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NO END IN SIGHT

DNA exonerations of the wrongfully convicted continue as non-DNA work heats up

By *Julius (Jay) Wachtel*. Three years ago Jack Blackburn, chief counsel of the [Innocence Project of Texas](#), said that cases of wrongful conviction where DNA was available [were drying up](#). His comments were echoed by the [California Innocence Project's](#) Justin Brooks, who said that "we're seeing very few DNA cases where testing is a possibility."

Barry Scheck felt differently. Co-founder of the famous [Innocence Project](#), the nation's first organization of its kind, he estimated that there were enough wrongful convictions with DNA available to support another ten years' work. Scheck, whose group shunts off non-DNA cases to state and local projects, suggested that the only reason why things might slow down is that advocates "are not looking hard enough."

Well, that's easy for him to say. Established in 1992, the Innocence Project was for many years the only place to whom the wrongfully convicted (and scores of not-so-wrongfully convicted) could turn for relief. Although other projects are now helping spread the burden, the original group's rock-star status assures it an unending supply of requests, reportedly to the tune of 3,000 a year. That keeps six full-time lawyers and a retinue of interns from [Cardozo School of Law](#), where the Innocence Project is housed, extremely busy.

Well, did DNA exonerations slow down? According to an informal review of [data published by the Innocence Project](#), the short answer is not yet. Since the exoneration of [Gary Dotson](#) in 1989, innocence projects have exonerated 266 persons through DNA, averaging 18 per year between 2007-10. (There has been one exoneration so far in 2011.) As one might expect, most of these cases involve crimes that occurred while DNA was in its infancy, with seventy percent of the convictions preceding 1990. Still, there is no indication that the end is in sight. Here are the three most recent DNA exonerations:

- In January 2011 Texas inmate [Cornelius Dupree](#) was released after serving 30 years for a rape/robbery. Dupree and a codefendant, whose release is pending, were mistakenly identified by the female victim from photo lineups. Her male companion couldn't identify either subject from photos but did so later, in court. According to the Innocence Project only two other exonerated persons have served more time: James Bain, a Florida inmate who served 35 years, and Lawrence McKinney, a Tennessee inmate who was locked up 31 years. This case was handled by the Innocence Project.
- In December 2010 Arizona inmate [John Watkins](#) was exonerated after serving six years for a 2004 rape. Misidentified by the victim from a suggestive photo lineup (Watkins was the only whose shirt was the right color) he accepted a plea deal to minimize the severity of his sentence. This case was handled by the [Arizona Justice Project](#).

- In May 2010 Ohio inmate [Raymond Towler](#) was exonerated of child rape after serving 28½ years. He was originally identified from photo lineups by the 11-year old victim, her 12-year old companion and two persons who said they had seen him in the area. A hair believed to be “Negro” was the only physical evidence. Towler and several alibi witnesses swore that he was home at the time but they were disbelieved. This case was handled by the [Ohio Innocence Project](#).

It’s inevitable that sooner or later the number of miscarriages of justice where DNA is both available and of probative value will drop off. Many local projects have already exhausted their supply of such cases. In any event, DNA is a tool, not a solution. Biological evidence that links a crime to its perpetrator is present in only a small proportion of cases; according to the Innocence Project, DNA can help in no more than ten percent. Yes, it’s conceptually simple to apply, and yes, the results can be compelling. But focusing just on DNA, as the Innocence Project does, leaves a tremendous gap.

Exoneration is a tough slog when DNA is available. As we pointed out in [“What if There’s No DNA?”](#) it’s doubly so in its absence. Reconstructing the past with witnesses and circumstantial evidence is difficult, and particularly after a conviction. Police lose interest – after all, they’ve done their job. Most accused also lack the resources to hire lawyers and investigators. The ability to gather enough facts to make a persuasive claim of innocence diminishes over time as memories fade and people disappear. And that’s to say nothing of the objections that prosecutors are sure to advance when a would-be exoneree seeks a habeas hearing. (For an account of a still-ongoing ordeal see [“Playing With Fire.”](#) For another, which is thankfully done, see [“Never Say Die.”](#))

Just a few days ago the ranks of projects that take on non-DNA cases were increased by one with the launching of Seton Hall Law School’s the [“Last Resort Exoneration Project.”](#) [Luis Rojas](#), a living example of a non-DNA exoneration, spoke at the kick-off event. A New York City resident, he had served eight years of a life sentence for murder. His conviction was based on the mistaken testimony of eyewitnesses who said he furnished the gun that another teen used in a killing. Rojas, then 18, was a mild-mannered youth with absolutely no criminal record. It took countless hours of work by a dedicated team of volunteers to win him a new trial, where he was acquitted.

Rojas was doubly lucky. He would probably still be rotting away in prison except that his situation drew the attention of the new project’s director, Lesley Risinger. She passed on the information to her mother, a lawyer, who got the ball rolling.

Debunking witnesses isn’t the only route for non-DNA exonerations. Physical evidence has often been inappropriately used to convict. In [“One Size Doesn’t Fit All”](#) we discussed the misuse of Shaken Baby Syndrome. Other forensic techniques that have come under attack include [blood spatter](#), [bite marks](#), [dog scent](#), and, as came to light through the wrongful execution of [Cameron Willingham](#), [arson evidence](#).

Innocence projects can help correct injustices, yet they must fight the good fight from the outside. Official initiatives that proactively seek to identify and address miscarriages of justice, such as the Dallas D.A.’s [Conviction Integrity Unit](#), are all too rare. Yet [every wrongful conviction begins with a mistaken arrest](#). It also hardly needs to be pointed out, as we did in [“It’s Good to be Rich,”](#) that innocent persons who lack substantial resources are at a particular disadvantage. What’s needed is a national initiative by

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criminal justice agencies to address the underlying causes of wrongful conviction and devise solutions. Really, until police and prosecutors are onboard, everything else is a band-aid.