

## DUANE BUCK FACT SHEET

### **If Duane Buck's defense lawyers called the psychologist who gave the racist testimony, why should Mr. Buck get a new sentencing hearing?**

- Racial bias has absolutely no place in the administration of criminal justice – particularly when the stakes are life and death. The state of Texas has a duty to ensure that its criminal justice system is free of racism.
- In 2000, then Texas Attorney General John Cornyn admitted that the United States Constitution was violated by the introduction of Dr. Walter Quijano's expert testimony linking race to future dangerousness in seven capital cases: in three of those cases, the expert was called as a defense witness; in the other four, the expert was called as a prosecution witness. These are the cases:
  - Duane Buck (Dr. Quijano was a defense witness)
  - John Alba (Dr. Quijano was a defense witness)
  - Carl Blue (Dr. Quijano was a defense witness)
  - Gustavo Garcia (Dr. Quijano was a prosecution witness)
  - Eugene Broxton (Dr. Quijano was a prosecution witness)
  - Michael Gonzales (Dr. Quijano was a prosecution witness)
  - Victor Hugo Saldano (Dr. Quijano was a prosecution witness)
- Attorney General Cornyn's promise of a new, fair sentencing hearing was never dependent upon whether Dr. Quijano was called as a prosecution or defense witness.
- In Mr. Buck's case, the trial prosecutor elicited the expert testimony linking race and dangerousness on cross-examination. She also argued to the jury that it should rely on the expert's testimony to find that Mr. Buck posed a future danger.
- Regardless of which side called the expert, the Attorney General's Office kept its promise in six of the seven cases – including two other cases in which the expert was called as a defense witness.
- ***Mr. Buck is the only one who has not been granted a new hearing.***

## Exactly what did the prosecutor do and say in Mr. Buck's case?

- Here is the question that the prosecutor asked Dr. Quijano on cross-examination:

Q: You have determined that the sex factor, that a male is more violent than a female because that's just the way it is, and that *the race factor, black increases the future dangerousness for various complicated reasons; is that correct?*

A: Yes.

Ex. 1, R.R. Vol. 28 at 160 (emphasis added).

- Here is the prosecutor's closing argument regarding Dr. Quijano's testimony:

You heard from Dr. Quijano, who had a lot of experience in the Texas Department of Corrections, who told you that there was a probability that the man would commit future acts of violence.

## Wasn't this just an isolated instance of a Harris County prosecutor referring to race?

- There is a long history of discrimination in Harris County generally and in the Harris County District Attorney's Office, in particular.
- Approximately one-half of the African-American prisoners on Texas' death row are from Harris County.
- A new study reveals that between 1992 to 1999 (a time period which includes Mr. Buck's case), **the Harris County District Attorney's Office was over three times more likely to seek the death penalty against African-American defendants like Mr. Buck than against similarly situated white defendants, and Harris County juries were more than twice as likely to impose death sentences on African-American defendants like Mr. Buck.**
- The results of this study are corroborated by earlier, comprehensive studies which demonstrated that, at the time of Mr. Buck's capital trial, the Harris County District Attorney's Office sought death for African-American defendants but did not seek death for similarly situated white defendants.

- Johnny Holmes was the Harris County District Attorney at the time of Mr. Buck’s capital trial and sentencing. District Attorney Holmes admitted that prosecutors routinely struck African-American potential jurors from service.
- Chuck Rosenthal succeeded Mr. Holmes as the Harris County District Attorney. District Attorney Rosenthal resigned after racist emails he sent and received on his work computer were discovered.

**But didn’t Mr. Buck kill two people in a particularly brutal way?**

- Mr. Buck does not dispute his guilt. He is extremely remorseful and takes full responsibility for the tragic deaths of Debra Gardner and Kenneth Butler.
- Mr. Buck should be punished for his crime, but no one – including Mr. Buck – should be executed because of the color of their skin.
- Each of the men to whom Attorney General Cornyn promised new sentencing were convicted of terribly brutal crimes. And all of them – except Mr. Buck – have received new, fair sentencing hearings.

**All the other defendants who had racist testimony presented at their original sentencing hearings were re-sentenced to death after they got new, fair sentencings. So why does it matter whether Mr. Buck gets a new sentencing or not?**

- All defendants facing society’s ultimate punishment have a right to the fair, color-blind sentencing trial that is guaranteed by the United States Constitution.
- The race-based expert prediction that Mr. Buck was likely to be dangerous in the future has been proven to be false:
  - Under Texas law, a jury must find that a capitally charged defendant is likely to be dangerous in the future before he can be sentenced to death.
  - Mr. Buck has no prior violent felony convictions.
  - Mr. Buck has not had a single disciplinary infraction during his fourteen years in prison. This is *extraordinary* given the fact that he is in a system where prisoners are regularly written up for such minor “offenses” as having too many postage stamps or refusing to shave.

- Mr. Buck has served as a role model for his fellow inmates and has facilitated a more peaceful relationship between inmates and guards.
- Mr. Buck had a traumatic childhood and upbringing. Three Texas Court of Criminal Appeals Judges concluded that if the jury had heard the true facts of Mr. Buck's life history – which it did not, due to the failures of his trial attorneys – Mr. Buck might not have been sentenced to death.
- Thus, there is an abundance of compelling evidence in favor of a life verdict for Mr. Buck.

**Haven't the courts already ruled on Mr. Buck's claim that he was subjected to racist testimony?**

- No. Three judges on the Texas Court of Criminal Appeals stated in a dissenting opinion, issued on November 20, 2013, that no court has *ever* reviewed the merits of Mr. Buck's claim that he is entitled to a new, fair sentencing trial free of racial bias.

**If Texas' highest legal officer confessed constitutional error in Mr. Buck's case and the cases of six other individuals where race was injected in the sentencing hearings, why hasn't Mr. Buck received a new sentencing hearing?**

- We do not know. Mr. Buck's case is identical to the others in which the Texas Attorney General conceded error and admitted that racial bias impermissibly tainted the proceedings. The State refuses to explain why it has chosen to treat Mr. Buck differently.