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THE USUAL SUSPECTS

Having a record makes it far more likely to be mistakenly arrested

By Julius (Jay) Wachtel. This isn't just another story about a wrongful conviction. No, it's much worse than that: it's about a D.A.'s office that doesn't care whether they have the right guy as long as they have *someone*. Who pays the tab for their fecklessness? Read on.

In March 1993 [an Anchorage prostitute](#) was picked up by two men, savagely attacked, dumped from a car, shot at and left for dead in a snowdrift. She miraculously survived. A week later two men were detained for the crime. In their car was a used condom of the kind carried by the prostitute, and a pistol that was matched to a cartridge casing left at the scene. The driver confessed. He said that the other assailant was not his then-passenger but a black man named William Osborne.

Osborne's photo was placed in a six-pack and shown to the victim. She said that her second attacker was either Osborne or one of the others, but most likely Osborne. Sperm from the condom was typed using a crude DNA procedure and found to be unique to one in every 6 or 7 African-American males. Hairs were also found: two were "consistent" with Osborne, while the origin of others was unknown. Osborne's lawyer decided not to pursue more advanced DNA tests, as she disbelieved his claim of innocence and feared that the results could only strengthen the prosecution's case.

Although the victim originally described a substantially older and much larger man, Osborne was convicted and imprisoned. For the next decade he repeatedly requested that DNA from the condom be analyzed using modern tests. Turned away by police, prosecutors and, finally, the Alaska Supreme Court, he finally admitted his guilt. Two years later, in June 2007, he was paroled.

Six months later Osborne was arrested for a home invasion. He and three codefendants are presently in jail awaiting trial. Obviously the concept of learning a lesson is not in this man's lexicon.

Meanwhile Osborne's appeals bore fruit. In 2006 a Federal District Court determined that Alaska's refusal to retest the DNA using modern procedures, on the defendant's dime, violated his Constitutional rights, senselessly depriving him of the opportunity to be cleared. Anchorage's never-say-die D.A. appealed. Earlier this month the Ninth Circuit affirmed the lower court, ruling that Alaska's standards for post-conviction DNA testing were overly restrictive, essentially requiring that

defendants prove their innocence in advance. The evidence finally went in and results are expected soon.

Admittedly, Osborne's not one to stir sympathy. After all, he did confess, even if it was only to qualify for parole. Maybe he's guilty, maybe not: why should we care whether he's cleared?

In 2005 Orange County (CA) resident [James Ochoa](#) was arrested for carjacking. Ochoa, who lived nearby, was identified by two of the victims from a photograph. A police bloodhound had also followed a scent from a baseball cap left in the vehicle to his home. However, DNA recovered from the baseball cap and from the car's interior was not his, and five members of his family swore he was with them when the crime occurred. Even so, a judge threatened Ochoa, who had a drug record, with a twenty-five year term if he was convicted at trial. Not willing to roll the dice, Ochoa pled guilty and got two years.

Ten months later a man was arrested for another carjacking. His DNA profile, which was routinely entered into the State database, matched the DNA profile from the Ochoa case. The suspect confessed, exonerating Ochoa.

In 1992 four prostitutes were murdered in South Los Angeles. Detectives interviewed [David Jones](#), a mentally disabled man with an IQ of 62 who was in jail for attempting to rape a prostitute. Through persistent, manipulative questioning they got him to say that he had smoked crack with the victims and choked them when they refused to have sex. But he denied killing anyone. Although DNA excluded Jones, prosecutors argued that it didn't rule him out, as prostitutes have multiple sex partners. He was convicted by a jury and got 36 years.

But the killings continued. In 2001 an LAPD detective used DNA to match ten rape/murders, including the four attributed to Jones, to a man in prison for rape. In 2004 Jones was exonerated and received a settlement of \$720,000. The real killer, Chester Turner, was convicted of the ten crimes in May 2007.

In [case after case](#) of wrongful conviction the guilty party continued victimizing citizens while a fall guy rotted in jail. That's not to say that the wrongfully convicted are always nice people -- many became suspects because they already had criminal records. They may not be worth pitying, but the public *is*. When cops quit looking because they incorrectly think they already have their man (or woman), perpetrators keep perpetrating and victims multiply.

Not caring whether the right person is locked up places innocent citizens at grave risk. It's more than a singular injustice: it's a recipe for disaster.