



THE INNOCENCE PROJECT **IN PRINT**

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The names that follow below are those of the 311 wrongfully convicted people whom DNA helped exonerate in the United States, followed by the years of their conviction and exoneration.

On the cover: Gerard Richardson with his family and IP attorney just days after his conviction was vacated. From left, Yvette Richardson, Richardson's sister; Innocence Project client Gerard Richardson; Vanessa Potkin, Innocence Project Senior Staff Attorney; Kevin Richardson, Richardson's brother.

RELIABLE FORENSIC SCIENCE IS KEY TO THE PURSUIT OF JUSTICE

A cornerstone of the Innocence Project's work, DNA testing is a powerful forensic discipline that can determine innocence or guilt. Although commonly referred to as forensic sciences, DNA testing is the only forensic discipline that is used to match a defendant to a crime scene that has been scientifically validated. Tragically, unvalidated and improper forensics have contributed to half of the 311 wrongful convictions in this country overturned by DNA evidence.

The case of Gerard Richardson (pictured on the cover) is a recent example. For 19 years, Gerard was locked away after being falsely convicted of murder. On October 28, a Somerset, New Jersey, judge vacated Gerard's conviction based on new DNA testing. A major factor that contributed to his conviction was the testimony of a forensic dentist who claimed that Gerard's teeth matched a bite mark on the victim, but DNA revealed that the bite was made by another man (see "Why Forensic Odontology Fails" on page 4).

Although bite mark analysis has been shown to be highly questionable as an investigative tool, it and other unreliable forensic practices are still used in criminal prosecutions. The Innocence Project is working in Congress and in the courts to ensure that forensic techniques are rooted in empirical evidence and not simply guided by the subjective experience of forensic examiners.


Thanks to the injustices revealed by the DNA exonerations, the justice system is beginning to make changes. The U.S. Department of Justice (DOJ) and the National Institute of Standards and Technology recently announced a joint commission to make policy recommendations to strengthen forensic practices. The National Science Foundation expressed an interest in funding forensic research. And earlier this year, the U.S. Federal Bureau of Investigations (FBI) and the DOJ announced a sweeping review of cases in which FBI examiners provided forensic hair analysis (see "Righting the Wrong: The FBI Investigates Cases of Hair Analysis Misconduct," on page 9), recognizing that agents routinely made errors which had the effect of exaggerating the significance of the hair evidence. The Innocence Project commends the FBI for publicly acknowledging its missteps and for actively pursuing justice for those who don't deserve to be behind bars. We're also pushing other labs around the country to follow the FBI's bold example and to take steps to ensure that cases involving improper forensics are reinvestigated.

As 2013 comes to a close, one of the Innocence Project's hopes for the new year is that the American justice system will begin to make greater strides toward preventing cases like Gerard Richardson's and those of the more than 150 DNA exonerations that involved unvalidated and improper forensics. We need a paradigm shift away from misguided practices that fail to protect us or deliver justice, and toward science-based practices and a truth-seeking system that we can all count on.

Maddy deLone

Maddy deLone, Executive Director





WHY FORENSIC ODONTOLOGY FAILS: AN ONGOING INNOCENCE PROJECT CASE

For more than 30 years in the United States, bite mark evidence has been routinely used to identify the perpetrators of violent crime by “matching” a suspect’s teeth to an impression on the victim’s skin. But bite mark analysis is not based on scientific research. The ongoing case of Gerard Richardson, who was recently released from prison in New Jersey, shows why bite mark analysis should not be used as evidence of guilt at a criminal trial.

The dentists who specialize in bite mark identification — just one of the facets of forensic dentistry — are known as forensic odontologists. Their work includes comparing bite marks and dental casts from defendants to marks left on victims’ bodies. Since 2000, at least 24 innocent men whose convictions and/or arrests were based on evidence “matching” their teeth to impressions on human skin have been cleared. There could be many more people who were wrongly convicted based on this evidence.

Barry Scheck (left), Gerard Richardson (seated)
and Vanessa Potkin (right).

In Gerard Richardson’s case, it was expert testimony regarding a bite mark comparison that helped to persuade a jury to convict him of the murder of Monica Reyes. Reyes

1987 TO 1996 • FREDRIC SAECKER 1990 TO 1996 • VICTOR ORTIZ 1984 TO 1996 • TROY WEBB 1989 TO 1996 • TIMOTHY DURHAM 1993 TO 1997 • ANTHONY HICKS 1991 TO 1997 • KEITH BROWN 1993 TO 1997 • MARVIN MITCHELL 1990 TO 1997 • CHESTER BAUER 1983 TO 1997 • DONALD REYNOLDS 1988 TO 1997 • BILLY WARDELL 1988 TO 1997 • BEN SALAZAR 1992 TO 1997 • KEVIN BYRD 1985 TO 1997 • ROBERT MILLER 1988 TO 1998 • PERRY MITCHELL 1984 TO 1998 • RONNIE MAHAN 1986 TO 1998 • DALE MAHAN 1986 TO 1998 • DAVID A. GRAY 1978 TO 1999 • HABIB W. ABDAL 1983 TO 1999 • ANTHONY GRAY 1991 TO 1999 •

was a 19-year-old from Elizabeth, New Jersey, who was addicted to heroin. On a few occasions she had sold drugs for Richardson and owed him \$90. Late one night in February 1994, she disappeared. Five days later, her small, 83-pound body was found partially covered in snow in a road-side ditch. She had been bludgeoned and strangled. During her autopsy, the medical examiner found a bite mark on the lower left part of her back.

At the 1995 trial, a forensic odontologist — Dr. Ira Titunik — said, “. . . this [bite] mark was made by Gerard Richardson . . . there was no question in my mind,” and the prosecutor argued that the bite mark was indisputably made by Gerard Richardson: “Mr. Richardson, in effect, left a calling card. . . . It’s as if he left a note that said, ‘I was here,’ and signed it because the mark on her back was made by no one else’s teeth.”

There was no other physical evidence tying Richardson to the crime. Richardson was pronounced guilty. He was sentenced to 30 years in prison without the possibility of parole.

More than 19 years after Monica Reyes was murdered, new evidence shows that Richardson is innocent. Post-conviction DNA testing of a swab collected from the bite mark revealed that the saliva left on the victim’s body does not belong to Richardson, meaning that he is not Monica Reyes’ assailant. Gerard Richardson spent nearly 20 years of his life in prison for a crime he did not commit.

On October 28, 2013, a New Jersey judge, with the consent of the Somerset County Prosecutor, overturned Richardson’s conviction based on the results of the new evidence that points to another man. Vanessa Potkin, Senior Staff Attorney at the Innocence Project, who is representing Richardson, said, “DNA proves that Gerard Richardson is not the person who committed this crime. He is completely innocent.”

While he waits for the prosecution to determine whether they will re-try him, Richardson is out on bail and living with his brother — a preacher — in Pennsylvania. At a press conference following the October 28 hearing, Richardson’s son, who was only one year old when his father was convicted, said, “I’m good now that I know he’s coming home.”

BITE MARK COMPARISON COMES UNDER FIRE

Introduced into the American courts in 1954, bite mark analysis became recognized by the nation’s forensic community as a legitimate domain in the 1970s.

Within the last decade, however, forensic odontology has come under severe scrutiny. Scientists and legal scholars argue that bite mark analysis as a means to positively linking individuals to crimes has no place within the criminal justice system because



Gerard Richardson (seated), his son and Barry Scheck.

the technique is entirely subjective and lacks an empirical basis for associating a suspect with an impression left on human skin.

In 2009, the National Academy of Sciences (NAS) — the nation’s most prestigious scientific organization — released a seminal report, *Strengthening Forensic Science in the United States: A Path Forward*, in which it describes bite mark analysis as “vulnerable” and having “never been exposed to stringent scrutiny.” According to the report, “although the identification of human remains by their dental characteristics is well established in the forensic science disciplines, there is continuing dispute over the value and scientific validity of comparing and identifying bite marks.” The report plainly states that “the scientific basis is insufficient to conclude that bite mark comparisons can result in a conclusive match” and “[a]lthough the majority of forensic odontologists are satisfied that bite marks can demonstrate sufficient detail for positive identifications, no scientific studies support this assessment.”



Ray Krone (right) and Chris Plourd, Krone’s defense attorney for his second trial. Today, Krone is the Director of Membership and Training at Witness to Innocence, a nonprofit that empowers death row exonerees and works to end capital punishment in the United States. Learn more, www.witness-to-innocence.org. To learn more about Ray Krone’s case, go to http://www.innocenceproject.org/Content/Ray_Krone.php.

Members of the forensic community express similar misgivings. Dr. C. Michael Bowers — a forensic odontologist and clinical professor at the University of Southern California Ostrow School of Dentistry in Los Angeles — has authored and edited several books on forensic odontology and served on the examination and credential’s committee of the American Board of Forensic Odontology. In his 2011 article “Recognition, Documentation, Evidence Collection, and Interpretation of Bitemark Evidence,” published in *Forensic Dental Evidence, Second Edition: An Investigator’s Handbook*, he says, the “ability of skin to register sufficient detail of a biter’s teeth is highly variable and commonly achieves contradictory results. . . . Some [odontologists] consider the ability to identify only a single person as the biter in skin an impossible task.”

Despite mounting evidence that bite mark analysis is ineffective and unreliable, testimony related to this forensic technique is currently still admissible in the country’s court rooms and carries enough weight with juries and judges to help convict people of serious crimes, sometimes wrongfully so.

A CASE OF REDEMPTION

Eight of the people exonerated by DNA evidence in the United States were convicted based on bite mark evidence. Ray Krone is one of those people. He served more than 10 years in prison — three of them in solitary confinement on death row. Labeled the “snaggletooth killer” by the media, Krone had served in the Air Force for six years prior to his conviction. Upon receiving an honorable discharge from the military, he moved to Phoenix, Arizona, where he worked for the United States Postal Service for seven years.

On New Year’s Eve 1991, he was arrested for the rape, assault, and murder of Kim Ancona, a 36-year-old woman who worked as a barmaid at a local pub where he played

darts. She had been found dead in one of the bar's bathrooms, sexually assaulted and stabbed, and with bites on her breast and other parts of her body.

At the trial, the prosecution hired a bite mark expert — at the price of \$50,000. The dentist compared Krone's dental casts to the marks found on the victim's body and declared a unique match, identifying Krone as the murderer. "The prosecution called me a monster . . . a deviant," Krone recalls, "because of the bite marks."

Krone was convicted and sentenced to death for kidnapping and first-degree murder. Looking back on that moment, Krone remembers asking himself, "Where did I step into?"

In 1996, the Arizona Supreme Court reversed Krone's conviction and ordered a new trial. Again, the same dental expert claimed that Krone's teeth "matched" the bite marks found on the victim. He was found guilty a second time, but this time he was sentenced to 46 years in prison, taking him off death row.

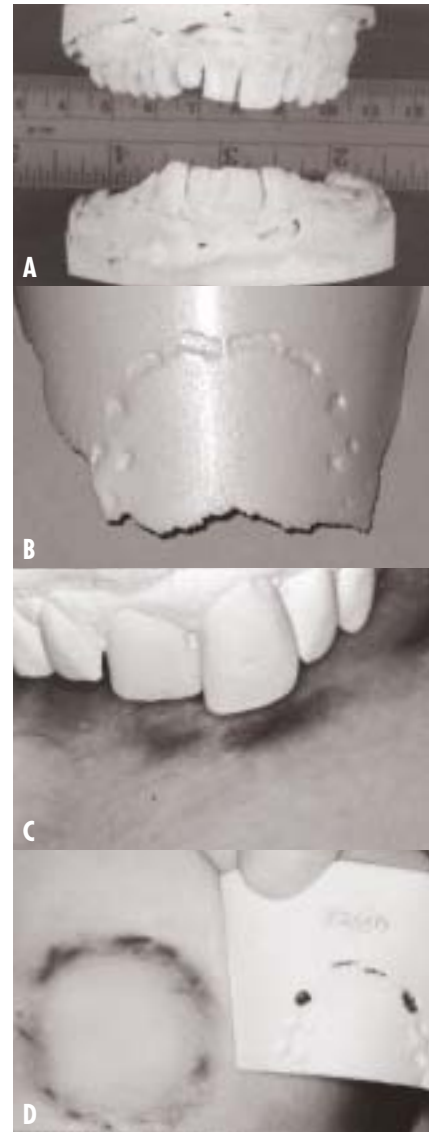
Krone served another six years of his life in prison before DNA finally cleared him of his wrongful conviction. DNA testing conducted on the saliva and blood found on the victim excluded Krone as the source and instead matched a man named Kenneth Phillips. Phillips was incarcerated on an unrelated assault of a young child and, although he had lived a short distance from the bar where Ancona worked, he had never been considered as a suspect in her murder. Krone was arrested two days after the murder. Had bite mark evidence not misled investigators, Phillips might have been caught sooner. Instead, he committed another crime, just 20 days after he killed Kim Ancona.

CHANGING EVIDENCE

In both Krone and Richardson's cases, the dental experts who testified on behalf of the prosecution declared that the defendants' teeth matched bite marks found on the victims. The NAS report found that these types of claims are scientifically invalid. There is currently no scientific evidence that experts are capable of reliably associating a bite mark with a suspect, and no evidence that bite mark analysis can narrow a pool of suspects to one individual person because there is no scientific proof that each person's teeth marks are unique. But, even assuming teeth are unique, skin is incapable of registering unique impressions.

A CALL FOR IMMEDIATE REFORM

The numbers can attest; improper and invalidated forensics — like bite mark analysis — is a leading contributor to wrongful convictions. Of the 311 post-DNA exoneration cases in the United States, unvalidated or improper forensics contributed to almost half of them.



A: Casts of Ray Krone's teeth.

B: Before investigators made casts of Krone's teeth, they asked him to bite into a Styrofoam cup as evidence.

C: Stone casts of Krone's teeth being compared to bite marks on the victim's body.

D: Styrofoam imprints of Krone's teeth being compared to bite marks on the victim's body.

**OF THE 311 POST-DNA
EXONERATION CASES IN THE
UNITED STATES, UNVALIDATED
AND IMPROPER FORENSICS
CONTRIBUTED TO HALF
OF THEM.**

The Innocence Project is working at local, state, and federal levels to encourage better practices within the forensic community and is committed to legislation that would improve forensic science upstream of its use in court. The organization is working alongside policy makers, such as Senators Patrick Leahy and Jay Rockefeller and Congresswoman Eddie Bernice Johnson, who are all working on legislation in Congress aimed at improving forensic science practices through investing in forensic science research, establishing uniform standards for the application of forensic science and building new committees to support this work.

The Innocence Project also supports the development of the National Commission on Forensic Science that is being established by the U.S. Attorney General and will be co-directed by the U.S. Department of Justice (DOJ) and the National Institute of Standards and Technology. According to the DOJ, the purpose of the commission will be to “develop national forensic guidance and policy recommendations.” The Innocence Project hopes that the new commission will help bring comprehensive reform to the field and application of forensic science.

M. Chris Fabricant, Director of Strategic Litigation at the Innocence Project, explains that the organization is also “collaborat[ing] with the defense bar and attorneys across the country, pursuing post-conviction innocence claims to identify convictions resting on discredited scientific evidence and to litigate against the admissibility of unreliable forensic science.” Some of that work is focused specifically on cases involving bite mark comparisons as central evidence to prevent what happened to Gerard Richardson from happening again.

A PARADIGM SHIFT

Sarah Chu, Forensic Policy Advocate at the Innocence Project says, “Innocence organizations, police organizations, prosecutors, defenders, and judges have the same goals where forensic science is concerned — we all want to secure and present the highest quality and most reliable scientific evidence possible. Our safety depends on it.”

Dr. Bowers may summarize the issue best: forensic odontologists need to embrace the overwhelming data showing that bite marks do not allow for conclusive results. “The new paradigm is an obvious one. The best identification evidence from a bitemark is DNA obtained from the saliva of the biter. The scientific rationale of DNA typing needs to be adopted by the bitemark community to achieve valid results.” ▲



RIGHTING THE WRONG: THE FBI INVESTIGATES CASES OF HAIR ANALYSIS MISCONDUCT

For nearly three decades, the U.S. Federal Bureau of Investigations (FBI) set the standard for forensic hair comparison analysis in the United States. Besides operating a hair microscopy unit — where hairs were microscopically examined and compared — the Bureau trained an estimated 500 local and state forensic hair examiners from crime labs from across the United States. FBI analysts and those trained by the FBI provided critical testimony that linked criminal defendants to crime scenes.

Now, years after those scores of hair examiners took the stand on countless criminal cases, the FBI and the U.S. Department of Justice (DOJ) have acknowledged that many analysts provided scientifically invalid reports and/or testimony. This summer, the FBI and the DOJ announced that they would conduct an in-depth review of more than 2,000 cases that were handled from 1985 through 1999, and an unknown number of cases that came in preceding years, in which the FBI analyzed hair samples and found positive associations between hair samples provided by defendants and hairs found at crime scenes which resulted in criminal convictions. Working in collaboration with the Innocence Project and the National Association of Criminal Defense Lawyers

1995 TO 2003 • KENNETH WYNIEMKO 1994 TO 2003 • MICHAEL EVANS 1977 TO 2003 • PAUL TERRY 1977 TO 2003 • LONNIE ERBY 1986 TO 2003 • STEVEN AVERY 1985 TO 2003 • CALVIN WILLIS 1982 TO 2003 • NICHOLAS YARRIS 1982 TO 2003 • CALVIN L. SCOTT 1983 TO 2003 • WILEY FOUNTAIN 1986 TO 2003 • LEO WATERS 1982 TO 2003 • STEPHAN COWANS 1998 TO 2004 • ANTHONY POWELL 1992 TO 2004 • JOSIAH SUTTON 1999 TO 2004 • LAFONSO ROLLINS 1994 TO 2004 • RYAN MATTHEWS 1999 TO 2004 • WILTON DEDGE 1982, 1984 TO 2004 • ARTHUR L. WHITFIELD 1982 TO 2004 • BARRY LAUGHMAN 1988 TO 2004 • CLARENCE

(NACDL), the FBI is looking for cases in which its hair examiners made errors which had the effect of exaggerating the significance of the hair evidence.

The review — the largest in the FBI’s history — was prompted by the discovery that three different FBI special agents, including the then chief of the FBI Crime Lab’s hair and trace unit, provided erroneous testimonies that contributed to three wrongful convictions in the District of Columbia. Donald Gates and Santae Tribble were wrongfully convicted of murder and Kirk Odom was wrongfully convicted of rape. All three men spent decades in prison before the Public Defender Service of the District of Columbia secured DNA testing which exonerated them.



Kirk Odom.

A YOUNG LIFE UNDONE

Kirk Odom was a 17-year-old kid in 1981 when he was arrested for raping and sodomizing a woman in her Washington, D.C., apartment. He was working part-time as a security guard at a local mall and was attending trade school to be a typewriter repairman. One evening, a couple of police detectives approached him on the street. They showed him a facial composite of a man and asked him if he was the person in the drawing. “That don’t look like me,” replied Odom. “I was shocked,” he explained, but, “I just let it go . . . and went on with my life.”

Odom did not see the detectives again for a number of months until one Sunday morning. “I was getting ready to go jogging, and they showed up at my mother’s house, where I was living,” said Odom. This time, the officers took him downtown to the local precinct and asked him for hair samples from his head and his pubic area. Odom remembers thinking, “What’s going on?” He had become the prime suspect.

At the trial, FBI Special Agent Myron T. Scholberg, chief of the unit, took the stand. He testified that the hair samples taken from Odom were microscopically similar to a hair that had been found on the rape victim’s nightgown, claiming that “the samples were indistinguishable.” Scholberg proceeded to say that he had found hair samples to be indistinguishable only “eight or 10 times” during the decade in which he had performed thousands of hair analyses. Odom recalls thinking, “They’re lying. I was nowhere near there [the victim’s house] at that particular time, climbing in somebody’s kitchen window with a gun.” The rape victim had identified Odom as the perpetrator in a lineup in which he was asked to stand on a box to appear the same height as the other men in the lineup. There were no other witnesses who placed him at the scene. The testimony of the FBI agent was central to the case.

The jury came back with a guilty verdict. “I was very hurt,” says Odom. “I was still trying to figure out, ‘What does this all mean?’” Odom was convicted and sentenced to more than 20 years in prison, but, as DNA evidence would finally reveal decades later, he was innocent.



EVIDENCE UNDER SCRUTINY

Odom's case went to trial when hair microscopy was used routinely, not only at the federal level but also by local and state jurisdictions. According to the FBI's website, hair has been used in forensic investigations for more than 150 years. For the FBI specifically, hair microscopy was used routinely starting in the early 1970s.

By the 1990s, though, the practice had started to come under scrutiny because of its subjective nature and lack of standards. In 1996, the FBI implemented mitochondrial DNA (mtDNA) analysis to be used in conjunction with microscopic hair comparisons as a means of confirmation. The FBI became even more concerned when a 2002 study they conducted showed that in 11% of their own hair cases, the FBI examiners declared matches when the DNA testing subsequently excluded the subject. Of the 311 post conviction DNA exonerations, in 74 of the underlying wrongful convictions, hair microscopy was used as part of the prosecution's case.

The FBI was, or should have been aware, that based on fundamental principles of statistics, that, at best, hair comparison can show similarities among samples and cannot be used to positively identify a single individual. In fact, it offers much less. An inclusion, except in extraordinary cases, means only that the defendant is a member of a pool of people who could have contributed the hair but the size of that pool is unknown. In practice, however, analysts often overstated the statistical significance of these similarities. According to Peter Neufeld, Co-Director of the Innocence Project, FBI agents led juries and judges to believe that "hair recovered from the crime scene must have come from the defendant and could not in all likelihood have come from anyone else."

From left, Peter Neufeld with Michael Bromwich (center) and Kirk Odom (right) testifying at a U.S. Senate of Judiciary hearing on improving the oversight of forensic sciences.

**“IF WE IMPROVE THE SCIENTIFIC
UNDERPINNINGS OF FORENSIC
SCIENCE PRACTICE, WE CAN
IMPROVE THE FORENSIC RESULTS
THAT WE RELY ON FROM
FORENSIC PRACTITIONERS.”**

— Peter Neufeld, Co-Director of the
Innocence Project

A NEW ERA OF TRANSPARENCY AND ACCOUNTABILITY

The Innocence Project and NACDL worked closely for over a year with the FBI and the DOJ in determining the scope, protocols and implementation of the review. The review will prioritize cases of defendants on death row and will include cases where defendants have already been executed. For the first time in its history, the government has agreed not to raise procedural objections, such as statute of limitations and procedural default claims, in response to the petitions of criminal defendants seeking to have their convictions overturned because of faulty FBI microscopic hair comparison laboratory reports and/or testimony. The government has also agreed to offer free DNA testing in the cases where an error was identified in the analysis or testimony and there is either a court order or a request for testing by the prosecution. The Innocence Project and NACDL will ensure that every criminal defendant has legal representation.

The Innocence Project hopes this review will help prompt federal oversight for all forensic practices across the United States. Also, given that the FBI review covers only cases analyzed by FBI analysts, the Innocence Project is urging state and local labs, most of which were trained by FBI examiners, to conduct their own reviews.

AFTER THE TRUTH: MOVING AHEAD

Neufeld says it’s important that the government learn from Odom’s case and others like it. In his July 2012 testimony at a Senate Judiciary hearing on the need for federal oversight for forensic disciplines, Neufeld said, “[t]he lesson of Kirk Odom’s case is not that we should point fingers at forensic science or forensic scientists; [they’ve] been doing the best they can with the scant resources and insufficient scientific foundation they have had at their disposal. . . . The lesson we must learn from such cases is that if we improve the scientific underpinnings of forensic science practice, we can improve the forensic results that we rely on from forensic practitioners.” ▲

In Their Own Words

Dr. Itiel Dror is a cognitive neuroscientist at University College London who examines decision-making with experts. His research shows that forensic experts can reach wrong conclusions because they can be influenced by bias. A portion of Dror's work has focused on latent fingerprint analysis. In two 2006 studies, he asked forensic experts to examine fingerprints that they thought were part of a criminal investigation. The experts didn't know that they had analyzed the exact same fingerprints five years prior under different contexts. Dror found that some examiners reached conclusions that contradicted their original analyses. The *Innocence Project in Print* talks to Dr. Dror about his findings, his critics, and how the criminal justice system needs to change to prevent more innocent people from being wrongfully convicted.

The Innocence Project in Print: You've said that "forensic science is not always what it appears to be." What do you mean by that?

Dr. Itiel Dror: In many forensic domains, the human examiner is the instrument of analysis. It's not like the television show "CSI." It's the human examiner who compares visual patterns and makes judgments and interpretations. There is a lack of objective criteria to [analyzing] many types of forensic evidence. It's very subjective.

The human mind is not a camera. We don't see things exactly the way they are. There are a lot of things that affect us. And the more intelligent we are, the more expert we are, the more the brain is active in using experience and expectation to help guide the interpretation of information. That's what makes experts, experts. However, there are also weaknesses, and bias is one of them.

IP: Your research reveals that forensic experts can reach inconsistent conclusions. Would you say that the more expertise someone has, the greater potential there is that he or she will make mistakes?

ID: They have more potential to make mistakes because of bias. Overall, they're going to make fewer mistakes; they're experts. They know what they're doing. Their experience helps them make accurate decisions most of the time. But, using their past experience can also misguide and bias them.

Someone who is a novice, they just look at the data; they don't have experience. Someone who has seen evidence many times before, however, uses their experience to know how to handle a situation. That [experience] guides them. But as it guides them, it can also misguide them. When it misguides them, that's what bias is all about.

IP: You've said that your findings were initially very controversial among the forensic community. Were you surprised by its response?



Dr. Itiel Dror, a cognitive neuroscientist at University College London.

**"THE HUMAN MIND IS NOT A
CAMERA. WE DON'T SEE THINGS
EXACTLY THE WAY THEY ARE."**

— Dr. Itiel Dror

How many 'F's are in the following text?

FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS...

ANSWER: SIX.

According to Dr. Dror, the more expertise you have — in this case, the more you read — the fewer Fs you see. Dr. Dror uses this exercise to help people understand that expertise can actually degrade performance.

For more information on Dr. Dror's work on bias in forensic science, see: www.cci-hq.com

ID: I was very surprised. First of all, I was surprised that any human on this planet could claim [to be] 100% objective and to never make mistakes. There was a total denial that there are mistakes . . . that they [forensic experts] are affected by context. And, I was surprised, and still am surprised, by some of the defensive, aggressive response from the forensic community. That was about 10 years ago. Now, things have changed a lot. Now there's more data. And the 2009 National Academy of Science report on forensic science has cited the research that I have done and made recommendations on the issue of bias, objectivity — about the human element.

IP: What has been your response to your critics?

ID: I try to work with the forensic community. I provide trainings. I show them what bias is. I show how the human mind interprets information and how we don't always do it correctly. After [people] understand what bias is and after they see bias in other expert domains, I talk about bias in forensic work and not only the data, but the cases. Sometimes in the beginning, I get very hostile responses. But as the forensics examiners understand the cognitive issues, they get more and more open to it.

The tide has changed. I think most forensic examiners today, even fingerprint examiners, will not say "zero-error rate" anymore. They will not say they're objective. There's still a long way to go, but the first step is the most difficult one, and we've taken it.

IP: In your opinion, how much weight should be given to fingerprint evidence?

ID: Forensic examiners overestimate the importance of the evidence. But they should be educating jurors and judges to make sure that they don't give too much weight to the evidence. And that is a big, big challenge in [an] adversarial court system.

IP: Is there onus on lawyers and judges to ensure that the weight of evidence isn't overstated in the courtroom?

ID: Absolutely, but there is a lack of sufficient education for lawyers and judges on this issue in the United States. If [the forensic community] educated judges and lawyers, that would be a big step forward.

IP: Do you think we'll start to see your research having an effect on the criminal justice system?

ID: Yes, we're seeing it already. For example, the FBI has changed its procedures. One of the things I've been claiming is that [forensic experts] cannot work from the suspect to the evidence. They have to work linearly, from the evidence to the suspect. The FBI used to analyze the latent prints from the crime and then compare them to the suspect; they would re-evaluate the evidence to fit the suspect. The Bureau now analyzes the evidence in isolation before being exposed to the context of the suspect. This is a change that I've been promoting for quite some time. I applaud the FBI for doing that. ▲

Exoneration Nation

Since June 2013, two 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.

After serving more than seven years for a wrongful conviction, **URIAH COURTNEY** was exonerated on June 23.

In 2005, Courtney was arrested for the kidnapping, sexual assault and false imprisonment of a teenage girl. She was attacked and assaulted on the side of an expressway in Lemon Grove, California. In a photo line-up, the victim had a challenging time deciding between three people in the array, eventually choosing Courtney, but not without hesitation. At the trial, Courtney's boss testified that Courtney was working at a construction site during the time of the attack. Regardless of his alibi, the jury found Courtney guilty. He was sentenced to life in prison.

In 2010, Courtney began to work with the California Innocence Project, which, with the San Diego County District Attorney's Office, got new DNA testing. The results pointed to another man, who actually lived only three miles from the crime scene and resembled Courtney.

Courtney told ABC-10 News in San Diego: "When I got out, I felt I could fly."

After serving nine years of a 102-year sentence for a 1991 rape, DNA evidence exonerated **JOSEPH FREY** on July 12.

In 1994, Joseph Frey was convicted of the 1991 rape of a University of Wisconsin-Oshkosh college student. Over several months during the investigation, the victim was asked to identify her assailant from several photo arrays. Each time, she refused to make a positive identification. Eventually, she identified Frey but said she was unsure as to whether he was actually her attacker. The case went to trial in 1993. The police did not present any physical evidence because they had destroyed nearly all of it. Instead, they presented testimony of a jailhouse informant who said that Frey had admitted to raping the Oshkosh woman. Frey was found guilty.

With help from the Wisconsin Innocence Project, evidence was recovered and submitted for DNA testing. Results implicated a deceased man who had been sentenced to 30 years in prison for sexually assaulting two sisters. ▲



Uriah Courtney and his father.

YEARS OF WRONGFUL IMPRISONMENT ENDURED BY ALL 311 EXONEREES

4,144

IP News

FORMER TEXAS PROSECUTOR AND JUDGE ENTERS PLEA TO CRIMINAL CONTEMPT IN MICHAEL MORTON CASE

Former Williamson County District Attorney Ken Anderson entered a plea of criminal contempt in early November for deliberately withholding evidence that pointed to the innocence of Michael Morton, a Texas man who was convicted in 1987 of murdering his wife in front of his 3-year-old child. In 2011, Morton was exonerated through DNA testing after serving more than 25 years of his life in prison.

Anderson was the lead prosecutor in the Morton case. New evidence in recent years and testimony from Anderson's former assistant prosecutor revealed that Anderson had not only concealed key evidence, but when asked by the judge if he had any exculpatory evidence to turn over to the court, he said he did not.

Anderson, who sent Governor Rick Perry a letter of resignation on September 23, received 10 days in Williamson County Jail and a \$500 fine. Also, he will be made to complete 500 hours of community service and will surrender his license to practice law.

This marks perhaps the first time that a prosecutor has been criminally punished for failing to turn over exculpatory evidence. Anderson's case sets a historic precedent, that "when a judge orders a prosecutor to look in his file and disclose exculpatory evidence, deliberate failure to do so is punishable by contempt," explains Innocence Project Co-Director Barry Scheck. "Every state and federal judge can issue such an order tomorrow and deter those few prosecutors who would otherwise deliberately violate their ethical and legal duties."

INNOCENCE PROJECT RECEIVES HONORS FROM WITNESS TO INNOCENCE, THE NEW YORK LAW JOURNAL AND COLD SPRING HARBOR LABORATORY

On October 8, Innocence Project Executive Director Maddy deLone was honored by Witness to Innocence, a national organization that strives to empower death row exonerees and advocates for ending capital punishment in the United States. Ms. deLone was recognized for her dedicated activism to reform the criminal justice system.

A month later, on November 4, the *New York Law Journal* honored the Innocence Project with a 2013 Impact Award for two decades of calling attention to wrongful convictions and collaborating with both the defense and prosecution to improve the use of DNA testing in criminal cases. To coincide with the *New York Law Journal's* 125th anniversary, it created the Impact Awards to honor individuals, groups or projects that have had significant impact on the legal community in New York.



Peter Neufeld (left) and Barry Scheck (right) with James Watson, the co-founder of DNA, at Cold Spring Harbor Laboratory's Double Helix Medal Award ceremony on November 4.

Also on November 4, Innocence Project Co-Directors Barry Scheck and Peter Neufeld were awarded the Cold Spring Harbor Laboratory's Double Helix Medal, given annually to individuals who have improved human health and positively influenced the world.

YOUNG PROFESSIONAL'S COMMITTEE FUNDRAISING EVENT RAISES \$117,000

The Innocence Project's Young Professionals Committee hosted the annual "A Night Out to Benefit the Innocence Project" on Tuesday, October 22, 2013 at the Bowery Hotel in Manhattan. This year's honorees were Sarah Burns and David McMahon, directors and producers (with Ken Burns) of the documentary "The Central Park Five," and Sarah F. Warren, Co-Chair of the Young Professionals Committee. Special guests included Betty Anne Waters and Central Park Five exonerees Raymond Santana, Yusef Salaam and Kevin Richardson. The evening raised \$117,000. More than 300 supporters attended the event.

CALIFORNIA PASSES IMPROVED COMPENSATION LAW

In October, Governor Jerry Brown signed Senate Bill 618 into law, making it easier for wrongfully convicted people to receive state compensation. Under the previous law, exonerated individuals were entitled to \$100 for every day they were wrongfully imprisoned, totaling \$36,500 for every year served. The process for getting the money, however, was extremely difficult. Increasingly, exonerees were excluded from receiving payment because the state compensation board determined that their cases did not qualify as wrongful convictions or because the Attorney General was slow to respond to requests for compensation. The amended law will enable faster payment to exonerees, make the approval process more consistent and extend compensation to exonerees that were in county jail for a felony conviction.



Central Park Five exonerees, from left, Raymond Santana, Yusef Salaam and Kevin Richardson.

BALTIMORE POLICE DEPARTMENT TAKES STEPS TO IMPROVE LINE-UP PROCESS

In October, the Baltimore Police Department announced that it will improve its eyewitness identification procedures by implementing a new double-blind sequential photo array measure. This best practice will ensure that during photo line-ups, officers will administer only one photo of a person at a time. It also means that the officer administering the photo line-up will not know whether or not a photo of the actual suspect is present in the photo array, and the eyewitness will be made aware that the officer does not know. Research has shown that following these best practices sharply reduces the chance of misidentification.

Implementation of the improved photo line-up procedure comes after a long collaboration between the local police department, the University of Baltimore's Innocence Project Clinic and the Innocence Project, with leadership from Commissioner Batts. The Baltimore's police department will be the largest in the state of Maryland to implement the nationally recognized procedure. ▲

Innocence by the Numbers

To date, of the 311 people in the United States who have been exonerated of crimes they did not commit based on DNA testing that demonstrated their innocence, nearly half of their cases involved the use of improper or unvalidated forensic science testimony or analysis which contributed to their wrongful convictions.¹ For this issue of the *Innocence Project in Print*, IP by the Numbers highlights statistics that reveal the importance of strengthening the foundation of forensic science practice in the United States.

- Number of DNA exoneration cases that involved improper or unvalidated forensic science testimony or analysis: **153**
- Number of these DNA exonerees who were sentenced to death: **13**
- Number of these DNA exonerees who were sentenced to life in prison: **33**
- Average time served in prison by these DNA exonerees: **13 years**
- Number of these DNA exoneree cases in which the real perpetrator was identified: **71**
- Number of DNA exoneration cases involving improper or unvalidated testimony or analysis of hair evidence: **74**
- Number of DNA exoneration cases involving improper testimony or analysis of serology evidence: **83**
- Number of DNA exoneration cases involving improper or unvalidated testimony or analysis of bite mark evidence: **8**
- Number of DNA exoneration cases involving improper testimony or analysis of DNA evidence (at the original trial): **8**
- Number of DNA exoneration cases involving improper or unvalidated testimony or analysis of other forensics (e.g., fingerprints, fibers, shoe prints, dog scent evidence): **19**
- Number of cases involving multiple types of forensic science problems (improper/unvalidated testimony/analysis): **37**

¹The *improper forensic science* category includes testimony and analysis which drew conclusions beyond the limits of science as known at the time or where there was negligence in analysis. The *unvalidated forensic science* category includes testimony or analysis of an unvalidated forensic science discipline which concluded that the defendant could have been the source of the forensic material.

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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, 311 people in the United States have been exonerated by DNA testing, including 18 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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