so far as to announce plans to have it destroyed in 2007.

Jones' son Duane, who has always believed his father was wrongfully convicted, commented to *Time* magazine, "It saddens me because you know they spend all the taxpayers' money fighting DNA tests. If you're so confident in your convictions, do the testing. You might find out something new."



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