

ROBERT SAWYER EXECUTED – HIS RETARDATION NEVER CONSIDERED BY THE COURTS

(An Informal Report to Colleagues)

By: Robert Perske

On January 25, 1993, Louisiana began its ratchet-like ritual that clicked down toward the execution of Robert Wayne Sawyer. The last click took place shortly after midnight on March 5, in the execution chamber of the penitentiary at Angola. Sawyer, age 47 and one five-foot-two, left this world with a series of haunting issues that had never been fully considered by any court.

A Gruesome Crime

The jury heard how, on September 28, 1979, Cynthia Shano and live-in boyfriend Sawyer returned to her Grema apartment after a night of bar-hopping. Charles Lane, “a stranger” they met that evening, came home with them. All three were extremely drunk. Upon entering the apartment, Shano’s four-year-old son, Wayne, told the threesome that baby sitter Fran Arwood had given his two-year-old brother, Troy, some pills to stop his crying. Sawyer allegedly became angry and struck her. Lane confessed to raping her but not killing her. Lane and Shano claimed that Sawyer had poured lighter fluid on Arwood and set her afire.

Jury Led to Believe Sawyer was a “Sociopath”

The court appointed a “sanity commission” of two doctors. Each spent less than 30 minutes with Sawyer. They administered no tests. They testified that Sawyer was competent to stand trial and he was “a probable sociopathic individual” and “a sadist.” The defense lawyer merely went along with the report. He did nothing to investigate Sawyer’s mental condition and background. He summed up during the penalty phase by saying, “I don’t know what I can say for Robert Sawyer. He is a poor miserable human being. He has had a hell of a life. He was involved in a heinous act... Like Doctor Ameson told you, [he is] probably a sociopath.”

Consequently, the jury was led to believe that little Sawyer was another overpowering Ted Bundy. They did it even though one attorney later described the defendant as being “awfully slow on the uptake about understanding what went on around him.”

New Evidence the Jury Did Not Hear and No Court Has Considered

New Orleans lawyers Nick Trenticosta, Neal Walker and Sara Ottinger picked up the case in 1990. Since the trial lawyer failed to do it, they went after every medical record they could find.

On November 11, 1991, the three lawyers came before the Louisiana Board of pardons with cardboard boxes filled with new evidence – numerous affidavits and video tapes from newfound witnesses. They came with qualified mental retardation experts as well. The new evidence:

- 1. Mental Retardation** New Mexico University special education professor/attorney Ruth Luckasson’s evaluations supported the “IQ 68” found in the institutional documents. Testifying before the parole board she described:
 - Sawyer’s meager reading, writing and math skills, hovering in the second-to-third-grade range. (“I can do some of them adding and subtracting things,” Sawyer said, “but when you put them x’s in front of them I can’t”).
 - His “cloak of competence.” Earlier, he convinced the parole board that he had been a river boat pilot. Luckasson showed how he had lied to hide his retardation. Later, he became like a guilty child and with an almost endless string of concrete words, he told the board he was sorry for misleading them.

- His utter inability to draw abstractions from concrete thinking. Luckasson gave examples: When he was asked what reasonable doubt meant, he crushed the fire from his cigarette. Pointing to the residual smoke, he said, “The smoke ain’t reasonable out.” His response to grave uncertainty was, “You dig a grave.” When asked about the judge’s instructions to the jury, he responded with “Ladies and gentlemen of the jury” and no more.
 - His hunger to learn and his guilt because he can’t. Luckasson prepared him for the hearing by telling him she must talk about things he got wrong – things he couldn’t help. “You mean it’s not my fault that I do these things?” he said with relief. Then he told her how he didn’t understand maps and directions and street signs – and how hitchhiking helped because the driver often knew where he wanted to go.
 - His memory gaps and rambling statements. He tried to remember setting Arwood afire, but he ended up describing something about pulling Arwood out of the tub after Lane had tried to drown her. Then he went off in almost endless shaggy-dog statements about the slope of the bathtub, the position of the faucets, the newly waxed floor (“linoleum or tile that was put over the hardwood”) the slippery rug and his pulling her out and the rug sliding and his falling with her on top of him and her being laid out on the couch and covered with a blanket. Aside from his vivid-but-rambling detailing of the floor and tub, he tried hard to sound intelligent and to please authority figures by trying to tell them what he thought they wanted to hear.
2. **Organic Personality Syndrome** Sawyer possessed a brain damage so full-blown, Washington, DC psychiatrist Alex Whyte read the complete description of the syndrome from the APA Diagnostic and Statistical Manual IIR and said, “this description reads like a veritable summary of the life history of Robert Sawyer.” This damage, according to Whyte, causes poor impulse control and social judgment. In certain structured environments, however, Sawyer remained appropriate and steady because others helped him to be that way – without his even being aware of it. In Whyte’s opinion, the damage came from trauma to the head when he was very young.
 3. **Frontal Lobe Injury** New York university neurologist Orrin Devinsky, with data from Magnetic Resonance Imaging (MRI), described visible damage to the frontal lobes of the brain.
 4. **Incredible Child Abuse.** New affidavits from relatives show:
 - Robert’s mother was ill and bedridden throughout her pregnancy. And even in this condition, her husband battered and raped her. He even bragged about it to others.
 - The surprise birth of twins (Robert and Betty Jane) came as a horrible blow to the mother.
 - The mother tried to kill Robert - - once by suffocation and once with a fireplace poker.
 - When Robert was three months old, the mother aimed a shotgun at her heart and pulled the trigger with her toe.
 - After the suicide, an aunt took Betty Jane away. Today, Betty Jane is a healthy, law-abiding adult who possesses none of the damage found in Robert.
 - Robert became the father’s target for everything that went wrong. He was horse-whipped. He still bears an eight-inch whiplash scar on his leg. He was beaten with farm implements. The scar from a hatchet remains on his hand. He was beaten until unconscious. At age five, he was unconscious for 45 minutes after “falling off a bike,” according to the father. Another time, he was knocked out for several hours after “a fight with another child,” the father said. The

length of these comatose states varied as the father described them over the years. No medical attention was sought at the time.

- The father ridiculed his son for failing first grade twice and for being placed in a special education class.
- Normal childhood experiences were denied. As an eight-year-old, he did “men’s work.”
- The father once said, “He’s the only thing that’s mine and I can do anything I want with him.”
- The father railed at his son for bedwetting – which Robert continued to do until his death.
- One of the aunts stated in her affidavit, “If any of Robert Wayne’s [trial] attorneys would have contacted me, I could have told them about him and testified in court.”

5. **Suppression of Evidence** The state’s case hinged on Shano’s testimony and a can of lighter fluid bearing Sawyer’s fingerprints that had been found on the kitchen table. During the investigation, however, a detective interviewed four-year-old Wayne in front of an adult friend. Wayne told the detective that Sawyer did not set fire to Arwood. Lane did. He also showed the detective the lethal can of lighter fluid that Lane had thrown into the garbage can. Wayne told the detective that Lane put lighter fluid in a “shiny thing you put cigarettes in” and poured it over Arwood, then it “went poof.” Wayne also said that Sawyer “tried to help the lady,” but was knocked away by Lane and he fell into a chair.

6. **New Evidence Concerning Shano and Lane** New affidavits state that Shano sold her testimony for a promise that she would not be prosecuted. She had been under investigation by the state for child abuse and she stood a chance of losing the two boys. (The state did place the boys in a foster home later.) Also, Shano was no stranger to Lane. Affidavits show they had been long-time acquaintances.

Board Votes to Commute But Governor Overrules

After hearing the fresh evidence, the Board of Pardons voted to commute the death sentence to life without parole. Governor Buddy Roemer, nevertheless – during his last days in office – ruled that Sawyer should die anyway. (In Louisiana, the governor can overrule the Board of Pardon’s vote.)

A Juror Speaks Out

After a trial juror read in the newspapers about the pardon board hearing and the vote for commutation, he called one of Sawyer’s lawyers. He said he had made a mistake. He said that if he had known about Sawyer’s mental retardation and brain damage during the 1980 trial, he would never have voted for the death penalty. (In Louisiana, if one juror votes for a life sentence, the judge must sentence the defendant accordingly.)

Supreme Court Overlooks Key Issues

On February 25, 1992, the U.S. Supreme Court heard the case. Unfortunately, its June 22, 1992 ruling upheld the death sentence. Its opinion focused tightly on the “standards for federal court review of *habeas corpus*,” and it reflected the court’s intent to limit such appeals. The court completely sidestepped the issue of the appropriateness of the death penalty for defendants with mental retardation. Lawyer Trenticosta’s response to the ruling: “It’s a terrible decision ... They decided it doesn’t matter what the mitigating evidence is ... No court has yet to decide whether Sawyer had a constitutional trial or sentence, base on the new evidence” (The [Baton Rouge] Advocate, 6-23-92).

The Last Week

On Tuesday, March 2, Jim Brolin, executive director of The Arc of Louisiana, Dr. Ruth Luckasson and other leading experts in retardation went before a newly-appointed Board of pardons. For almost six hours, they described Sawyer's retardation, his brain damage and the MRI results showing frontal lobe brain damage. This writer talked about patterns showing up in similar cases with persons having retardation across the country. All of the testimony was convincing.

Then the new Board of Pardons voted 3-to-2 that Robert be executed.

The new governor, Edwin Edwards, refused to overrule the board's vote.

The chairperson of the board told reporters she was convinced that Sawyer was faking mental retardation.

According to attorneys Trenticosta, Ottinger and Walker, a majority of officials suddenly saw him as a political symbol – and no longer as a human being with disabilities.

Robert was pronounced dead 12 minutes after midnight on Friday March 5. Just before he lost consciousness, Allison Lamy, his long-time advocate, friend and spiritual advisor, stood up and placed her hands on the witness room window pane. He turned his head toward her and said, "I love you."

The Bitter Twist in this Case

Charles Lane received a life sentence, Robert Sawyer got death.