



Anatomy Of An Effort That Saved A Man's Life

By Jeffrey Deskovic

The Facts

A man in Texas who was scheduled for execution even though he was innocent received an 11th hour miracle. Texas has a law known as The Law Of Parties, which states that if two people commit a crime together, and one of them commits murder, and the other party should have anticipated that a murder might occur, then both people may be tried, convicted and sentenced to death as though both had committed the murder.

In 1997 Kenneth Foster was convicted of a murder, and sentenced to death. The facts of the case were as follows: Foster and several friends had been driving around drinking and committing

robberies. Foster stated, "Enough is enough," and that he wanted to go home. On the way home, Maurecio Brown, executed last year for the murder in question, left the car to talk to a woman. An argument ensued, that soon involved her boyfriend, Michael Lahood. Brown claimed that Lahood reached into his jeans, a move he interpreted as, "Reaching for a gun." Brown then pulled his gun and killed Lahood. The murder occurred as Foster was sitting in a car nearly 100 feet away with three other passengers, but prosecutors insisted there was a conspiracy to commit the murder and therefore that he deserved a death sentence. Since Foster's original trial, the other passengers, none of whom was tried under The Law Of Parties have testified that Foster had no idea a shooting was going to take place.

The Movement

Spearheaded by the **Free Kenneth Foster Coalition** in Texas, along with chapters from the group **Campaign To End The Death Penalty** around the country, Kenneth's supporters undertook a grassroots campaign to raise public awareness of the case and have people express, to Texas Governor Perry, their opposition to the

scheduled execution.

The movement took on a life of its own, attracting national and international attention. Many newspapers ran stories about the case and ran editorials voicing opposition. There was near unanimity among Texas newspapers, including *The Austin Chronicle*, whose reporter Jordan Smith had been reporting on the case for years. Television stations *Democracy Now*, *ABC*, *MSNBC.COM* and radio station *WNAI* covered the case. **Amnesty International**, who seldom get involved in domestic cases, referred to the scheduled execution as "A shocking perversion of the law".

The President of the European Union, Archbishop Desmond Tutu, former President Jimmy Carter, NY State Senator Bill Perkins, actress Susan Sarandon, Ray Ramirez and The Welfare Poets, and David Kazinski of **New Yorkers Against The Death Penalty**, were among the more famous people who voiced their opposition.

Exonerees also added their voices: Yusuf Salaam of the Central Park Jogger Case; Darby Tillis, who was the first exoneree of Illinois; Shujaaa Graham who spent years on California's death row before being cleared. **Campaign To End The Death Penalty** founder and former Black Panther Lawrence Hayes, himself a former NY death row prisoner, also spoke out. Countless others inundated the Gov. Perry's office with phone calls and emails, and signed petitions. Rallies were held all over

the country. However, despite all of this, we knew that this was an uphill battle, with the odds against us. Texas is the nation's leader in the number of executions.

My personal involvement

I first learned of Kenneth's case two months ago through the **Campaign To End The Death Penalty**, whose events I had spoken at several times in the past. I did a good amount of research on the case, because, as always, I felt that it was really important to only support those cases and causes that I truly believed in, and whose facts I am well acquainted with. To me, it was a moral outrage that someone who, even the authorities were acknowledging had not killed anybody, would be executed.

Given that Foster wanted to end the robberies and go home was, to me, indisputable proof that he was not involved in a conspiracy to commit murder. Yes, he had participated in multiple robberies but the penalty for that should not be death. In addition, he had already served 10 years in prison on death row, where living conditions are inhumane, for example, not being able to hold his own daughter, or hold his wife's hand, or even hug his family.

Upon completion of my research, I was ready to do all that I could possibly do to help. I attended a rally in a church along with Darren Wilkins, my agent, in order to show my support. The program was already established, and I was not a necessary speaker. They simply wanted us there for whatever moral weight I could lend based on my own ordeal and the advocacy work I have engaged in since my release.

In a surprise move, with no advance warning, I was asked to speak by event moderator Yusuf Salaam. Taking the microphone, I explained who I was, and how critical I felt it

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was to voice our opposition to injustice, as well as how for many years, while I was incarcerated, I desperately wanted people to support me, and that it was only by coming together we might bring enough pressure to bear to even have a chance. I urged people to make phone calls, sign petitions, and do all that they could, because when many do a little, a lot gets done. A few months later I attended a meeting with Congressman Charles Rangel's staff, and then participated in the press conference afterward. I vocalized my solidarity with Kenneth; that I felt based upon having been a victim of the criminal justice system, and I made a moral appeal to political leaders as well as to others to voice their opposition to Kenneth's execution, as well as against the death penalty in general.

Somebody recorded my remarks, and placed the video on the internet. The broadcast station *Democracy Now* also used excerpts of my statement. I came away feeling that I had probably done all that I could. Many of us had difficulty sleeping the night before the scheduled execution. I could not imagine what went on in Kenneth's mind, or in the minds of his family.

Victory

The Board of Pardon and Parole voted 6-1 in favor of commuting the death sentence on the day of Kenneth's scheduled execution, which was a minor miracle in and of itself. We held our breath, uncertain what Gov. Perry would do. After all, he had

previously signed 160 death warrants since taking in office; more than any other Texas Governor in history. Texas had already executed two people that week, with Kenneth scheduled to be the third, and five additional executions lined up for September. Additionally, we knew that he had previously overridden the Board of Pardon and Parole on at least one occasion.

At approximately 12pm word reached me that Gov. Perry had commuted Kenneth's sentence to Life Imprisonment. I found myself on Cloud Nine all day. It was extremely humbling and mind-blowing to know that I in some small way I had played a role in helping to save his life.

I immediately called my former attorney Nina Morrison of **The Innocence Project**, and left an excited message on her machine in which I could barely contain myself. I called Darren Wilkins and verbally celebrated, and other members of **Campaign To End The Death Penalty**. That night, we were invited to Senator Bill Perkins office to celebrate. During that celebration we spoke to a member of Kenneth's family, and those who had worked on the legal side of things. Afterwards we went to a Mexican Restaurant, where about 30 of us celebrated the victory. There was a feeling of being naturally high, experienced by all, and a metaphysical feeling of this having been a watershed moment, whose momentum would carry forward in our struggle against the death penalty, and wrongful

convictions, as well as our effort to bring about legislative reforms.

While I am still buoyed by the experience, I realize at the same time it was a personal affirmation that I am engaged in the right course of action in my quest for a more just judicial system in order that others should not have to go through what I went through, rather than my simply trying to blend back into society and live a normal life. I feel, now more than ever, that I have a moral imperative to do what I can to bring about reforms, and to continue to struggle against the death penalty, and that I not only have a self-applied moral imperative, but also a moral obligation to do so.

There is much work to be done in New York State, a state where the threat of the reinstatement of the death penalty is ever-present, especially with the case of *People v John Taylor*, scheduled to be heard on Sept. 10th. The Taylor case is on in which The Court Of Appeals could wind up bringing the Death Penalty back judicially, thus encouraging the periodic introduction of death penalty statutes by various State Senators. However, I prefer to remain optimistic as I really believe the anti-Death Penalty forces can win. I am so pleased to be free so that I can add my voice and efforts to those who have been already working on these issues. ■

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