

James Lee Woodard 9/30/09  
Jerry Lee Evans 10/21/09  
Michael Marshall 12/14/09  
James Bain 12/17/09  
Donald Eugene Gates 12/18/09  
Freddie Peacock 2/04/10  
Ted Bradford 2/11/10  
Curtis Jasper Moore 3/24/10  
Anthony Caravella 3/25/10  
Frank Sterling 4/28/10  
Raymond Towler 5/05/10  
Patrick Brown 6/17/10  
Douglas Pacyon 6/21/10  
Larry Davis 7/14/10  
Alan Northrop 7/14/10  
Anthony Johnson 9/15/10  
William Avery 9/21/10  
Maurice Patterson 10/8/10  
Michael Anthony Green 10/20/10  
John Watkins 12/13/10  
Phillip Bivens 12/14/10  
Bobby Ray Dixon 12/14/10  
Larry Ruffin 12/14/10  
Cornelius Dupree 3/03/11  
Derrick Williams 4/04/11  
Calvin Wayne Cunningham 4/12/11

# THE INNOCENCE PROJECT **IN PRINT**

BENJAMIN N. CARDOZO SCHOOL OF LAW, YESHIVA UNIVERSITY

VOLUME 7 ISSUE 1

SUMMER 2011

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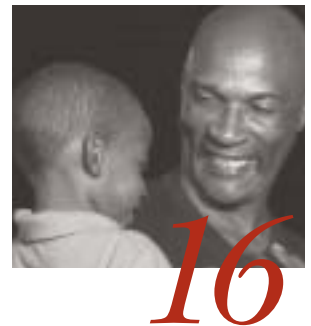
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ON THE COVER: ON MARCH 21, HIS 46TH BIRTHDAY, THOMAS HAYNESWORTH WAS RELEASED AFTER SPENDING 27 YEARS IN PRISON FOR CRIMES HE DIDN'T COMMIT. HERE, HE HUGS HIS MOTHER, DELORES HAYNESWORTH, WHILE A CAMERA CREW LOOKS ON.

PHOTO CREDITS: COVER, *Richmond Times-Dispatch*; PAGE 3, www.heatherconley.com; PAGE 6, *Richmond Times-Dispatch*; PAGE 9, Tony Deifell; PAGE 12, Dottie Stover/University of Cincinnati Photography; PAGE 13, Greg Kendall-Ball; PAGE 14, Diane Bladecki; PAGE 18, Paul Videla/*Bradenton Herald*

THE NAMES THAT FOLLOW BELOW ARE THOSE OF THE 271 WRONGFULLY CONVICTED PEOPLE WHOM DNA HELPED EXONERATE, FOLLOWED BY THE YEARS OF THEIR CONVICTION AND EXONERATION.

# LOOKING BACK, LOOKING AHEAD

When we met with our colleagues from the Innocence Network this spring, we felt that, beyond just participating in a three-day conference, we were making history. Never before had so many exonerated people – and their family members and advocates – come together from all across the country and the world. The conference reinvigorated our efforts and challenged us to think bigger.

Every exoneree – whether male or female, black or white, from the big city or a small town – shares the life-altering experience of wrongful conviction. (Read more about the exonerees who attended the conference in “Strength in Numbers” starting on page 12.) And just as the criminal justice system repeats the same mistakes, wrongful conviction cases share identifiable similarities.

Seventy-five percent of those exonerated through DNA testing were misidentified by an eyewitness. (As you’ll read in “A Case of Mistaken Identity” on page 4, eyewitness misidentification is the leading cause of wrongful convictions.) Twenty-five percent of their cases involved a false confession or admission. (False confession expert Richard Leo explains how this can happen in “In Their Own Words,” on page 16.) Many other wrongful convictions involved faulty forensics, jailhouse informants, prosecutorial and police misconduct and ineffective defense. (For more about prosecutorial misconduct, see “Who Will Prosecute the Prosecutors?” on page 9. For more about ineffective defense, see “Innocence by the Numbers” on page 22.)

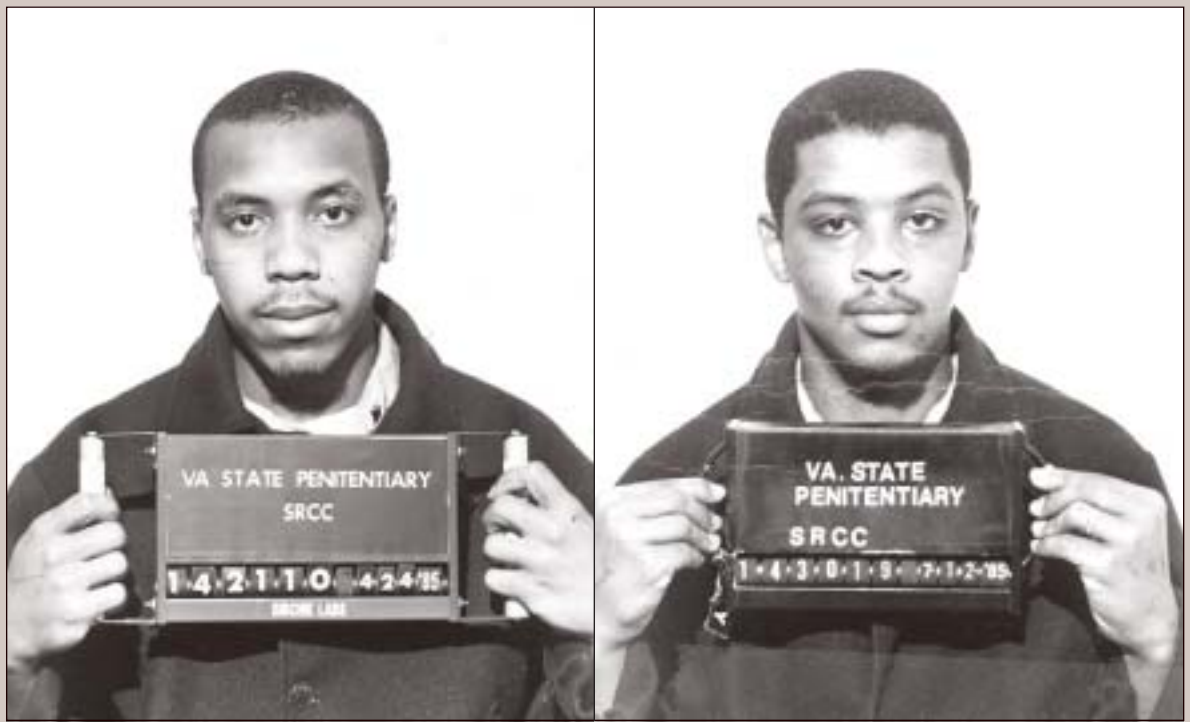
In order to confront these systemic flaws, the Innocence Project helped found and develop the Innocence Network, an affiliation of organizations dedicated to overturning wrongful convictions and improving the criminal justice system. Although each of the 55 U.S. Innocence Network member organizations operates independently – from Texas to Ohio to Washington State – we help to coordinate policy reform efforts. The Innocence Project provides strategic support, shapes the reform agenda and collaborates with the member organizations. Working together, we build relationships with state lawmakers and local law enforcement – all while keeping our bold national agenda intact.

It’s an effort that began many years ago with only a few, scattered exonerations. Today, over 270 people have been exonerated through DNA testing, and wrongful convictions have been overturned in hundreds of other cases by other means. We have revealed startling flaws in the criminal justice system and laid the groundwork for systemic change. How many more innocent prisoners will be freed in the years to come? How will the system be transformed? We can’t wait to find out.



Maddy deLone  
Executive Director





# A CASE OF MISTAKEN IDENTITY

Nationwide, of the 271 cases of wrongful conviction overturned through DNA testing, 202 involved eyewitness misidentification. An ongoing Innocence Project case tells the story behind the number.

## A YOUNG MAN'S FUTURE UPENDED

In early 1984, a serial rapist began terrorizing white women in Richmond, Virginia. Police apprehended Thomas Haynesworth, and he was convicted of three crimes. But as the city breathed a sigh of relief, the attacks continued. The perpetrator, emboldened, began calling himself the “black ninja.” Finally, towards the end of the year, Leon Davis was arrested and convicted, and the “black ninja” never struck again.

THOMAS HAYNESWORTH (LEFT) WAS MISIDENTIFIED FIVE TIMES AS THE PERPETRATOR OF A SERIES OF RAPES THAT WERE ACTUALLY COMMITTED BY LEON DAVIS (RIGHT).

All of the crimes were perpetrated within the same one-mile radius, all targeted the same victim demographic and all followed a similar pattern. Was there a connection between

Haynesworth and Davis? Could Davis have committed all of the crimes? If police and prosecutors asked these questions, they never bothered to find the answers.

Thomas Haynesworth became a suspect when one of the victims spotted him walking near his home and identified him as the attacker. He was 18 years old and had no criminal record. His photo was shown to victims of similar crimes. Five victims eventually identified him – the one on the street and four in photo arrays. In one of the crimes, the victim, who was 5' 8", had originally described the perpetrator as "taller than me." In another, the perpetrator was described as 5' 10". Haynesworth is only 5'6 1/2"; Davis is 5'10". Haynesworth was ultimately convicted of two rapes and one attempted robbery and abduction.

Haynesworth, a young man with dreams and ambitions, was suddenly a convicted serial rapist. He says "I thought they were going to see that they made a mistake and correct it. It's been 27 years, and I'm still waiting."

In Haynesworth's first letter to the Innocence Project, he writes: "There is an inmate named Leon Davis who is in prison for some of the same things I'm charged with, and he was living down the street from me in Richmond, Virginia.... I will bet my life this is the man who committed these crimes.... A simple blood test could solve this problem right away. Just get my DNA tested, and you will see I'm innocent of these crimes."

## RELEASED, BUT NOT FREE

In Virginia, post-conviction DNA testing has refuted eyewitness evidence in ten cases. These ten people were exonerated after spending a combined total of 128 years in prison. Now Haynesworth's case makes 11. DNA testing of biological evidence from the perpetrator links Leon Davis to two of the crimes that Haynesworth was charged with, one that resulted in his conviction and one that resulted in his acquittal. Haynesworth has been exonerated of that one crime, but the other two convictions still stand because biological evidence is not available for post-conviction DNA testing.

Even without the DNA evidence, it's plain to see that Haynesworth did not perpetrate any of these crimes. The manner in which the rapes and attempted rapes were committed is consistent with Davis' modus operandi. All of the victims provided similar descriptions of the perpetrator. Davis matches these descriptions, Haynesworth does not.

In February, local prosecutors joined the Innocence Project, the Mid-Atlantic Innocence Project and the law firm of Hogan Lovells in an effort to overturn all three convictions. The Virginia Attorney General also supports Haynesworth's motion for exoneration on all charges. Even though his motion is unopposed, the Virginia Court of Appeals still hasn't ruled on it. Without a writ of innocence or a pardon, Haynesworth cannot be cleared.

At the Governor's request, and the Innocence Project's urging, Haynesworth was released this March on his 46th birthday. Since then, the Virginia Attorney General's

**"THERE IS AN INMATE NAMED  
LEON DAVIS WHO IS IN PRISON  
FOR SOME OF THE SAME  
THINGS I'M CHARGED WITH....  
I WILL BET MY LIFE THIS IS  
THE MAN WHO COMMITTED  
THESE CRIMES."**

*– From a letter Thomas Haynesworth wrote  
to the Innocence Project from prison*



Office has employed him as an office technician, a job that he says he enjoys because “it makes me feel like part of society again.” But, sadly, Haynesworth is still under state supervision. As long as he awaits a decision from the court, he will continue to be on parole, permitted only to leave the house to go to his job.

## THE EYES DECEIVE

In the rape that Haynesworth has been exonerated of, the rape victim was reported as saying: “I would have staked my life on the fact that I knew exactly who had done this.” How could she have been so sure and yet so wrong? And how could multiple witnesses have misidentified the same innocent man?

Scientific research about eyewitness identification has advanced in the last century, but one early discovery remains undisputed: memory is mutable. Witnesses will naturally look to outside sources – law enforcement, media, or other witnesses – for reassurance and guidance. A suggestion from law enforcement, whether intentional or unintentional, can have the same effect that contamination of forensic evidence has – it becomes unreliable.

The Innocence Project encourages state legislatures to mandate the adoption of uniform identification procedures and advocates a specific package of best practices that have been proven to reduce the rate of misidentification. (For more about these reforms, see the sidebar on page 8.) Police identification procedures vary from state to state and even jurisdiction to jurisdiction. Many police departments don’t have written policies at all.

THOMAS HAYNESWORTH WALKS IN THE FRONT DOOR OF HIS MOTHER’S HOUSE IN RICHMOND, VIRGINIA, ON THE DAY OF HIS RELEASE FROM THE GREENSVILLE CORRECTIONAL CENTER.

Instead, procedures are passed down from senior officers to junior officers and may not be based on scientific research or best practices. Research has shown that simple procedural errors, such as failing to tell the witness that the perpetrator may not be present in the lineup, can result in misidentifications and set the stage for a wrongful conviction.

## RECOMMENDATIONS FOR REFORM

Eleven states, including Virginia, have statewide laws governing lineup procedures. Earlier this year, Virginia lawmakers, at the urging of the Innocence Project and other stakeholders, passed a law that will require police departments to adopt eyewitness identification procedures consistent with best practices. The Virginia State Crime Commission has committed to addressing the issue by planning an audit to investigate whether the procedures are in place. If the procedures are scientifically sound, the new law could be a big step toward strengthening the integrity of eyewitness evidence in Virginia and preventing what happened to Haynesworth from happening again.

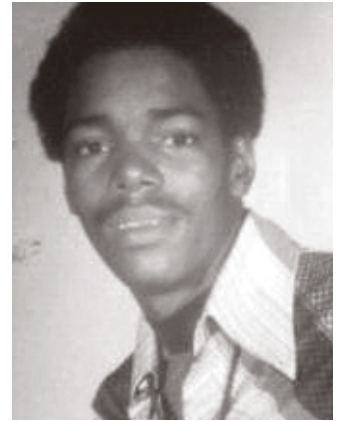
New Jersey led the vanguard in eyewitness identification reform in 2001. But a 2004 conviction revealed that the new procedures mandated by the reforms were not always being practiced. Larry Henderson's conviction, based largely on faulty eyewitness identification, prompted the state Supreme Court to consider a major overhaul of legal standards for eyewitness identification evidence.

Innocence Project Co-Director Barry Scheck argued the case before the court earlier this year. At issue is the legal test used by 48 states and the federal courts to determine the reliability and admissibility of eyewitness testimony. *People v. Henderson* could change the way that cases involving eyewitness identification are litigated in New Jersey and could ultimately compel reform in other states as well.

The majority of states still have no laws governing eyewitness identification procedures, and the Innocence Project is working with law enforcement and lawmakers to affect change in this area. In Texas – where more people have been misidentified, wrongfully convicted, and exonerated through DNA testing than any other state – exonerees have teamed with the Innocence Project and local advocates to support eyewitness identification reforms that passed in June.

Just a week after he was declared innocent in early 2011, Cornelius Dupree joined over a dozen Texas exonerees to testify at the state capitol in favor of eyewitness identification reform. Dupree was misidentified as one of two men who perpetrated a Dallas area rape and robbery. After 30 years behind bars, Dupree has served more time wrongfully than anyone else in the state.

“It’s not going to be a perfect system,” Dupree told the legislators, “but we need to minimize the amount of people falling into the same trap I did.” During his 30 years of wrongful imprisonment, Dupree lost both parents and was not able to go to their funerals. He might have been released on parole in 2004 if he had been willing to



CORNELIUS DUPREE, BEFORE HIS WRONGFUL CONVICTION AT AGE 19 (TOP), AND AFTER HIS 30 YEARS OF WRONGFUL IMPRISONMENT AT AGE 51, WITH HIS WIFE, SELMA DUPREE (BOTTOM).

attend a sex offender treatment program, but he refused. He and his longtime love, Selma, wed the day after his release. They had dated for 20 years. (For more about Dupree, see “Strength in Numbers” on page 12.)

For all that Dupree and Haynesworth have endured, they are only two of the over 200 people who have been misidentified and proven innocent through DNA testing after years or decades. Since DNA testing is not available in most cases, we can never know how many people are wrongfully imprisoned because they were mistaken for somebody else. But we do know how to address the problem. Decades of scientific research has shown that the rate of misidentifications can be reduced through simple reforms. That means fewer wrongful convictions and more real perpetrators apprehended before they have a chance to reoffend. ▲

## EYEWITNESS IDENTIFICATION PROCEDURAL REFORMS

As recommended by the Innocence Project and leading national justice and legal organizations including the National Institute of Justice and the American Bar Association.

### ▲ DOUBLE-BLIND ADMINISTRATION

Photos or lineup members should be presented by an administrator who does not know who the suspect is. And the witness should be told that the administrator doesn't know.

### ▲ PROPER LINEUP COMPOSITION

“Fillers” (the non-suspects included in a lineup) should resemble the eyewitness's description of the perpetrator, and the suspect should not stand out. Also, a lineup should not contain more than one suspect.

### ▲ INSTRUCTIONS TO THE WITNESS

The person viewing a lineup should be told that the perpetrator may not be in the lineup and that the investigation will continue regardless of whether an identification is made.

### ▲ CONFIDENCE STATEMENTS

At the time of the identification, the eyewitness should provide a statement in her own words indicating her level of confidence in the identification.

### ▲ RECORDING THE PROCEDURE

Identification procedures should be videotaped.

### ▲ SEQUENTIAL PRESENTATION

*(Optional)* Lineup members are presented one at a time (by a “blind” administrator) instead of side by side.





# WHO WILL PROSECUTE THE PROSECUTORS?

A recent Supreme Court decision begs the question of what, if anything, prosecutors can be held accountable for.

In 1985, John Thompson, a 22-year-old father of two, was wrongfully convicted of murder and sent to death row at Angola State Penitentiary in Louisiana. While facing his seventh execution date, a private investigator hired by his appellate attorneys discovered scientific evidence of Thompson's innocence that had been concealed for 15 years by the New Orleans Parish District Attorney's Office.

Thompson was released and exonerated in 2003 after 18 years in prison, 14 of them isolated on death row. The state of Louisiana gave him \$10 and a bus ticket upon his release. He sued the District Attorney's Office. A jury awarded him \$14 million, one for each year on death row. When Louisiana appealed, the case went to the U.S. Supreme

JOHN THOMPSON

Court. This spring, Justice Clarence Thomas issued the majority 5-4 decision in *Connick v. Thompson* that the prosecutor's office could not be held liable.

The controversial and divided decision leaves Thompson with no choice but to get on with his life, which, incredibly, he already has. He is the founder and director of "Resurrection after Exoneration," an organization that provides transitional housing to exonerees in the New Orleans area. Thompson's fortitude notwithstanding, his story has become a kind of cautionary tale of unchecked prosecutorial power. If prosecutors cannot be held accountable in this case, when can they be held accountable?

In an op-ed for *The New York Times*, Thompson writes, "I don't care about the money. I just want to know why the prosecutors who hid evidence, sent me to prison for something I didn't do and nearly had me killed are not in jail themselves. There were no ethics charges against them, no criminal charges, no one was fired and now, according to the Supreme Court, no one can be sued."

**"BECAUSE THE ABSENCE OF  
THE WITHHELD EVIDENCE MAY  
RESULT IN THE CONVICTION OF  
AN INNOCENT DEFENDANT,  
IT IS UNCONSCIONABLE NOT  
TO IMPOSE REASONABLE  
CONTROLS IMPELLING  
PROSECUTORS TO BRING THE  
INFORMATION TO LIGHT."**

— Justice Ruth Bader Ginsburg

## DELIBERATE INDIFFERENCE

The prosecutorial misconduct in Thompson's case was no anomaly. According to a report by the Innocence Project of New Orleans, District Attorney Harry F. Connick's office withheld evidence favorable to the defense in at least nine death row cases. Four death row convictions were overturned because of the misconduct.

In spite of this legacy, the Supreme Court ruled that the violation in the Thompson case was "a single incident," and that no pattern of misconduct could be established. The majority opinion acknowledges the four other overturned convictions but argues that they don't count because different types of evidence were withheld in those cases. In her dissent, Justice Ginsburg writes, "the conceded, long-concealed prosecutorial transgressions were neither isolated nor atypical." She cites ten items of evidence that were withheld from Thompson's defense, including police reports, audiotapes and blood evidence that would have seriously undermined Thompson's conviction.

Such violations have led to an incalculable number of wrongful convictions. Because of the often covert nature of prosecutorial misconduct, it is impossible to estimate how many innocent people have been affected. Furthermore, the vast majority of felony cases are resolved through plea bargaining and never go to trial. Prosecutors may have engaged in misconduct in those cases as well.

In at least 63 of the wrongful convictions later overturned through DNA testing, innocent defendants alleged prosecutorial misconduct in their appeals or civil trials. Examples of misconduct include eliciting perjured testimony; destroying, concealing or fabricating evidence; making improper and inflammatory statements and more.

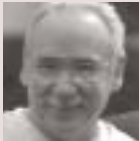
Recent studies of these and other cases have shown that prosecutors are rarely found at fault, and even when they are, they are very rarely disciplined for it. A *USA Today* investigation found that only one federal prosecutor has been disbarred, even

temporarily, for misconduct in the past 12 years despite 201 documented cases of violated laws or ethics rules. The federal prosecutor in that one case was suspended from practicing law for just one year. A study conducted by the Northern California Innocence Project supports these findings. In that study, over 700 California prosecutors engaged in misconduct from 1997 to 2009 and only seven of them were disciplined.

In response to the misguided ruling in *Connick v. Thompson*, the Innocence Network sent a letter to Attorney General Eric Holder, the Presidents of the National District Attorneys Association and the National Association of Attorneys General calling for solutions to the problem of prosecutorial misconduct. Nineteen wrongfully convicted victims of prosecutorial misconduct signed the letter: “Now that the wrongfully convicted have virtually no meaningful access to the courts to hold prosecutors liable for their misdeeds, we demand to know what you intend to do to put a check on the otherwise unchecked and enormous power that prosecutors wield over the justice system.”

The 19 exoneree signatories included five people who served time on death row. Kirk Bloodworth, who spent two years on Maryland’s death row, remarked on the Thompson decision: “It’s sad for America that we allow court officers to inflict the most harmful of all errors upon us with glib and cavalier intent to only win. Justice in that event always loses.” ▲

## OTHER EXAMPLES OF PROSECUTORIAL MISCONDUCT



### THOMAS GOLDSTEIN

LOS ANGELES DISTRICT ATTORNEY JOHN VAN DE KAMP DEVELOPED A CASE AGAINST GOLDSTEIN BASED LARGELY ON THE INCENTIVIZED TESTIMONY OF A JAILHOUSE SNITCH. THE INFORMANT TESTIFIED THAT HE RECEIVED NO BENEFIT FOR HIS TESTIMONY WHEN, IN FACT, HE HAD NEGOTIATED WITH THE PROSECUTOR'S OFFICE FOR A LIGHTER SENTENCE IN AN UNRELATED CRIME. THE U.S. SUPREME COURT STRUCK DOWN GOLDSTEIN'S ATTEMPT TO HOLD PROSECUTORS' LIABLE IN *VAN DE KAMP V. GOLDSTEIN* IN 2009. GOLDSTEIN'S CONVICTION WAS OVERTURNED IN 2004 BECAUSE OF CONCERNS ABOUT THE INFORMANT'S CREDIBILITY.



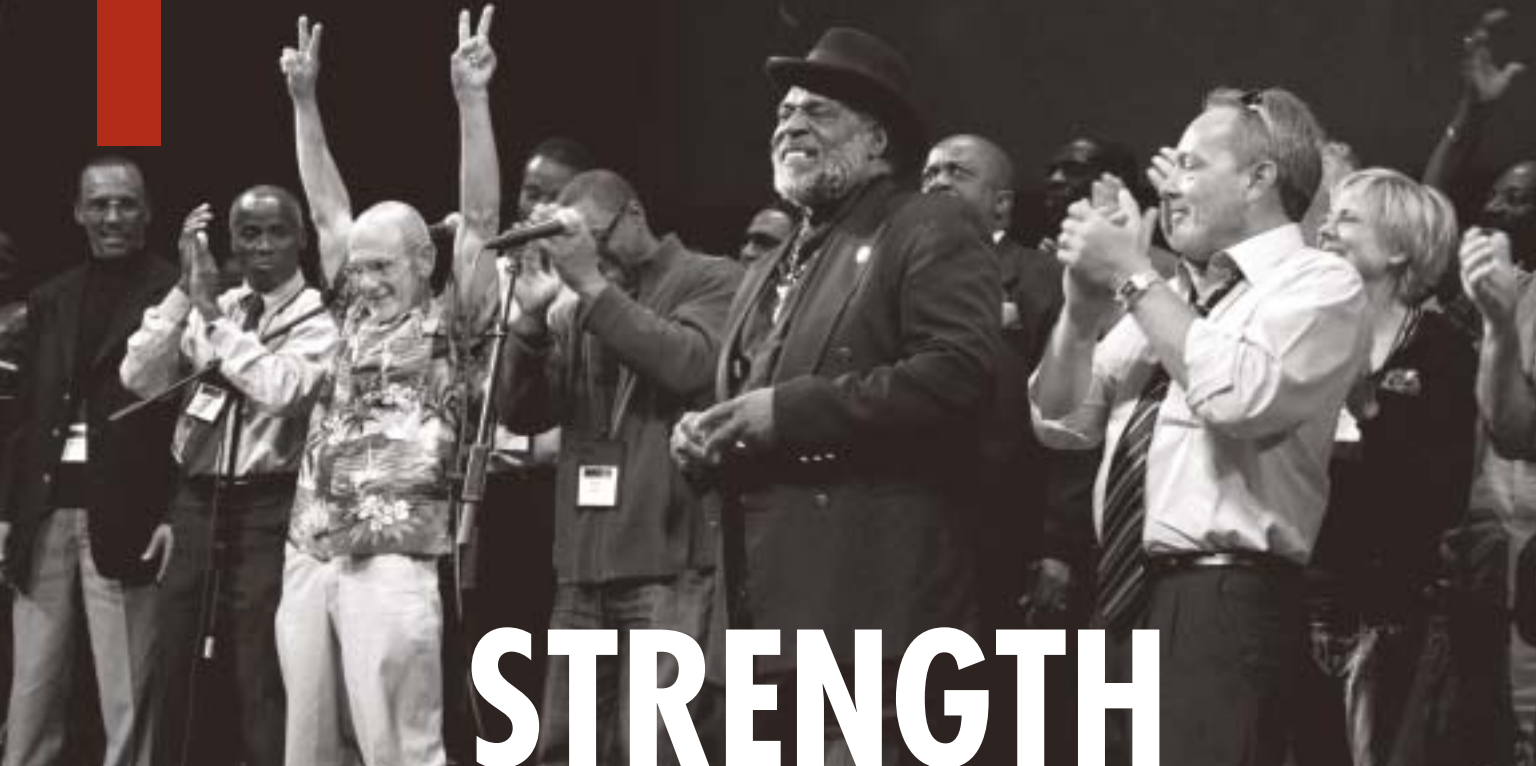
### CURTIS McCARTY

OKLAHOMA CITY DISTRICT ATTORNEY ROBERT MACY COMMITTED MULTIPLE ACTS OF MISCONDUCT IN THE McCARTY CASE, INCLUDING WITHHOLDING KEY EVIDENCE FROM THE DEFENSE, DISPARAGING DEFENSE COUNSEL AND MAKING INFLAMMATORY REMARKS. MACY SENT 73 PEOPLE TO DEATH ROW DURING HIS 21 YEAR CAREER (INCLUDING McCARTY), MORE THAN ANY OTHER PROSECUTOR IN THE NATION. DNA TESTING PROVED McCARTY'S INNOCENCE AND HE WAS EXONERATED WITH THE HELP OF THE INNOCENCE PROJECT IN 2007. McCARTY SPENT 19 YEARS ON DEATH ROW AND 21 YEARS IN PRISON.



### NATHANIEL HATCHETT

WHEN PRE-TRIAL DNA TESTING EXCLUDED HATCHETT, PROSECUTORS REQUESTED THAT THE VICTIM'S HUSBAND'S GENETIC PROFILE BE COMPARED TO THE BIOLOGICAL EVIDENCE. BUT THE HUSBAND WAS ALSO EXCLUDED, SUGGESTING THE PRESENCE OF AN UNKNOWN PERPETRATOR. PROSECUTORS DID NOT SHARE THIS INFORMATION WITH DEFENSE ATTORNEYS. IN FACT, THE PROSECUTION REFERRED TO THE HUSBAND IN CLOSING ARGUMENTS AS A POSSIBLE CONTRIBUTOR OF THE EVIDENCE. DESPITE DNA EVIDENCE POINTING TO HIS INNOCENCE, HATCHETT WAS CONVICTED AND SPENT 10 YEARS IN PRISON BEFORE HIS EXONERATION IN 2008.



# STRENGTH IN NUMBERS

The annual Innocence Network Conference is the largest gathering of exonerated people anywhere in the world. This year was the biggest ever.

Standing together, the men and women on stage represented hundreds of years of wrongful imprisonment. They were Americans, Mexicans, British, Japanese and Canadians. They were grandfathers, mothers, small business owners, students, activists and newlyweds. Some had been exonerated 10 years ago or more, others had been out less than a month. They were taking their lives back.

Before 2000, only 66 people had been exonerated through DNA testing and they were scattered throughout the country. Today, over 270 innocent people have been cleared through DNA testing and hundreds more have been exonerated through other means. Each year, they meet to socialize and strategize at the Innocence Network Conference.

The Innocence Network is an affiliation of organizations that provides pro bono legal and investigative services to prisoners with claims of innocence and works to improve

EXONEREES ON STAGE AT THE "LET FREEDOM SING"  
CONCERT ON THE LAST NIGHT OF THE INNOCENCE NETWORK  
CONFERENCE IN CINCINNATI.

the criminal justice system. The Innocence Project is a founding member of the Network, which now includes 55 projects from the U.S. and 9 in other countries. Attorneys and staff members from the projects also attend the conference.

Hosted by the Ohio Innocence Project at the Freedom Center in Cincinnati, the April 2011 conference was the largest gathering of exonerees ever. Part family reunion, part professional networking opportunity, the conference gave exonerees the chance to reunite and work toward common goals – fighting injustice and easing the transition for the newly released. In a welcoming ceremony, each exonerated person came forward as their name and current occupation was read. Here are a few of their stories:

## **JAMES D. WALLER: Fundraising for Exoneree Brothers of Texas; Bail bondsman**

Exonerated from Dallas, Texas, in 2007, James Waller has attended the conference every year since his exoneration. Those four conferences have brought him to San Jose, California; Houston, Texas; Atlanta, Georgia; and now to Cincinnati. Impeccably dressed in a tan suit at 6'4", he's ever aware of the impact his presence can have at strategic times – at a legislative hearing for criminal justice reform, for example, or at the exoneration of the person most recently proven innocent in Texas. His drive to be a presence in the innocence movement brings him back to the conference year after year.

Waller says, “At the Introduction of the Exonerees, you see all these people come up knowing that they’ve been locked up for a long time. So many years, and so many family members lost during that time. To see that they still want to get out and work after being incarcerated for so long – you see men who are 50 years old and don’t have any social security because they were locked up for 25 or 30 years – and then for them to say that they just want to get out and do something to help, that takes a lot of courage.”

Waller and four other Texas exonerees have started the “Exoneree Brothers of Texas,” to provide assistance to the newly released exonerees. The group is filing for nonprofit status and hoping to provide transitional housing in Dallas for Texas exonerees and at-risk youth.

## **CORNELIUS DUPREE: Attending Houston Community College; Advocate for eyewitness reform; Intern for Senator Rodney Ellis**

One would never guess from all of his activities that Cornelius Dupree has only been exonerated for a few months and has been out of prison for less than a year. Released in July 2010 and exonerated in March 2011, he endured 30 years of wrongful imprisonment. He attended the conference for the first time this year with his wife, Selma Perkins Dupree. After two decades of courtship behind bars, the two were married the day after his release.



JAMES WALLER



**“EACH ONE CAN IDENTIFY  
WITH YOUR HURT AND SORROWS  
AND PAIN.”**

— Cornelius Dupree

The trip to Cincinnati also marked Dupree’s first time on an airplane. “Everything is my first. Going into prison at such a young age, I never had the opportunity to live as an adult. You miss out on so much.”

Like Waller, his favorite moment of the conference was the Introduction to the Exonerees ceremony. “To see everyone come together on the same stage in unity – that meant a lot to me. That was very unique to be in one spot with exonerees from all over the globe who have experienced the same thing. You all can communicate on the same level. Each one can identify with your hurt and sorrows and pain.”

Being from Texas, Dupree has a stronger local support network than many others. In fact, a dozen or more Texas exonerees came out to support him at the Dallas County courthouse when he was pronounced innocent. Several of them had even served time together. Dupree hopes to do the same for those who follow in his footsteps. “I look forward to being very active and supportive in the years to come,” he says.

## **TOSHIKAZU SUGAYA: Japan’s First DNA Exoneration**

The tsunami that devastated Japan struck less than a month before the April conference, but Toshikazu Sugaya made the long journey to Ohio nevertheless. Sugaya has become an outspoken advocate for criminal justice reform in Japan since his DNA exoneration in 2010.

Based almost entirely on his false confession, Sugaya was convicted of the murder of a 4-year-old girl in 1990. A 45-year-old school bus driver at the time, Sugaya was a senior citizen by the time he was released. Both of his parents had passed away; his father died just two weeks after Sugaya’s arrest.

Speaking through a translator, Sugaya explained that he had been coerced into confessing after 13 hours of interrogation. “In Japan, interrogations are not recorded.

DARRYL BURTON EXONERATED FROM ST. LOUIS, MISSOURI (LEFT), AND BRITISH EXONEREE, GERRY CONLON (RIGHT), READ A POEM FROM “ILLUSTRATED TRUTH: EXPRESSIONS OF WRONGFUL CONVICTION” EXHIBIT SHOWCASED DURING THE INNOCENCE NETWORK CONFERENCE.

I want to see that change made in Japan and all over the world. That's why I'm here." Electronically recording interrogations from the reading of the Miranda rights onward is the best reform available to prevent false confessions from becoming wrongful convictions. In the U.S., only 18 states require interrogations to be recorded. (For more about false confessions, see "In Their Own Words" on p. 16.) In Japan, suspects can be interrogated for up to 23 days, and interrogations may include physical violence and sleep deprivation.

As one of the only exonerees in his home country, Sugaya enjoyed the opportunity to interact with people from other countries who know what he's going through. "Everyone is on the same page," he says. "I feel like I made some friends. I would like to come again."

## TRENA BOZELLA: Wife of Exoneree Dewey Bozella

Family members of the exonerated attended the conference as well, not only to accompany their husbands, brothers and daughters, but also to connect with others who share their experience. As Trena Bozella says, "Anyone who has stuck by an innocent person in prison has a story to tell."

Trena and Dewey Bozella had been married 14 years by the time of his release and exoneration for a Poughkeepsie, New York, murder that he didn't commit. Those years of dealing with his wrongful imprisonment were hard, she remembers, but life since his exoneration in 2009 has presented its own set of challenges. "The sleepless nights, the attitudes, the mood swings. I had no tools to deal with it." She spoke about these challenges on a special panel at the conference titled "Women on the Outside." The three panelists spoke about the costs, both financial and emotional, of wrongful conviction from a family member's perspective.

Fellow family members of the exonerated can help prepare each other for a newly exonerated relatives' homecoming. Most exonerees, if they have surviving family, go to live with them immediately upon release. By speaking out at the conference, Bozella hopes that she reached others who might learn from her experience: "We go through years of visiting them, bringing them packages, we do this and that. We always look like the strong ones. Sometimes I thought I was losing myself to be there for him."

Dewey Bozella has since become a boxing trainer and a counselor for formerly incarcerated youth. Trena Bozella says, "After all that Dewey has gone through fighting for his freedom, he's finally found a family," she says, referring to the bond between the exonerated men and women. "It's brotherhood and sisterhood with the men and women who have been wrongfully convicted." ▲



TRENA AND DEWEY BOZELLA

# IN THEIR OWN WORDS

## Q & A WITH RICHARD LEO, ASSOCIATE PROFESSOR OF LAW AT THE UNIVERSITY OF SAN FRANCISCO AND FALSE CONFESSION EXPERT



RICHARD LEO IN HIS OFFICE AT THE UNIVERSITY OF  
SAN FRANCISCO.

DNA exonerations have proven what many find impossible to believe – people confess to crimes they didn’t commit. In fact, false confessions and admissions contribute to about 25% of wrongful convictions in DNA exoneration cases. In Richard Leo’s book, “Police Interrogation and American Justice,” Leo examines how interrogations can elicit confessions from innocent people. *The Innocence Project In Print* asked Leo to help explain what happens inside the interrogation room, how false confessions lead to wrongful convictions and how they can be prevented.

**Innocence Project In Print:** What happens during the interrogation process that could cause a person to falsely confess?

**Richard Leo:** Interrogations are a two-step process – sticks and carrots. The first step is beating the suspect down psychologically. Then, after you move the person to a perception that there is no way out, the second step is to induce them to think that they’re better off confessing. The first step involves isolating the suspect, accusing them and cutting off their denials. Interrogators are trained to dominate the interaction and not let the suspect verbalize the words, “I did not do it. I am innocent.” At the heart of this first step is what researchers call “the evidence ploy.” Most people in America don’t know that police can lie about the existence of evidence, to say “We’ve got your fingerprints.” I cannot think of a single false confession case that didn’t involve lies about evidence.

**IP:** Do Miranda warnings help prevent false confessions?

**RL:** Miranda Warnings were designed to protect someone’s free choice to participate in an interrogation. “You have the right to remain silent. You have the right to an attorney.” When people hear that they don’t think, “I can shut down the interrogation.” They just think they’re being educated about their rights more broadly. If you’re of a



certain education level or have lawyers in the family, you might know that police can trap you. But most people don't know that. The impulse to talk when a police officer is accusing you is strong. We want to instinctively defend ourselves against false accusations. You could say "I would like to have a lawyer." In theory, that should end the interrogation. Very few suspects actually say that, and usually when they have said that in the innocence cases, it was ignored.

IP: Can you speak about how young people are especially vulnerable?

RL: There's great research from developmental psychology about why juveniles are more vulnerable to false confessions: they're less mature, they're more impulsive, they are more gullible and trustworthy, and they don't think about long-term consequences. These are the same reasons why people with low IQs are vulnerable. But false confessors are not limited to these categories.

IP: Can having the parents present during an interrogation be a protection?

RL: I've always been skeptical about the idea of getting a guardian or parent in the room. Because the police make up evidence, and they tell the parents, "We have people saying he did this." Then the parents are like, "Joe, stop lying. You need to tell the officer the truth." So the parents become agents, oftentimes, of the police. Most parents just aren't street smart.

IP: Can you explain the investigators' "presumption of guilt"?

RL: A police interrogator's goal is to build a case, not to separate out whether the suspect is likely innocent or likely guilty. There's no hypothesis testing in interrogations. If we start thinking about more thorough ways to analyze whether the suspect is likely guilty or not, and maybe getting more evidence before we subject them to that interrogation, maybe police can prevent more false confessions.

IP: What other reforms do you recommend?

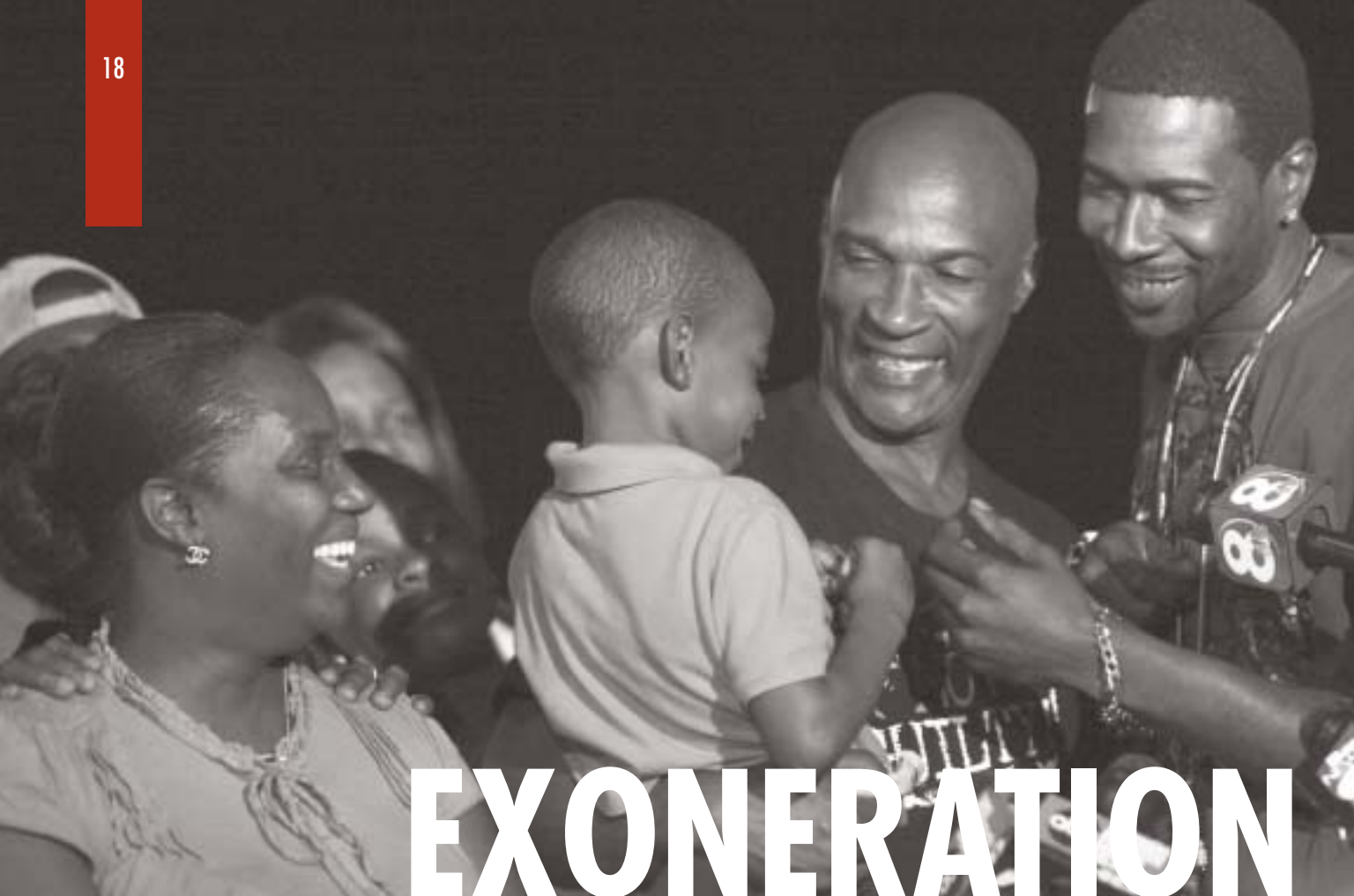
RL: Electronically recording the entire interrogation is the most important reform. Non-public details (that are not publicly known by anyone other than the true perpetrator and the police) can be intentionally or unintentionally imputed to the suspect. They make the confession seem persuasive. Recording captures the contamination process from start to finish. If a case were to go to trial, the defense attorney can show how the details never were known by the person being accused, and how they were fed at every step of the way.

IP: Are interrogations ever good and necessary?

RL: You need confessions to solve crimes, especially murder crimes, and as long as confessions are done fairly and legally, we're absolutely in favor of the interrogations that produce them. We don't want to undermine the ability of police, most of whom are good and decent people who follow the rules, to get these confessions. As long as you do things fairly and properly, it shouldn't endanger the innocent. ▲

**"INTERROGATORS ARE TRAINED  
TO DOMINATE THE INTERACTION  
AND NOT LET THE SUSPECT  
VERBALIZE THE WORDS,  
'I DID NOT DO IT.'"**

— Richard Leo



# EXONERATION NATION

Since January 2011, three more innocent people have been exonerated through DNA testing. The Innocence Project congratulates these inspiring individuals, as well as our colleagues who fought to help prove their innocence.

Of the 42 people exonerated through DNA testing in Texas, none served more time than **CORNELIUS DUPREE** who was wrongfully imprisoned for 30 years before his release in January 2011. At the age of 19, he was misidentified and convicted of an armed rape and robbery. The perpetrators, who have never been identified, accosted a young woman and her male friend in a Dallas parking lot. They robbed both victims and forced the male victim to drive. Later, they forced the male victim out of the car and raped the young woman in a nearby park.

DERRICK WILLIAMS (CENTER), HOLDS HIS GRANDSON, OMAR JR., WHILE SURROUNDED BY FAMILY MEMBERS ON HIS EXONERATION DAY.

Dupree and his friend, Anthony Massingill (who also claims innocence), became suspects after they were stopped and frisked by police. The following day, the female victim selected both Dupree and Massingill from a photo array. The male victim didn't make an identification. DNA testing was not available at the time of the trial, but post-conviction DNA testing secured by the Innocence Project produced two male profiles, neither of which matched Dupree or his co-defendant. Dupree was officially exonerated on March 3. Massingill is still fighting to prove his innocence.

Based on a suggestive identification procedure, a Florida rape victim selected **DERRICK WILLIAMS** as the man who drove her to a secluded orange grove and raped her in the backseat of her car in the summer of 1992. After viewing a photo array in which Williams' picture appeared twice, she said that she was about 80% sure that he was the perpetrator. By the time she viewed him again in a live lineup, she was 100% sure. At trial, Williams testified that he was attending a family barbecue at the time of the rape, an alibi corroborated by six witnesses. Furthermore, Williams did not match the description of the perpetrator as being about 5'6" with a scar on his gut; he is 5'11" and has a scar on his back. Williams was wrongfully convicted in 1993 and sentenced to life in prison.

With the help of the Florida Innocence Project, Williams received post-conviction DNA testing of sweat and skin cells from a T-shirt worn by the attacker. Other evidence, including a rape kit and other clothing, had been destroyed after a water leak at the evidence warehouse facility led to extensive damage. DNA test results proved that Williams did not wear the T-shirt and therefore, could not have been the perpetrator. A judge also ruled that the destruction of the other evidence in Williams' case violated his due process rights. Williams was released and exonerated on April 4. He had spent 18 years in prison.

When **CALVIN WAYNE CUNNINGHAM**'s neighbor across the hall was raped at 4 a.m. one morning, she identified Cunningham as the perpetrator. In 1981, Cunningham was convicted of the crime. In 1982, before DNA testing had ever been used in a criminal case, he wrote to a judge requesting that his biological sample be compared with the evidence at the crime scene. He spent seven years in prison before being released on parole and made to register as a sex offender.

Cunningham returned to prison for an unrelated, non-violent offense. In the meantime, Virginia Governor Mark Warner ordered a review of hundreds of closed cases after DNA exonerations raised questions about the state criminal justice system. Through this review, Cunningham's evidence was finally tested, and he was proven innocent of the crime. The Mid-Atlantic Innocence Project represented him in his exoneration on April 12. Cunningham is still serving a four-year sentence on unrelated charges and expects to be released in November 2012. ▲



CORNELIUS DUPREE

YEARS OF WRONGFUL INCARCERATION ENDURED BY ALL  
271 EXONEREES

3,494

# IP NEWS

## TEXAS FORENSIC SCIENCE COMMISSION ISSUES RECOMMENDATIONS FOR ARSON CASES

Seven years after Texas executed Cameron Todd Willingham based on outdated and unscientific arson evidence, the Texas Forensic Science Commission released an 893-page report recommending more education and training for fire investigators and implementing procedures to review old cases.

The report was the long-awaited response to the Innocence Project's 2006 allegation in two cases – Cameron Todd Willingham and Ernest Willis – arguing that both had been wrongfully convicted based on the same flawed arson evidence. Though Willingham was executed, Willis was exonerated. After years of politically motivated delays and upheavals, the TFSC issued the report with 16 recommendations this April. While the TFSC stopped short of saying that arson investigators were negligent in Willingham's case, it did concede that the arson evidence used to convict him was outdated. An opinion is pending from the Texas Attorney General about whether the commission may report on the alleged negligence of the arson investigators.

## ILLINOIS ABOLISHES THE DEATH PENALTY

Citing the risk of wrongful execution and other failings, Illinois Governor Pat Quinn signed a bill abolishing the state's death penalty in March. Gov. Quinn also commuted the sentences of all 15 inmates remaining on Illinois' death row. From Gov. Quinn's official statement: "Since 1977, Illinois has seen 20 people exonerated from death row....That is a record that should trouble us all. To say that this is unacceptable does not even begin to express the profound regret and shame we, as a society, must bear for these failures of justice."

Former Governor George Ryan led the way by passing a moratorium on executions in 2000 in response to a growing concern about the possibility of executing an innocent person. Five of the 17 people who have been exonerated by DNA testing after serving time on death row were Illinois' cases. The state, which once had one of the larger death rows in the country, has not executed anyone since 1999. Since the reinstatement of the death penalty in 1977, sixteen states and the District of Columbia have halted executions.

## SUPREME COURT APPROVES PRISONER'S CLAIM FOR DNA TESTING

Texas Death Row Inmate Hank Skinner was just hours away from execution when the U.S. Supreme Court stayed his execution and granted Skinner's request to file a civil



HANK SKINNER

rights claim in federal court for post-conviction DNA testing. The March ruling may benefit other prisoners whose requests for testing have been unfairly denied by state courts. Skinner had been seeking DNA testing for 10 years in the murder of his live-in girlfriend and her two sons. Among the evidence Skinner is seeking to test are knives from the crime scene, hairs from the victim's hand and a windbreaker possibly worn by the perpetrator. The Innocence Project, which has assisted Skinner's attorneys, argues that these items could provide proof of his guilt or innocence. Seventeen people have been proven innocent and exonerated by DNA testing after serving time on death row.

### IP'S FIFTH ANNUAL CELEBRATION OF FREEDOM AND JUSTICE A SUCCESS

Hundreds of Innocence Project supporters and exonerees gathered to celebrate and raise over \$950,000 for the organization at the 2011 benefit during which Betty Anne Waters, Governor Jon S. Corzine and the law firm of Schulte Roth & Zabel were honored. Waters' story of determination in fighting for her brother's exoneration through DNA testing became a major motion picture in 2010 – "Conviction" starring Hilary Swank and Sam Rockwell. Governor Jon S. Corzine led New Jersey in criminal justice reform, including abolishing the death penalty. The law firm of Schulte Roth & Zabel has provided extensive pro bono work and ongoing support for the Innocence Project. The gala, held at the Waldorf Astoria Hotel on May 4, included musical entertainment from jazz pianist Jonathan Batiste and exoneree musicians William Dillon, Antione Day and Raymond Towler.

### DNA EVIDENCE CLEARS NINE IN CHICAGO

New DNA test results prove that four men were convicted of a 1994 rape and murder they didn't commit. The DNA results link a convicted murderer to the crime, and the four men are seeking to be released from prison based on the new evidence. The case is nearly identical to another in the Chicago area, in which five men convicted of a 1991 murder are seeking to overturn their convictions based on DNA evidence that a convicted rapist committed the crime.

In both cases, the defendants were teenagers when they were arrested, as young as 14, and the principal evidence used against them was their own confessions. (To read about why young people are more susceptible to false confessions, see "In Their Own Words" on page 16.) Also in both cases, the defendants were convicted in spite of preliminary DNA tests that excluded all nine of them. However, there was no connection to another possible suspect as there is now. The Innocence Project is working with the Center on Wrongful Convictions of Youth (at Northwestern Law School), the Exoneration Project (at the University of Chicago Law School) and private attorneys to overturn all nine convictions and exonerate the men. ▲



BETTY ANNE WATERS WITH EXONEREE ANTIONE DAY AT THE 2011 INNOCENCE PROJECT BENEFIT.

# INNOCENCE BY THE NUMBERS

## INEFFECTIVE DEFENSE

In the Winter 2010 issue of *The Innocence Project In Print*, we provided statistics about prosecutorial misconduct. The other side of that issue, and another major contributor to wrongful convictions, is ineffective defense. While cases of outright incompetence do exist, and should be addressed, defense attorney's failings are better understood by what they did not do. Negligent attorneys, struggling with a massive caseload and a lack of resources, do not meet their constitutional obligation to advocate for their clients. The data below offers only a glimpse of the problem and indicates only those cases where information was available.

Number of the 271 DNA exonerees to allege ineffective assistance of counsel in their post-conviction appeals **62**

Number of those 62 in which courts found error, whether harmful or harmless **10**

Number of those 62 in which courts found "harmful error" that lead to a reversal of the conviction **7**

Number of the 271 DNA exonerees who paid for their own lawyer at their original trials (resulting in the wrongful conviction) **65<sup>1</sup>**

Number of the 271 DNA exonerees who were represented by a public defender or court-appointed counsel at their original trials **163<sup>1</sup>**

Average hourly rate of lawyers in private practice **\$178-\$265<sup>2</sup>**

Approximate hourly rate of court-appointed attorneys in non-capital felony cases **\$50-\$65<sup>2</sup>**

Percent increase in criminal caseloads from state public defender programs from 1999 to 2007 **20%<sup>3</sup>**

Percent increase in number of public defenders employed in state programs for the same period **4%<sup>3</sup>**

<sup>1</sup> Based on 228 cases where information was known.

<sup>2</sup> The Constitution Project, "Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel," (2009).

<sup>3</sup> Bureau of Justice Statistics Special Report, "Defense Counsel in Criminal Cases," (2000).

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, 271 people in the United States have been exonerated by DNA testing, including 17 who served time on death row. These people served an average of 13 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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