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Prosecutor Owns Up to Going After Innocent Man

BY RITA RADOSTITZ Ruben Cantu, 18 years old, was convicted of capital murder in San Antonio in 1985 and executed in 1993. Many people – including Sam Millsap, Bexar Co. district attorney at the time of Cantu's conviction – now believe that Cantu was innocent. A 2005 article in the *Houston Chronicle* led the current DA, Susan Reed, to open an investigation. However, her tactics – including threatening to charge one of the recanting witnesses with "murder by perjury" – have led all the witnesses to hire attorneys and clam up. And it is now unclear whether any real investigation will take place.

Wrongful convictions in capital cases are, unfortunately, not unusual. The Death Penalty Information Center (www.deathpenaltyinfo.org) lists 123 cases since 1973 in which convicted inmates have been released from death row because of innocence. What is very unusual is a prosecutor who takes full – and personal – responsibility for the mistake.

Sam Millsap has done just that. Last weekend, speaking at the Faces of Wrongful Conviction conference at UCLA, Millsap introduced himself to the audience of mostly criminal defense attorneys and activists as the man "who is at least partially responsible for the execution of the first innocent man in the State of Texas." (Millsap later qualified his comment by conceding that Cantu is the first innocent person executed in Texas *that we know about*.) He then accepted full responsibility for the mistake: "What I accept responsibility for was that I made the decision to prosecute [the Cantu] case as a death penalty case. That was a mistake. That was a serious mistake."

Millsap described the effect of learning about the evidence pointing to Cantu's innocence from the *Houston Chronicle* reporter as "painful beyond description." He says he is speaking out in the hope that other prosecutors who have made similar mistakes will have the courage to review their possibly flawed decisions. At the time of Cantu's trial, Millsap felt that "the only thing a defendant is entitled to is a fair trial." But he believes that Cantu received a fair trial. So the fact that Texas executed an innocent person (who, it happens, was a juvenile at the time of his alleged crime) has led Millsap to conclude that what we owe all the citizens of Texas is more than merely a fair trial. We need to ensure that the execution of an innocent person cannot happen again.

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