

News & Notes

Northwestern University School of Law

SUPPLEMENT April 2003

Lawyering in a Death Penalty Case

inside

Accounts from Leroy Orange
and Former Clinic Students
Who Worked on the
Orange Case

Thomas F. Geraghty

Director, Bluhm Legal Clinic

In 1989, I was appointed by the Supreme Court of Illinois to represent Leroy Orange, a condemned prisoner. On January 11, 2003, Leroy Orange was pardoned by Governor George Ryan.

Although I had substantial experience in representing defendants in criminal cases when I was appointed to represent Leroy, I had never before represented a man sentenced to death. After receiving notice of my appointment, I went to see Leroy at the Menard Correctional Center. I remember Leroy as a handsome, dignified man walking into the visiting room. Leroy's greeting was reserved and measured. He was, as he is now, a quiet and reflective person. He listened more than he talked. This is still his habit.

Leroy must have wondered why I was appointed to represent him. What was it about my qualifications and abilities that had led the Supreme Court of Illinois to appoint me to try to save his life? Leroy

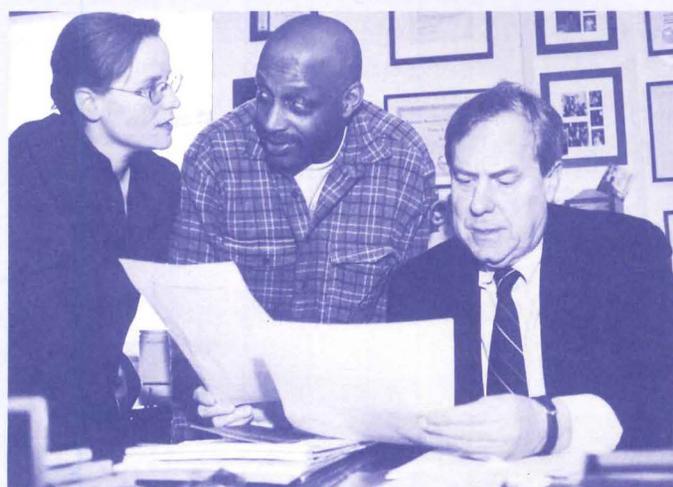
was much too polite to ask this question directly. But in light of his experience with the lawyer who represented him at trial (who failed to move to suppress his coerced confession, the only evidence against him, and who did not present any evidence in mitigation), Leroy had no reason to trust another lawyer. I was keenly aware of this dynamic as we developed our plan for representation. However, keeping in close contact with a client who is in prison 300 miles away made optimal lawyer-client communication *very* difficult.

The first task was to amend a *pro se* petition for post-conviction relief that had been filed after the Illinois Supreme Court affirmed Leroy's conviction on direct appeal. I was fortunate to have the assistance of Bruce Boyer '86, who had recently joined the Clinic after practicing at Jenner & Block and Cynthia Woolley '92 who was then a student in the Clinic.

Lawyers crafting post-conviction petitions in 1989 were not as focused as they are now on the phenomenon of wrongful convictions. Defense lawyers, myself included, gave more deference than was due to our justice system's ability to make good faith and reliable determinations of fact. Trial and appellate courts were loath to disturb trial courts' fact-based determinations, even when the evidence against a defendant was thin. Instead, post-conviction counsel focused almost exclusively on identifying facts outside the record that would form the basis for a finding of constitutional deprivation resulting from procedural defects in the proceedings.

Leroy Orange, and other defendants who had been torture victims of Chicago Police Department Area 2, whose trials had been marred by faulty identification procedures, or who were the victims of jailhouse snitch testimony, knew from their experience that discovery of the facts regarding the police investigations that led to their arrests and convictions, not necessarily procedural irregularities, were the key to proving that they had been wrongfully convicted.

Recent history has taught us that commonly held assumptions, mine included, about our criminal justice system's ability to find facts reliably were unfounded. The unearthing of so many wrongful convictions requires that representation of defendants on appeal and



Cathryn Crawford, Leroy Orange, and Tom Geraghty (photo by Jennifer Linzer)

in post-conviction proceedings involve a thorough re-examination of the facts underlying the conviction.

There were three events in Leroy's representation that convinced me that Leroy's perspective was correct and that my commonly held assumptions were wrong. The first occurred in 1992 during oral argument before a Cook County Circuit Court judge assigned to rule on the State's motion to dismiss our petition for post-conviction relief. The judge dismissed our petition, relying on irrelevant authority, even though we had established that Leroy's lawyer failed to challenge the admissibility of a coerced confession and failed to present any mitigation evidence. I was astounded by the ruling and by the judge's dismissive tone and demeanor. To this day, I do not understand how a judge could have ruled, as that judge did, that Leroy Orange had received a fair trial.

The second event was the Supreme Court of Illinois' rejection, in 2000, of Leroy's claim that his conviction was flawed because of his lawyer's failure to move to suppress his statement and because newly discovered evidence of abuse of other suspects by Area 2 officers supported the claim that Leroy was tortured. These arguments seemed well received by the Supreme Court of Illinois during oral argument. The Court's decision, however, relied on procedural technicalities to block further inquiry into the question of whether Leroy's confession was coerced and unreliable.

The third event occurred in 2001. We had convinced a circuit court judge to order a new sentencing hearing for Leroy. The hearing was to take place before a jury that, unlike most juries in death penalty cases, had not heard the trial testimony. As we prepared for the sentencing hearing, we alerted the judge and the prosecutor that we intended to introduce evidence that Leroy's confession was coerced and therefore unreliable. We felt that fact should be made known to a jury responsible for deciding whether Leroy should live or die. The prosecutor objected. The judge ruled in favor of the prosecution.

These events brought me closer and, at the same time, distanced me from Leroy. I struggled to explain these events to him, and to make sense out of them. But that was a difficult task because of my evolving belief that Leroy would not receive justice from the Illinois courts. While apologizing for our losses, it was my responsibility to develop strategies that would result in saving Leroy's life and to give Leroy hope that these strategies would succeed. When I attempted to provide Leroy with some basis for optimism, he would look at me in a way that suggested we shared the same cynicism about our system of justice.

Now that Leroy has been pardoned, thanks to the work of Clinic faculty and students and to the relentless and creative energetic leadership of Larry Marshall and the Clinic's Center on Wrongful Convictions, the failures of our justice system stand a chance of being minimized or even forgotten.

Our challenge is to keep up the work on behalf of prisoners whose cases have yet to receive the attention and scrutiny that they deserve. It's also time to listen even more closely to our clients as we develop new and more effective approaches to providing them with the representation they deserve.

Leroy Orange

The first time I met Tom Geraghty, I was a little skeptical that a white person could help me. After all, I had been questioned, and then charged by white policemen on the basis of a story they made up and tortured me into agreeing was mine, and prosecuted by white men before a white judge.

The whole system seemed to be white and unjust so you would naturally distrust any white lawyer.

I can't say exactly when I came to have faith in Tom. It was a growing thing. He is an introvert and does not exhibit his emotions, but gradually, I felt he was listening to me all the time.

Since I was the one in prison and doing the time for a crime I did not commit, naturally I was more emotional than anyone else.

But I came to terms with Tom's reserve and realized it is just the way he is. I remember the law school students who started seeing and interviewing me shortly after Tom came on my case in 1989. There were so many. I do remember Melissa Pratt, Angela Coin, and many others whose names escape me.

Then there were lawyers associated with the Northwestern clinic like Bruce Boyer and the ever feisty Cathryn Stewart (Crawford) and those from the Center on Wrongful Convictions like Larry Marshall and Rob Warden.

Thanks to Cathryn and Tom, I won the right for a resentencing because of their arguments that my original counsel was "grossly ineffective."

I felt the students were all sincere, but in the beginning I wondered how were they viewing me. Was I like an exhibit to them, to these good white kinds who grew up in good neighborhoods and were all of a sudden faced with black guy on death row?

They would all visit me a lot first at Menard Correctional Center, then at Pontiac, and then at Cook County Jail where I was the last four and a half years waiting to be resentenced.

Over time I realized they were all sincere. They came to be as frustrated as I was by the lack of integrity of our criminal justice system. These wonderful Northwestern students, their teachers, and lawyers like Tom Geraghty and Cathryn Stewart (Crawford) saved my life. I am more than grateful. I owe them everything. I think they are some of the greatest people on earth.



Melissa Pratt

CLASS OF 2000

I must admit that when I was first assigned as a student to work on Leroy's case, I had my doubts. I had doubts about working on a death penalty case because I supported (and still support) the death penalty if it is implemented fairly. I also had my doubts about becoming involved in Leroy's case because Leroy was charged with a quadruple homicide, and one victim was a child.



Tom Geraghty and I talked about my concerns about being involved in this case. Tom said that he was not concerned about my position on the death penalty unless my feelings about the death penalty would interfere with my ability to represent Leroy zealously. I said that I would make the same commitment to Leroy's case that I would make to any other client. My commitment was to make sure that the system addressed Leroy's claims fairly and in accordance with the law. Tom welcomed me to the Orange team.

The more I looked into Leroy's case, the more I became convinced that he was innocent. His conviction rested solely on a confession obtained as the result of police torture. The case became a centerpiece of my legal education and of my professional life after graduating from law school.

I worked on the appeal of the dismissal of Leroy's second amended post-conviction petition. In that proceeding we had asked, as we had before, that Leroy be granted a hearing on whether his confession was the product of police torture. We lost that appeal. I remember being in my office at Schiff Hardin & Waite when the decision was handed down. I went to the Clinic to be with students and faculty who had worked on Leroy's case in order to absorb the news and to analyze the opinion. We strategized about the next steps.

Leroy's case educated me about the need for qualified and motivated trial counsel. Leroy had neither. I became convinced that if Leroy had been provided with a good lawyer from the start, he would not have been convicted. More than anything, however, the case taught me about our justice system. We are raised with the idea that our system of justice is the best in the world. It may well be; but that doesn't mean that it is flawless. Before my involvement with Leroy's case, I believed that if one were innocent, justice would be done. I know now that this belief is not always well founded.

Steven Block

CLASS OF 1999

Leroy Orange was the first case to which I was assigned as a third-year student in the Clinic. One of my first tasks was to visit Leroy at the Cook County Jail to discuss our efforts to obtain a hearing for him on his claim that his confession was the result of torture by the police.



My first impression was how calm and reflective Leroy was. He did not speak until he had reasoned through what he wanted to say.

Our attempts to obtain a hearing on the admissibility of Leroy's confession went on after I graduated. Having worked on Leroy's case while I was in law school, I had become quite invested in it. I could not just say "stop" and move on to other things when I graduated. I went on to work for Latham & Watkins and then for Butler Rubini Saltarelli & Boyd. Each firm allowed me to stay on the case and work pro bono for Leroy in conjunction with the Clinic.

When I heard about the pardon in January, I could not believe it. I was on vacation in Panama and saw the ticker on CNN say that "Governor is expected to pardon 4 on death row." I immediately called Cathryn Crawford and she said, "This is it. It is Leroy." We had put a lot of effort into our petition for executive clemency and had an excellent case based on the facts. However, you never expect that your client will receive a pardon.

I came back to Chicago as quickly as I could. The first time I saw Leroy as a free man was when he appeared on the *Oprah Winfrey Show*. By the time this supplement is published, Leroy and I will have visited Italy to tell his story as the guests of Hands Off Cain, a European anti-death penalty group.

The experience of working on Leroy Orange's case in law school has been humbling and exhilarating. I have been humbled by Leroy's dignity and strength throughout the process. I have been humbled by our inability, until recently, to obtain relief for Leroy. The pardon was exhilarating as in the fact that I am able to interact with Leroy in the context of his new-found freedom.

Cynthia Woolley

CLASS OF 1992

When I first was assigned to Leroy Orange's case as a second-year law student, one of my classmates observed how difficult it must be to work on a case where somebody's life was at stake. But I did not think of it that way because I knew



Tom Geraghty was in charge. Tom is calm and cares so much about getting things done properly that I knew it would be fine. This was also about the time when information was coming out that the police had used a so-called "black box" to torture people into confessing to crimes. When they complained about the torture (all were minorities), no one believed them.

I was responsible for investigating and preparing materials for the mitigation phase of our post-conviction petition seeking a new sentencing hearing for Leroy. Leroy's trial lawyer had presented no evidence in mitigation at Leroy's sentencing hearing. I interviewed everyone in his family as well as his minister, employers, and friends. I obtained affidavits from the many people who knew Leroy and who thought highly of him.

My interviews of witnesses — who should have been called to testify at Leroy's sentencing hearing — showed Leroy to be a caring, responsible person who never had any kind of criminal record as an adult.

The first time I met Leroy, he was on death row at the Menard Correctional Center. I had no idea what he would be like. But the reality matched what I had been hearing. Afterwards I remember thinking that this is a beloved family man — not a killer.

At the time I was working on Leroy's case, I felt we had solid evidence. I was optimistic that we would get life in prison for Leroy even though I felt he shouldn't be in prison at all for a crime he did not commit.

Over the years I would talk periodically to Tom Geraghty. Last fall when I was at Northwestern attending my 10-year class reunion, Tom told me more about Leroy's case. Then in January he told me to be sure to watch the news. I was thinking that it would be nice if they would let him out, but I didn't expect it to happen. It was wonderful when Leroy was pardoned.



Exonerated Center on Wrongful Convictions clients in Lincoln Hall on January 11 included Paula Gray (above) hugging Ford Heights Four defendant Dennis Williams and Gary Gauger (right). Dennis Williams received a gubernatorial pardon in November 2002 and Gary Gauger was pardoned in December 2002. (photos by Jim Ziv)



Videotaping Interrogations

Northwestern law professors and students were not only instrumental in the historic pardons and commutations, they have been instrumental in efforts both locally and nationally to push reforms to prevent wrongful convictions in both capital and non-capital cases.

Steven Drizin of the Children and Family Justice Center (CFJC) has been a leader in promoting one of the most important reforms in the death penalty area and in the criminal justice system — a requirement that police electronically record custodial interrogations of suspects. Of the first 13 innocent men on Illinois's death row, seven involved cases that were tainted by the false and coerced statements of defendants or co-defendants.

On the home front, the work of Drizin, and attorneys and staff from the Center on Wrongful Convictions, was instrumental in getting the Illinois Senate Judiciary Committee to pass a bill to require electronic recording of stationhouse interrogations in murder cases. If the bill passes the Senate, the House, and is signed by Governor Blagojevich, Illinois will become the first legislature to mandate taping. (Alaska and Minnesota require taping as a result of state Supreme Court decisions).

Clemency and Continuing the Work of Criminal Justice Reform

by Rob Warden, Executive Director, Center on Wrongful Convictions

It was not by happenstance that George Ryan chose Lincoln Hall as the venue for his historic announcement emptying Illinois death row on January 11. Rather, as he put it in his internationally televised address, it was “fitting that we are gathered here today at Northwestern University with the students, teachers, lawyers and investigators who first shed light on the sorrowful condition of Illinois’s death penalty system.”

The drive that led to the governor’s commutation of the death sentences of 167 death row prisoners (and the pardons of four others based on innocence the previous day) began at Northwestern Law in November 1998 when the Bluhm Legal Clinic hosted the National Conference on Wrongful Convictions and the Death Penalty.

The conference, which was the brain-child of Professor Lawrence C. Marshall, showed the world how perilously close the American criminal justice system had come to executing innocent men and women. It also spawned Northwestern’s Center on Wrongful Convictions, through which scores of Northwestern law students, faculty, and staff have worked on wrongful conviction cases and public education initiatives that were crucial to Governor Ryan’s decision to declare a moratorium on executions in 2000 and to grant blanket clemency to everyone on death row in 2003.

The center, in fact, has been instrumental in the cases of 11 of the 17 prisoners who have been exonerated and released from Illinois death row (including cases in which Lawrence Marshall or other members of the center staff were involved before the center came into existence). On the public education front, the center has sponsored research and seminars on the systemic flaws that lead to wrongful convictions — erroneous eyewitness testimony, the use of incentivized witnesses (jailhouse snitches), and false confessions (a disturbingly ubiquitous phenomenon until recently thought to be rare).

The month before the blanket clemency announcement, the center sponsored a National Gathering of the Death Row Exonerated at the Law School, led a march of the exonerated from Stateville Penitentiary to the governor’s office in Chicago, and hosted the governor and other dignitaries at the Chicago premiere of the critically acclaimed off-Broadway play, *The Exonerated*. Finally, the center had the honor of hosting the governor on January 11 at Lincoln Hall.

In the wake of the announcement, the question that seems to be most frequently asked by the center’s friends and supporters is: What’s next?

The response must be prefaced with a reminder that the death penalty is not the center’s primary issue. The center’s mission is to identify and rectify wrongful convictions, to raise public awareness of

the prevalence, causes, and social costs of wrongful convictions, and to promote substantive reform of the criminal justice system.

That said, the reality is that, as significant as Governor Ryan’s action was, it is only a milestone on the path to reform. Thus, the center will continue — and, resources permitting, significantly expand — its litigation and public education activities. These are the twin engines that drive reform.

Two recent center successes underscore the power of litigation — the case of Tabitha Pollock, a young mother wrongfully convicted of murdering her young daughter even though her boyfriend confessed to the crime, and the case of Michael Evans and Paul Terry, youths convicted in 1976 of a child rape and murder that DNA indicates they did not commit.



Illinois Governor George H. Ryan (above) and Professor Lawrence C. Marshall (right), Legal Director of the Center on Wrongful Convictions, in Lincoln Hall on January 11, 2003. (photos by Jim Ziv)



The Pollock case, in which staff counsel Jane Raley and Bluhm Legal Clinic students won an outright reversal from the Illinois Supreme Court, was featured by, among others, the *New York Times*, ABC News, and the *Chicago Sun-Times*. (“I knew if anyone would help me,” the latter quoted Pollock as saying, “it would be Northwestern.”)

The Evans/Terry case, in which center staff counsel Karen Daniel and cooperating outside counsel Jeffrey Urdangen secured the exculpatory DNA results, commanded front-page treatment in the *Chicago Tribune*. (Two fortuitous circumstances, noted the *Tribune*, saved Evans and Terry from otherwise virtually certain execution — both were just shy of age 18, and the crime occurred the year before

Illinois restored the death penalty following *Furman v. Georgia*.)

Against the backdrop of such cases, the center’s public education efforts in the near term will focus on garnering grass roots support for an ambitious criminal justice reform package pending in the Illinois General Assembly. The package includes measures proposed two years ago by the Center on Wrongful Convictions, the MacArthur Justice Center at the University of Chicago School of Law, and the Illinois Death Penalty Education Project, and endorsed last year by Governor Ryan’s blue-ribbon Commission on Capital Punishment.

Among the proposed measures are requirements that police agencies replace traditional lineups with sequential identification procedures (a reform that psychological studies indicate would reduce mistaken identifications by half) and electronically record all custodial interrogations of criminal suspects (to guard against false confessions). Another important piece of the package would require judges to conduct pre-trial hearings to determine the reliability of jailhouse snitch testimony proffered by the prosecution.

In the longer term, the center will work with university-based innocence projects and reform-minded organizations in other states where Governor Ryan’s action in Illinois has created an opportunity for a meaningful dialog on criminal justice reform for the first time since the 1960s.



State of Illinois
Executive Department

TO: Circuit Clerk, Cook County, Cook County, Illinois
Warden, Menard Correctional Center, Menard, Illinois
Sheriff of Cook County, Cook County, Illinois

Whereas, LEROY ORANGE was convicted of the crime of Murder; Aggravated Arson, Concealing a Homicidal Death, Armed Robbery; Case # 84 C 667 in the Criminal Court of COOK County and was sentenced July 1, 1985 to Death (vacated) and whereas it has been represented to me that said LEROY ORANGE is a fit and proper subject for Executive Clemency.

Now, Know Ye, that I, GEORGE H. RYAN, Governor of the State of Illinois, by virtue of the authority vested in me by the Constitution of this State, do by these presents:

COMMUTE THE SENTENCE OF
AND PARDON **LEROY ORANGE** TO DEATH ON INNOCENCE

Grant commutation of sentence to
Supervised Release Period; Grant
Expungement Under

Not Being Subject to the Mandatory
Sentence With Order Permitting
Section 2630/5.

DATED: January 10, 2003

George H. Ryan
GEORGE H. RYAN
GOVERNOR

By the Governor:

Jesse White
JESSE WHITE
SECRETARY OF STATE



Northwestern Law Students Who Worked on the Leroy Orange Case

- | | | |
|--------------------------|----------------------|-------------------|
| Mona Arain | Claire Goldstein | Douglas Smith |
| Bil Barnes | Marc Hauser | Sunjay Sood |
| Jared Bartie | Anthony W. Hill | Brandon Spurlock |
| Amy Bauman | Albert Hofeld | Mark Starchman |
| Douglas Beck | Keri Holleb-Hotaling | Thomas P. Swigert |
| Juliet Berger | Christopher Hotaling | Guy Temple |
| Steven Block | Greta Jacobs | Terry Thomas |
| Bruce Boyer | Hinda Jarik | Holly Travis |
| Claire Boyle | Mohit Kalra | Rebecca Trent |
| Louis Chaiten | Ken Katkin | Robert Tseng |
| Angela Coin | Christopher McFadden | Daniel Twetten |
| William Colman | Lee Mendelson | Lyle Washowich |
| J. Erik Connoly | Brian Mendonca | Victoria Wei |
| Lisa Copland | Sarah N. Mervine | Karin Weiner |
| Mario De La Garza | Andrew Mottaz | Steven Wernikoff |
| Kelly Deere | Marc Pachon | Steven Winger |
| David Doyle | Jeff Palmer | Cynthia Woolley |
| Daniel Fahner | Alexander Paul | Jennifer Zlotow |
| Rod Floro | Melissa Pratt | |
| Carolyn Frazier | Thomas P. Ratcliffe | |
| Kimberly Fuchs | Steve Ro | |
| Ilyse Goldsmith (Broder) | Mikaal Shoab | |

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NORTHWESTERN
UNIVERSITY



Northwestern University
School of Law
357 East Chicago Avenue
Chicago, Illinois 60611-3069
www.law.northwestern.edu

Thomas F. Geraghty, Director
Steven A. Drizin, Assistant Director
312.503.8576; fax 312.503.8977

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