

No. 79407-3

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALEXANDER RIOFTA,

Petitioner.

AMICUS CURIAE BRIEF OF THE WASHINGTON ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS

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STATE OF WASHINGTON
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I. AMICUS ARGUMENT

A. THIS COURT SHOULD ADOPT THE MOST LIBERAL READING OF RCW 10.73.170 POSSIBLE UNDER THE LAW AND PERMIT POST-CONVICTION DNA TESTING IN THE BROADEST NUMBER OF CASES

1. *Although the state and federal constitutions contain broad protections for the accused, innocent persons continue to be convicted in the United States.*

Despite legal safeguards, innocent people continue to be convicted in the United States. See Appendix 1, *200 Exonerated, Too Many Wrongfully Convicted, An Innocent Projection Report on the First 200 DNA Exonerations in the U.S.* published by the Benjamin N. Cardozo School of Law, Yeshiva University.

... DNA testing has established factual innocence with certainty in numerous post-conviction cases, so much so that it has now become widely accepted in the space of just a few years, that wrongful convictions occur with regular and troubling frequency in the American criminal justice system.

Steven A. Drizin and Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 904 (2004).

Given the heightened accuracy of DNA analysis compared to more traditional methods of identification, such as fingerprints and eyewitness testimony, it should be readily available in post-conviction proceedings because it further minimizes the risk that an innocent person will be burdened by a wrongful conviction.

2. *Eyewitness misidentification is a hallmark of a wrongful conviction.*

In affirming the denial of Riofta's request for DNA testing under RCW 10.73.170 the Court of Appeals stated:

Here, the State is correct that legitimate tactical reasons support Riofta's trial counsel's decision to forego DNA testing of the white hat. Specifically, given (1) Riofta's association with the Trang Dai defendants and with Sok's brother, Veasna; (2) Riofta's inflammatory statements regarding Veasna and favorable statements toward other Trang Dai defendants; and (3) Sok's confident eyewitness identification of Riofta as the shooter, Riofta's trial counsel likely feared that Riofta's DNA would be discovered on the white hat, effectively ending the case and inculping Riofta beyond a reasonable doubt.

Riofta v. State, 134 Wash. App. 669, 699, 142 P.3d 193 (2006) (emphasis added). Items 1 and 2 are extremely unpersuasive reasons to deny Riofta DNA testing. Item 1 is an argument for "guilt by association." Item 2 simply states that Riofta had a motive. If that were a reason for denying post-conviction DNA testing, almost every request would be denied because the State can always posit that a particular defendant had a "motive." The Court's real reason seems to be what it terms the "*confident eyewitness identification*." But the Court's faith in eyewitness identification is quite possibly the worst reason to deny Riofta's request.

Eyewitness misidentification continues to be the leading cause of wrongful convictions. It is widely accepted by courts, psychologists and commentators that "[t]he identification of strangers is proverbially untrustworthy." Felix Frankfurter, *The Case of Sacco and Vanzetti: A Critical Analysis for Lawyers and Laymen* 30 (Universal Library ed., Grosset & Dunlap 1962) (1927) ("What is the worth of identification testimony even when uncontradicted? . . . The hazards of such testimony

are established by a formidable number of instances in the records of English and American trials. These instances are recent-not due to the brutalities of ancient criminal procedure.”); *see also Bernal v. People*, 44 P.3d 184, 190 (Colo. 2002) (citing a study that concluded that “mistaken eyewitness identification is responsible for more of these wrongful convictions than all other causes combined.”); *State v. Cotton*, 318 N.C. 663, 351 S.E.2d 277 (1987) (wrongful conviction based on victim's eyewitness testimony); *State v. Youngblood*, 153 Ariz. 50, 734 P.2d 592 (Ariz. Ct. App. 1986) (same); *United States v. Wade*, 388 U.S. 218, 228, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967) (same); C. Ronald Huff et al., *Guilty Until Proven Innocent: Wrongful Conviction and Public Policy*, 32 *Crime & Delinq.* 518, 524 (1986) (“the single most important factor leading to wrongful conviction in the United States . . . is eyewitness misidentification”).

DNA testing ameliorates the risk of a wrongful conviction based upon eyewitness testimony. The Innocence Project at the Benjamin Cardozo School of Law report on the 200 persons exonerated by DNA testing around the county found that 77% of those freed were convicted in part on eyewitness misidentification. *See Appendix 1 at pages 18-19.*

Earlier, in a study of 40 cases of DNA exoneration researchers concluded:

Of these 40 cases, 36 (or 90%) involved eyewitness identification evidence in which one or more eyewitnesses falsely identified the person. One person was identified by five separate eyewitnesses. It is important to note that the 40 cases . . . were not selected because they happen to have eyewitness identification as the primary evidence. Instead, these cases are simply the first 40 cases in the U.S. in which DNA was used to exonerate a previously convicted person.

Hence, the kind of evidence that led to these wrongful convictions could have been anything. The fact that it happens to be eyewitness identification evidence lends support to the argument that eyewitness identification evidence is among the least reliable forms of evidence and yet persuasive to juries.

Gary L. Wells, Mark Small, Steven Penrod, Roy S. Malpass, Solomon M. Fulero, and C.A.E. Brimacombe, *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 *Law and Hum. Behav.* No. 6, at 1 (1998); A. Daniel Yarmey, *Expert Testimony: Does Eyewitness Memory Research Have Probative Value for the Courts?* 42 *Canadian Psychology* 92, 93 (May 2001) (“[E]yewitness evidence presented from well-meaning and confident citizens is highly persuasive but, at the same time, is among the least reliable forms of evidence.”); Gary L. Wells and Elizabeth A. Olson, *Eyewitness Testimony*, 54 *Annu. Rev. Psychol.* 277, 278 (2003) (“... eyewitness researchers have noted that mistaken identification rates can be surprisingly high and that eyewitnesses often express certainty when they mistakenly select someone from a lineup.”)

Based upon the above research, Amicus urges this Court to hold that the fact that there is a “confident eyewitness identification” in the trial court is not a legal justification for denying DNA testing under RCW 10.73.170.¹

¹ Although this case does not involve a “confession,” false confessions also continue to plague the criminal justice system. See Appendix 1 at 26. For example, here in Washington, Ted Bradford was convicted, based in part, on his “confession” to rape. *State v. Bradford*, 95 Wash. App. 935, 978 P.2d 534 (1999), *review denied*, 139 Wash.2d 1022, 994 P.2d 850 (2000). That “confession” was undermined by post-conviction DNA

3. *Giving the statute the broadest possible reading will not impose an unreasonable burden on the State.*

There is an extrinsic value to society in insuring that those wrongfully convicted of crimes and imprisoned are released. The value of accurate criminal justice determinations cannot be overstated. Respect for the criminal justice system depends upon the public's confidence that the system either: 1) renders dependable determinations of guilt or innocence at the outset, or 2) corrects any miscarriage of justice when it occurs. That respect is undermined when the criminal justice system has available tools to verify the correctness of its judgments but deliberately refuses to use them. Engaging in a hypertechnical analysis of RCW 10.73.170 is detrimental to the public's perceptions of the validity of adjudications made by the criminal justice system and the fairness in its operation.

Giving the statute the broadest reading possible will not result in a flood of meritless requests for testing. It is unlikely that defendants who are truly guilty will request testing. Defendants are unlikely to ask for DNA testing which would conclusively prove their guilt. And of the

testing and Bradford, through the help of the Innocence Project Northwest, was granted a new trial. *In Re Bradford*, -- Wash. App. -- , 165 P.3d 31 (2007).

A well-known case of false confession is that of the 1989 "Central Park Jogger" in which five boys ranging in age from 13 to 16 falsely confessed to beating and raping the victim and were wrongfully convicted.

The Central Park Jogger case stands as a testament to the remarkable and tragic fallibility of the American criminal justice system, which exists to a degree that was almost unthinkable in the pre-DNA era.

Richard A. Leo, Steven A. Drizin, Peter J. Neufeld, Bradley R. Hall and Amy Vatner, *Bringing Reliability back in: False Confessions and Legal Safeguards in the Twenty-First Century*, 2 Wisc. L. Rev. 479, 537 (2006).

minority who despite being represented by counsel and having been fully informed of the risk press on, conclusive DNA evidence of their guilt is equally important to support the public's confidence in the criminal justice system.

DNA is the miracle forensic tool of our lifetimes. It has the power to convict the guilty and exonerate the innocent . . . These mistakes in our system of justice carry a high personal and social price. They undermine the public's confidence in our judicial system, they produce unbearable anguish for innocent people and their families and for the victims of these crimes, and they compromise public safety because for every wrongly convicted person, there is a real criminal who may still be roaming the streets. Indeed, in dozens of cases in which DNA testing has exonerated a wrongfully convicted person, the same test has identified the real perpetrator.

U.S. Senator Patrick Leahy (Vermont), *Senate Floor Speech in Support of Justice for All Act of 2004*, Oct. 7, 2004.

And providing liberal opportunity for post-conviction DNA testing does not simply benefit the wrongly convicted. Freeing the innocent can often lead to the arrest and prosecution of the actual perpetrator of the crime. The Innocence Project reports that in 37% of the 200 cases they examined, DNA exoneration also led to the identification of the true perpetrator. *Id.* at 38-39.

The legacy of the Central Park Jogger case is not merely that police and prosecutors extracted five demonstrably false confessions from five innocent teenage boys that led to five wrongful convictions . . . Following his vicious attack and rape of the Central Park Jogger, Reyes went on to commit additional violent crimes against five more women . . .

Richard A. Leo, Steven A. Drizin, Peter J. Neufeld, Bradley R. Hall and Amy Vatner, *Bringing Reliability back in: False Confessions and Legal Safeguards in the Twenty-First Century*, 2 Wisc. L. Rev. 479, 537 (2006). Moreover, the conclusive nature of DNA evidence has prompted almost every other state to provide some sort of post-conviction DNA testing. See Appendix 2, Solomon Moore, *Exoneration Using DNA Brings Change in Legal System*, NEW YORK TIMES, Oct. 1, 2007. Presently, forty-two states and the District of Columbia have statutes providing access to post-conviction DNA testing. *Id.* The substantial majority of those states allow post-conviction DNA testing of evidence, regardless of whether such tests were available at trial. At least twenty-one states, including Arizona,² California,³ Connecticut,⁴ Florida,⁵ Hawaii,⁶ Indiana,⁷ Kansas,⁸ Kentucky,⁹ Maine,¹⁰ Montana,¹¹ Nebraska,¹² Nevada,¹³ New Jersey,¹⁴ New Mexico,¹⁵

² Ariz. Rev. Stat. § 13-4240(B)(3) (2000).

³ Cal. Penal Code § 1405(6)(A) (2000).

⁴ Conn. Gen. Stat. § 54-102kk (b)(3) (2004).

⁵ Fla. Stat. Ann. § 925.11(2) (2001) (*amended* 2006).

⁶ Haw. Rev. Stat. § 844D-121(4) (2005).

⁷ Ind. Code Ann. § 25-38-7-8(3)(A) (2001).

⁸ Kan. Stat. Ann. § 21-2512(a)(3) (2001).

⁹ Ky. Rev. Stat. Ann. § 422.285(2)(c) (2007) (applicable only to death penalty cases).

¹⁰ Me. Rev. Stat. Tit. 15, § 2138 (4)(A)(C) (2001) (*amended* 2005).

¹¹ Mont. Code Ann. § 46-21-110(5)(f) (2003).

¹² Neb. Rev. Stat. § 29-4120(1)(c) (2001).

¹³ Nev. Rev. Stat. § 176.0918(6)(c) (2003).

¹⁴ N.J. Stat. Ann. § 2A:84A-32-a(6)(b) (2002).

¹⁵ N.M. Stat. § 31-1-A-2(C)(3)(a) (2003).

New York,¹⁶ North Carolina,¹⁷ Ohio,¹⁸ Tennessee,¹⁹ Utah,²⁰ West Virginia²¹ and Wisconsin²² allow post-conviction DNA testing to proceed if “the evidence was not previously tested,” even if the testing was available at trial. Four states allow testing to proceed if the petitioner can establish that there is a reasonable explanation for the failure to request DNA testing at the time of trial.²³ Two states deadline by which beyond which DNA tests can not be requested, if they were available at the time of trial.²⁴ And three states have permissive standards for testing, but do not specifically address this issue in their post-conviction DNA statutes.²⁵

¹⁶ N.Y. Code Crim. Pro. § 440.30-1-a(a) (2003).

¹⁷ N.C. Gen. Stat. § 15A-269(a)(3)(a) (2001).

¹⁸ Ohio Rev. Code Ann. § 2953.74(B)(1) (2006).

¹⁹ Tenn. Code Ann. § 40-30-304(3) (2001).

²⁰ Utah Code Ann. § 78-35a-301(2)(d) (2001).

²¹ W.Va. Code § 15-2B-14(6)(A) (2004).

²² Wis. Stat. Ann. § 974.07(2)(c) (2001).

²³ Colo. Rev. Stat. § 18-1-413(c)(II) (2003) (“petitioner did not secure DNA testing prior to his or her conviction because DNA testing was not reasonably available or for reasons that constitute justifiable excuse, ineffective assistance of counsel, or excusable neglect”); Ga. Code Ann. § 5-5-41(3)(B) (2003) (“[t]he evidence was not subjected to the requested DNA testing because the existence of the evidence was unknown to the petitioner or to the petitioner’s trial attorney prior to trial”); N.H. Rev. Stat. Ann. § 651-D:2, D:3(d) (2004) (“[e]xplain why the evidence sought to be tested by the petitioner was not previously subjected to DNA testing”), Tex. Crim. Pro. Code Ann. § 64.01(b)(1)(B) (2001, *amended* 2007) (“was not previously subjected to DNA testing. . . through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing”).

²⁴ Mich. Comp. Laws § 770.16 (2000) (trial must have been held before January 8, 2001); 42 Pa. Con. Stat. § 9543.1(a)(2) (2002) (trial must have been held before January 1, 1995).

²⁵ Iowa Code Ann. § 81.10; Mo. Rev. Stat. § 547.035 (2001); Vt. Stat. Ann. Tit. 13 § 5561 (2007).

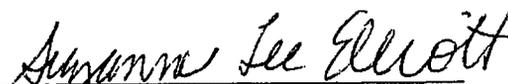
II. CONCLUSION

Amicus urges his Court to grant Mr. Riofta relief.

DATED this 8th day of October, 2007.

**FILED AS ATTACHMENT
TO E-MAIL**

Respectfully submitted,



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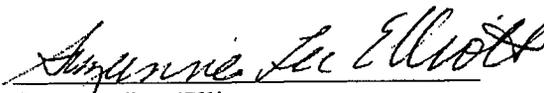
CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing Amicus Curiae Brief of WACDL on the following:

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RICHARD DANZIGER
2002

11 YEARS
TEXAS

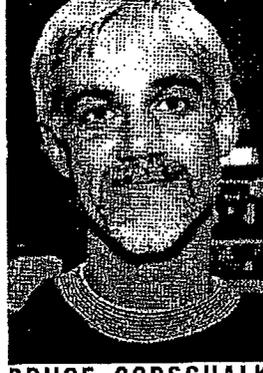
Richard Danziger's roommate, Chris Ochoa, implicated Danziger in his confession to the rape and murder of an Austin Pizza Hut employee. They both received life sentences. Years later, another prisoner confessed to the crime. The case was reopened, and DNA tests excluded Ochoa and Danziger and incriminated the other man. Tragically, Danziger sustained brain damage from attacks he suffered while in prison.



CHRIS OCHOA • 2002

11.5 YEARS
TEXAS

In a desperate attempt to avoid the death penalty, Chris Ochoa confessed to a rape and murder and also implicated his roommate, Richard Danziger. DNA testing excluded Ochoa while he was serving a life sentence. Since his exoneration, Ochoa earned a law degree at the University of Wisconsin and has worked with the Wisconsin Innocence Project.



BRUCE GODSCHALK
2002

14.5 YEARS
PENNSYLVANIA

Two women in the same apartment complex were raped in 1986. One of them identified Bruce Godschalk as the perpetrator. His conviction was fraught with misconduct, including a coerced confession, and after he was convicted, prosecutors and police mishandled evidence and claimed it was destroyed. After almost 15 years in prison, and seven years fighting for DNA testing, Godschalk was exonerated.



ARVIN MCGEE • 2002

12.5 YEARS
OKLAHOMA

Arvin McGee was convicted of committing a 1987 rape in Tulsa. McGee's first trial ended in a mistrial, and the second ended in a hung jury. After the third trial, he was convicted and sentenced to 365 years in prison. His sentence was later reduced to 298 years. Finally, DNA proved his innocence and identified the true perpetrator.



VICTOR LARUE THOMAS
2002

15 YEARS
TEXAS

In June 2001, Victor Larue Thomas was freed from prison after DNA testing proved that he did not commit a 1986 robbery, kidnapping and rape of a convenience store clerk. His conviction was based largely on the victim's misidentification.

65% were convicted based at least in part



RAY KRONE • 2002

10 YEARS
ARIZONA

Ray Krone was said to be helping a Phoenix bartender close the bar on the night of her murder. Based on this information and “bite-mark” analysis (for which police asked Krone to bite into a Styrofoam cup and then compared the cup to bite marks on the victim), Krone was convicted of the crime and sentenced to death and 21 years. Ten years later, DNA testing exonerated Krone, who is now a Pennsylvania resident and Communications Director of Witness to Innocence.



HECTOR GONZALEZ
2002

5.5 YEARS
NEW YORK

Hector Gonzalez was convicted of murder in a gang-related crime in New York City. Serological testing on bloodstains on Gonzalez's pants revealed that half the population of New York City could be the source of the blood, yet based on this evidence and a witness who saw him at the scene of the crime, he was convicted. DNA testing revealed that the bloodstains came not from the victims, but from two other men whose wounds Gonzalez had been tending the night of the crime.



ALEJANDRO DOMINGUEZ
2002

4 YEARS
ILLINOIS

Alejandro Dominguez, then a 16-year-old Mexican national, was convicted and sentenced to nine years in prison for rape. His conviction was based primarily on the victim's cross-racial eyewitness identification. After he was released, Dominguez sought DNA testing at his own expense and was finally exonerated 12 years after his conviction.



CLARK MCMILLAN • 2002

22 YEARS
TENNESSEE

Clark McMillan had an obvious limp at the time that a rape victim identified him as the assailant. The victim's description of her assailant did not include a limp until she testified at trial. McMillan served 22 years of a 119-year sentence when DNA testing cleared his name.



LARRY JOHNSON • 2002

18 YEARS
MISSOURI

After Larry Johnson was convicted of a 1984 rape, he and the Innocence Project faced considerable resistance gaining access to evidence from his case for DNA testing. Even after the Innocence Project filed a civil rights lawsuit, the prosecution refused to release the evidence. In 2001, the state Supreme Court ordered the Circuit Attorney's Office to respond to the Innocence Project's motion. The DNA test results proved that Johnson could not have been the perpetrator and he was finally exonerated.

**on fraudulent, unreliable
or limited forensic science.**



MARVIN ANDERSON
2002

15 YEARS
VIRGINIA

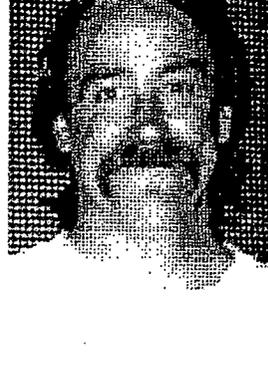
An all-white jury convicted Marvin Anderson of rape and related charges when he was 18 years old. He became a suspect in the investigation because he lived with a white woman and the victim said her attacker claimed he "had a white girl." He was exonerated through DNA testing 15 years later. Today, he owns a trucking company and lives in Hanover with his three children.



EDDIE JOE LLOYD • 2002

17 YEARS
MICHIGAN

Police officers investigating the brutal murder of a 16-year-old girl interrogated Eddie Joe Lloyd while he was a patient in a mental hospital. They led him to believe that by confessing and getting arrested, he would help them expose the real perpetrator. The judge said that Lloyd would have received the death penalty if it were legal in Michigan. For over six years, Innocence Project legal clinic students worked to secure the evidence in Lloyd's case. Lloyd died two years after DNA testing proved his innocence.



JIMMY RAY BROMGARD
2002

14.5 YEARS
MONTANA

At the age of 18, Jimmy Ray Bromgard was convicted of rape and sentenced to 40 years in prison. His conviction was secured with the hesitant eyewitness identification of the eight-year-old rape victim and the fraudulent testimony of a forensic analyst (who simply invented statistics claiming that a hair at the crime scene was likely from Bromgard). DNA testing eventually proved his innocence.



ALBERT JOHNSON • 2002

10 YEARS
CALIFORNIA

Albert Johnson became the prime suspect in a sexual assault case when police stopped him for speeding. He matched the description of the assailant as a black man driving a small white car. Two rape victims identified him. Johnson studied law while incarcerated and sought DNA testing. One of the rape kits had been destroyed, but the second was located and subjected to testing; Johnson was exonerated based on the results.



DOUGLAS ECHOLS • 2002

5 YEARS
GEORGIA

Douglas Echols, a former Army officer, was convicted of kidnapping a woman outside a Savannah nightclub and restraining her while his co-defendant, Samuel Scott, raped her. Echols was paroled five years later. Scott contacted the Innocence Project, which helped locate the evidence and secured DNA testing. Both Echols and Scott were vindicated.

**19% were convicted based at least
in part on faulty microscopic hair analysis.**



SAMUEL SCOTT • 2002

15 YEARS
GEORGIA

Samuel Scott was convicted of rape, kidnapping, and robbery and served 15 years of a life sentence. He was released on parole in September 2001 but arrested two days later when he failed to register as a sex offender. In October 2002, his indictment was dismissed based on DNA test results.



BERNARD WEBSTER
2002

20 YEARS
MARYLAND

Bernard Webster became the first person to be exonerated under Maryland's post-conviction DNA statute. Webster was convicted of rape after the victim and multiple eyewitnesses misidentified him as the perpetrator. He was 40 years old when DNA finally exonerated him and he walked out of prison; he was 18 when he was arrested.



DAVID BRIAN SUTHERLIN
2002

0 YEARS
MINNESOTA

In 1985, David Brian Sutherlin was convicted of rape, as well as two unrelated murders. He was sentenced to life in prison for the murders; a month later, he was sentenced for the unrelated rape. In 2002, Sutherlin was exonerated of the rape charge after a prosecution-initiated review led to DNA testing of the evidence in his case, which showed that another man was the perpetrator. Sutherlin, who never served time for the rape conviction while serving his life sentence for the unrelated murders, remains in prison.



PAULA GRAY • 2002

9 YEARS
ILLINOIS

Paula Gray was convicted of murder, rape, and perjury and sentenced to 50 years in prison in the "Ford Heights Four" case. Then 17 years old, her own statements were used to secure her conviction and that of four innocent men — Kenneth Adams, Verneal Jimerson, Willie Rainge and Dennis Williams. DNA testing ultimately proved that none of the five were involved in the crime. Gray is the only woman to be exonerated through post-conviction DNA testing.



ANTRON MCCRAY • 2002

6 YEARS
NEW YORK

Antron McCray and four other adolescents were convicted of a brutal rape in the now infamous Central Park jogger case of 1989. Years after their convictions, DNA test results matched a convicted murderer and rapist who admitted that he alone was responsible for the attack. None of the DNA evidence matched those wrongfully convicted, and all five men were exonerated.

Three cases involved an erroneous DNA inclusion.



KEVIN RICHARDSON
2002

5.5 YEARS
NEW YORK

Kevin Richardson, who was 14 years old at the time, was one of five teenagers convicted in the attack of a Central Park jogger in 1989. Because the victim had no memory of the assault, police focused on a group of youths who were already in police custody for other crimes perpetrated in the park that night. In 2002, all five men were proven innocent through DNA testing.



YUSEF SALAAM • 2002

5.5 YEARS
NEW YORK

Yusef Salaam was convicted of rape and assault in connection with the 1989 Central Park jogger case. He was the only one of five teenagers convicted who did not give a videotaped confession. In 2002, all five men were deemed innocent after DNA testing was conducted on several pieces of evidence, including a rape kit and hairs found on the victim.



RAYMOND SANTANA
2002

5 YEARS
NEW YORK

Raymond Santana falsely confessed to involvement in the Central Park jogger case of 1989. He and five other teenagers, between the ages of 14 and 16 years old, were convicted of this crime. In 2002, another man who had been convicted of similar crimes confessed that he alone committed the Central Park jogger attack, and all five men were exonerated after DNA testing confirmed his admission.



KHAREY WISE • 2002

11.5 YEARS
NEW YORK

Kharey Wise was one of five teenagers convicted in connection with the Central Park jogger case. He and three of his co-defendants gave videotaped confessions that differed significantly on key details of the crime. In retrospect it is clear that the young men did not know where, how, or when the attack took place. In 2002, all five men were deemed innocent after DNA testing.



DANA HOLLAND • 2003

8 YEARS
ILLINOIS

Dana Holland was imprisoned for a decade for two wrongful convictions: a rape, an armed robbery and an attempted murder. On the morning of the rape, officers traced the suspect's footprints to Holland's apartment building. The Center on Wrongful Convictions took his case and secured DNA testing, which exonerated Holland in 2003. He was retried for the armed robbery and attempted murder (for which there was no DNA evidence) and acquitted.

**25% were convicted
based at least in part**



GENE BIBBINS • 2003

15.5 YEARS
LOUISIANA

In 1987, Gene Bibbins was convicted of raping a young woman in the apartment complex where he lived. He became a suspect when he was seen carrying a radio that had been stolen from the victim's apartment. He had found the radio on the premises. The victim identified him as the perpetrator after police drove him to the crime scene and illuminated his face with a flashlight. He was exonerated 15 years later, when DNA testing proved that he could not have committed the crime.



WILEY FOUNTAIN • 2003

16 YEARS
TEXAS

Wiley Fountain was convicted of aggravated sexual assault of a pregnant woman in the Dallas area who had been abducted while walking to a bus stop. Fountain was stopped by police because his clothing resembled the victim's description of what her attacker wore. Based on DNA test results, he was pardoned in March 2003.



JULIUS RUFFIN • 2003

20 YEARS
VIRGINIA

A young nurse identified Julius Ruffin, a maintenance worker at a medical school where she was a student, as the man who raped her several weeks earlier. After two trials resulted in hung juries, Ruffin was convicted and sentenced to life. Over two decades later, DNA testing exonerated Ruffin and linked to a convicted rapist.



DENNIS MAHER • 2003

19 YEARS
MASSACHUSETTS

Dennis Maher, then a 23-year-old Army sergeant, was stopped and questioned by police on the night that a rape occurred in his town of Lowell. Although no biological evidence linked him, he was convicted of two rapes. The New England Innocence Project helped secure DNA testing in his case and he was proven innocent. He is now a mechanic for a waste management company, has recently married and has two young children.



EDDIE JAMES LOWERY
2003

9.5 YEARS
KANSAS

Investigators in the 1981 rape of an elderly woman questioned Eddie James Lowery on the day of the attack. They denied him a lawyer, fed him details of the case and extracted a confession. Lowery's first trial ended in a hung jury, but he was convicted in the second. After his parole in 1991, Lowery financed DNA testing in his case and was proven innocent.

on false confessions or admissions...



MICHAEL MERCER • 2003

10.5 YEARS
NEW YORK

Michael Mercer was misidentified in the rape of a 17-year-old girl when the victim saw Mercer in her building two months after the attack. In 2000, DNA testing was finally conducted and found a match — not to Mercer, but to a convicted rapist who could not be charged because the statute of limitations had expired.



PAUL KORDONOWY • 2003

13 YEARS
MONTANA

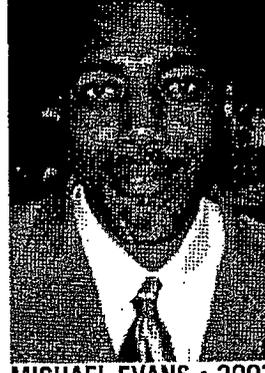
Paul Kordonowy was exonerated for a 1990 rape conviction after DNA testing proved his innocence. At his trial, the former head of the Montana Forensic Science Laboratory, Arnold Melnikoff, testified falsely that hairs found at the crime scene matched Kordonowy. Kordonowy remains in prison for another rape charge to which he pled guilty.



KENNETH WYNIEMKO
2003

8.5 YEARS
MICHIGAN

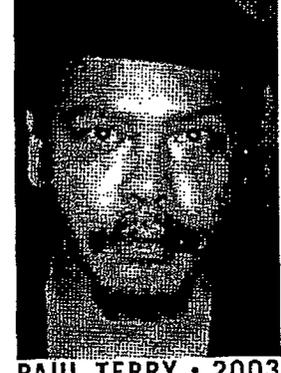
A Michigan rape victim told police that she had little opportunity to view her assailant. But they asked her to help prepare a composite sketch, which she said was about 60% accurate. Police targeted Kenneth Wyniemko because he resembled the sketch. He was convicted and sentenced to 40-60 years in prison. Nine years later, DNA proved his innocence. Today, Wyniemko — joined by his Cooley Innocence Project attorneys and the prosecuting attorney in his case — educates the public about wrongful convictions.



MICHAEL EVANS • 2003

26 YEARS
ILLINOIS

Michael Evans served 26 years of a 400-year sentence for the murder, rape and kidnapping of a young girl before DNA testing exonerated him. A neighborhood woman, responding to a reward offer of \$5,000 for helping identify the killer, implicated Evans. He and his co-defendant, Paul Terry, were teenagers when they were convicted.



PAUL TERRY • 2003

26 YEARS
ILLINOIS

Based on a false tip of a neighborhood woman, detectives began asking local African American teenagers about the rape and murder of a nine-year-old girl. Paul Terry was identified in a line-up by the woman, who claimed to have been a witness to the struggle. Although her work timecard showed she could not have witnessed the crime, prosecutors continued their case against Terry and Michael Evans. The two served a combined total of 52 years in prison before DNA testing proved them innocent.

**And 35% of those who falsely confessed
were 18 years old or younger**



Lonnie Erby • 2003

17 YEARS
MISSOURI

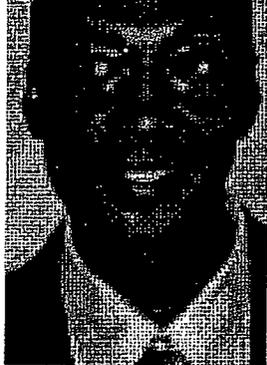
Lonnie Erby was convicted of several St. Louis kidnappings and rapes and sentenced to 115 years in prison. Although no biological evidence linked him to the crimes and he had strong alibis for each of them, he was convicted based on misidentification by several of the victims. The Innocence Project took Erby's case in 1995 and spent seven years fighting for DNA testing on evidence in the case. Finally, in 2003, DNA test results proved his innocence.



Steven Avery • 2003

17.5 YEARS
WISCONSIN

Sixteen witnesses corroborated Steven Avery's alibi that he had spent the day shopping with his family when a brutal sexual assault occurred. Nevertheless, based on the eyewitness misidentification of a single witness and hair analysis, Avery was convicted. DNA testing secured by the Wisconsin Innocence Project proved that Avery was innocent — and matched a man who was in prison for sexual assaults committed after the one for which Avery was wrongfully convicted.



Calvin Willis • 2003

21.5 YEARS
LOUISIANA

Calvin Willis was convicted of raping a seven-year-old girl while two other young girls were also in the Shreveport home. The children provided conflicting descriptions of the attacker, and their memories of the attack changed over time. Willis, who was well known in the neighborhood and denied having anything to do with the crime, was finally exonerated based on DNA testing on several pieces of evidence. The real perpetrator was never found.



Calvin Lee Scott
2003

20 YEARS
OKLAHOMA

Microscopic hair analysis — a science that is limited at best — was used to convict Calvin Lee Scott of a 1982 rape. Two decades later, DNA testing excluded Scott and matched to a convicted rapist who could not be charged due to the statute of limitations.



Nicholas Yarris • 2003

21.5 YEARS
PENNSYLVANIA

Sentenced to death in 1982 for a rape, murder, and kidnapping, Nicholas Yarris first sought DNA testing in his case in 1989. DNA tests on evidence from his case were conducted throughout the 1990s and were inconclusive. In 2003, a private lab conducted one last round of DNA tests on several items of evidence — and the results proved that Yarris was innocent. He is now living in England with his wife and young daughter.

and/or developmentally disabled.



STEPHAN COWANS
2004

5.5 YEARS
MASSACHUSETTS

The victim and multiple witnesses misidentified Stephan Cowans as the man who shot a Boston police officer, and he was convicted on several charges and sentenced to 30-45 years in prison. Several items of evidence were later subjected to DNA testing, and they all showed that Cowans was innocent. Subsequently, officials reexamined a fingerprint from the crime scene that an expert had testified came from Cowans — and the new analysis revealed that fingerprint was not Cowans's. He was fully exonerated in 2004.



DARRYL HUNT • 2004

18.5 YEARS
N. CAROLINA

Darryl Hunt was convicted of a 1984 rape and murder despite a lack of evidence against him. The main prosecution witness was a former Ku Klux Klansman. In 1994, DNA testing excluded him, yet state and federal courts turned down his request for a new trial. But when a final round of DNA testing identified the real perpetrator, Hunt was finally exonerated. He now runs the Darryl Hunt Project for Freedom and Justice, which assists innocent prisoners and helps people successfully reenter society after incarceration.



ANTHONY POWELL • 2004

12 YEARS
MASSACHUSETTS

A man who raped a teenager in 1991 demanded that she meet him at the local skating rink the night after the attack with \$100. Anthony Powell happened to be at the rink that night and the young woman misidentified him as her attacker. He was convicted of rape and kidnapping and sentenced to 12-20 years in prison. When DNA testing was finally conducted, the judge quickly acknowledged that the results proved Powell's innocence, and he was freed.



JOSIAH SUTTON • 2004

4.5 YEARS
TEXAS

At Josiah Sutton's rape trial in 1999, a Houston Police Department crime lab employee testified that DNA from the crime was an exact match to Sutton. Knowing this couldn't be true, Sutton fought, unsuccessfully, to have independent DNA testing conducted during his trial. In 2003, an independent audit of the crime lab uncovered extensive problems. DNA tests proved that Sutton was innocent, and he was exonerated. Since his release, he has advocated for legislative reform in Texas.



LAFONSO ROLLINS
2004

10 YEARS
ILLINOIS

Lafonso Rollins was a 17-year-old special education student in the ninth grade when he was arrested for robbery and rape on the basis of a composite sketch. Rollins, whose cognitive abilities are limited, confessed to the robberies and four rapes. Years later, DNA testing proved that he was innocent and that an unknown male had committed the crimes. During the years Rollins was wrongfully imprisoned, his mother, father, sister and grandparents had died.

Nine pled guilty to crimes



RYAN MATTHEWS • 2004

5 YEARS
LOUISIANA

Ryan Matthews was arrested for murder soon after his 17th birthday. His friend, Travis Hayes, falsely confessed to the crime and implicated Matthews, who was convicted and sentenced to death. The Louisiana Crisis Assistance Center helped Matthews win post-conviction DNA testing that excluded him. After almost five years on death row, he was released.



WILTON DEDGE • 2004

22 YEARS
FLORIDA

The prosecution at Wilton Dedge's rape trial relied on eyewitness misidentification, snitch testimony, hair comparison and dog sniffing to secure his conviction in 1982. The conviction was reversed in 1983, but then reinstated in 1984. Three years after post-conviction DNA testing excluded him in 2001, he was finally released. Dedge lives in Florida, where he is a landscaper and an advocate for criminal justice reform.



ARTHUR LEE WHITFIELD
2004

22.5 YEARS
VIRGINIA

Arthur Lee Whitfield was convicted of two rapes and sentenced to 63 years in prison. More than two decades later, when he sought DNA testing that could prove his innocence, he was told the evidence was lost forever and could not be tested. But samples of evidence were found in the old notebooks of a former lab analyst who, against lab protocol, saved evidence samples in hundreds of cases — which have already led to several exonerations. DNA testing on the evidence exonerated Whitfield in 2004.



BARRY LAUGHMAN • 2004

16 YEARS
PENNSYLVANIA

When police lied to Barry Laughman and told him that his fingerprints were found at a murder scene, he confessed to the crime. Laughman's IQ had been measured at 70, and he was said to be functioning at the level of a 10-year-old child. Despite serious discrepancies between his confession and the actual crime (including the date), he was convicted of rape, murder and other charges in 1988 and sentenced to life in prison. Years later, DNA testing of the evidence proved his innocence.



CLARENCE HARRISON
2004

17.5 YEARS
GEORGIA

Poor preservation of evidence almost prevented Clarence Harrison from proving his innocence in a 1986 rape case. After he was convicted, he pursued DNA testing but was told the remaining evidence had been destroyed in the early 1990s. By 2003, the Georgia Innocence Project had helped locate one last preserved slide, and it proved Harrison's innocence. Just 18 days after his release from prison, Harrison married his longtime girlfriend.

they did not commit.



DAVID ALLEN JONES
2004

9 YEARS
CALIFORNIA

Los Angeles police investigating several murders interrogated David Allen Jones, who has the mental ability of an eight-year-old, for over two days. After detectives “reminded” Jones that he had already admitted to the crimes, he falsely confessed and was convicted. Nine years later, DNA testing proved Jones’s innocence — and matched a convicted serial murderer.



BRUCE DALLAS GOODMAN
2004

19 YEARS
UTAH

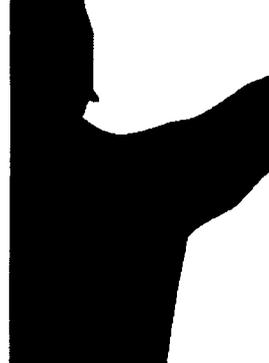
Convicted of the rape and murder of his live-in girlfriend based largely on inconclusive forensics, Bruce Dallas Goodman maintained his innocence. He ultimately sought the help of the Rocky Mountain Innocence Center, and DNA testing exonerated him.



DONALD WAYNE GOOD
2004

13.5 YEARS
TEXAS

Donald Wayne Good was convicted of rape, based only on the victim’s eyewitness identification. He continued to fight to prove his innocence for years after he was paroled. DNA testing finally led to his exoneration in December 2004.



DENNIS BROWN • 2005

19 YEARS
LOUISIANA

At age 17, Dennis Brown was accused of rape and confessed to the crime when a detective threatened him. The victim said her attacker’s face was almost completely covered, yet she identified Brown. The Innocence Project New Orleans requested DNA testing in Brown’s case, which proved his innocence. He had spent over half of his life in prison.



DONTE BOOKER • 2005

15 YEARS
OHIO

After he was paroled, Donte Booker sought post-conviction DNA testing in the 1986 rape case for which he had been convicted. He refused opportunities for an earlier parole because he would not admit to a crime he didn’t commit. In 2005, DNA testing excluded him, and his conviction was overturned.

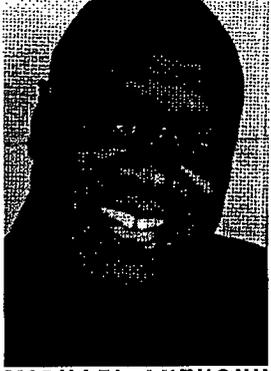
**15% were convicted based
at least in part**



PETER ROSE • 2005

8 YEARS
CALIFORNIA

A young rape victim initially reported that she was raped by a stranger, until her aunt, an estranged acquaintance of Peter Rose, suggested that he had committed the crime. Under interrogation, police repeatedly pressured the girl to name him, despite her misgivings. He was convicted and sentenced to 27 years. With the help of the Northern California Innocence Project, Rose's innocence was established through DNA testing.



MICHAEL ANTHONY WILLIAMS • 2005

23.5 YEARS
LOUISIANA

Just 16 years old at the time of his conviction, Michael Anthony Williams served nearly 24 years of a life sentence for aggravated rape. The victim, who was his tutor, misidentified Williams, and he was convicted. More than two decades later, DNA testing proved that he could not have committed the crime. Upon his release, the Louisiana Department of Corrections issued him a check for \$10.



BRANDON MOON • 2005

17 YEARS
TEXAS

Brandon Moon was convicted of three counts of aggravated sexual assault for a string of crimes in the El Paso area where he was a college student. Moon was arrested and convicted in 1988, based largely on eyewitness misidentification and faulty forensic analysis. DNA testing proved his innocence 17 years later. Moon has since moved to Missouri. He is an advocate for criminal justice reform.



ANTHONY WOODS • 2005

18 YEARS
MISSOURI

When Anthony Woods was paroled after 18 years in prison for raping a teenager, he immediately called his original public defender and obtained an order for DNA testing in his case. In prison, he had twice failed to complete the sex offender program because he refused to accept responsibility for the crime. DNA results cleared his name three years after his release.



THOMAS DOSWELL • 2005

18.5 YEARS
PENNSYLVANIA

When a rape victim was shown a photo array of possible suspects, only one — Thomas Doswell's — was marked with the letter 'R', which officers said meant that Doswell had been charged with rape. Although Doswell challenged the identification at his trial, he was convicted. Nearly two decades later, in March 2005, DNA testing proved his innocence. He is now part of a band that opened for B.B. King during his 2006 tour.

on testimony from snitches or informants.



LUIS DIAZ • 2005

25 YEARS
FLORIDA

Luis Diaz was convicted in 1980 as the "Bird Road Rapist." One of the victims identified Diaz when she saw him at the gas station where she worked. Diaz, a married father of three, was roughly 70 pounds lighter and 7 inches shorter than her initial description. With the help of Diaz's son and the Florida Innocence Initiative, he was finally released on the basis of exculpatory DNA test results.



LEO WATERS • 2005

21 YEARS
NORTH CAROLINA

A woman who had been raped in 1981 while selling a waterbed out of her home identified Leo Waters as the assailant. She was hypnotized in an attempt to bolster her memory. In 2003, DNA testing showed that he could not have been the rapist, and two years later he was pardoned.



GEORGE RODRIGUEZ
2005

17 YEARS
TEXAS

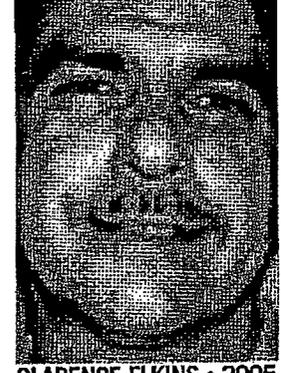
George Rodriguez was at work when a 14-year-old girl was raped by two Latino men, one of whom had called the other "George." The victim identified Rodriguez in a photo array and he was arrested. Based in part on inaccurate forensic analysis, he was convicted and sentenced to 60 years in prison. Years later, results of mitochondrial DNA testing did not match Rodriguez, but did match another man.



ROBERT CLARK • 2005

23.5 YEARS
GEORGIA

The perpetrator of a brutal 1981 rape and robbery stole the victim's car. He loaned it to his friend, Robert Clark, who the victim then saw driving it. Clark gave the man's name to detectives, but the man was never charged. Decades later, DNA testing revealed Clark's innocence and implicated the man who loaned him the car, who was already serving time on other convictions. Clark lives in Atlanta and works in construction.



CLARENCE ELKINS • 2005

6.5 YEARS
OHIO

Clarence Elkins was convicted of the rape and murder of his mother-in-law and the rape of his six-year-old niece in 1999. While he was in prison, Elkins's wife worked with a private investigator to find the real perpetrator. They learned that a convicted rapist, who had lived near the crime scene, had been transferred to Elkins's cell block. Elkins retrieved one of the man's cigarette butts from the prison yard in order to obtain his genetic profile. DNA testing cleared Elkins and matched the man Elkins and his wife suspected.

45% were compensated (either through state compensation laws or civil lawsuits)



JOHN KOGUT • 2005

17 YEARS
NEW YORK

Through hair comparison, snitch testimony and John Kogut's false confession — produced after 18 hours of interrogation — Kogut was convicted of the rape and murder of a 16-year-old girl. John Restivo and Dennis Halstead were also convicted on the pretense that the three men acted together. Several rounds of DNA testing over 10 years excluded all three men. After a retrial, Kogut was finally exonerated.



PHILLIP LEON THURMAN
2005

19 YEARS
VIRGINIA

Phillip Leon Thurman was convicted of a 1984 rape, abduction and assault based on eyewitness identification and serology on crime scene evidence. After he was released on parole in 2004, he was required to register as a sex offender, but he continued fighting to prove his innocence. A key piece of biological evidence had been saved by a lab analyst, whose work proved instrumental in the exonerations of several other Virginia prisoners. Thurman's evidence was subjected to DNA testing, and he was exonerated.



WILLIE DAVIDSON • 2005

12 YEARS
VIRGINIA

Willie Davidson served 12 years for the 1980 rape of an elderly female acquaintance of his who testified that he had been like a grandson to her. Davidson and his family said that he was at home sleeping when the crime occurred. Years after he was released from prison, he was proven innocent through DNA testing of evidence that a lab analyst had saved in her notebooks.



ENTRE NAX KARAGE
2005

6.5 YEARS
TEXAS

Entre Nax Karage was convicted of murdering his girlfriend in 1997. Post-conviction DNA testing proved that he was innocent. The profile obtained from spermatozoa found on the victim matched another man who was previously convicted of a similar crime.



KEITH E. TURNER • 2005

4 YEARS
TEXAS

Post-conviction DNA testing proved that Keith E. Turner was not the perpetrator of a 1982 rape of a Dallas woman. Turner had been misidentified both visually and by his voice. He and the victim worked for different branches of the same company and came into contact when Turner was transferred.

**for their wrongful convictions,
usually years after their release;**



DENNIS HALSTEAD • 2005



JOHN RESTIVO • 2005



ALAN CROTZER • 2006



EUGENE HENTON • 2006



ARTHUR MUMPHREY
2006

16 YEARS
NEW YORK

16 YEARS
NEW YORK

24.5 YEARS
FLORIDA

1.5 YEARS
TEXAS

17.5 YEARS
TEXAS

Investigators in the murder of a 16-year-old girl focused, in part, on Dennis Halstead who was believed to be associated with another young woman who had disappeared. Together with John Kogut and John Restivo, Halstead was convicted of rape and murder in 1987. After several rounds of exculpatory DNA testing, all three men were released in 2003 and exonerated in 2005.

Together with defendants John Kogut and Dennis Halstead, John Restivo was convicted of the rape and murder of a 16-year-old girl on Long Island. DNA testing proved the innocence of all three men in 2003, and they were fully exonerated in 2005. The real perpetrator was never found. Today, Restivo lives in Florida with his girlfriend.

Three men broke into a Tampa home in 1982 and kidnapped and raped an adult woman and a 12-year-old girl, leaving them tied to a tree after the attack. One of the victims identified Alan Crotzer, who maintained that he had no knowledge of the crime. In 2003, he secured DNA testing and was exonerated in 2006.

In exchange for a guilty plea, Eugene Henton received a sentence of four years in prison for a 1984 sexual assault that he did not commit. When he was paroled a year and a half later, he continued his pursuit of DNA testing, which led to his exoneration. He is now serving time for two unrelated convictions.

Based on the testimony of a co-defendant, Arthur Mumphy was convicted of sexual assault and sentenced to 35 years in prison. In exchange for testifying against Mumphy, his co-defendant received a reduced sentence of 15 years. Eventually, DNA tests confirmed the co-defendant's guilt and Mumphy's innocence.

the amounts of compensation ranged



DREW WHITLEY • 2006

16.5 YEARS
PENNSYLVANIA

If not for 39 tiny hairs stuck to a nylon mask, Drew Whitley would still be in prison. The actual perpetrator, who shot and killed a McDonald's night manager in 1988, had worn a nylon mask that he shed at the scene. Over a decade after Whitley initially filed for DNA testing on the hairs and was told they could not be located, he learned that the 39 hairs still existed and that he was excluded as the source.



DOUGLAS WARNEY • 2006

9 YEARS
NEW YORK

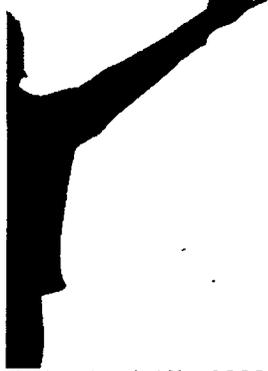
Despite a lack of physical evidence, Douglas Warney was convicted of murder in 1997. Warney confessed to the crime, but his confession revealed that he did not know several key facts. DNA testing exonerated him and matched a convicted murderer already serving a life sentence in New York. Warney, who became gravely ill while he was in prison, is cared for by his sister in Rochester.



ORLANDO BOQUETE
2006

13 YEARS
FLORIDA

Orlando Boquete, a Cuban immigrant, was identified by a rape victim from the back of a police car parked 20 feet away, in the middle of the night. He was convicted, and two years into his sentence he escaped and lived as a fugitive for a decade. He was eventually recaptured and served another 10 years. For a total of 23 years he lived as a fugitive or a prisoner before DNA testing established his innocence. Today, he lives in the Florida Keys near many of his relatives.



WILLIE JACKSON • 2006

17 YEARS
LOUISIANA

Based on the victim's misidentification, Willie Jackson was convicted and sentenced to 40 years for rape. Post-conviction DNA testing exonerated Jackson and implicated his brother in the rape. At the time of his release, his brother was serving a life sentence for a rape committed nine years after Jackson's conviction.



LARRY PETERSON • 2006

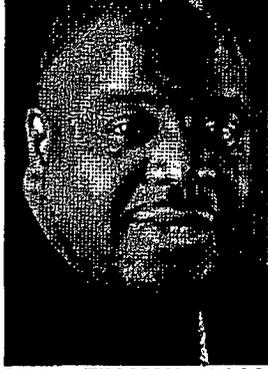
16.5 YEARS
NEW JERSEY

Three witnesses claimed that Larry Peterson confessed to a rape and murder, and he was convicted despite his repeated assertions of innocence. In 2003, DNA tests established his innocence but prosecutors refused to drop charges until two of the witnesses changed their previous stories. Finally, in 2006, he was exonerated. He is currently looking for employment and fighting to have his record expunged.

from \$25,000 to \$12.2 million.



ALAN NEWTON • 2006



JAMES TILLMAN • 2006



JOHNNY BRISCOE • 2006



SCOTT FAPPIANO • 2006



ALLEN COCO • 2006

21 YEARS NEW YORK

Alan Newton of New York attended his mother's funeral in shackles. She died shortly after his rape conviction in 1985. He began requesting DNA testing in 1994, but the rape kit could not be located until 2005. Once it was located, DNA testing proved his innocence. Newton is currently pursuing a degree in business administration at Medgar Evers College with support from the Thurgood Marshall Scholarship Fund.

16.5 YEARS CONNECTICUT

James Tillman's conviction in 1989 was based almost entirely on a cross-racial eyewitness misidentification. Soon after his conviction, Tillman requested DNA testing, but it was not as sophisticated at that time and the results were inconclusive. In 2005, another round of testing showed conclusively that Tillman was innocent, and he was exonerated the following year.

23 YEARS MISSOURI

In 1982, a Missouri man told the woman he raped that his name was Johnny Briscoe. The victim would later identify Briscoe in a photo lineup and a live lineup. Briscoe was the only man in the live lineup wearing an orange jumpsuit. In 2006, DNA testing excluded Briscoe and matched a man who was known to Briscoe and may have used his name in the crime.

21 YEARS NEW YORK

Scott Fappiano became implicated in a rape case when the victim, a police officer's wife, identified him. At his second trial in 1985, he was convicted. By chance, a piece of evidence in his case was discovered in 2005—not at the NYPD storage facilities, but at LifeCodes, a private DNA laboratory. Testing confirmed Fappiano's innocence and he was released. Today, he lives in Brooklyn with his family, in the same house he lived in as a teenager.

9 YEARS LOUISIANA

After a victim was raped and burglarized in 1995, there were several inconsistencies between her initial description of the assailant and her identification of Allen Coco. During the attack, she had stabbed the man in the buttocks, but Coco had no stab wound. Still, he was convicted and sentenced to life in prison without probation or parole. The Innocence Project New Orleans helped him secure DNA testing in 2005 and he was exonerated the following year.

**37% of their exoneration cases
also led to identification**



JAMES OCHOA • 2006

10 MONTHS
CALIFORNIA

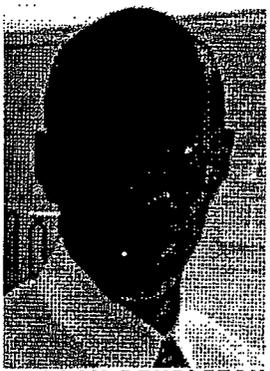
Ten months after he was convicted of carjacking and armed robbery, James Ochoa's conviction was vacated and he was exonerated. Though Ochoa had already been excluded from the DNA evidence at the time of trial, prosecutors were convinced of his guilt. A routine run of the DNA profile from the crime scene evidence through the national DNA database matched another man.



**JEFFREY DESKOVIC
2006**

15.5 YEARS
NEW YORK

Based on a false confession extracted from him at the age of 16, Jeffrey Deskovic was convicted of the rape and murder of his 15-year-old classmate — even though DNA testing excluded him. He was released years later when more sophisticated DNA testing was conducted and run through New York State's DNA database, providing a match to a convicted felon. Since his release, Deskovic has enrolled at Mercy College and speaks publicly about criminal justice reform.



**MARLON PENDLETON
2006**

10 YEARS
ILLINOIS

Marlon Pendleton was convicted in 1996 for a 1992 rape. Pamela Fish, a laboratory analyst who has allegedly provided false testimony in at least seven other cases that resulted in DNA exonerations, testified at his trial that the biological evidence was insufficient for DNA testing. In 2006, DNA testing was conducted and Pendleton was proven innocent.



**BILLY JAMES SMITH
2006**

19 YEARS
TEXAS

Billy James Smith attempted to secure DNA testing to overturn his rape conviction for over four years. His initial attempts were denied because the victim's boyfriend could have been a source of semen in the rape kit — even though the victim had earlier said that she did not have sex prior to the crime. After numerous appeals, DNA testing was finally granted, and Smith was proven innocent.



**BILLY WAYNE MILLER
2006**

22 YEARS
TEXAS

Billy Wayne Miller was officially exonerated in December 2006 after DNA testing proved he did not commit a 1984 Dallas County rape. The victim had accepted a ride home from a man in a Chevy who raped her several times. The police identified Miller as the son of a registered owner of a Chevy with a license plate similar to the one the victim remembered.

of the true perpetrator of the crime;



GREGORY WALLIS • 2007

17 YEARS
TEXAS

An initial round of DNA testing showed that 1 in 452 people had the same portion of the DNA profile shared by both Gregory Wallis and the perpetrator of a 1988 rape. Rather than take a deal that would release him from prison if he would agree to be a life-time registered sex offender, Wallis pushed for more testing. Subsequent testing of the rape kit and cigarette butts conclusively eliminated Wallis as the perpetrator, and he was exonerated in 2007.



LARRY FULLER • 2007

25 YEARS
TEXAS

Larry Fuller was the 10th Dallas County man proven innocent through DNA testing in just five years. The victim was raped in her home before sunrise and in dim lighting. She identified Fuller after seeing his photo in two photo lineups. Today, Fuller cares for his elderly parents and works as a telemarketer.



TRAVIS HAYES • 2007

8 YEARS
LOUISIANA

Travis Hayes's co-defendant, Ryan Matthews, was exonerated from death row in 2004. Attorneys at the Innocence Project New Orleans fought for two and a half more years to win Hayes's exoneration for a murder that neither man committed. DNA testing in 2004 cleared Hayes and Matthews and implicated another man, and three years later prosecutors announced that they would not retry Hayes.



WILLIE "PETE" WILLIAMS
2007

21.5 YEARS
GEORGIA

Months after Willie "Pete" Williams was arrested based on the misidentification of two Atlanta rape victims, a series of similar rapes occurred. A second man pled guilty and was convicted. But Williams and his attorneys did not learn of the crimes until the appeals process. Working with the Georgia Innocence Project, Williams secured DNA testing. The second man matched the genetic profile in both rape kits and Williams was eliminated.



ROY BROWN • 2007

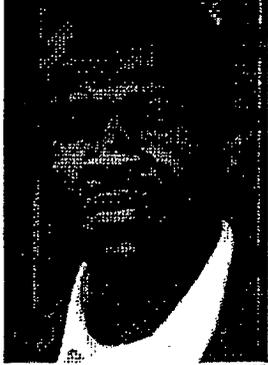
15 YEARS
NEW YORK

Roy Brown cracked his own case from prison by requesting documents under the Freedom of Information Act. Five days after Brown mailed a letter to Barry Bench, the man that he suspected to be the killer, Bench committed suicide by stepping in front of an Amtrak train. Bench's daughter provided the DNA sample that implicated him and excluded Brown. Brown, who suffers from liver disease, has been in and out of the hospital since his release.

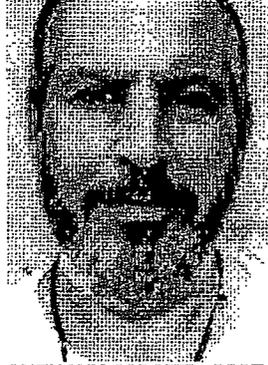
in 63% cases,



JAMES WALLER • 2007



ANTONIO BEAVER • 2007



ANTHONY CAPOZZI • 2007



ANDREW GOSSETT • 2007



JERRY MILLER • 2007

10 YEARS TEXAS

In addition to ten years of wrongful incarceration, James Waller spent 13 years on parole for allegedly raping a young boy who lived in his apartment development. As a condition of his parole, he was not allowed to have any contact with children. Even while volunteering through his church group to serve food to homeless people, Waller had to ask another volunteer to serve the children. He was finally vindicated on March 9th when, as the result of exculpatory DNA testing, the Texas Governor officially pardoned him.

10 YEARS MISSOURI

Antonio Beaver was convicted of first-degree robbery in a St. Louis carjacking case and sentenced to 18 years in prison. Beaver's conviction was based on the victim's identification of him in a live lineup in which he was one of only four lineup members. She had described the assailant as having a gap in his teeth and Beaver was the only one with any dental irregularities. DNA testing conducted on blood left by the perpetrator on a car door cleared Beaver of the crime after ten years behind bars.

20 YEARS NEW YORK

Biological evidence stored for two decades in a hospital drawer was the key to the 2007 exoneration of Anthony Capozzi, a Buffalo man who spent 20 years in prison for two rapes he didn't commit. Capozzi was convicted by a jury of two rapes and acquitted of the third although all three victims identified him in court as the attacker. DNA tests in March 2007 showed that another man, currently awaiting trial on three murders, actually committed the 1985 attacks, know as the Delaware Park rapes.

7 YEARS TEXAS

On the night of a kidnapping and rape in Garland, Texas, a police officer on duty noticed Andrew Gossett in the vicinity of the crime scene. Consistent with the victim's description of the perpetrator, Gossett was wearing a plaid shirt. Gossett was brought in the following day for a lineup and the victim identified him. He served seven years for the sexual assault before DNA evidence exonerated him.

24.5 YEARS ILLINOIS

Jerry Miller was convicted of raping a woman in a parking garage. After the attack, the rapist attempted to drive the victim's car out of the garage with her in the trunk. Two parking attendants began questioning the assailant, and he fled. A police officer, who thought that Miller resembled the composite sketch, put him in a lineup and Miller was erroneously identified. He was convicted and served 24.5 years before DNA testing proved his innocence.

the true perpetrator was never identified.

THE QUESTION NOBODY CAN ANSWER

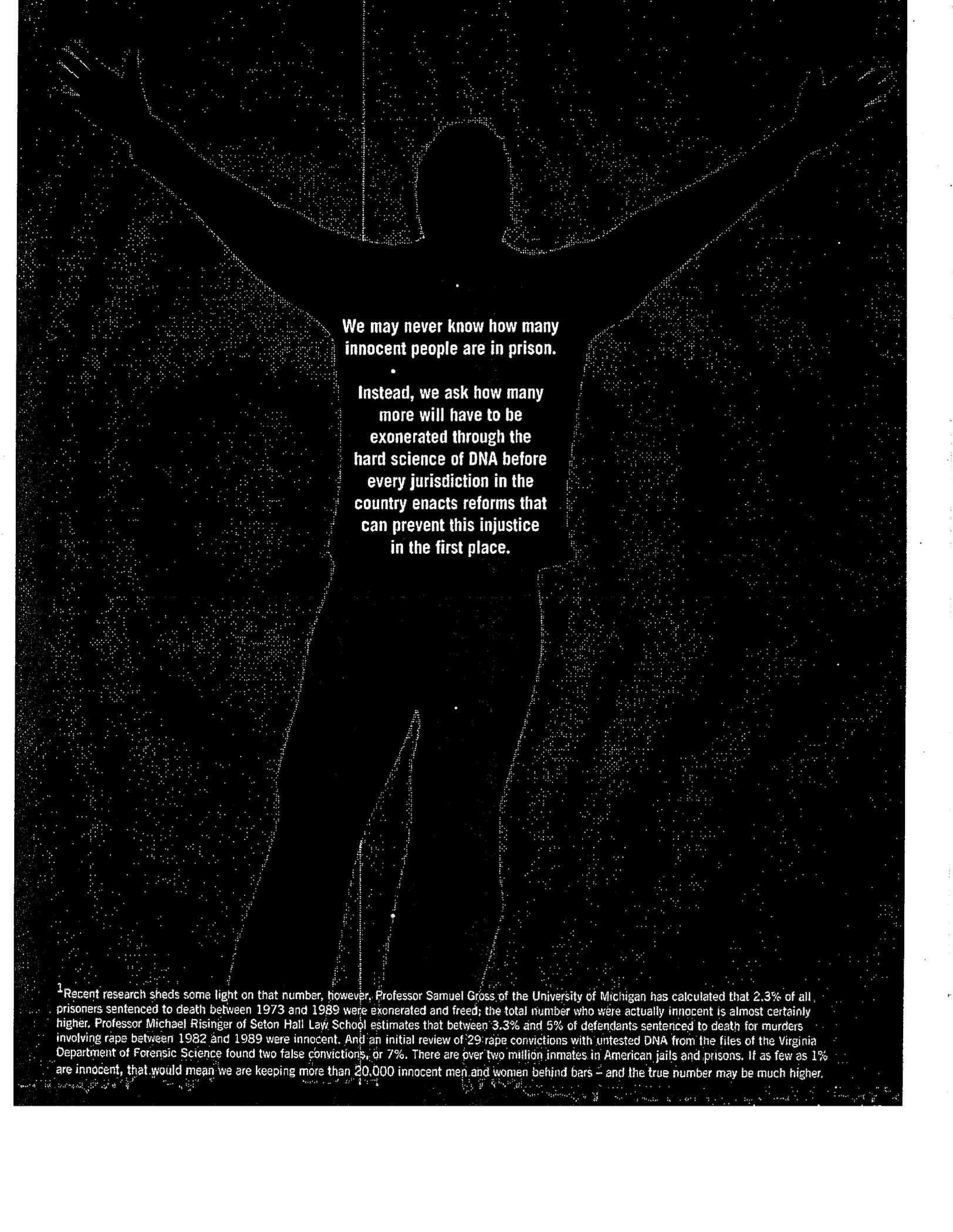
We don't know how many innocent people are in prison.¹ The individuals in this booklet are the first 200 proven innocent through DNA testing — and there will surely be many more, as the Innocence Project and other organizations in the Innocence Network continue exonerating people nationwide.

We do know that those who are exonerated by DNA are a subset within a subset — a fraction of cases that have evidence that still exists and can yield DNA results, within the tiny fraction of cases that even have DNA evidence as part of the crime.

Very few cases involve physical evidence that could be subjected to DNA testing (for example, it is estimated that, even among murders, only 10% of cases have such evidence).

The Innocence Project receives more than 3,000 letters per year from prisoners nationwide, and Innocence Network organizations receive many more. At any given time, the Innocence Project is actively evaluating 6,000 to 10,000 cases. Approximately 33% of DNA cases that are ultimately closed by the Innocence Project are closed because the evidence has been lost or destroyed.

By the time they write to the Innocence Project or another organization, innocent prisoners have lost multiple appeals and have spent years incarcerated for crimes they did not commit. Many of them have concluded, understandably, that the truth will never come to light, so they do not seek help.



**We may never know how many
innocent people are in prison.**

**Instead, we ask how many
more will have to be
exonerated through the
hard science of DNA before
every jurisdiction in the
country enacts reforms that
can prevent this injustice
in the first place.**

¹Recent research sheds some light on that number, however. Professor Samuel Gross of the University of Michigan has calculated that 2.3% of all prisoners sentenced to death between 1973 and 1989 were exonerated and freed; the total number who were actually innocent is almost certainly higher. Professor Michael Risinger of Seton Hall Law School estimates that between 3.3% and 5% of defendants sentenced to death for murders involving rape between 1982 and 1989 were innocent. And an initial review of 29 rape convictions with untested DNA from the files of the Virginia Department of Forensic Science found two false convictions, or 7%. There are over two million inmates in American jails and prisons. If as few as 1% are innocent, that would mean we are keeping more than 20,000 innocent men and women behind bars – and the true number may be much higher.

The Innocence Project was founded in 1992 by Barry C. Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law at Yeshiva University to assist prisoners who could be proven innocent through DNA testing. To date, 200 people in the United States have been exonerated by DNA testing, including 14 who served time on death row. These people served an average of 12 years in prison before exoneration and release. The Innocence Project's full-time staff attorneys and Cardozo clinic students provided direct representation or critical assistance in most of these cases. The Innocence Project's groundbreaking use of DNA technology to free innocent people has provided irrefutable proof that wrongful convictions are not isolated or rare events but instead arise from systemic defects. Now an independent nonprofit organization closely affiliated with Cardozo School of Law at Yeshiva University, the Innocence Project's mission is nothing less than to free the staggering numbers of innocent people who remain incarcerated and to bring substantive reform to the system responsible for their unjust imprisonment.

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October 1, 2007

Exoneration Using DNA Brings Change in Legal System

By SOLOMON MOORE

State lawmakers across the country are adopting broad changes to criminal justice procedures as a response to the exoneration of more than 200 convicts through the use of DNA evidence.

All but eight states now give inmates varying degrees of access to DNA evidence that might not have been available at the time of their convictions. Many states are also overhauling the way witnesses identify suspects, crime labs handle evidence and informants are used.

At least six states have created commissions to expedite cases of those wrongfully convicted or to consider changes to criminal justice procedures. One of them, the California Commission on the Fair Administration of Justice, will hold a hearing this month on remedies for people who have been wrongfully convicted.

Laws in several states, including Illinois, New Jersey and North Carolina, have bipartisan backing, with many Democrats supportive on civil rights grounds and Republicans generally hoping that tighter procedures will lead to fewer challenges of convictions.

"Technology has made a big difference," said Margaret Berger, a DNA legal expert who is on a National Academy of Sciences panel that is looking into the changing needs of forensic scientists. "We see that there are new techniques for ascertaining the truth."

Maryland, North Carolina, Vermont and West Virginia passed legislation this year to create tougher standards for the identification of suspects by witnesses, one of the most trouble-ridden procedures.

Nationwide, misidentification by witnesses led to wrongful convictions in 75 percent of the 207 instances in which prisoners have been exonerated over the last decade, according to the Innocence Project, a group in New York that investigates wrongful convictions.

Legislatures considered 25 witness identification bills in 17 states this year, the National Association of Criminal Defense Lawyers reported. Five states approved bills, while five states defeated them. Bills are pending in seven states.

"It's become clear that eyewitnesses are fallible," said Lt. Kenneth A. Patenaude, a police commander in Northampton, Mass., who is an expert on witness identification techniques.

Two states, Vermont and Maryland, passed laws this year to improve crime lab oversight to eliminate errors and omissions. Maryland recently passed a law that will hold its crime labs to the same standards as clinical labs, a much more rigorous requirement. Other legislative changes to crime lab oversight are pending in 21 states, including New York.

App. 2

More than 500 local and state jurisdictions, including Alaska, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, Wisconsin and the District of Columbia have adopted policies that require the recording of interrogations to help prevent false confessions, according to the Innocence Project.

The California Legislature also passed a bill this year that requires informant testimony to be corroborated before it can be heard by a jury. Critics say such testimony can be unreliable, especially when it is offered by convicts or suspects in return for leniency. The bill awaits approval by the governor.

Advocates of efforts to use DNA to exonerate those wrongfully convicted say the changes in the state laws are welcome and long overdue.

"The legislative reform movement as a result of these DNA exonerations is probably the single greatest criminal justice reform effort in the last 40 years," said Peter J. Neufeld, co-director of the Innocence Project.

But some law enforcement officials oppose some of the changes, saying they create legal minefields for the police and prosecutors. Any deviation from the new standards, no matter how minor, could be taken up by defense lawyers in an appeal, the critics say.

The California State Sheriffs' Association is fighting two bills there that would mandate electronic recording of interrogations and corroboration of informant testimony. The bills have been passed by the Legislature and are awaiting final approval by Gov. Arnold Schwarzenegger, a Republican.

"Simply put, these two bills create loopholes for defendants to get an edge in court on technicalities," according to a letter from the sheriffs' organization to the California Commission on the Fair Administration of Justice. The association also opposed a state bill that would create guidelines for suspect lineups.

Even some proponents of the new standards balk at making them state law, insisting they are better dealt with by local law enforcement agencies.

"I'm not fond of legislation," said Lieutenant Patenaude, the Massachusetts police commander. "I've been asked to review bills in several states, and I haven't seen one that mirrors the best practices that we've put out here. I'd like to see police agencies mold the procedures instead of legislatures or courts."

Studies of wrongful convictions suggest that there are thousands more innocent people in jails and prisons. The Innocence Project, the nation's most prominent organization devoted to proving wrongful convictions, is pursuing 250 cases and at any given time is reviewing 6,000 to 10,000 additional cases for legal action. Approximately 1 percent of those cases will be accepted, and half of those accepted cases are closed because evidence has been lost or destroyed.

Other smaller efforts to overturn wrongful convictions also receive thousands of letters from inmates.

In a 2005 study, a University of Michigan Law School professor, Samuel R. Gross, estimated that 340 prisoners sentenced from 1989 to 2003 had been exonerated. Of those, 205 were convicted of murder and 121 of rape. Half of the wrongful murder convictions and 88 percent of the wrongful rape convictions included false eyewitness identification, the study found.

DNA evidence was used to exonerate 144 of those inmates.

In a 2007 study, Professor Gross analyzed 3,792 death sentences imposed from 1973 to 1989 and found that 86 death row inmates, or 2.3 percent, had been exonerated through 2004

Professor Gross said the total number of innocent prisoners was likely to be far higher. In his view, well-documented wrongful convictions in capital cases provided a window on systemic problems, with even larger numbers of convictions for less serious and less publicized convictions.

“Of the 340 exonerations I looked at” in the 2005 study, Professor Gross said, “96 percent are for rape and murder.” He added: “Does that mean nobody was wrongfully convicted for drug possession, or drunk driving or burglary? Chances are there are many, many more false convictions for lesser crimes.” The most recent prisoner to be exonerated by DNA evidence was Dwayne Allen Dail, who served 18 years in North Carolina for a false conviction of child rape. Prosecutors had used the victim’s identification of Mr. Dail and hair found at the crime scene to convict him. Years later, after repeated inquiries from defense lawyers, the police found a box of additional evidence in the case that contained the victim’s semen-stained nightgown. DNA analysis ruled out Mr. Dail and implicated another man. Mr. Dail was released from prison in August.

The proposed laws on witness identification are intended to reduce cases like Mr. Dail’s by requiring things like sequential photo lineups of suspects, in which police officers show witnesses photographs of one suspect at a time. Studies have shown that witnesses tend to compare photos when they are shown them simultaneously, a tendency that can lead to errors.

The legislation would also create “double blind” systems so that the police officers administering the photo lineups are unaware of the suspects’ identities in order to avoid influencing witnesses.

The North Carolina legislature adopted both lineup procedures this year.

Crimes labs are also getting additional scrutiny in some states.

William E. Marbaker, president of the American Society of Crime Lab Directors, an independent accreditation body, said the group had accredited more than 300 crime labs. But some law enforcement agencies are finding that even more oversight is needed.

A two-year review of the Houston Police Department’s crime lab called into question more than 600 cases. The review was initiated after a court found in 2005 that faulty forensic evidence led to the conviction of George Rodriguez in 1987 for kidnapping and assaulting a child. Mr. Rodriguez served 17 years of a 60-year sentence before his release two years ago.

Houston crime lab officials erroneously concluded that hair found at the crime scene belonged to Mr. Rodriguez. The crime lab also failed to rule out Mr. Rodriguez as a suspect after finding that semen collected from the scene matched that of another man.

Eight states — Alabama, Alaska, Massachusetts, Mississippi, Oklahoma, South Carolina, South Dakota and Wyoming — do not have laws that give inmates access to DNA evidence.

Advocacy groups, including the Innocence Project, said they intend to lobby for the passage of access laws in those states during the next legislative session.

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