



JUSTICE AT DEATH'S DOOR

By KAREN J. MATHIS Special to The Tampa Tribune

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When we as a society are faced with a horrific crime, where guilt seems rock-solid, it is only human to react to the cruel brutality with visceral contempt for the perpetrator. But however appalling an individual crime might be, we must not lose sight of one truth: Sometimes the system gets the wrong person. To assure justice for all, victims as well as victimizers, we must make sure the system is fair and accurate to avoid making tragic mistakes.

This is not idle talk. Florida leads the nation in death penalty exonerations, with 22 since 1973. That means 22 wrongly convicted people lost years of their lives behind bars, facing death, before evidence of mistakes led to the release of these individuals.

A team of Florida experts, working under the auspices of the American Bar Association, recently identified 11 major problems with the fairness and accuracy of the state's death penalty system. Correcting these problems would not benefit hardened criminals who have been correctly sentenced to death; a fair and accurate system would still penalize them. But fixing the system would reduce the chance of unjustly sentencing to death - and possibly executing - the wrong person.

Florida's governor, Legislature and courts have an obligation to rise above emotional responses to savage crimes and assure the citizens of Florida that responses to those crimes are fair and just.

Florida's death penalty assessment team documented a system where lawyers defending people charged with crimes that put them at risk of death may not be qualified; where juries can recommend death sentences by majority vote, meaning some jurors oppose execution in the specific case at hand; where those convicted of capital crimes are more likely to be executed if their victim is white than if the victim is a minority; and where secrecy about clemency masks mercy in mystery. It is not surprising that mistakes have occurred in 22 of Florida's death sentence cases.

While the specifics of the team report add weight to the case against death sentences in Florida courts, it is not news that there are problems. Two sitting Florida Supreme Court justices have challenged the qualifications of lawyers handling postconviction death penalty appeals.

In 2000, the Governor's Task Force on Capital Cases recommended reforms to eliminate potential or actual racial bias in Florida's capital punishment system. In 1991 the Florida Supreme Court Commission on Racial and Ethnic Bias concluded that the death penalty is "not color blind."

In a decision in 2005, the Florida Supreme Court called on the Legislature to pass a law requiring jury unanimity in sentencing recommendations; the Legislature failed to pass a bill seeking this requirement.

To make Florida's death penalty system fairer and more accurate, the team recommends creating two independent commissions: one to establish the cause of wrongful convictions in capital cases and propose ways to prevent them in the future, and another to review claims of factual innocence in capital cases that, if sustained, would be reviewed by a panel of judges.

The team also urges enhancing standards to qualify and compensate lawyers handling postconviction death penalty cases, requiring that jury decisions to recommend the death penalty be unanimous, changing the rules governing the relevance of mental disability in capital cases, and performing a study of racial disparities in Florida's death penalty system.

No human system can be perfect, but Florida can make its death penalty system fairer and more accurate. Correcting the system's flaws will make that system stronger. Doing nothing puts at risk the lives of potentially innocent people. Only when Florida is confident that it punishes the guilty and protects the innocent will true justice be done.

THE NUMBERS

Since 1973, 123 inmates have been exonerated from death row. Florida leads the country in exonerations.

Florida: 22

Illinois: 18

Louisiana: 8

Texas: 8

Arizona: 8

- Oklahoma: 7
- Pennsylvania: 6
- Alabama: 5
- Georgia: 5
- North Carolina: 5
- Ohio: 5
- New Mexico: 4
- California: 3
- Massachusetts: 3
- Missouri: 3
- Indiana: 2
- South Carolina: 2
- Mississippi: 2
- Idaho: 1
- Kentucky: 1
- Maryland: 1
- Nebraska: 1
- Nevada: 1
- Virginia: 1
- Washington: 1

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Not All Released Inmates Are Exonerated

By VICTOR D. CRIST

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In the commentary article "Justice At Death's Door" (Nov. 19), Karen Mathis notes that Florida leads the nation in death penalty exonerations, with 22 since 1973. She also claims that the death penalty system in Florida is unfair and makes tragic mistakes. The way she spun the facts misleads a reader to believe our system is broken. That is simply not the case. In fact, the releases from death row clearly demonstrate our state's safeguards are working.

Currently there are fully funded offices of the Capital Collateral Regional Counsel and a statewide list of qualified private attorneys available to represent death-row inmates. As your state representative, I fought for these protections, which were recommended by the 1997 McDonald Commission, of which I was a member. These changes helped ensure the justice system has built-in safeguards.

Since the 1997 reforms, only one case exists in which an inmate was convicted and sentenced but later released from death row. The other 21 cases all occurred before 1997.

I also must take issue with the assumption that those released from death row are "exonerated" and thus free from guilt. In a number of these cases, the release was not due to innocence, but a result of technical problems. The Florida Legislature's Commission on Capital Cases analyzed these 22 cases, some of which were more than 20 years old. Fifteen cases were not reprosecuted because of newly discovered evidence, lost evidence, missing witnesses or recanted witness testimony. While these technical problems must be acknowledged, to label all people released from death row as "exonerated" is disingenuous at best. (For a comprehensive analysis of all 22 cases, see: <http://www.floridacapitalcases.state.fl.us/c-publications.cfm>)

In some of these cases, a significant amount of time passed between the original conviction and sentence and the date the court remanded the case. During lapses of up to 20 years, evidence was lost or witnesses died or could not be found. A decision to not prosecute is not a declaration of innocence.

Overall, nine of those released from death row have committed 28 felonies subsequent to their release. It is also important to note that no other person has ever been arrested in any of these 22 cases.

The death penalty system works in Florida. The safeguards are in place. That 22 people have been released from death row demonstrates judicial oversight - to ensure a wrongful conviction does not occur.

State Sen. Victor Crist, R-Tampa, chairs the Senate Justice Appropriations Committee and the Commission on Capital Cases, responsible for oversight of attorneys who provide appellate representation for death row inmates.

Find this article at:

<http://www.tbo.com/news/opinion/commentary/MGBDD2T13VE.html>

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