



# Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING

## Lessons from crime lab scandal

Posted by James Alan Fox, Crime and Punishment September 25, 2012 12:00 PM

The third time will be anything but a charm for a 48-year-old Texas inmate who will return to the state's execution chamber after twice before coming within hours of getting the needle. Cleve Foster, a former army recruiter who was convicted a decade ago of murdering a Ft. Worth woman, will repeat today a bizarre death ritual that has become all too familiar.

One again, Foster will be escorted by van the hour-long trip from his prison cell in West Livingston to the lethal injection chamber in Huntsville. Once again he will sit in silent solitude awaiting his fate and praying that the U.S. Supreme Court will intercede as it had twice before. Once again he will be served a last meal, whether or not justice will be served afterwards. Only this time, Foster will not have his choice of menu, as this long-practice gesture of mercy was banned last year by order of Texas Department of Criminal Justice.

If the death sentence is indeed carried out today, Foster will also be given his opportunity for some final words before poison is injected into his veins. Some condemned prisoners take this occasion to add insults to injury, while others invoke their right to remain silent. Sometimes inmates confess to their crimes, if only as a last gasp attempt to purge their conscience or offer some small measure of solace to the surviving victims. And, of course, many use the occasion to protest their innocence right down to the bitter end, as Foster will likely do.

Inmate Foster has insisted on his innocence throughout his trial and incarceration. Apparently, his fate was sealed on the basis of DNA evidence, the very type of proof that tends to convince even the most skeptical of jurors. After all, it is science, and who can argue with that?

Since first being used as evidence in criminal cases some 25 years ago, DNA has become a valuable tool for implicating violent offenders as well as for exonerating hundreds of incarcerated prisoners who had been found guilty based on weak or controversial evidence years before these genetic markers were used forensically.

Despite the unparalleled power to prove guilt or innocence, reliance on DNA evidence has its downside. The science of DNA may be indisputable, but the testing and analysis are performed by people, even though assisted by highly reliable lab equipment. And humans are far from infallible -- prone to mistake,

or worse, given to malice. Juries may be swayed by the science, without fully considering those who present it.

Here in Massachusetts, the criminal justice system is reeling from the recent Jamaica Plain lab scandal in which potentially thousands of drug tests were tainted by human error and incompetence. Years ago as governor, Mitt Romney attempted to push through the Massachusetts legislature his model for a fool-proof death penalty, one that was largely informed and guided by science.

While pondering whether Cleve Foster was possibly convicted in a Texas court based on scientific evidence produced by someone who was overworked, poorly trained or inadequately supervised, we should be relieved that the Massachusetts courts are spared this most profound, life-and-death element of doubt.

*Update: Cleve Foster was executed by lethal injection on September 25th, pronounced dead at 6:43 PM local time.*