Innocent and Executed

Four Chapters in the Life and Death of America’s Death Penalty.
“My name is Ruben M. Cantu and I am only 18 years old. I got to the 9th grade and I have been framed in a capital murder case.”

-- Ruben Cantu in a letter to a San Antonio newspaper

“I just want to say I hold no grudges. I hate no one. I love my family. Tell everyone on death row to keep the faith and don’t give up.”

-- last words of Carlos De Luna

“I suspect my life will end soon, if the state should have its way. I am no angel, but nor do I deserve to lose my life for a murder I did not commit.”

-- Larry Griffin in a letter to a St. Louis newspaper

“I am an innocent man, convicted of a crime I did not commit. I have been persecuted for 12 years for something I did not do.”

-- Cameron Todd Willingham, moments before execution.
Did This Man Die for a Phantom’s Crime?

On the night of December 7, 1989, the state of Texas executed 27-year-old Carlos De Luna. Sixteen years after the execution, the Chicago Tribune published a three-part investigative series that implicated another man and debunked the evidence that had originally been used against De Luna.

In February of 1983, Wanda Lopez, a gas station clerk, was stabbed to death during her night shift. She did not have to die. In fact, she had called 911, not once but twice, asking for help. Had police responded after her initial call, there is a good probability that she would still be alive today, as would De Luna. Throughout the second call, at the end of which her final screams can be heard, she was audibly upset because through a series of yes or no questions with the dispatcher, she affirmed that an Hispanic male was brandishing a knife in the store and she was scared. When police eventually did arrive at the gas station, they found Lopez dead on the floor of the store and De Luna nearby, hiding underneath a truck.

His immediate claims of innocence and knowledge of the true perpetrator were ignored. Also ignored was the fact he was never entirely certain that De Luna was the perpetrator. The reliability of the other eyewitness is suspect: he could not even identify De Luna at a perpital hearing.

During the trial, the prosecution argued that De Luna had stabbed Wanda Lopez, a gas station clerk, during the commission of a robbery. However, the Tribune’s investigation revealed that no money had been taken that night from the register. It was the supposed robbery that statute-ly elevated the murder of Wanda Lopez to a death-eligible crime.

The jury was told that the reason De Luna ran and hid was because he was the one who committed the murder. However, from the onset, De Luna had told the detectives and his lawyers that the reason he hid was because he had just been paroled and got scared when he heard the sirens coming. He told them he was not guilty of the crime, but he knew who was.

The prosecution managed to get the jury to convict without any DNA or physical evidence implicating De Luna as the perpetrator. They relied only on the eyewitness testimony and the 911 audio tape which was certainly more prejudicial than probative in terms of De Luna’s possible role in the crime.

The jury then subsequently sentenced him to die.

The police discovered two eyewitnesses and brought them over to De Luna, who was seated and cuffed in the back of their squad car. The eyewitnesses were told that De Luna had been found hiding under a truck nearby. The eyewitnesses took that as an indication of the man’s guilt, and in doing so, gave a positive identification to the police. Only one of the eyewitnesses, Kevan Baker, could be reached by the Tribune’s investigative team. He told them that he was never entirely certain that De Luna was the perpetrator. The reliability of the other eyewitness is suspect: he could not even identify De Luna at a perpital hearing.

Normally, there should be a good amount of skepticism when someone is arrested and points their finger at a different person for the crime. However, Hernandez was infamous in his neighborhood and in the criminal justice system, with a lengthy rap sheet of violent convictions including an assault charge and an arrest for a murder committed with a knife. De Luna’s rap sheet consisted mostly of status offenses and nonviolent crimes.

Five people, including Hernandez’s family members, told the Tribune that after De Luna was arrested and sentenced for the murder of Lopez, Hernandez said that he was the one who had stabbed and killed Lopez. He would say that his “stupid tocayo” took the blame and was sent to death row for Hernandez’s crime. “Toca yo” is the Spanish word for “namesake.” Some people never told this to the police because they were scared of Hernandez’s wrath or they wanted to forget that they had such knowledge. Others believed that they would be questioned, but they never were.

In 1999, ten years after De Luna was executed, Hernandez died in prison of liver cirrhosis. During that decade, Hernandez managed to accumulate five additional arrests, the final of which, an assault with a knife, landed him in prison.

When confronted with the evidence of Hernandez’s guilt and De Luna’s innocence, the prosecutors in De Luna’s trial offered no apologies for their actions. No one is willing to apologize to Carlos De Luna or his family for taking away his life. Nor is anyone willing to apologize to all those who Hernandez had the opportunity to victimize, but shouldn’t have if the police and attorneys had done a thorough investigation of the Lopez murder. And what about the jurors who were led to believe that De Luna was guilty? They deserve an apology as well.
**The Eye Witness who Wasn’t There.**

**Early in the morning of June 21, 1995, Larry Griffin of Missouri died by lethal injection. Even up to his last moments, he claimed that he was innocent. Ten years later, the St. Louis Post-Dispatch revealed new disclosures from a year-long investigation conducted by the NAACP Legal Defense and Educational Fund that support those claims.**

Twenty-six years ago, Quintin Moss, a 19-year-old drug dealer, was shot 15 times by men firing from a slow-moving Chevrolet Impala at the corner of Olive Street and Sarah Avenue in St. Louis. Police immediately began to suspect Griffin because his older brother, Dennis Griffin, had been shot to death earlier that year. Moss, although never charged, was a prime suspect in that crime. An attempt had been made on Moss’s life several weeks before the afternoon he was killed, and Larry and Reggie Griffin were chased down in a car by police after that attempt.

An eyewitness account by a man named Robert Fitzgerald implicated Larry Griffin. During Griffin’s trial, Fitzgerald told the jury that, while giving a ride to a man and his daughter on the afternoon of June 26, 1980, his car overheated and broke down near the scene of the crime. His passenger was in the process of fixing the car when the drive-by shooting occurred. Fitzgerald testified that, while inside the car, he was able to avoid the bullets, protect the little girl from being shot, identify Griffin as one of the shooters and memorize the car’s license plate number, JPP 203. Michael Ruggeri, the first police officer to respond to the incident, testified at Moss’s trial that he saw Fitzgerald attempting to care for Moss when police arrived on the scene. Fitzgerald became the prosecution’s star witness.

Ten years after the execution, the Post-Dispatch published new facts undermining the credibility of this eyewitness testimony. Coincidentally, publication of these new facts came at a time when Congress was considering legislation that would have radically curtailed federal appeals of state-imposed death sentences. Fitzgerald, then 36, was a convicted felon living in a St. Louis motel under the witness protection program, waiting to testify against a former associate in crime in the murder of a Boston police officer. By that time, Fitzgerald had been convicted of numerous charges, including possession of heroin, auto theft, armed robbery, and credit card fraud. On the exact day Griffin was convicted, St. Louis County authorities released Fitzgerald. Months later, he testified in the Boston police officer murder trial. That jury rejected his testimony, and the defendant was acquitted.

Another eyewitness testimony was unavailable until recently. On the afternoon that Moss was killed, a man named Wallace Conners was also at the corner of Olive Street and Sarah Avenue. Moss was there to sell drugs, and Conners was there to buy. Conners was struck by a stray bullet and taken to the hospital. When police initially interviewed him after the shooting occurred, Conners did not identify Griffin as a shooter. Shortly thereafter, Conners left St. Louis and was not called as a witness by either the defense or the prosecution at the trial or the later hearings.

Today, we know what Conners never said. Conners told the Post-Dispatch during an interview that he knew Griffin, and Griffin was not one of the shooters. “If it would have been somebody who I knew or something, I would have recognized them because I did get a look,” Conners said.

According to Conners, someone else was not on the scene on the afternoon Moss was killed—Robert Fitzgerald. Is it possible that Conners simply did not see Fitzgerald? Conners explained that Fitzgerald would have stood out if he were present, because Fitzgerald is white. Everyone at the corner of Olive and Sarah that afternoon was black.

Fitzgerald testified that he was parked 20 feet away from the shooter’s vehicle. Conners points out two flaws with this statement. First, if Fitzgerald’s vehicle was on the scene and so close to the assailant’s vehicle, then Conners would have taken refuge behind Fitzgerald’s vehicle. Second, if Fitzgerald was on the scene, “he would have been shot just like everybody else,” Conners said.

Why was Conners’ testimony not heard at Griffin’s trial? Conners left St. Louis shortly after the shooting. The original prosecutor, Gordon Ankney, told the judge that Conners had left the state and could not be located. However, records show that Conners was being held by police in Texas at that time. In fact, Texas officials had even issued a subpoena to St. Louis police seeking records regarding Conners.

Ruggeri, the officer who initially confirmed Fitzgerald’s presence at the crime scene, also has recently revealed new information. The officer, now retired, told investigators and the Post-Dispatch during interviews that, in fact, he saw no one else with Moss and Conners when he arrived. According to Ruggeri, he arrived on the scene when he was dispatched from a police garage four blocks away. He cannot remember seeing anyone with Moss and Conners at the crime scene. Ruggeri took a description of the assailant’s vehicle from Conners and broadcast an alert based on the description. It was not until several minutes later that he saw Fitzgerald on the scene. Ruggeri also did not recall seeing Fitzgerald’s car broken down near the corner of Olive and Sarah.

“He might have been around the block. He might have been across the street. He may have been, you know, I don’t know where he was, but he wasn’t there,” Ruggeri said.

Ankney, Griffin’s prosecutor, does not believe the new findings. Ankney claims that the new report’s authors have a political agenda and have tailored the findings to fit their desired result. He dismisses the question of Fitzgerald’s credibility, asserting that he “never saw any indication that what [Fitzgerald] said wasn’t true.” As for Conners, Ankney said, “I was told or I participated in an interview of him in which he said it was one of the Griffins.” Ankney discounts Ruggeri’s change of story due to memory issues.

The new report identifies three other potential suspects: Reggie Griffin, Ricky Thomas, and Ronnie Parker. St. Louis Circuit Attorney Jennifer Joyce has reopened the case, assigning two top lawyers to investigate the Moss murder case as if it had happened yesterday as opposed to more than 25 years ago.

For the Moss family, old wounds are being reopened as investigators attempt to discover the truth about Quintin Moss’s killer. Moss’s sister, Sherry, said that she has always doubted Griffin’s guilt. Her brother, Walter, said he will reserve judgment about whether Griffin was guilty until after the reinvestigation is completed.

Margarette Hollinshead, Griffin’s sister, welcomes the new report and reinvestigation in hopes of absolving her brother. She admits that Griffin made mistakes in his life, but also notes that he always confessed when he actually committed a crime. This time, he maintained his innocence until the last moments.
An Execution on the Basis of Lies.

During the investigation of the crime, Moreno was shown pictures of possible suspects. Cantu’s photograph was among those that he was shown. However, Moreno was unable to identify Cantu, so the case was dropped for lack of evidence—the police had no DNA or physical evidence and Moreno could not identify Cantu as the perpetrator.

A few months later, an off-duty police officer was drinking and playing pool at a local lounge. Cantu was there doing the same. Supposedly, Cantu, unprovoked, shot the officer four times. However, a conviction could not be made for this crime because of tainted evidence. It was then that the murder of Pedro Gomez was reopened. The police wanted to be certain that if they could not get Cantu for shooting one of their own, then they would manage to find another way to get him. And that is what they did.

No new physical evidence had been uncovered in the crime. So the very next day the police decided that they were going to try again with Moreno. They showed him pictures of possible suspects again. But to no avail: Moreno failed to identify Cantu as the shooter. The police were not yet ready to give up their quest to prosecute Cantu and returned to Moreno’s house the next day. But this time they brought him down to the station, where for the third time he was shown photographs. Finally, the police got what they want—a positive identification of Cantu as the shooter. The prosecutor told the Chronicle’s “Ruben Cantu had nothing to do with the murder, attempted murder and robbery of the two men at 605 Briggs Street. I should know.” What would cause Garza to tell the truth regarding something that he had remained silent about for so many years? Garza attributes it to an ever-growing guilt he has felt; his silence helped send his best friend to his death. Garza said “Part of me died when he died.” And Garza wasn’t the only one who had something new to say.

The prosecution’s sole witness, Juan Moreno recanted his story. In reference to Cantu being the shooter, Moreno now says that he is “sure it wasn’t him… It was a case where the wrong person was executed.” Moreno told the Chronicle that Cantu was never there that night. He only identified Cantu on the third try because he felt immense pressure from the police to identify him. After all, he was an illegal immigrant at the time.
Executed for an Accidental Fire.

On Feb. 17, 2004, Cameron Todd Willingham was strapped to a gurney in a Texas death chamber as he declared his innocence for the last time. Minutes later, he was executed by lethal injection. In December of the same year, the Chicago Tribune uncovered secrets behind the Willingham case, addressing questions left unanswered and raising doubts left unacknowledged.

On Dec. 23, 1991, Willingham was at home with his three daughters. His wife, Stacy, left their home in the morning to pay the bills and shop for Christmas gifts at a Salvation Army store. The family had been struggling that year; Todd, as everyone called him, had recently been laid off, and Stacy was supporting the family with her wages from a bar. The Willinghams were two months behind on rent, and they had even stopped paying some bills in order to save money for Christmas.

Willingham recalled waking up briefly as his wife was leaving the home around 9 a.m. When he heard their one-year-old twins, Kamon and Kameron, crying, he woke up to feed them and went back to sleep. About an hour later, his two-year-old daughter Amber woke him with her cries, and the house was quiet. About an hour later, his two-year-old daughter Amber woke him with her cries, and the house was quiet. Willingham knelt out two bedroom windows with a pool cue, but could not get into the bedroom.

Buvin Smith arrived on the scene after hearing the neighbor’s call over a radio scanner. Smith remembered restraining Willingham from going onto the porch, and heard him yelling that his “babies were in the house” and noticed that he was “acting real hysterical.”

Almost immediately, Willingham became a suspect. According to the Chicago Tribune, prosecutors often are able to rely on circumstantial evidence in cases when a child dies and the parent survives. In this case, the prosecution convinced the jury that Willingham killed his children because they interfered with his beer-drinking, dart-throwing lifestyle. The jury believed it.

Neighbors told investigators that they did not believe Willingham tried hard enough to save his children. In fact, Barbee said that she saw Willingham standing by the fence as heavy smoke came out of the windows. Also, she told investigators that Willingham seemed more concerned with moving his belongings than saving the children.

Willingham’s wounds were treated shortly after the fire. Firefighters did not think that his burns were severe enough had he indeed searched for his daughters in the manner he described. His shoulder, back, and hair were burned, but his bare feet were not burned at the bottom.

Police stated that, the day after the fire, Willingham complained about not being able to find a dartboard in the house and went on to say that this fire may have been simply accidental.

The conclusions of this team of investigators are based on current forensic evidence and scientific knowledge of fire that was unavailable only a decade ago. For example, the original investigators determined that an accelerant was used because wood cannot burn hot enough to melt aluminum. According to Hurst, it can. The 1991 investigators also claimed that the brown rings on the Willingham’s front porch were another indicator of accelerant usage. Hurst called this “baseless speculation,” explaining that fire-hose water often leaves brown rings on surfaces after evaporation. In this full report, Hurst went on to dismiss every single indicator of arson Fogg and Vasquez had originally cited.

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Executed for an Accidental Fire.

In addition to these evaluations of Willingham’s behavior, fire investigators reported 20 indicators of arson. These include the “crazed glass,” or the web-like cracks in the glass. Until more recent research was completed, arson specialists believed this to be a clear indication that an accelerant had been used in the fire. The fire experts also noted that the fire had reached a stage known as flashover, when a fire reaches such a high temperature that an explosion results. This further supported their reasoning that an accelerant had been used.

Willingham was charged with murder on Jan. 8, 1992, just two weeks after the fire. In August of the same year, his trial began, and after Willingham turned down a deal from the prosecution and insisted that he was innocent. During the trial prosecutors presented inmate Johnny E. Webb as a witness. He testified that Willingham confessed at the county jail to killing his children in order to cover up the fact that his wife, Stacy, had been physically abusing them. Webb, a recovering drug addict, was taking psychiatric medication to relieve post-traumatic stress syndrome. The prosecution also presented as witnesses the neighbors who claimed that Willingham should have done more. Fire investigators Doug Fogg and Manuel Vasquez also testified at Willingham’s trial. Both of these investigators testified in court that the fire was caused by arson. Both of these investigators testified to assumptions about fire that have been scientifically proven to be wrong.

Today, we know better. The Chicago Tribune has published information from recent reports regarding the Willingham case. Gerald Hurst, a Cambridge University-educated chemist, investigated this case by reviewing documents, trial testimony, and video documentation of the fire scene. John Lentini, John DeHaan, both private consultants specializing in fire investigation, along with Louisiana fire chief Kendall Ryland, also examined the materials. These four experts concluded that the original investigation was terribly flawed. In fact, they suggest that this fire may have been simply accidental.

Innocent and Executed
Want to help? The following organizations support needed reforms to death penalty statutes in the U.S., moratorium or abolition:

National Coalition to Abolish the Death Penalty
(202) 331-4090 www.ncadp.org

ACLU Capital Punishment Project
(202) 675-2319 www.aclu.org/death-penalty

Amnesty International USA Program to Abolish the Death Penalty
(202) 544-0200 www.aiusa.org

Citizens United for Alternatives to the Death Penalty (CUADP)
(800) 975-6548 www.cuadp.org

Citizens United for the Rehabilitation of Errants (CURE)
(202) 749-2126 www.curenational.org

Death Penalty Information Center
(202) 289-2275 www.deathpenaltyinfo.org

Equal Justice USA/Quixote Center
(301) 699-0042 www.ejusa.org

Journey of Hope: From Violence to Healing
(877) 92-4GIVE (4483) www.journeytohope.org

The Justice Project
(202) 638-5899 www.thejusticeproject.org

Murder Victims' Families for Human Rights
(617) 868-0007 www.murdeervictims.org

Murder Victims' Families for Reconciliation
512-782-9895 www.mvfr.org

NAACP Legal Defense and Educational Fund
(212) 965-2207 www.naacpdlf.org