

## Finality Over Justice Transcript

Lee Greenwood: I just remember calling the airline and booking a flight and throwing some things together and getting on a plane that day and coming here, and meeting his father, and we immediately go into an attorney. I can remember getting monies together, and you sell everything you have that you think can turn into money right quick. I brought it all here in cash, and I was kind of clutching my purse in an odd way, and I was so overwhelmed with the news. Fear set in and, "What am I going to do?" Or, "What are we going to do?" Or, "How do we handle this?"

Narrator: EPF Media presents Practical Reason, stories that are unfamiliar or worthy of reexamination. That's Joseph Nichols' mother Lee Greenwood from an interview created by Texas After Violence Project and the Human Rights Documentation Initiative.

Lee Greenwood: Joseph is the third child of five. He's the second son. Kind of quiet his demeanor, excelled in all sports, very outgoing, very humanitarian traits. If you were bullied in school or just pretty much alone, Joseph was going to be your friend and maybe even take up your cause.

I believe when Joseph's father and I divorced, he was probably seven or eight maybe. Being a young parent and kind of growing up with the children, we had a lot of fun, so we were close-knit, the kids and I. Joseph did not give me a discipline problem as a young adult, which came as a shock to me when I was called and told that he had been arrested.

It happened in the morning. I was living in San Diego at the time. And my daughter, she called me hysterical that he had been arrested and was being charged with capital murder. I saw him the next day. If I can remember, he wasn't very talkative. He just knew that he hadn't killed anyone. During the trial, I was actually thinking it, still thinking that we had a good system. If you look at the facts of the case, it will leave you with a question mark in your mind. How could this happen? You believe in the justice system and soon you get a very bad taste in your mouth.

Gabriel Solis: My name is Gabriel Solis. I'm the director of the Texas After Violence Project. Our organization documents and studies the impacts of state violence on families and communities. Claude Schaeffer was a clerk at a delicatessen in Houston. In 1980, Joseph Nichols and three of his friends, including a man named Willie Williams, robbed a delicatessen in Houston. Joseph Nichols and Willie Williams went into the deli while the other two people stayed in the car and were to be the getaway drivers.

Joseph Nichols and Willie Williams both fired their weapons and then both ran out of the store. At some point, Willie Williams turned back around, ran back into the store and fired one more shot that hit Mr. Schaeffer. The medical examiner found that Mr. Schaeffer died from a single gunshot wound to the back. Both

## Finality Over Justice Transcript

Joseph Nichols and Willie Williams were arrested a few days after the crime and both were charged with capital murder.

Willie Williams confessed to going back into the store and firing the shot that killed Mr. Schaeffer. During his trial, he actually pled guilty. The Harris County district attorney's office was successful in getting a conviction and death sentence for Willie Williams. He was executed in 1995. Six months later, Harris County prosecutors then put Joseph Nichols on trial for capital murder. So their strategy for Joseph Nichols was to charge him with capital murder and to basically present an argument under the law of parties, which in Texas means that somebody can be found guilty and sentenced to death for capital murder, even if they weren't the one that pulled the trigger or the one that killed the victim.

Joseph Nichols' attorneys weren't saying that Joseph wasn't there or that he didn't participate. What they were arguing was that he was not the one that fired the fatal shot that killed Mr. Schaeffer, and the physical evidence backed them up on that. Although the jury found him guilty of capital murder, they could not come to an agreement on punishment. And so his first trial ended in a mistrial.

This is in 1982, and this is during the Johnny Holmes era as district attorney. Johnny Holmes was the district attorney of Harris County from 1979 to 2000. And during those years, it's estimated that Harris County alone, which is where Houston is located, sent over 200 people to death row. After Joseph's first trial ended in a mistrial, the prosecutors in Harris County regrouped. They wanted to secure a death sentence for him.

What they decided to do was to change their whole theory of the case from the first trial and to now argue to the jurors that Joseph Nichols was the one that fired the fatal shot that killed Mr. Schaeffer. Johnny Holmes and his prosecutors were so focused on getting a death sentence for Joseph Nichols, they did not share the whereabouts or the contact information for the deli employee who had told them that she witnessed Willie Williams firing the fatal shot, not Joseph Nichols, to ensure his conviction and death sentence that kept her away from the defense attorneys and from the trial. It was successful. And at Joseph Nichols' second trial, he was found guilty and given a death sentence.

In '92, a district judge vacated Joseph Nichols conviction and death sentence. When the judge vacated Joseph Nichols' conviction and death sentence by pointing to the very obvious and clear fact that both arguments that they're making, that Willie Williams shot the fatal shot and that Joseph Nichols shot the fatal shot cannot be the case. It was in 1995 that another appeals court, the Fifth Circuit Court of Appeals, reversed the district judges decision and actually reinstated the conviction and the death sentence. After 25 years on death row, Joseph Nichols was executed on March 7th, 2007 by lethal injection.

## Finality Over Justice Transcript

Andy Love: I'm Andy Love, and I'm a lawyer, I've handled death penalty cases for 25 years. I was one of three lawyers who handled Tom Thompson's appeal and post-conviction proceedings.

So, Tom Thompson who was sentenced to death in Orange County in 1984 for the rape and murder of Ginger Fleischli. The crime had happened in September of 1981. And the night of Ginger Fleischli's death, she would've been out with Tom, and returned to the apartment with him. Her body was found three days later in grove with trees. And the physical evidence tied the killing to the apartment.

But the other physical evidence all pointed towards David Leitch, and Leitch had a history of violence, including with the victim, who was his former girlfriend and he had even at one point threatened to kill her and she had to be escorted by a police officer after that incident.

Before the trial, the cases were joined together, and the prosecutor's theory was that Leitch had the motive and he had hired Tom to kill the victim, Ginger Fleischli. To support this theory he had, he presented three jailhouse informants at the preliminary hearing. And so these three jailhouse informants testified that Tom had confessed to them that he had committed the murder at David Leitch's behest. The cases were then separated. Tom's case went first.

Paula Mitchell: My name is Paula Mitchell. I'm the legal director at the Loyola Law School Project for the Innocent, and I'm also the executive director of the Alarcon Advocacy Center and I oversee the Ninth Circuit Appellate Clinic here at Loyola.

The case was very controversial. A lot of people, even to this day, think that he was innocent. There was very little evidence directly tying Tom Thompson to the murder. There was much more evidence tying his roommate, David Leitch. Ultimately, the prosecution relied on jailhouse informants to convict him.

Andy Love: What's important is that the rape murder special circumstances, what made this a death penalty case. Without the rape, there was no death penalty eligibility. A theory that Tom had actually raped Ginger Fleischli and then killed her to cover up the rape.

Paula Mitchell: There were two sets of informants. The first time around, the informant wasn't giving the prosecution quite what they needed and they were somehow able to go and find more informants. I mean, according to the prosecution, Tom Thompson was just out telling everybody.

Many of the cases that I see come across my desk here working on wrongful convictions involve a jailhouse informants. And when you think about it logically, it so often makes no sense. Who is going to go sit down next to somebody they've just met in a jail cell or are sitting next to on a bus and start revealing their deep dark secrets about what crimes they've committed, precisely how they've

## Finality Over Justice Transcript

committed them? "Let me unburden myself and tell you what I've just done." It just doesn't happen.

Andy Love: There wasn't any evidence of rape. So the prosecutor came up with two new informants who miraculously said that Tom had confessed to them that he had raped the victim and had killed her to cover up the rape. So that's five jailhouse informants now. He was 28 years old when he was arrested. He had no criminal history, no history of violence. Thomas is then found guilty of murder and sentenced the death, and then David Leitch was tried separately by the same prosecutor.

Paula Mitchell: The prosecution basically asserted that David Leitch was responsible for the murder and simultaneously asserted that Tom Thompson was responsible for the murder.

Andy Love: As these defense witnesses left the stand, the prosecutor subpoenaed them so that they could be prosecution witnesses at Leitch's trial. So we disparaged them in Tom's trial and then in Leitch's trial, he came up with a theory, an inconsistent theory, from Tom's case that actually it was David Leitch who had the motive to commit the murder.

The prosecutor could get away with a completely different theory for each of these defendants, and use this false evidence, clearly false evidence, of jailhouse informants to convict Tom. Tom's lawyer failed to actually do the investigation of these informants that would have uncovered that there were these lifelong snitches who had gotten deals, both in this case and in many other cases. It was completely skewed because the prosecution presented false evidence and the defense lawyer failed to challenge it, and so the jury got a completely skewed view of the case.

The trial was in 1984, and the case went to federal court. A federal judge found that the trial was unfair, that Tom was deprived of the effective assistance of counsel. The Ninth Circuit, originally a three-judge panel, overturned the district court judge and said, "Well, even if the lawyer was ineffective, it wouldn't have made a difference." At that point in time, his execution was set for July, 1997.

Practically in the eve of the execution, the Ninth Circuit came back with a new ruling. This is an 11 judge panel that overturned the three judge panel, and they came with the death sentence, ordered a new trial based on not only the fact that Tom's lawyer was ineffective with regard to the jailhouse informants, but also found that the prosecutors use of these inconsistent theories violated due process and was fundamentally unfair.

After the Ninth Circuit, at this 11th hour, reversed the death sentence and ordered a new trial, the case went to the US Supreme Court, and the court reversed the Ninth Circuit. Never addressing the underlying claims about the

## Finality Over Justice Transcript

fairness of the trial, but because they said the Ninth Circuit had violated these court rules and had issued their ruling too late in the process.

The opinion stressed the importance of finality. I mean, the overarching concern with the criminal justice system, particularly in death penalty cases is finality, not justice, not whether all the evidence has been heard, whether or not someone not having a fair trial then gets a fair trial. And until he was executed in 1998, he continued to maintain his innocence.

Kristin Houle: Hi, my name is Kristin Houle. I'm the executive director of the Texas Coalition to Abolish the Death Penalty. We are a statewide grassroots advocacy organization based in Austin, Texas.

Particularly in the 1980s and 1990s, prosecutors in Texas opted to seek the death penalty as often as they could see, seemingly. I think there have been many, many cases where prosecutors were not pursuing justice. They were pursuing convictions at all costs. I think that these convictions were used for political gain, for the reputation of the prosecutor.

Paula Mitchell: What happens often in very serious felony cases that are high profile where the defendant is death penalty eligible, prosecutors come up with a theory, law enforcement comes up with a theory about how the crime occurred, and they develop a narrative, and it just kind of takes over.

The longer that goes on, the harder it is for anybody to change course, including the prosecution. So once they have decided they're going to seek death in a case, it's sort of all hands on deck. Everybody goes forward, full steam ahead, doing everything they can to get the death penalty. It's really hard to turn that ship around once it's set sail.

Andy Love: And that's the whole theory of the jury system in the States, as you have prosecutor presenting evidence honestly, and a competent defense lawyer challenging that evidence and then the jury hears both and can weigh the evidence. I think particularly in a death penalty case where it's life and death, the system does depend on a prosecutor being ethical presenting evidence that is true.

Gabriel Solis: When I think about what happened to Joseph Nichols, I think the first question that pops in my mind is, "Why were the prosecutors so singularly focused on killing him? Why weren't they satisfied with a death sentence for Willie Williams who admitted to killing Mr. Schaeffer? Why did they try so hard to suppress evidence that showed, an eye witness testimony that showed, that Joseph Nichols in fact did not kill Mr. Schaeffer?"

Andy Love: One of the informants, his actual name was Edward Fink ... just kind of remarkable, and Fink and this other woman. There are two of them testified that

## Finality Over Justice Transcript

Tom said he had raped the victim, and killed her to prevent her from reporting the rape.

In 2004, a man named Tom Goldstein who would serve 24 years for a murder that he claimed he didn't commit, was released from prison. The courts found his conviction was basically based on the false testimony of our good friend Edward Fink. And so just like in Tom's case, Fink would lie to the jury about Goldstein's confession and about not receiving anything for his testimony. But Goldstein's case was not a death penalty case. So when the truth came out, Goldstein was still alive.

Kristin Houle: At the end of the day, the prosecutor has really unfettered authority and discretion and very little oversight. So we've seen a pretty significant trend over the last few years and focusing on the critical role that prosecutors play as the lynchers, really, of our criminal justice system. It really comes down to, in most cases, the authority of a single person. And because the prosecutor is an elected official, many of these individuals used high profile cases, in particular the death penalty cases, as a way to secure a sort of a notch in their belt. It was a way for them to prove they were tough on crime.

Paula Mitchell: There is no real incentive for prosecutors to disclose exculpatory evidence or impeachment evidence that may be helpful to the defense because when they fail to disclose it, there is no real consequence for them other than sometimes they're promoted or sometimes their career is enhanced because they have one more conviction under their belt.

Gabriel Solis: You see situations where prosecutors do truly outrageous things, whether it's working with police to, if not suppress evidence, but to fabricate evidence, to intimidate witnesses so that they will give a version of what they saw or didn't see that would support the state's theory and secure conviction. Whether it's trying to paint the defendant as the worst person that could have ever lived in order to try to dehumanize them in the eyes of the jury so that it's easier for the jury to send them to death row. And usually all of the above at once.

Kristin Houle: Prosecutors generally have immunity from being held accountable for their actions. So many wrongful convictions have hinged on prosecutorial misconduct. Again, there have only been a couple of cases that I know of here in Texas where prosecutors have been held accountable.

Then we come to cases like Joseph Nichols where prosecutors have used the hammer of their office to secure convictions and desinences in cases where the evidence didn't support it or where they've changed their theory of the crime or have changed their tactics from one trial to another. I mean, I think we've had a history of prosecutors not being willing to admit and recognize a rectify mistakes.

## Finality Over Justice Transcript

- Andy Love: While all the other litigation was going on, we'd uncover new evidence that the state knew about but hadn't disclosed, that Leitch testified during a parole hearing that he had observed Tom and Ginger Fleischli having consensual sex when he came back to the apartment. And this is evidence that would have obviously corroborated Tom's theory and undermine the prosecution's rape murder theory.
- And we tried to present this evidence to the courts. We'll never really know what happened because first time was denied a fair trial and then all we were asking for was a new trial with an ethical prosecutor and a competent defense lawyer, and we didn't get it, and the only reason we didn't get it was because the court said, "Well, it's too late. We need closure here." One often hears about criminal defendants getting off on technicalities, but this is really a case where someone was executed based on technicalities.
- Paula Mitchell: I would say our system is set up in a way that really, really emphasizes finality. Once somebody has been given a fair trial and once they've been convicted, once the court of appeal has affirmed that conviction, that person is pretty much done. They've been given the due process and the fair trial and the right to appeal that they are entitled to and everybody should just go home. But finality is not nearly as important as accuracy.
- Yeah, once the train leaves the station and the trial is underway and the defendant is convicted and then his conviction is affirmed on appeal, and it's time for everybody to just pack their bags and go home. Getting back into court, first of all, uncovering the existence of that exculpatory evidence is all but impossible, nearly impossible anyway. And then getting back into court is just far more difficult than it should be.
- Kristin Houle: Once a conviction and a sentence is secured, it is extremely difficult to overturn it. What we see is that the courts pay extreme deference to a jury verdict. And even if that verdict was based on false testimony or evidence that was based on junk science or any number of things, that court system seems to just give extreme deference to that jury verdict. And we see that in the sort of rhetoric of elected officials.
- I think that for too long the justice system has prioritized finality over truth and that has resulted in hundreds of individuals being wrongfully convicted or sentenced to extreme punishments. And I think that stems in part from the political nature of the criminal justice system. When you have individuals whose political careers are staked on convictions, I think that does lead to some tunnel vision on the part of prosecutors.
- Gabriel Solis: Our justice system is meant to achieve an end goal. It's meant to find some kind of finality in a case. It does not necessarily always have the interest of justice as

## Finality Over Justice Transcript

its focus. It's always trying to come to an end. And if that means the ending is the execution of somebody who should not have been executed, then so be it.

**Paula Mitchell:** We have to get it right. And when you have a system that is so focused on finality that once the conviction has been affirmed, it's all but impossible to get back into court with new evidence, with anything that suggests that you might be innocent, it really, really has to be addressed. It's a big problem.

**Kristin Houle:** I think like prosecutors, judges often prioritize finality over truth and justice. I think that there has been an unwillingness to recognize the fact that the criminal justice system is fatally and fundamentally flawed from top to bottom.

**Andy Love:** It's often been said that the people on death row are the ones who had the worst lawyers, not the ones who committed the worst crimes.

**Paula Mitchell:** Admit that the system is not perfect and that it is much more important to avoid killing an innocent person than it is to have this finality. I understand that we need for our criminal justice system to serve as a deterrent. We need to show people that illegal behavior has consequences and that if they break the law and they get caught, they will pay a price. But the idea that fidelity trumps everything else assumes that we get it right most of the time or almost all the time, and we don't.

**Lee Greenwood:** There may be adequate laws in place, but you've got the people in high places that are carrying out these laws in any way that they so deem necessary to obtain a conviction. It's the human factor that's carrying out the laws that's so unjust.

**Narrator:** Practical Reason is produced by Larry Rattner. Special thanks to Lee Greenwood, Kristin Houle, Andy Love, Paula Mitchell and Gabriel Solis. Also, Loyola Project for the Innocent, Texas After Violence, The Texas Coalition to Abolish the Death Penalty, and The Human Rights Documentation Initiative.

Original music by Christopher Cano. Post audio mixer and supervisor Emmanuel Miranda. Audio editing Nipun Nair. Extra help from Andrea Nakaya, Luis Guerra and Matt Warnick and Radio 7 12. Visit our website, [practicalreasonpodcast.com](http://practicalreasonpodcast.com) to find additional programs, materials, and links, and learn about the documentaries we distribute at [epfmedia.com](http://epfmedia.com). Thank you for listening.

**Copyright.** The Finality Over Justice transcript is owned by EPF Media. You may use the Study Guide solely for personal or educational, non-commercial use, and you may download or print any portion of the Study Guide solely for personal or educational, non-commercial use, provided you do not remove the copyright or other notice from such Content. No other use is permitted without prior written permission of EPF Media.