

## Episode Twenty

### Alabama Death Row Inmate Freed: Jennifer Whitfield Interview

**AH: Hello and welcome to the Death Penalty Information Center's podcast exploring topics related to capital punishment. I'm Anne Holsinger, Special Projects Assistant at the Center. In this edition, we will be interviewing Jennifer Whitfield, of Covington and Burling, a law firm based in Washington, D.C. Ms. Whitfield, thank you for taking the time to speak with us.**

JW: Thank you, it's great to be here.

**AH: I understand that you and your law firm represented a man named Larry Smith, who was on death row in Alabama. Could you tell me more about the case and how you came to be involved?**

JW: Of course, of course. Larry's case began in 1994, when a man in Alabama named Dennis Harris was murdered. The police began investigating the case and in October of 1994 they arrested our client, Larry Smith, and they charged him with the murder. Larry retained his own counsel in February of 1995 and in August of 1995 he went to trial and he was convicted of the murder of Dennis Harris. He was also – he was not only convicted, but he was sentenced to death. At that trial in 1995, the State didn't have any forensic evidence linking Larry to the crime, they didn't have any eyewitness testimony, but they did have a few very important things: they had a confession from our client, they had testimony from an informant who told the police and told the jury at trial that Larry Smith had hatched a plan to rob Dennis Harris, and they had testimony from a man who said that Larry Smith was seen with Dennis Harris on the day of the murder. Unfortunately, because Larry Smith didn't hire counsel who did any work on his behalf, the jury never heard the other side of that case, which only came out several years later, in fact, over a decade later, when we began investigating this case – when Covington and Burling began investigating this case. And, when that happened, we were able to show that the man who testified that Larry was seen with Dennis Harris on the day of the murder, when he was showed a calendar, he was able to conclusively say, "Oh, no, I had my dates wrong, it was actually the week before" when Larry was seen with the victim. And, in light of the fact that Larry and the victim were friends, everybody knew that, that was in the record, they were good friends, there was no surprise that Larry was seen with the victim some days before, and in fact Larry himself had told the police this. The informant who had told the police that Larry Smith hatched a plan to rob the victim shortly before the victim disappeared. Well, in 2006, we interviewed other people who knew the informant, including his wife, and she told us and she told the court that the informant's testimony was false, and that in fact what happened is that all of the information he gave the police about Larry Smith was actually information about things that he himself had done, suggesting that Larry never was the one who hatched a plan to rob Dennis Harris. And the third piece of evidence was unquestionably the most critical

piece of evidence, and that was Larry's confession, and sadly there was very little work done to challenge that confession in front of the jury, but had – when we started looking at the confession and the circumstances surrounding it, it became very clear that this was a false confession, that Larry felt pressured to confess to a crime he didn't commit. And, sadly, this confession, joined with hiring defense counsel who was completely ineffective, led to his conviction. Covington and Burling became involved in 2001, and we represented Larry through the state *habeas* appeals process, and in 2006, Larry Smith was given a new trial by the Circuit Court in Alabama. The State continued to appeal that, until recently, when the order for a new trial became final and we prepared to go to trial and we were able to work out a plea deal with the prosecution whereby Larry was allowed to go home. The prosecution, thankfully in this case took a hard look at the case, they took a hard look at the evidence, they took a look at the evidence that we compiled in the course of the state *habeas* appeal, and they realized, I think, that they didn't have enough to retry this case in light of the fact that it had actually been investigated on Larry's behalf this time, and we were able to work out a deal whereby he went home.

**AH: Why did the firm take on this kind of work that's so different from its usual practice, and is it common for death row inmates to have large law firms representing them?**

JW: Well, I can't say how many death row inmates have large law firms representing them, but I think it's fair to say that it's not typical, and it may be fair to say it's very uncommon. Covington takes its *pro bono* commitment very seriously. When I was looking at law firms as a law student one of the things I looked at when I was figuring out where to work was, you know, I wanted to work at a place that I felt like, had a soul, and Covington's commitment to *pro bono* was so, so strong and so evident by the way they approached their *pro bono* work, and they handle it just like any paying client who comes in the door, that it made it a really attractive place for me. And, I think Covington has that approach to *pro bono* work, like many large law firms do, particularly in D.C., for a couple of reasons: first, and most importantly, it's just the right thing to do. I mean we're, lawyers are a profession, and because of that, we have an obligation, I think, to give back, and I think Covington from the top down believes that. And then the second thing is it provides, you know, really good opportunities for junior lawyers to get involved in some work that they may not be able to get involved in with our larger paying clients, though it serves multiple interests, and, you know, I think it makes it a really nice place to work.

**AH: Why was Mr. Smith's conviction overturned? Is it possible that he could have been executed, and is it also possible that he was completely innocent of the crime?**

JW: Well, as to innocence, yes, I think it is possible that he was innocent. Covington, I think, as a firm, generally always believed Larry that he was innocent. Larry's maintained his innocence throughout the entirety of his case, from, frankly, the minute he was arrested until today. He's maintained his innocence, with one nine minute exception, and that was the confession that he was led through by the police. But unfortunately, that's not enough, simply being innocent is not always enough and what you need on top of that, is you need counsel to represent you, because our justice system, of course, is an

adversarial process, and it requires that the defendant have counsel who can present the best and strongest defense on his behalf. And, unfortunately, in Larry's case the adversarial process broke down. Larry was fortunate enough that an organization in Alabama called the Equal Justice Initiative that does really tremendous work identified his case as a case in which justice had not been done. And the Equal Justice Initiative brought his case to Covington and Burling and asked us if we could take it on through its state, and federal if necessary, *habeas* process. And that's how the case ended up coming to Covington in 2001. Covington agreed to take it on, and the minute we signed that retainer, treated it like any other client that the firm has. Sadly, I think there are maybe a lot of people out there like Larry, who didn't receive the assistance they needed the first time around, and were not as fortunate as Larry to have counsel through their *habeas* process that had the resources to demonstrate, kind of at a second shot, that all the facts that needed to be demonstrated for him to get another trial, and another shot at this.

**AH: One of the factors that you mentioned was the coerced confession that Mr. Smith gave and I understand that Alabama police guidelines were actually not followed in obtaining it, is that correct?**

JW: That is right, yes.

**AH: What kinds of things can be done to help prevent false confessions like Larry's?**

JW: You know, it's a hard question, but I don't think that – I think there's a lot that can be done, frankly, and in Larry's case, there are a handful of things in particular that would have really helped. One, if they had videotaped his interrogation, or even recorded it, it would've been really terrific. Larry was arrested several hours before he confessed, and he was interrogated during that time but there's no record of the interrogation. There's no record of what was said, of what he was told, what he was promised, what facts were given to him. If there was a record of that, I think – and, you know, we can never know for sure – but I think if we had a record of that initial interrogation, his counsel maybe at his first trial, and certainly on appeal, would have been able to show that Larry was given the facts he needed to confess, and that he was coerced into confessing with the promise that his wife, who was arrested at the same time he was, would be set free. And in fact, his wife, who was arrested at the same time he was, was released without any charges, soon after he confessed. Unfortunately, there's no transcript of that interrogation, so there's no way to prove that, and that's particularly damaging in Mr. Smith's case. The other thing is, I think, frankly, training policemen about false confessions is incredibly important, and I think that a lot has changed since Larry's case in 1994, but I don't think enough has changed and I think there's a lot of progress to be made. But Larry's confession was obtained by leading questions, where he was asked questions along the lines of – this is not, of course, verbatim, but – “Did you shoot Dennis Harris?” “Yes.” “Did you shoot him twice?” “Yes.” “Did you shoot him in the head?” “Yes.” And questions like that are the type of questions that elicit false confessions, and a policeman might have, an investigator might have all the best intentions, and want to obtain truthful information, and want to see justice done, but if

they don't have proper training, and they're not trained in false confessions, they may not have the tools they need to make that happen. So that's, that's critical as well and would've made a big difference in Mr. Smith's case.

**AH: What other sorts of improvements are needed in the system, particularly in death penalty cases, to ensure that those cases are handled correctly the first time? For example, you've talked about the problem of ineffective counsel in his initial trial. Is there a certain level of experience that's necessary to effectively defend a capital case, and is there a way for states to guarantee that defendants receive effective counsel?**

JW: You know, I think it's really hard for states to guarantee that any defendant is going to receive effective counsel, but I think there's a long way to go to ensure that defendants receive the best defense possible, and that they receive effective counsel as often as possible. I think two things could be very helpful, in that regard, and would've been helpful here. One, is that defense counsel has got to investigate the case. They've got to knock on doors. They've got to talk to witnesses. In this case, that wasn't done, and because that wasn't done, there was no evidence developed to show that Larry did not commit this crime. Now, had it been done, the trial would've been much different, but it wasn't done probably – and now I'm guessing as to what happened here – it wasn't done most likely because of resources. It's expensive to investigate a case, and a death penalty case has to be investigated in two ways: not only do you have to investigate the facts of the actual case at issue, but you also have to investigate the nature of the crime, the nature of the person, the person's history, because in the event that that person's convicted, you need to be able to put on a compelling case to the jury that that person should not be convicted of the death penalty. So there's a dual function of investigations in death penalty cases, and frankly, it's expensive, and states need to do everything they can do to ensure that counsel have the resources that they need to conduct that investigation. The other thing is that counsel have to have adequate training. They need experience, they need experience in handling death penalty cases, they need other considerable criminal experience, they need – you know, ideally, will have been first chair, second chair in several death penalty cases before they handle their first as the first chair. That's not going to be possible in every circumstance, but the more training you have, and the more resources that can be brought to bear in any given case, is going to really change the trial, and frankly the nature of the adversarial process.

**AH: So, now that Mr. Smith has been released, what lies ahead for him?**

JW: You know, he's going to have a hard road ahead, I think. He was able to spend Easter with his family, he was able to eat Easter dinner with his family, and we're really hopeful that he's going to find a job and start integrating himself back into the community. And I say that he has a tough road ahead because he was in jail for 17 years. He wasn't just in jail, he was on death row, and death row in Alabama – I assume death row everywhere – is a very isolated experience. He doesn't have – he wasn't given any job training in the last 17 years, so he has a lot of work to do, and he knows that, but he's so thrilled, as you can imagine, to be a free man and to be able to eat home cooking and

to go fishing. He's looking forward to the opportunity to finally support himself, so we're hopeful. Covington plans on staying in touch with him, and we hope to support him through this transition because it's a big one, and I'm thrilled that the firm is able to do that and interested in doing that, because I think that the second phase in Larry's life is going to be, has a lot of promise if he has the right support.

**AH: Do you think the fact that in the end he had to plead guilty to a lesser offense in order to be released, will that have an effect on his future, will that make it more difficult than if he had been acquitted at a retrial, for example?**

JW: You know, I think it might, but I hope not. As Larry said to us, "I'm always gonna be the man who spent 17 years on death row. There's nothing you can do that's gonna erase that." And I think he's right, in some respects. No matter what we do, even if we had gone to trial again, and received an acquittal, I think he would always be viewed by some as the man who was convicted of that crime at some point. And once that has happened, once somebody has gone through that process and had that type of injustice, there's no erasing it. I mean, all we could do was provide him with the best options possible and, hopefully we've done that, I think he's happy with the result.

**AH: Good. Is there anything else you'd like to add?**

JW: No, I'm just thankful that you've shown interest in this case, it was a tremendous experience for me, for everybody who worked on the case – I obviously am just one piece of a much larger team here at Covington, there was incredible support from a lot of different people, and it was a great experience for us and we're thankful to have had a client who was wonderful to work with and, you know, who was really thankful for the opportunities that lie ahead for him now.

**AH: Great, well, thank you so much for taking the time to speak with us today, we really appreciate you sharing your experience and your expertise on this case. We'd also like to thank our listeners for joining us for this edition of the Death Penalty Information Center Podcast. You can find past editions of the podcast and other information about the issues we've discussed at [deathpenaltyinfo.org](http://deathpenaltyinfo.org).**