

For Immediate Release: September 6, 2011
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Prosecutor In Case Where Government Relied On Race Testimony At Trial Urges Texas Officials To Stop Duane Buck's Execution

Today, a former Harris County Assistant District Attorney who prosecuted Duane Buck is urging state officials to halt Mr. Buck's execution next week because "[n]o individual should be executed without being afforded a fair trial, untainted by considerations of race." Linda Geffin, who served as second-chair prosecutor in the State of Texas vs. Duane Buck in 1997, sent a letter this morning to Governor Rick Perry, the Texas Board of Pardons and Paroles, Attorney General Greg Abbott, and Harris County District Attorney Patricia Lykos, urging them to intervene and stop Mr. Buck's September 15 execution.

In her letter, Ms. Geffin says she "felt compelled to step forward" after reading about the clemency petition and a motion in federal court recognizing that former Attorney General John Cornyn had previously acknowledged the "improper injection of race in the sentencing hearing in Mr. Buck's case."

On May 5, 1997, Mr. Buck was convicted of capital murder in Harris County for the July 1995 shooting deaths of Debra Gardner and Kenneth Butler. A third person, Phyllis Taylor, was also shot, but survived her wound. Ms. Taylor has forgiven Mr. Buck and does not want him executed.

During Mr. Buck's trial, psychologist Walter Quijano testified, based on several factors, that he did not believe Mr. Buck would be dangerous in the future. On cross-examination, the prosecutor elicited improper testimony from Dr. Quijano that the fact that Mr. Buck was African-American increased the likelihood of his being dangerous in the future. The State urged the jury in its closing argument to rely on Dr. Quijano's testimony. The jury did so, found that Mr. Buck would be a future danger, and he was sentenced to death.

After Mr. Buck's trial, but while his case was pending on appeal, on June 9, 2000, in a highly-unusual move, then-Attorney General John Cornyn issued a press release calling for the retrial of six individuals who had been sentenced to death based on improper introduction of, and reliance on, race as a factor in sentencing. The Attorney General identified Mr. Buck's case as one of those six cases, stated that Texas would not contest federal appeals in those six cases, and that if the attorneys for the six identified defendants raised claims challenging the government's reliance on race at sentencing, the Attorney General would not object.

Then-Attorney General Cornyn first confessed error based on the government's reliance on Dr. Quijano's testimony in the case of Victor Saldaño. The Attorney General stated: "As I explained in a filing before the United States Supreme Court...it is inappropriate to allow race to be considered as a factor in our criminal justice system....[T]he United States Supreme Court agreed. The people of Texas want and deserve a system that

affords the same fairness to everyone."

Despite this concession, the improper racial testimony in Mr. Buck's case has not been redressed. Mr. Buck is the only one of the six death row inmates identified by the Attorney General who was not granted an opportunity to have a colorblind sentencing.

The clemency petition, which was filed on August 31, asks the Texas Board of Pardons and Paroles and Governor Perry to intervene. In it, attorneys for Mr. Buck state: "Five out of the six cases in which Attorney General John Cornyn conceded error resulted in new sentencing hearings. Mr. Buck has not received the same corrective process. The State of Texas cannot and should not tolerate an execution on the basis of an individual's race, particularly where this State's highest legal officer has acknowledged the error, not only in similarly situated cases, but in this case."

Ms. Geffin's letter concludes: "I now join Phyllis Taylor, the surviving victim, in asking for the intervention of the Board of Pardons and Paroles, Governor Rick Perry, Attorney General Greg Abbott and Harris County District Attorney Patricia Lykos. All of these parties should be motivated, as I am, to do everything within their power to ensure that our justice system is not tainted by unconstitutional considerations of race."

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Texas Set to Execute Man Despite Improper Racist Evidence, Presented by Prosecution at Trial

Attorneys urge prosecutors, courts, and Governor Perry to halt execution in case in which prior Attorney General John Cornyn admitted error

Austin, Texas, August 31, 2011 – Today, attorneys for Duane Edward Buck filed a clemency petition with the Texas Board of Pardons and Paroles urging the Board and Governor Perry to intervene and halt the execution of Mr. Buck, scheduled for September 15, 2011.

On May 5, 1997, Mr. Buck was convicted of capital murder in Harris County for the July 1995 shooting deaths of Debra Gardner and Kenneth Butler. A third person, Phyllis Taylor, was also shot, but survived her wound. Ms. Taylor has forgiven Mr. Buck and does not wish to see him executed.

During Mr. Buck's trial, psychologist Walter Quijano was called by the defense and testified, based on several factors, that he did not believe Mr. Buck would be dangerous in the future. On cross-examination, the prosecutor elicited improper testimony from Dr. Quijano that the fact that Mr. Buck was African-American increased the likelihood of his being dangerous in the future. The State urged the jury in its closing argument to rely on Dr. Quijano's testimony. The jury did so, found that Mr. Buck would be a future danger, and he was sentenced to death.

After Mr. Buck's trial, but while his case was pending on appeal, on June 10, 2000, in a highly-unusual move, then-Attorney General John Cornyn issued a press release calling for the retrial of six individuals who had been sentenced to death based on improper introduction of, and reliance on, race as a factor in sentencing. Mr. Cornyn identified Mr. Buck's case as one of those six cases. Then-Attorney General (now Senator) Cornyn stated that Texas would not contest federal appeals in those six cases and that if the attorneys for the six identified defendants amended their appeals to include objections to Dr. Quijano's testimony, the Attorney General would not object.

Then-Attorney General Cornyn first confessed error based on the testimony of Dr. Quijano in the case of Victor Saldaño. Attorney General Cornyn stated: "As I explained in a filing before the United States Supreme Court...it is inappropriate to allow race to be considered as a factor in our criminal justice system....[T]he United States Supreme Court agreed. The people of Texas want and deserve a system that affords the same fairness to everyone."

The six cases in which the Attorney General conceded error were those of Gustavo Garcia, Eugene Broxton, John Alba, Michael Gonzales, Carl Blue, and Duane Buck. In the other five cases, courts granted new sentencing trials to the inmates to allow them fair

trials untainted by consideration of race.

Despite this concession, Mr. Buck's case has slipped through the cracks. For complicated reasons related to the intricate litigation process in post-conviction proceedings, the issue related to the improper racial testimony and arguments in Mr. Buck's case has not been redressed. Mr. Buck is the only one of the six death row inmates identified by the Attorney General who was not granted an opportunity to have a colorblind sentencing. Mr. Buck now faces execution on September 15, 2011.

The clemency petition filed today asks the Texas Board of Pardons and Paroles and Governor Perry to intervene. In it, attorneys for Mr. Buck state: "Five out of the six cases in which Attorney General John Cornyn conceded error resulted in new sentencing hearings. Mr. Buck has not received the same corrective process. The State of Texas cannot and should not tolerate an execution on the basis of an individual's race, particularly where this State's highest legal officer has acknowledged the error, not only in similarly situated cases, but in *this* case."

Lawyers for Mr. Buck are also asking the Harris County District Attorney's Office and the Attorney General of Texas to intervene and withdraw Mr. Buck's execution date. "This case represents an obvious injustice that must be remedied by prosecutors, the courts or by Governor Perry and the Board of Pardons and Paroles," said Kate Black, counsel for Mr. Buck. "If Mr. Buck is executed, not only will Texas have violated the constitution, it will have violated its citizens' basic moral values by permitting an execution to be carried out that is based on an individual's race."

The clemency petition can be found at : <http://scr.bi/rnZxax>.

For more information or comment, please contact:

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