

## Review of unfair death penalty sentencing as important as innocence

By

Guest blogger

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*The following guest blog post is written by Lisa Graybill, Legal Director of the [American Civil Liberties \(ACLU\) of Texas](#).*

Though death sentences and executions have declined in recent years in Texas, the state remains the national leader in executions. The Dallas County District Attorney's Office, under [Craig Watkins's](#) leadership, should be commended for taking a serious look at the questionable procedures and shoddy evidence routinely used in the past that have plagued former administrations and led to scores of wrongful convictions. But Dallas County still remains a leader among Texas counties in seeking and receiving death sentences and is on track to replace Harris County as the infamous "capital of capital punishment." Its recent handling of decades-old capital cases, including the resentencing trials of Ronald Chambers and Fernando Garcia and the retrial of Jonathan [Bruce Reed](#) now taking place, reveal serious shortcomings in its consideration of capital cases and decisions to seek death and its total unwillingness to review the unfair sentencing practices it inherited.

The case of Ronald Chambers, who was once dubbed the "Dean of Death Row" and was the longest serving inmate on Texas' death row at the time of his death, provides a telling example. Mr. Chambers, an African-American man, passed away last November in the Dallas County Jail awaiting his fourth capital sentencing trial for the 1975 murder of Michael McMahan, a white man. He had been tried three times before, in 1975, 1985, and 1992. Following each trial, his case was reversed due to clear, egregious constitutional errors, most recently in 2007 because his jury in his third trial had no mechanism to give meaningful consideration to his mitigating evidence.

The State's own misconduct and refusal to concede these errors or reform its own troubling practices over the 35-plus year history of the case resulted in years of needless delay in Mr. Chambers' appeals. Though the State was willing to spend enormous time and resources over decades fighting his appeals, it was totally unwilling to acknowledge that Mr. Chambers was a model prisoner who would not be a future danger and thus was ineligible for the death penalty under Texas law.

In addition, Mr. Watkins's office was doggedly seeking the death penalty against him for the fourth time even though, at the time of his death, Mr. Chambers was 55-years old and suffered from chronic health issues that proved fatal. Further, by the time he was granted a fourth resentencing trial, the State's delays had greatly thwarted Mr. Chambers' ability to conduct the comprehensive mitigation investigation that the Constitution requires: an exhaustive investigation of Mr. Chambers' life, searching for factors that might persuade a jury to give him a life sentence. His parents and other critical mitigation witnesses were deceased or otherwise unavailable. Records were lost. His childhood neighborhood was destroyed.

The Dallas County District's Attorney's Office's handling of Mr. Chambers' case also came at enormous cost to Texas taxpayers. In 1992, before his third trial, the Dallas Observer dubbed Mr. Chambers the "5 Million Dollar Man" because the case, even then, had cost so much money. Eighteen years of unnecessary litigation and maximum-security incarceration later, the costs to the state of Texas of the State's steadfast determination to execute Mr. Chambers have been, no doubt, astronomical.

Though the age of Mr. Chambers' crime rendered him ineligible for the relatively new-to-Texas sentence of life imprisonment without parole, Mr. Chambers had offered to accept two stacked life sentences for his role in Mr. McMahan's death. The deal effectively ensured that Mr. Chambers would die in prison; he would not have been eligible for parole until the age of 90. But the offer fell on deaf ears at the Dallas District Attorney's Office. It refused to consider the 35 years in which it had failed to obtain Mr. Chambers' execution, its own responsibility in the errors that led to his three reversals and the resulting litigation delays, the astronomical costs already incurred in pursuing a death sentence against him and the more to come in seeking a punishment for a crime over three decades old, and the emotional toll on Mr. McMahan's surviving family member of another capital sentencing trial and appeals.

The Dallas County District Attorney's office also has a long, disturbing history of discrimination in jury selection, excluding people of color, women, and other minorities from its juries. Because of these discriminatory practices, Mr. Chambers, an African-American man, was tried not once, but twice, by all-white juries, in his 1975 and 1985 trials. Indeed, his 1985 trial was reversed when Dallas prosecutors were unable to provide race-neutral reasons for removing African-Americans from his jury. One of these prosecutors was Andy Beach. Despite this tainted history, Craig Watkins allowed Andy Beach to lead the prosecution team seeking Mr. Chambers' fourth death sentence.



Though Mr. Watkins no longer has the opportunity to correct these troubled practices in Mr. Chambers' case, he does have the opportunity to correct it in others. Jury selection began in Jonathan Bruce Reed's retrial on February 14, 2011. The Fifth Circuit granted Mr. Reed a new trial 26 years after the jury returned its verdict in his second trial in 1983 because Dallas prosecutors - again including Andy Beach - had improperly excluded African-Americans from his jury. Andy Beach leads Mr. Reed's prosecution now. Watkins's decision to allow Andy Beach to prosecute Mr. Chambers and Mr. Reed's cases when he had been a complicit player in the office's discriminatory practices that led to reversals of their convictions, offered no assurance that the unconstitutional tactics of the past are behind his office.

Just as with Mr. Chambers, the State's unwillingness to acknowledge its error in Mr. Reed's case despite its well-documented history of discrimination resulted in 26 years of needless delays to the case, at great prejudice to Mr. Reed. Mr. Reed's legal team faces extraordinary challenges in investigating a case in mitigation. Mr. Reed's father and his stepmothers who raised him are deceased, as well as other critical witnesses, including teachers, childhood physicians and mental health workers. Key records are destroyed.

Craig Watkins has also chosen to continue to pursue death against another capital defendant who was, like Mr. Chambers, granted a resentencing trial decades after his conviction because his jury did not have an adequate vehicle to give meaningful consideration to his mitigating evidence. Fernando Garcia was first convicted and sentenced to death in 1989. He, too, faces the very same challenges as Mr. Chambers and Mr. Reed in investigating and presenting mitigating evidence over 20 years after his conviction and sentence of death. Mr. Garcia has offered to accept a plea of stacked life sentences ensuring that he will never leave prison if the State agrees to stop seeking death against him. Against this contaminated historical backdrop, Craig Watkins should accept the offer.

Since his election in 2006, District Attorney Craig Watkins has made a very public commitment to reform. He deserves praise for the establishment of the Conviction Integrity Unit in his office and his willingness to take a look at the mistakes of the past. In seeking death sentences against Mr. Chambers, Mr. Reed, and Mr. Garcia, however, he has not distanced himself from the misconduct left at his door by former administrations. A true commitment to justice and integrity requires not only taking a look at the sad legacy of wrongful convictions, but bringing the same level of scrutiny to the unfair and troubled sentencing practices of the past. He had the opportunity to do so in Mr. Chambers' case, but of course, for Mr. Chambers it is now too late. However, Mr. Watkins still has an opportunity to consider the tainted legacy and extend his promise of reform to sentencing in other capital cases, starting with the retrial of Jonathan Bruce Reed and the resentencing trial of Fernando Garcia. He should do so.