



DEATH PENALTY TESTIMONIALS



Chuck Lloyd and Deb Lingen

Albert Burrell and Michael Graham were found guilty of the murders of Delton and Callie Frost. Both were on death row in the Louisiana State Penitentiary for 13 years before being exonerated due to a lack of physical evidence and suspect witness testimony. Chuck Lloyd and Deb Lingen, both members of the Death Penalty Project Steering Committee, worked on Burrell's post-conviction case.

Background:

Can you tell me about your background and your previous work?

Chuck: I practiced very general commercial litigation. Before the Burrell case, I was representing the players in an antitrust case against the NFL. I didn't really have a criminal defense background.

Deb: I've been working with Chuck for 20 years doing paralegal work and general litigation. I was interested in pro bono matters that came up and would do work on some of the cases.

Describe your involvement in the case. What initially drew you into it?

Chuck: Lindquist and Venum took on the case around 1990 or 1991. The team of lawyers was initially headed by Tom Fabel, who was pretty well-known already. Tom was planning to run for county attorney in Ramsey county and had to step away from Burrell case during his campaign, so he came to me to be the lead on the case. The whole thing involved several trips to Louisiana, witness interviews, and digging through court files from the district attorney.

The Burrell Case:

What were the general circumstances of the Burrell case?

Chuck: Delton and Callie Frost were murdered on the Sunday of Labor Day weekend in 1986. The murder weapon was never recovered and there was no physical evidence to tie either Burrell or Michael Graham to the murders. The initial suspect was Mike Rogers, the nephew of victims.

So, on Sunday night, the Frost's neighbor, James Bearden and his brother-in-law, Dorsey Smith, stopped by the Frost home to buy sweet potatoes. Now, the Frosts were very poor. Delton pretty much ran errands for people to make money and they sold things from their garden, so Bearden stopped by to check on them and buy some sweet potatoes.

Now, there were some unusual things that Bearden noticed when he was there. First of all, Delton Frost did not immediately come up to the truck to greet Bearden as he usually did when visitors arrived. Instead, according to Bearden, Mike Rogers and another man were sitting on the porch. Bearden asked to speak with Delton and Rogers went into house to get him. This was another odd thing. Frost came out and stayed on the porch after nephew went and got him. Again, he didn't come down to talk to Bearden. Delton said that Bearden should come back in the morning for the sweet potatoes. Then, Bearden and Smith left and this was the last time when the Frosts were reportedly seen alive.

Next morning, the neighbors came by and saw broken glass from the front door. They called the sheriff, who found the bodies and found that both had been shot to death. Now, there are two important details of the crime scene that you need to keep in mind. The Deltons lived in a one room house, so the bed was in the living room. On the bed, someone dumped out what looked like the contents of three grocery sacks. This was everything that the couple owned. Delton's wallet was underneath all of these items on the bed. This is the first important thing to remember, that his wallet was found underneath all this stuff on the bed. The second thing to keep in mind is the broken glass. Delton's body was on top of glass from the broken window in the door, so whoever broke the glass did so before Delton somehow landed on the floor.

When the police arrived, Bearden told them about Rogers and other man who were at the Delton home the night before. When the police brought Rogers in to question him, he denied being at the Delton's with another man and instead claimed that he was there with his girlfriend. Rogers said that they left shortly after Bearden left, which would've been around 9 or 9:15 on Sunday evening.



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However, Rogers said he didn't get home until sometime between 11 and 11:30 on Sunday evening. Rogers explained that it took two hours to drive the 17 miles to his house because he drives "real slow" at night. The girlfriend was brought in and she confirmed this whole story. The police believed their story and never searched Rogers' home.

So six weeks went by and the police still had no leads until the sheriff got call from Janet Burrell, who claimed her ex-husband, Albert, was involved in the murder. She told a story of meeting with Al and claimed that Al had had Delton's wallet that night. Now, first of all, Janet claimed that the wallet that Albert showed her was brown when Delton's wallet was actually black. But the main problem with this story is that the police found the wallet at the scene of the crime. So, the prosecution argued that, after Janet had seen wallet, Al went back and threw the wallet through the window, even though this still doesn't work because the wallet was buried beneath all this other stuff.

Janet's story had another problem too. According to her story, Albert was after money, so he shot Callie and Delton through a different window, then broke in through door. We knew that this was a lie because it was inconsistent with crime scene. If Albert had killed Delton before he broke in, glass from the door would have been on top of his body. However, Delton was lying on top of the glass. But even with all of these inconsistencies in Janet's story, the prosecution still used that information against Burrell and didn't disclose these inconsistencies to the judge. The police obtained a warrant, searched Albert's house, and found no inculpatory evidence at all. The prosecution's only evidence was Janet's statement. There were no matching fingerprints and the blood at the scene didn't match Albert's blood type. They also never found a murder weapon or the money that Albert was supposedly after.

The next day after Albert's arrest, the story was in paper. A family, the St. Clair's, came forward, claiming that Michael Graham had been with Burrell that weekend. Graham was living with the St. Clair's at that time. The family said they weren't sure when they saw them together, but they were pretty sure it was on Saturday night. However, by the time trial came around, they concluded it was Sunday night instead. This change in their story was never disclosed to judge.

So the sheriff turned all the evidence over to the district attorney. The assistant district attorney, Dan Grady, looked at evidence and told the D.A. that the evidence was way too skimpy. There were some credibility issues with witnesses because there was a huge custody dispute between Albert and Janet. Now, this is just a testimony about what this Janet is like. Albert is mentally retarded, he suffers from schizophrenia, and he's illiterate. Despite all this, Albert was awarded custody of their son in the divorce. This is highly unlikely in Louisiana. I mean, Albert had a better chance of winning the lottery than getting custody, but he did anyway. So, Grady told the D.A. that there was no evidence and that they couldn't take it to a grand jury. The D.A. told Grady that the case had to go before a grand jury so they didn't embarrass the sheriff, so Grady secured indictments against Graham and Burrell.

Three days after the indictment, Olan Wayne Brantley, the jailhouse snitch, came forward, saying that Graham had confessed to the crime and told Brantley about it. As a consequence, Graham went to trial first. Based on the St. Clair's testimony, Janet's story of Albert at the Frost house, and Brantley's testimony, Graham was sentenced to death.

Now, there's an important thing to know about Brantley. His nickname, which was known across the state by law enforcement, was Lying Wayne Brantley. He's one of few people to ever beat forged check charge on grounds of legal insanity by being incompetent to stand trial. He is a professional con man. Later on, after this case, Brantley was arrested in Florida for trying to swindle people out of their money and, while he was in jail, more people who were on trial for murder supposedly confessed to him too.

So, sometime after Graham's trial, Brantley came forward again and said that Albert had also confessed. According to his story, Albert's mother and brother had visited him in jail and, when they were there, Brantley heard Albert tell his brother to get rid of "it" for me. Supposedly, Albert told him to hide this thing in a suitcase. One week after the initial visit, the brother came back and told Albert that it was hidden really well in some sort of vehicle. Another week later, Albert allegedly confessed to the murder. Now, Brantley claimed that all of this happened in July 1987. But, according to the jail visitors' log, Albert's brother didn't have any consecutive visits in July, so they knew Brantley was lying. But based on Brantley's testimony and the suspicion that the murder weapon was hidden in a suitcase or a car, the police obtained a warrant to search Albert's home. However, the search didn't turn up any evidence.

So, based on bad testimonies, Albert was also convicted. His defense attorneys were Keith Mullins and Rod Gipson. Both were later convicted of crimes and disbarred. Mullins was convicted of selling drugs and he also suffers from mental illness. Gipson only had a year of experience when took on Burrell's case. The trial was a farce and Dan Grady completely took advantage of the defense.

When looking into Burrell's case, we dug up police reports which showed the inconsistencies between Janet's story and crime scene as well as Brantley's criminal history. A judge said this information deprived Michael Graham of a fair trial and declared that he would



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have a new trial. He also said that, because Michael and Albert's cases were so closely linked, whatever happened with Michael would happen for Burrell. After nine months of investigation, the attorney general concluded that there was no credible evidence linking Michael and Burrell to the crime and refused to re-prosecute for murders. No other arrests have been made.

Why do you think Burrell was convicted despite such scarce evidence?

Chuck: Grady believed Brantley. He was publicly outraged about the release. It's hard to know what the heck is going on with Grady. Nick Trenticosta, who also worked on Albert's case, only represents guys on death row in Louisiana. When talking to Nick, Grady encouraged him to look closely at those convictions. He wouldn't explain himself any further when Nick asked what he meant. He just told Nick to look at the convictions closely. He's retired now and is an administrative law judge in Alabama. He ran a convenience store for a while.

Can you describe your feelings when Burrell was finally exonerated?

Chuck: We had visited Albert several times on death row and were allowed to see his cell and his living conditions. The warden allowed general population inmates to put together dinner for death row inmates and their family members, which Albert invited me to. I distinctly remember Albert's mom, Gladys. She was a devout Jehovah's Witness.

Then there was the hellish day in 1996 when we were faxed an order that Albert was to be executed in sixty days. We got a stay just 17 days before the execution.

December 27, 2001 was the day we received the statement for his release, so on the 28th, we went to Louisiana. But there were still delays. The judge needed to review files and circumstances before Albert could be exonerated. She agreed to do so over the holiday weekend and have a hearing on January 2nd to see if he'd be released. Even after the hearing, certain paperwork still needed to be signed before he could even take off his handcuffs. But not even the birth of my three kids compares to that moment when Albert was released.

Deb: The whole thing was very exciting even though I wasn't quite as involved as Chuck in the case. It was exciting, but also very surreal. I didn't know how to deal with the fact that this could happen to someone. It was this huge relief, but I still felt somewhat removed.

Capital Punishment in the United States:

Do you think there is any way for states without the death penalty, like Minnesota, to influence policy in death penalty states?

Chuck: The single best argument that is prevailing right now is not what I would have expected. I thought we'd have growing opposition to the death penalty when it was proven that an innocent person had been executed. I figured that anything short of that wouldn't bring change. It turns out that the economy is real reason for the unpopularity of the death penalty. States just can't afford it anymore. New Mexico has gone that way and now it's an open question in California because of their severe budget problem. The Advocates can do a few things to help. They can get involved in cases where there is need and make sure that public policy can be informed. If a bill or moratorium gets to a governor, we should call that governor so they know that people are paying attention. Even if these things are happening in other states, we should still be involved. Most governors want to do something for more than just their state and it would be good for them to know that people across the country have an interest in what happens in their particular state.

Would it take another Supreme Court decision to ban capital punishment in the United States? Is there any other way to end federal use of the death penalty despite the *Gregg v. Georgia* ruling? What do you think would be the best course of action?

Chuck: I don't think there's a way to do it all at once. Each individual state can get rid of it. It would take an act of Congress to get rid of it at the federal level even if all states did so. It would definitely put pressure on Congress to do so if all of the states abolished the death penalty.



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Have you had any other involvement with death penalty advocacy?

Chuck: There's not a lot that needs to happen in Minnesota. We go over to legislature whenever bill is introduced on capital punishment and talk to representatives. Also, I participate in Law Day, which is a forum for high school kids to talk and ask questions about the death penalty debate.

Capital Punishment Worldwide:

How do you feel about documents such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, which protect the right to life and prohibit inhuman punishment? Many countries have signed and/or ratified these documents but still use capital punishment. Do you feel that there is any way the global community or the United Nations can do anything to enforce these commitments to human rights?

Chuck: I think with the UDHR and various charters, we run a certain political risk for the abolitionist movement if we put too much stock in enforcement in international court. We ought to live up to treaties and our own courts should enforce treaties. A better argument would be to say, look at the company were in by using capital punishment: Iran and North Korea. We need to look at this from a political perspective. Treaties are good, but a lot of people will be nervous with that argument. My preference is that American courts should enforce treaties, but going beyond that is a politically risky strategy.

Opinions and Advice:

What component of the death penalty do you find most troubling? What component are you most passionate about?

Chuck: I'm most troubled by the capital trial process in general. For capital cases, there are two parts to a trial: the guilt phase and the penalty phase. In any other case, jury selection is based on a juror's ability to be fair. A juror would never be asked about punishment. You just can't do that. But, in a capital case, there needs to be a death-qualified jury, one that would be capable of possibly voting in favor of the death penalty. This means that jurors are asked about the penalty and if they feel like they'd be able to put the defendant to death. It creates this not-so-subtle message that defendant is already guilty. Plus, death row inmates are treated like animals. They spend 23 hours a day in a six-by-nine foot cell. There was never a time when I thought that capital punishment was OK. Even when I was in middle school, I managed to convince my conservative father to vote against it in a referendum. That opposition made me want to get involved in Albert's case. I would've worked just as hard even if I had been convinced that Albert was guilty.

Deb: This case opened my eyes to a lot of things. I grew up in a farming community where most people were for the death penalty, and this case forced me to think about my own opinion of it. My own conclusion is that I can't see how any open-minded, compassionate person can put a person to death. I saw how things slipped through cracks. People who were in powerful positions and were able to make the difference and save a man's life were willing to lie anyway.

Some who support the death penalty argue that the death penalty deters crime, that life without parole isn't enough to keep criminals off the streets, or that the death penalty is just. How would you respond to these and other pro-death penalty arguments? How would you persuade a neutral party to oppose the death penalty?

Chuck: The states with the highest execution rates- Virginia, Florida, Texas- also have high violent crime rates. There is no correlation between death penalty and low crime. First degree murder recidivism is already so low, it doesn't justify this claim. There is no significant, credible study that proves a deterrent effect. The family of victim is entitled to retribution and I'm sympathetic to that, but, historically, families don't get closure upon the execution of a perpetrator. Parents especially are forever changed by a child's murder, but the death penalty only creates a new class of victims by hurting the family of the perpetrator.

Deb: I'm trying to think of something to add to that. Every person has their past and some people just aren't willing to listen to anything or open their minds to new evidence and see a situation in another way. We have to try to approach situation in a calm and rational way because people are very passionate about the topic. I also agree that the families of victims don't get what they need in the end through the death penalty.



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Chuck: I think of what Michael Dukakis said when asked about the death penalty during his campaign. Someone asked, what if your daughter were raped and murdered? He answered, I know how I would feel if my daughter were raped and murdered. I'd want to kill the guy myself, but that's the point of government and laws. Social contract is such that we don't get to do that. I'd be grateful for that social contract because it would save me from myself. It's hard to ask families to sit back and look at it rationally.

Deb: What I would say to people who want to get into discussion about capital punishment is that this question is different from many other topics that people talk about. With the death penalty, there isn't a second chance or a do-over. When talking about this, the real question we need to be asking is, what is an acceptable rate of failure when you're killing someone? It's just so much more different from anything else we talk about.

What is your advice for individuals who want to get involved with this cause?

Chuck: The first thing to do is to get to know your state legislators. Introduce yourself as constituent. Stay involved in the general public policy debate. What happens is, when a really big issue comes up, legislators see a lot of new faces who suddenly take an interest in the issue. You want to be the familiar face who talks about other issues. Make sure your representative knows you as someone who is thoughtful and involved in policy, not just someone who just shows up for a certain issue. Legislators pay particular attention to people who aren't just single-issue activists.

Deb: There is a lot to be said about having an informed opinion. Being active in the community will increase your opportunity to share opinions when the time comes.