

The Latest News on North Carolina's Death Penalty System

It is still early in 2004, but already a series of events has shaken the faith of North Carolinians in the state's capital punishment system. Miscarriages of justice in case after case illustrate the troubling flaws that have prompted a wide range of citizens, organizations, local governments, newspapers, and the State Senate to call for a two-year moratorium on executions so those flaws can be examined and public confidence in the system can be restored. Here's a rundown of what's happened so far this year.

February 6 - Darryl Hunt is freed after serving 18 years in prison for a rape and murder he did not commit

Despite the lack of any physical evidence tying him to the crime, Hunt was tried and convicted twice of the 1984 rape and murder of Deborah Sykes. In his first trial, the state sought the death penalty, and the jury sentenced him to life. Hunt consistently maintained his innocence. In 1994, scientific advances allowed for DNA testing of evidence from the crime scene and that testing revealed that the DNA of the rapist did not match Hunt's. The State then changed its story insisting that there was more than one assailant, and that Hunt still could have killed her. The judge agreed and Hunt remained in prison.

In December of 2003, shortly after the *Winston-Salem Journal* published an eight-part series, the DNA from the crime scene was finally run through a database. A match was found and Willard Brown, who had been identified in a similar rape a few months after Sykes' murder, was arrested. Brown confessed to having committed the rape and murder alone, and apologized to the victim's family and to Hunt. Hunt was exonerated in court on February 6, 2004, and was formally pardoned by Governor Easley on April 15, 2004.

February 6 - Republican North Carolina Supreme Court Justice Ed Brady writes that mistakes made in death penalty cases are costing victims' families, defendants, and the state far too much, both emotionally and financially

Brady's comments were included in one of two opinions on that day in which the Court threw out two death sentences because of mistakes made in the original trials. Brady directed mounting criticism about North Carolina's capital punishment system and calls for a moratorium to the state legislature.

February 18 - Alan Gell is freed after spending nine years in prison, including nearly five years on death row for a murder he did not commit

Like Darryl Hunt, Gell was convicted of murder despite the lack of any physical evidence tying him to the crime. He was sentenced to death for the 1995 murder of Allen Ray Jenkins based on the testimony of two 15-year-old girls who in return received reduced sentences for their roles in the murder. The *Raleigh News & Observer* ran a five part series on the case in December of 2002, and while it was running, Gell was awarded a new trial. The series and the defense revealed that the Attorney General's Office had concealed compelling evidence of Gell's innocence---statements from witnesses who saw the victim alive at a time when Gell had an airtight alibi, and an audiotape of the girls trying to make up a story about the murder.

Provided with the documents withheld at the first trial, the State's own medical examiner changed her opinion and concluded that Jenkins died later than the State claimed, meaning that Gell could not have killed him. Despite the newly discovered and overwhelming evidence of Gell's innocence, Attorney General Roy Cooper decided to retry Gell. A jury acquitted Gell in less than three hours, and jurors commented that the decision to find him not guilty was not a close call.

February 25 - Judge stops execution of George Page after state psychiatrist sees for the first time key medical records that she now says could have changed her trial testimony

George Page was only a few days away from being executed by the State of North Carolina when the State's own psychiatric expert, who had testified against Page at his Forsyth County trial, discovered that the materials given to her by the prosecution at the time of trial were incomplete. The psychiatrist's testimony played a key role in the jury's decision to sentence Page to death. She said that if she had seen all of Page's mental health records, her testimony might have been dramatically different. A judge stopped Page's execution based on the new evidence. The prosecution disputed the claim, insisting that the psychiatrist had seen the evidence before the trial. Finally, when it became clear that the evidence in question had not been given to the psychiatrist at the trial, the prosecutor backed down and agreed to the stay of execution.

February 25 - Judge throws out death sentence for Donald Scanlon amid questions of innocence

Scanlon was awarded a new sentencing hearing based on the failings of his defense attorneys, but the most troubling aspect of this prosecution is that it may not be a murder case at all. Forensic experts testified at a recent hearing that previously undisclosed evidence raises the possibility that the decedent died of suicide or natural causes. Both the district attorney's office and the defense failed to give their experts critical medical records, leading many to believe the trial may have ended in an acquittal if the jury had heard that evidence. The case is still on appeal.

March 1 - Attorney General Roy Cooper calls for sharing of files in death penalty cases

Attorney General Roy Cooper, in the wake of a torrent of criticism over his handling of the Gell case, announced that he supports open file discovery in pre-trial capital cases, in an effort to prevent wrongful convictions and lengthy and costly appeals. Cooper has yet to explain why his office still fought to execute Gell despite the compelling evidence of his innocence.

March 4 - Governor Mike Easley's legal counsel says in a letter to *The News & Observer* that when Easley was Attorney General, he supported the open file policy that led to Alan Gell's acquittal

The next day an article in *The News & Observer* revealed that Easley vehemently opposed the provision of the open file law that ultimately led to Gell's acquittal. The paper published on its website a memo from Easley's office providing irrefutable proof of Easley's opposition.

March 8 - US Supreme Court refuses to hear appeal of death row inmate Kenneth Rouse despite disturbing evidence of a racially tainted trial

The Court's refusal to hear Rouse's appeal means no federal court will ever hear the startling evidence of racial bias in his case because his lawyers filed his appeal one day late. In February of 2003, a three-judge panel of the Fourth Circuit Court of Appeals ruled the racial bias in his case was so extreme that the claim should be heard. After the North Carolina Attorney General's Office continued to press for Rouse's execution, the full Fourth Circuit Court overturned the panel's opinion and ruled against Rouse.

Rouse had an all-white jury because the prosecutor dismissed all of the people of color who were qualified for jury service. One of the jurors has since admitted he lied in order to be chosen for jury service. The juror's mother had been sexually assaulted and murdered, and her killer was executed. The juror concealed this fact from the court. The juror admitted after the trial that he believed that "black men rape white women so they can brag to their friends" and "blacks do not care about living as much as whites do." The juror routinely referred to African-Americans as "n-----s."