

Columbia Law School study: How Texas executed an innocent man

Patrick Martin
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A study released by Columbia University Law School this week documents in agonizing detail the execution of an innocent man in the state of Texas 23 years ago.

The Columbia *Human Rights Law Review* devoted its entire spring edition to a double-issue, book-length study of the state killing of Carlos DeLuna, demonstrating that a different man, Carlos Hernandez, was likely guilty of the murder for which DeLuna was tried, convicted and put to death.

The report is entitled *Los Tocayos Carlos: An Anatomy of a Wrongful Execution* (“Tocayos” means “namesakes” in Spanish). Professor James Liebman and 12 students at the law school worked on the investigation for more than seven years, interviewing a hundred witnesses and assembling an exhaustive mass of evidence.

The 20-year-old DeLuna was arrested in February 1983 for the stabbing death of a young woman, Wanda Lopez, in Corpus Christi, Texas. He consistently maintained his innocence, as well as identifying the actual murderer, Hernandez, who was the same height and weight and bore some resemblance to DeLuna.

Police and prosecutors maintained that Carlos Hernandez did not exist and was a “figment of DeLuna’s imagination,” as the chief prosecutor declared in his closing argument. However, an investigator for Professor Liebman found proof of Hernandez’s existence in only one day and learned that the two men were distantly related.

Hernandez was an alcoholic with a long history of violence, arrested 39 times, 13 of them for carrying a knife, and on parole most of his adult life. Several of his arrests were for hold-ups of gas stations and convenience stores. Wanda Lopez was a store clerk at a Shamrock gas station.

Two months before DeLuna was executed, in October

1989, Hernandez was sentenced to ten years in prison for a knife assault on another woman. The lock-blade buck knife he used in the assault was eventually found to be the same weapon that killed Wanda Lopez six years before.

Hernandez made repeated statements about having killed Wanda Lopez, joking about how his “tocayo” had been arrested and convicted for that crime in his stead. Corpus Christi police heard about these claims but made no effort to revisit the case against DeLuna or hold back his execution.

According to the Columbia University report, Lopez actually called police twice the night of her death, asking for protection from a man with a switchblade knife, but the police did nothing. Professor Liebman observed, “They could have saved her. They said ‘we made this arrest immediately’ to overcome the embarrassment.”

Carlos Hernandez died in prison in 1999, of cirrhosis of the liver, ten years after the execution of Carlos DeLuna and five years before the Columbia University team took up the case.

Once they began investigating, the shockingly inept police work became apparent. The case against DeLuna was based on the eyewitness testimony of a man who had seen the attack but later confirmed that he could not tell one Hispanic man from another.

DeLuna was found hiding under a pickup truck a block away. Then 20 years old, he was described as “childlike” in his demeanor and clearly frightened. He was marched back to the gas station, identified by the witness and promptly arrested.

Even then, there were obvious discrepancies, as the witness had initially described the attacker as a man with a mustache and wearing a grey flannel shirt. DeLuna was clean-shaven and wearing a white dress

shirt.

No useable fingerprints were taken, no blood samples or scrapings from the victim's fingernails. Crime scene photographs showed a bloody footprint next to the body that was never measured, let alone compared to the shoes worn by the alleged attacker.

The crime scene was washed down within two hours so the owner could reopen the gas station for business. When Liebman sought the evidence file to conduct DNA testing, which was not available in 1983, he was told all the evidence had disappeared.

The report's authors conclude: "Unfortunately, the flaws in the system that wrongfully convicted and executed DeLuna—faulty eyewitness testimony, shoddy legal representation and prosecutorial misconduct—continue to send innocent men to their death today."

In statements to the press accompanying the release of the report, Professor Liebman pointed to the routine character of the colossal injustice perpetrated on Carlos DeLuna. "This wasn't the trial of OJ Simpson," he said. "It was an obscure case, the kind that could involve anybody."

"We've provided as complete a set of information as we can about a pretty average case, to let the public make its own judgment. I believe they will make the judgment that in this kind of case there's just too much risk."

In their foreword to the publication of "Los Tocayos Carlos," the editors of the *Human Rights Law Review* also emphasize the ordinariness of the case, which was the product not of a well-organized frame-up, but the routine methods used to send to their deaths the vast majority of the nearly 500 men and women executed in Texas over the past three decades.

They write that the study "poignantly reveals how easily our legal system can fail to produce just outcomes even without the deliberate interference of individuals acting in bad faith and how the consequences of such failures can be irrevocable and, at times, fatal... At a minimum, we hope that this breathtaking story will be an adequate answer to those who question whether it is possible that an innocent man has ever been executed for a crime he did not commit in the United States."



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