

THE DALLAS MORNING NEWS

QUALITY OF JUSTICE: DEFENSES IN QUESTION

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A look at the cases of some Texas death row inmates represented by attorneys whose performance has been questioned. Information comes from interviews, court records, state bar disciplinary files and previously published stories.

Inmate: Bobby Moore

County: Harris

Date of offense: April 25, 1980

Case summary: Convicted in the death of store clerk James McCarble in 1980. His confession was admitted as evidence at trial, except for his description of the shooting as accidental. His retained attorney, Alfred J. Bonner, did not object. During the punishment phase, Mr. Bonner failed to present information about his abusive childhood and borderline intelligence. Mr. Bonner was subsequently appointed to handle the appeal because Mr. Moore could no longer afford an attorney. He routinely missed filing deadlines and did not file a brief on Mr. Moore's behalf until three years after the trial. Mr. Bonner was suspended twice after the trial, then disbarred in 1991. Another attorney was appointed; he, too, missed filing deadlines. A volunteer attorney won a reversal of the punishment phase from the Fifth Circuit Court of Appeals.

Status: The case has been sent back to the state trial court.

Inmate: Calvin Burdine

County: Harris

Date of offense: April 18, 1983

Case summary: Convicted in the death of W.T. Wise. He initially confessed, then changed his story. A partner was convicted of a lesser crime and paroled after eight years. According to three jurors and the court clerk, Mr. Burdine's court-appointed attorney, Joe Frank Cannon, fell asleep several times during the trial. Mr. Cannon, who has since died, said he occasionally closed his eyes to concentrate. Mr. Cannon also used the terms "queer" and "fairy" to describe his client to the jury. And he allowed the seating of three jurors who admitted being prejudiced against gays. Last year, a federal judge ordered that Mr. Burdine be retried or set free because of Mr. Cannon's courtroom naps.

Status: The state appealed the judge's decision to the Fifth Circuit.

Inmate: Pam Perillo

County: Harris

Date of offense: Feb. 24, 1980

Case summary: Convicted in the robbery and strangulation of Bob Skeens after turning herself in and confessing to the crime. Another man, Robert Banks, was also killed. Ms. Perillo was convicted and sentenced to death. A new trial was ordered in 1984 because of an error in jury selection. She again received the death penalty. That conviction was overturned by a federal court because her court-appointed attorney, Jim Skelton, had a conflict of interest. He previously represented another defendant in the case, Linda Fletcher, with whom he had a personal relationship. Ms. Fletcher, who received five years probation, was the key witness against Ms. Perillo. Another defendant, James Michael Briddle, Ms. Fletcher's former husband, was executed in 1995. Mr. Skelton has since been disbarred for misconduct in two other cases.

Status: Earlier this year, capital murder charges against Ms. Perillo were dropped in exchange for her pleading guilty to two charges of aggravated robbery. Ms. Perillo received one life sentence and one 30-year sentence.

Inmate: George McFarland

County: Harris

Date of offense: Nov. 15, 1991

Case summary: Convicted in the robbery and murder of grocery store owner Kenneth Kwan. Mr. McFarland hired attorney John Benn, then 72 and "prone to take afternoon naps." A second attorney, Sandford Melamed, was appointed to assist. Mr. Melamed, who had no experience in capital cases at the time, later said he noticed Mr. Benn napping. Mr. Melamed said he prepared for the trial by spending seven hours reviewing files. He met with Mr. McFarland once before going to court. On appeal, Mr. McFarland was appointed another attorney with little experience, who has since been disciplined by the bar.

Status: Mr. McFarland has new lawyers who are filing appeals.

Inmate: Alberto Valdez

County: Nueces

Date of offense: Sept. 9, 1987

Case summary: Sentenced to die for the 1987 shooting death of Corpus Christi police Sgt. Joseph D. Bock. A federal judge overturned the death sentence in 1999, contending that Mr. Valdez "would not be on death row today but for his trial counsel's complete and utter failure to investigate" his background and discover "many 'red flags' suggesting mental retardation." The judge cited a

psychiatric evaluation of Mr. Valdez at age 18 that noted he was unable to "state the number of months in a year" or "describe a thermometer." Defense attorney Carl Lewis, now a Nueces County juvenile court judge, said he saw no signs of retardation.

Status: The Fifth Circuit heard oral arguments last week.

Inmate: Ricky Kerr

County: Bexar

Date of offense: Aug. 31, 1994

Case summary: Convicted in the murders of his landlords, Garry Lawrence Barbier and Elizabeth McDaniel. He was assigned a habeas attorney, Robert McGlohon, who had been practicing for only two years and had never tried or appealed a capital case. Mr. McGlohon's appeal failed to raise any challenges to Mr. Kerr's trial. The Court of Criminal Appeals denied the appeal, paving the way for Mr. Kerr's execution, because no issues were raised. Mr. McGlohon later admitted in an affidavit that he did not understand the appellate process. A volunteer attorney then requested a new appeal because of ineffective assistance of counsel. The court denied the petition. A federal judge later halted Mr. Kerr's execution. Prosecutors and lawyers in the state attorney general's office then agreed that Mr. Kerr deserved a new appeal.

Status: His state habeas corpus appeal is pending.

Inmate: Michael Dean Gonzales

County: Ector

Date of offense: April 21, 1994

Case summary: Convicted of the robbery-slayings of two elderly neighbors in Odessa. Mr. Gonzales, who confessed to a jail guard, argued he could not be convicted of capital murder because he did not kill both victims. Mr. Gonzales is arguing in his federal appeal that his attorney, Gary Garrison, neglected his case to manage several bingo parlors he owned. His second attorney, Benny J. Lowe, had been suspended twice by the bar.

Status: His federal habeas corpus appeal is pending.

Inmate: Henry Watkins Skinner

County: Gray

Date of offense: Dec. 31, 1993

Case summary: Convicted in the deaths of his girlfriend, Twyla Busby, and her two sons. His court-appointed attorney, Harold Comer, had previously prosecuted Mr. Skinner on two separate felony charges. The year before his

appointment, Mr. Comer's law license was briefly suspended for mishandling drug money while he was Gray County district attorney.

Status: His federal habeas corpus appeal is pending.