

The Ronnie Frye Story: A Total System Failure

by Marilyn Ozer

Bill Massengale and Marilyn Ozer have a two-lawyer general practice law firm in Chapel Hill. They have been working on behalf of men on Death Row for about 10 years. They have now represented—either on direct appeal or post-conviction—18 men who were “capitally tried.” Two of these men have been awarded new trials by the North Carolina Supreme Court, although the United States Supreme Court eventually took one of those away. The clear lesson they have learned from their work on capital cases is that the current death penalty system does not provide anything even remotely close to justice.

Ronnie Frye should never have been executed.

For the last six years, as Ronnie's post-conviction counsel, my partner, Bill Massengale, and I have told Ronnie's story to anyone who sat still long enough. If any part of the justice system had functioned as it should, Ronnie would be serving a life term in some medium security prison in rural North Carolina.

But for Ronnie Frye, nothing worked. Tom Portwood, the trial attorney responsible for the sentencing phase of Ronnie's capital trial, had a simple job; he was to learn Ronnie's story and tell it to the jury. But Portwood never learned the story. Instead, by his own admission, he went home every evening to down 12 shots of 80-proof rum. An alcohol addiction expert told Governor Easley at Ronnie's clemency hearing that a man who drank that much would be legally incompetent to drive 24 hours a day, seven days a week.

In the last 20 years, only three trials have resulted in death sentences in the county in which this lawyer practiced—he represented a defendant in each of these trials. The system appointed this clearly impaired lawyer over and over again. It should come as no surprise that when asked to review his performance, this same system found nothing amiss.

A competent attorney would have learned that Ronnie was born into a poster family for dysfunction. Ronnie was given away like an unwanted puppy before he was four, was bullwhipped until his little body was covered with scars, lived in six different households before he was 14, was repeatedly abandoned by his parents, and self-medicated himself into the addiction that led to the murder.

But Ronnie didn't have a competent attorney and the jury never heard his story. Reviewing courts didn't care to hear. One

after another, the courts saw their role to be the protector of the alcoholic attorney, not the indigent defendant.

With less than a week to go before the scheduled execution, the winds finally seemed to change direction. On Monday, the North Carolina Academy of Trial Lawyers held a ground-breaking press conference. For the first time in the history of the organization, it came out in support of an individual defendant's clemency plea. The attorneys had not done their jobs. They had violated their most basic ethical and professional duties. If Ronnie Frye was not granted clemency, it could only mean one thing—that in North Carolina, indigent defendants do not have the right to an attorney.

The banter on the evening newscast was positive. The reporter told her audience that this case is different; this one deserves clemency. We were overjoyed. Powerful people had heard the story and were passing it on.

Tuesday was the day chosen for the clemency hearing. Governor Easley let us know that he only wished to hear from Ronnie's current lawyers. But Ronnie's story had spread across the state. Influential people wanted to tell the governor that this was a case for clemency.

Gene Nichols, dean of the University of North Carolina School of Law, explained that Ronnie's situation represented exactly what clemency was designed for—the rare case in which courts have missed the boat and no other remedy remains.

Former North Carolina Supreme Court Chief Justice James Exum told the governor that Ronnie's experience in the justice system was a blight on the bench and the bar. Our state could not execute a man whose attorney was so rum-soaked that he could not legally drive.

Representatives of the bar told the gov-

ernor that Ronnie's attorneys were so deficient that, in effect, he had no counsel. Our state could not execute a man who had been deprived of such a fundamental constitutional right.

Medical doctors and psychologists detailed Portwood's alcohol addiction and Ronnie's traumatic childhood.

At the rally outside the building, author Allan Gurganus, a boyhood friend of the governor, read an open letter to the governor pleading for mercy.

A child abuse expert who had run studies on childhood mortality told the crowd that Ronnie's abuse was the worst she had ever seen that had not ended in the child's death.

One after another, people stepped up to the podium to plead for clemency. That evening, a long-time advocate for the abolition of the death penalty called to share his excitement. He had never before seen such a diverse group of people focused on clemency for one defendant. We went to sleep that night feeling that the long nightmare had at long last ended.

But the governor chose not to listen to the leaders of the bar, the medical experts, the authors or the people. Thursday morning, legislators called on the governor to plead for clemency, but their arguments went unheeded.

The television program *60 Minutes* called late Thursday morning requesting an interview with Ronnie; the warden and the secretary of corrections refused permission. After 5:00 p.m., the governor returned the call of a legislator who had tried to intervene on behalf of the news show. The governor laughed and said maybe he'd let them talk to Ronnie after all. But permission was never granted.

At 6:30 p.m., the moment the evening news shows concluded, the governor was finally willing to admit publicly that he chose death. The call came to our cell phone just as we joined Ronnie's family in front of the prison doors.

It had been four years since our last contact visit with Ronnie. We walked into the room where he waited for us, hugged him, and signaled that it was all over. Ronnie held us tightly, his eyes began to fill with tears, but then he smiled and reminded us that the Lord's will be done. He was leaving for a better place.

Plastic chairs lined the narrow passage-

way that served as the temporary contact visit room. Ronnie sat between us. Two guards were across the room, one holding a black notebook entitled “Death Watch” in which he jotted down our movements every 15 minutes.

Finally, we hugged Ronnie one last time. He whispered to each of us in turn the message he wanted most to be remembered: “The Lord turns everything bad into good.” We smiled and waved as the guards led him back to the secure area to start the final preparations for death. Ronnie didn't want to see tears. He needed to think that we'd be okay.

On execution days, visitation ends at



Photo of Ronnie Frye taken by Alex Maness, courtesy of the *Independent Weekly*

11:00 p.m., three hours before the killing. Family and lawyers must spend these last hours confined in a makeshift waiting area—a portion of the prison mailroom, sectioned off for the occasion by cardboard room dividers. An old orange vinyl couch is brought in, along with a number of mismatched desk chairs scrounged from other prison offices. The furnishings fit right into the nightmare. A prison chaplain serves as our guard, although it is never clear what might be considered worth protecting in this forlorn space.

Silence was unbearable, so we tried to

make conversation. At midnight, we all said happy birthday to David Frye, Ronnie's brother. We were told that at 1:20 a.m., an officer would come in to explain how the state would kill Ronnie. Sharply at 1:20 a.m., the official arrived. It sounded as if he was reassuring a family about their son's tonsillectomy. The witnesses would be able to see Ronnie walk into the room. Then the curtains would be drawn. When they opened again, Ronnie would be on the gurney, his face within two feet of the glass. The family would be able to see his lips move, but not hear his voice. The glass is too thick, as the room where Ronnie will die was designed as a gas chamber.

At 1:50 a.m., the family was escorted up to the death chamber. Bill and I had the option of staying in the stark room with the chaplain guard watching our every expression or leaving the grounds. We chose to be alone. As we left the prison, we passed through the crowd of supporters huddled in the rain, holding candles and praying for Ronnie. We drove through the rainy night, while back in the death chamber, volunteers injected their poison.

Ronnie flew away to what surely must be a better place. We stayed here to tell his story. ■