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Exoneration of death row convict supports abolitionists

Henry McCollum's case proves that flaws in the US capital punishment system can lead to wrongful execution

September 10, 2014 6:00AM ET

by [Lauren Carasik](#) [@LCarasik](#)

Two cognitively impaired men in North Carolina [have been exonerated](#) 30 years after their wrongful conviction following a DNA test. Henry Lee McCollum, the longest-serving death row inmate in the state's history, and his half-brother Leon Brown, who was serving a life sentence, were set free on September 3, after a Superior Court judge overturned their sentence and ordered their release. They were convicted in 1984 of the rape and murder of 11-year-old Sabrina Buie, in a case riddled with weaknesses and misconduct. The episode has long been fodder for debate between death penalty proponents and McCollum's supporters.

The DNA test by the independent state agency, the [North Carolina Innocence Inquiry Commission](#), has implicated another man who lived near the murder scene and had confessed to a similar crime weeks after Buie's murder. Sadly, the kind of mistakes and malfeasance that led to McCollum's wrongful verdict are not limited to his case. The reversal dispels the myth that the death penalty can be carried out without irrevocable errors.

For one, there was no physical or forensic evidence linking the two men to the crime. The entire case was built on confessions of mentally challenged men, made under intense and lengthy questioning, and in the absence of legal representation. Intimidated and exhausted, McCollum made up a story, mistakenly believing that he would be allowed to go home after confessing.

His admission was used to pressure Brown to make his own statement of guilt, which was peppered with inconsistencies. McCollum recanted the confession shortly afterwards, and repudiated his statement at least 266 times during cross-

examination at his trial. Both men were originally sentenced to death, but Brown's sentence was reduced to life during a second trial.

Tainted convictions

It may be hard to imagine why suspects would confess to a crime they did not commit. But according to the nonprofit Innocence Project, in about 30 percent of cases exonerated by DNA, innocent defendants made incriminating statements, confessed or pleaded guilty. The group lists coercion, mental or cognitive impairment, threats or real violence, misapprehension of the law and intoxication as possible explanations. Suspects are often subject to harsh interrogation techniques, and sometimes misleadingly told that a confession will lead to greater leniency.

Still, false confessions are just one cause of wrongful convictions. Facing pressure to nab a suspect, officers often approach investigations with overt or implicit bias that preordains the outcome. Similarly, as seen in McCollum's case, investigators or prosecutors may fail to explore viable alternative theories and withhold exculpatory evidence that would assist the defense. Jailhouse snitches often cut deals for more favorable conditions or lightened sentences in exchange for their testimony. And eyewitness testimony, which is given great weight by juries, is often unreliable, resulting in [72 percent of wrongful convictions nationwide](#) that were reversed through DNA testing.

As the North Carolina case amply demonstrates, race also plays a role in death penalty sentencing. Prosecutors can leverage racial bias to obtain a conviction against African-American defendants. A 2012 [study](#) by Michigan State University found that the state used peremptory challenges, which are used to strike potential jurors without having to state a reason, to exclude African-Americans from juries. In 2012, a North Carolina judge [vacated the death sentences of three defendants](#) because he found evidence of racial bias in the jury selection process. This included a prosecutor's racially charged notes about the jury pool and use of a "[cheat sheet](#)" to cloak impermissible challenges under non-discriminatory reasons for excluding jurors. Other studies have also

demonstrated the [impact of race in death penalty](#) cases in North Carolina. For example, 100 percent of death row exonerees in the state were initially convicted of crimes against white victims, though whites comprised only 40 percent of the state's homicide victims. Racial disparities in the imposition of the death penalty are present [on a national level](#) as well.

Supreme Court Justice Antonin Scalia, an outspoken proponent of the death penalty, voted not to hear McCollum's appeal and has [referred to the heinous facts of the case](#) to justify his support for the death penalty. Scalia later suggested that the Supreme Court has never held that the [execution of an innocent man](#) who had a full and fair trial would be unconstitutional. [Slate's](#) Dahlia Lithwick pondered whether given that logic, some members of the Supreme Court would have even been troubled if McCollum had been executed.

McCollum's exoneration is a timely reminder that we should all be shouting from the rooftops about the unacceptable risk of an irreversible and deadly miscarriage of justice.

Ahead of the men's release last week, District Attorney Johnson Britt read the ethics rules governing prosecutors, emphasizing he was obligated ["to seek justice, not merely to convict"](#) suspects. But even if the recently discovered DNA evidence was known at the time, the men would likely have been tried, and perhaps convicted, anyway: Joe Freeman Britt, the prosecutor who obtained the original guilty verdicts, and was known for his aggressive pursuit of the death penalty, [still thinks the men are guilty.](#)

Support for the death penalty [has steadily declined](#) from 78 percent in 1996 to 58 percent in 2013. At least 18 states and the District of Columbia prohibit capital punishment, and a number of others, including North Carolina, have de facto moratoriums. A [spate of recent botched executions](#) has brought the mechanics of execution under greater scrutiny.

There may never be a consensus on the morality of retributive justice or the efficacy of deterrence in the imposition of the death penalty. But McCollum's case should give pause to those who claim the system works well enough to ensure that no innocent person is executed. Instead, it offers more proof that too many things can and do go wrong. McCollum recalled his anguish as he watched other death row companions being led to their executions while he awaited his own unjust but seemingly inevitable fate. Nothing can bring back those lost years or his dreams that were shattered during his time behind bars. Besides, there is still no justice for those whose intentional misconduct led to the conviction of these innocent men, including the police officers who provided the details to make the coerced confession more credible, such as the brand of cigarettes the perpetrator smoked; withheld exculpatory evidence; or were far more concerned with conviction than with truth.

While at least [146 people have been exonerated from death row](#) since 1973, in 2006 Justice Scalia [claimed](#) there is no evidence showing any wrongful execution. If there was, Scalia said, "we would not have to hunt for it; the innocent's name would be shouted from the rooftops by the abolition lobby." McCollum was spared a wrongful execution, but he easily could have lost his life. Others have not been so fortunate — the list of recent convicts [questionably executed](#) includes [Troy Davis](#), [Cameron Willingham](#) and a host of others. Given the inherent flaws in our system of capital punishment, we should not wait until there is incontrovertible evidence that an innocent person has been put to death. McCollum's exoneration is a timely reminder that we should all be shouting from the rooftops about the unacceptable risk of an irreversible and deadly miscarriage of justice.

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