

February 12, 2020

The Honorable J. Kevin Stitt
Office of the Governor, State of Oklahoma
Oklahoma State Capitol
2300 N Lincoln Blvd.
Oklahoma City, Oklahoma 73105

RE: SUPPORT FOR JULIUS JONES' CLEMENCY PETITION

Dear Governor Stitt and honorable members of the Oklahoma Pardon and Parole Board,

My name is Irwin Cotler, former Minister of Justice and Attorney General of Canada, Emeritus Professor of Law at McGill University and Chair of the Raoul Wallenberg Centre for Human Rights (RWCHR). The RWCHR is an international human rights organization engaged in the pursuit of justice. In particular, advocacy for political prisoners and the wrongfully convicted is central to our mission and mandate.

I write to you now in support of the clemency petition for Oklahoma death row prisoner Julius Jones. When I served as Minister of Justice and Attorney General of Canada, the review of wrongful convictions fell under my exclusive jurisdiction and was one of my top priorities.

After a comprehensive review of this case, I have determined that there are multiple grounds— using metrics that I am familiar with relating to wrongful conviction— that clearly demonstrate that Mr. Jones suffered a miscarriage of justice. These grounds are as follows:

- (1) **Misidentification:** The *only* eyewitness description of the crime was incompatible with Mr. Jones' appearance at the time, while his co-defendant, Christopher Jordon, perfectly matched the description.
- (2) **Incentivized Testimony:** The police assured Mr. Jordon, a key prosecution witness, that he would avoid the death penalty by testifying against Mr. Jones. Two inmates confirmed that Mr. Jordon boasted he was the killer and set up Mr. Jones. Two other prosecution witnesses, and long-time police informants, Ladell King and Kermit Lottie, were facing 20 and 40 years in prison respectively. After their testimony, Mr. King's charges were dropped and Mr. Lottie's were reduced to four years. The Edmond Police Detective, Anthony Fike, sent a letter to the DA requesting leniency in exchange for Mr. Lottie's testimony. The DA said the letter was "lost" and was only found a year after the trial. These facts are crucial, particularly where it has been found that incentivized testimony is the leading cause of wrongful convictions in capital cases.¹
- (3) **Prosecutorial Abuse and Flawed Forensic Science:** The prosecution struck all eligible black jurors from the jury pool but one, even though white jurors who gave the same answers remained. Moreover, the prosecution relied on scientifically discredited bullet lead analysis that could have affected the trial's outcome. The analyst at trial later pled guilty to giving false testimony in connection with her bullet lead comparison just 14 months after Mr. Jones' trial.
- (4) **Ineffective Counsel:** The public defenders assigned to Mr. Jones were appointed on short notice, following the sudden death of his lawyer, and subsequently stated "we failed him miserably." They failed to present an official photograph of Mr. Jones taken a few days prior to the crime, demonstrating a clear discrepancy with

¹ Center on Wrongful Convictions, *The Snitch System* at 3, available at <http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/documents/SnitchSystemBooklet.pdf>.

the only eyewitness description of the crime. They had no capital trial experience. They failed to call alibi eye-witnesses who reported that Mr. Jones was with them at the time of the shooting. They failed to cross-examine his co-defendant, Mr. Jordon, on at least six contradictory material statements. They failed to assert a claim against the prosecution for withholding the deals made with its key witnesses. They even failed to put on a single witness during the guilt-innocence phase of the trial.

- (5) **Racial Animus:** Finally, and most importantly, the jury deliberations were marked by blatant racial animus. One juror explicitly used the N-word to describe Mr. Jones and called for him to be lynched, considering the trial “a waste of time.” These statements were brought to the attention of the judge, although the juror was permitted to remain and proceeded to cast his vote to put Mr. Jones to death. His violent intent and discriminatory remarks were never disclosed to trial counsel and were concealed until 2017.

These concerns are exacerbated in the context of death row, where there is a risk of the State perpetrating the very act for which it accused Mr. Jones— murder.

What is also particularly disturbing about this case is that the DA in charge, Robert Macy, has sent more people to death row than any other DA.² He has even boasted of sending a juvenile, who was found to have a mental disorder, to death.³ Courts have reversed nearly half of his death sentences and three of the people he helped convict were later exonerated from death row.⁴

Over the years, I have observed that the data consistently shows the disproportionate and prejudicial impact of the death penalty on minorities, the indigent, and those with ineffective counsel. Indeed, a report by the Oklahoma Death Penalty Review Commission found that (1) black individuals convicted of killing white individuals are twice as likely to receive the death penalty than when the victim is non-white and (2) homicides of white victims are three times more likely to result in a death sentence.⁵

I want to close with a prominent case of wrongful conviction I had the honour and duty of correcting as Minister of Justice of Canada— the case of Steven Truscott, victim of a similar miscarriage of justice. I first studied the Truscott case while a law student as a capital punishment case. Mr. Truscott was tried and convicted of the rape and murder of a teenager and was sentenced to death. Fortunately, his death sentence was commuted and, 40 years later, the case came before me. I asked the appellate court in Canada to review the new evidence and an acquittal was entered in his case after a comprehensive review. As in the Truscott case, which took decades to correct, I urge you to reverse this historic injustice against Mr. Jones.

Thank you for your consideration.

Sincerely,


Irwin Cotler

Chair, Raoul Wallenberg Centre for Human Rights
Former Minister of Justice and Attorney General of Canada

² Fair Punishment Project, *America's Top Five Deadliest Prosecutors: How Overzealous Personalities Drive the Death Penalty*, Jun. 2016, at 8, available at http://fairpunishment.org/wp-content/uploads/2016/06/FPP-Top5Report_FINAL.pdf.

³ Sara Rimer, *A Proud And Unwavering Believer In The Death Penalty*, N.Y. Times, Feb. 10, 2001, available at <https://www.nytimes.com/2001/02/10/us/public-lives-a-proud-and-unwavering-believer-in-the-death-penalty.html>.

⁴ See Fair Punishment Project, *supra* note 3, at 9.

⁵ The Constitution Project, *The Report of the Death Penalty Review Commission*, Mar. 2017, at 217-218, available at <https://www.courthousenews.com/wp-content/uploads/2017/04/OklaDeathPenalty.pdf>.