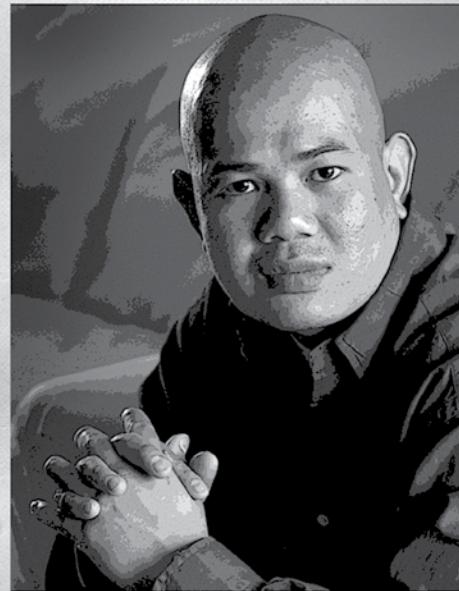


# Convicting the Innocent: TEXAS JUSTICE DERAILED

Stories of Injustice and the Reforms  
That Can Prevent Them



THE JUSTICE PROJECT

*“Any wrongful conviction is a tragedy  
because it leaves the guilty unpunished  
and condemns the innocent to prison,  
or death.”*

— WALLACE B. JEFFERSON, CHIEF JUSTICE  
OF THE TEXAS SUPREME COURT



## About The Justice Project

The Justice Project (TJP) is a non-profit, non-partisan organization dedicated to improving the fairness and accuracy of the criminal justice system. TJP's Campaign for Criminal Justice Reform seeks to reaffirm America's core commitment to fairness and accuracy by designing and implementing national and state-based campaigns to advance reforms that address significant flaws in the American criminal justice system.

The Justice Project has developed a national program of initiatives designed to address and affect the policies and procedures that perpetuate errors and contribute to the conviction and incarceration of innocent people. As such, TJP advocates for 1) improvements in eyewitness identification procedures; 2) electronic recording of custodial interrogations; 3) higher standards for admitting informant or accomplice testimony at trial; 4) expanded discovery in criminal cases; 5) improvements in forensic testing procedures; 6) greater access to post-conviction DNA testing; 7) proper standards for the appointment and performance of counsel in capital cases; and 8) improving prosecutorial accountability.

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## Convicting the Innocent: TEXAS JUSTICE DERAILED

**S**INCE 1994, TEXAS HAS EXONERATED thirty-nine innocent people who served over 500 years in prison for crimes they did not commit. This report contains brief overviews of these thirty-nine cases, all of which have been exposed by DNA evidence, and analyzes the systemic problems that have resulted in the wrongful convictions of the innocent. By identifying the causes of wrongful convictions and implementing practical reforms, Texas can increase the fairness, accuracy, and reliability of its criminal justice system.

These thirty-nine DNA cases expose a criminal justice system that is wrought with problems that lead to wrongful convictions.

Because DNA evidence is only available in a fraction of cases, the wrongful convictions described in this report are only the beginning. There are many other wrongful convictions that have been cleared without the benefit of DNA. While non-DNA exonerations are more difficult to prove, they are similar to DNA cases in that they trace back to the same flawed procedures in need of reform. As such, these thirty-nine DNA cases expose a criminal justice system that is wrought with problems that lead to wrongful convictions.

Although several of the exoneration cases involve instances of intentional misconduct, inadvertent error is by far more common. It would only compound these injustices, however, to assume that these mistakes were inevitable. Texas cannot ignore its broken criminal justice system. This report addresses the common causes that lead to wrongful convictions, as echoed in each of these cases, and presents practical reforms to prevent such errors. It is critical for Texas to take action. When Texas gets it wrong and convicts an innocent person, the true perpetrator remains free to commit more crimes.

## Factors Leading to Wrongful Convictions

The thirty-nine DNA cases analyzed in this report clearly indicate that eyewitness misidentification is by far the leading factor in wrongful convictions in Texas. The majority of these misidentifications occurred in either photo or live lineups. Other factors include: false forensic testimony, reliance on unreliable or limited forensic methodologies (such

as microscopic hair comparison or serology inclusion), testimony from informants or accomplices with incentives to lie, false confessions and guilty pleas, suppression of exculpatory evidence, ineffective assistance of counsel, and investigative and prosecutorial tunnel vision. The last two factors, while undoubtedly at work, are difficult to pinpoint or quantify. As such, we have not attempted to measure specific instances of those problems in the remainder of the report, but briefly address them here.

There is no question that the most fundamental and important protection against wrongful conviction is access to a qualified defense attorney. With appropriate investigative and expert resources, defenders can meaningfully test the evidence against their clients and argue an effective line of defense. In practice, defenders frequently go without these much-needed resources and may often lack training, skills, and support—all factors that put innocent defendants at risk.

Tunnel vision refers to a normal psychological tendency to seek information that fits a theory or belief and causes one to discount or ignore information that does not fit within that theory or belief. While investigators and prosecutors must eventually commit to a theory of who is responsible for a crime, too often this commitment to a theory is premature in the investigative process, and important leads or information are either rejected or simply ignored.

Eyewitness misidentification is by far the leading factor in wrongful convictions in Texas.

## Wrongful Convictions Threaten Public Safety

Considering the devastating consequences of even one of these injustices, it is clear that all reasonable steps to prevent wrongful convictions must be taken. The injustice endured by an innocent person whose most basic liberty is denied cannot be overstated. The nightmare of an unjust imprisonment ruins lives and destroys families. For the innocent, prison is a terrifying ordeal few can even imagine.

Beyond the personal cost to those wrongfully convicted and the millions of dollars spent re-

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investigating cases and paying compensation, there is another price we all pay—true perpetrators go uninvestigated and unpunished, putting public safety at risk. In each of these innocence cases, a criminal investigation into a serious violent crime was shut down prematurely when authorities prosecuted the wrong person.

In most cases, it took many years to bring these wrongful convictions to light. Most of the crimes remain unsolved because the leads dried up long ago. Fortunately, in some of these cases, the same DNA results that freed the innocent also identified the guilty. It is in those cases that we catch a glimpse of the full cost of a wrongful conviction. The crimes that are committed in the time between a wrongful conviction and the identification of the true perpetrator are an immeasurable cost to the community.

The Innocence Project's recent review of DNA exonerations has identified ninety-one actual perpetrators from 233 exoneration cases—approximately thirty-nine percent. The Innocence Project also estimates that forty-nine rapes and nineteen murders were committed by actual perpetrators following wrongful convictions. Although Texas has identified actual perpetrators in about thirty-five percent of DNA exoneration cases, Texas has been unable to prosecute some of those perpetrators because the statute of limitations has passed.

One of the most troubling examples of the threat posed to public safety from wrongful conviction is found in the case of Timothy Cole, who tragically died in prison in 1999 prior to exculpatory DNA testing. Cole was convicted of one of a string of five rapes that occurred in 1985 near the Texas Tech campus in Lubbock based largely on a victim's eyewitness identification. The photo lineup presented to the victim was highly suggestive. Cole's picture stood out because the police used a color Polaroid photo of Cole while the other photos were black and white mug shots.

Cole was only convicted of one of the Texas Tech rapes, but because of the similarities in the crimes, the police suspected that Cole was guilty of them all. Consequently, the investigation into the Texas Tech rapes ended once Cole was behind bars.

During his trial, Cole's defense lawyer tried to argue that a man named Jerry Wayne Johnson was

a more plausible alternative suspect, but the judge rejected this line of defense. In May 2008, DNA testing proved that Jerry Wayne Johnson had indeed raped the victim of the crime for which Cole was imprisoned.

Johnson, however, continued to commit horrible crimes. On July 4, 1985, Johnson abducted a man and woman after a party and raped the woman in a cotton field. While out on bond awaiting trial for that rape, Johnson raped a fifteen-year old girl at knifepoint. Additionally, Johnson was suspected in the murder of insurance saleswoman Mary Louise Smith. Smith was found beaten with a blunt object and strangled. Though he was held on a two million dollar bond in that case, the investigation stalled and Johnson was never tried for Smith's murder. He was convicted of the other two rapes, however, and is now serving a life sentence.

It is impossible to know for sure what would have happened if more careful eyewitness identification procedures were used in the Texas Tech rape investigation. By presenting a photo lineup in which Cole's picture stood out as different from the

fillers, police undermined their ability to get reliable eyewitness evidence and mistakenly came to believe they had their man. Had the investigation continued, Johnson might have been stopped before victimizing others. In September 2008, the victim of the crime for which Cole was convicted, Michele Mallin, spoke out publicly about her experience and her hope that reforms are implemented to avoid such mistakes in the future.

The public was also put at risk following the wrongful conviction of Thomas McGowan, who was convicted of rape and burglary in 1985 following a mistaken eyewitness identification. After DNA test results cleared McGowan of involvement in the crime in 2008, police ran the DNA evidence through a national DNA database and found a match in Kenneth Wayne Woodson. They found that while Woodson went uninvestigated for the McGowan case, he committed another rape and burglary in 1986. He was sentenced to thirty years in prison for that crime and was paroled in January 2006 after serving twenty years. He was then convicted of robbing a bank in Richardson, his parole was revoked,

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and he was sent back to serve prison time for the bank robbery.

Woodson confessed to the crimes for which McGowan had been wrongly convicted when he was confronted with the DNA evidence. He cannot be charged for those crimes, however, as the statute of limitations has passed. Had the investigation into the 1985 rape not been prematurely shut down by bad eyewitness evidence, police might have been able to prevent Woodson from committing other horrible crimes. The photo lineup that led to the misidentification was suggestive and the mistake could have been avoided.

The statute of limitations has also passed in another troubling case in which incontrovertible DNA evidence came too late. Although Ronald Taylor was convicted of the 1993 rape of a Houston woman, DNA tests later revealed the identity of the true perpetrator, Roosevelt Carroll. While a faulty eyewitness identification led the investigators to mistakenly zero in on Taylor, Carroll victimized at least two other women. Carroll was convicted of two other rapes and was serving a fifteen-year sentence when Taylor was finally exonerated. The victim of the 1993 rape will never get justice.

Though these investigations and prosecutions were done in good faith, their accuracy was undermined by unreliable evidence. If such tragic and consequential errors in evidence were unavoidable, then one might be forced to accept them as “the cost of doing business.” However, the reality is that many of the errors follow patterns that are predictable and preventable with the right kind of safeguards in place. Until those safeguards have been implemented, Texas faces the risk of more investigations ending prematurely while the true perpetrator remains at large to commit additional crimes.

## The Limits of DNA Evidence

In a state with thousands of criminal convictions every year, the number of documented wrongful convictions represents only a tiny fraction. There can be no doubt that the system usually gets it right.

Nevertheless, the devastating costs of wrongful convictions make it clear that Texas cannot afford to assume that these cases are merely the cost of doing business in the criminal justice system. Texas must recognize that the system is flawed and can be improved by implementing simple procedural reforms that greatly reduce the risk of error.

While the majority of this report focuses on the wrongful convictions uncovered through DNA testing in Texas, they are only the tip of the iceberg. The advent of DNA technology has given our criminal justice system a tool that can provide incontrovertible evidence of guilt—and innocence—in cases where the presence of biological evidence is dispositive. Unfortunately, biological evidence is present in only a fraction of criminal cases. While DNA is an invaluable tool, it does not solve the problems of unreliable evidence that repeatedly surface when wrongful convictions are discovered. The vast majority of cases simply do not have probative DNA evidence.

In addition to the thirty-nine DNA exoneration cases in this report, there are scores of exonerations in Texas for which there is no DNA evidence. While a defendant is innocent until the prosecution proves guilt, after a conviction occurs, the burden shifts to the defendant to prove innocence. New evidence that merely casts doubt on the conviction is not nearly enough to overturn a conviction—which is why DNA evidence, where it exists, is so successful in exonerating the innocent. Without DNA evidence, inmates face an almost insurmountable challenge to establish their innocence conclusively. Still, a surprising number have been cleared against the odds.

In one high-profile set of non-DNA wrongful convictions, dozens of people were framed in a drug sting by a rogue undercover officer. In that 1999 case, forty-six residents of the small town of Tulia, Texas were arrested for selling cocaine based solely on the word of one undercover officer. After it was discovered that the undercover officer had fabricated all the evidence in the cases, a collective lawsuit brought by the wrongly convicted was settled for six million dollars.

Perhaps one of the most well-known Texas wrongful convictions was that of Randall Dale Adams. Adams was convicted of the murder of a Dallas police officer and sentenced to death. His case was

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the subject of the documentary film *The Thin Blue Line*. The true killer, David Harris, subsequently confessed on tape. After twelve years in prison, new evidence of innocence came to light through Adams' appeals and he was eventually released.

Another non-DNA exoneration occurred in the case of Clarence Brandley, a janitor who was wrongly convicted and sentenced to death in Montgomery County, Texas for the rape and murder of Cheryl Ferguson in 1981. Brandley's conviction was overturned in 1989 after new evidence showed that authorities had suppressed exculpatory evidence. In addition, an investigation by the FBI and the U.S. Department of Justice found additional misconduct by the authorities in the case. All charges against Brandley were eventually dropped.

In 2004, Ernest Willis was released after serving almost seventeen years on Death Row for the arson murder of two women. Willis had been living in the house where the fire occurred. Willis escaped uninjured and investigators believed that he had intentionally set the fire. Years later, the Pecos County District Attorney hired an independent arson expert who concluded that the evidence used against Willis was without any scientific basis, and there was no evidence of arson. The prosecutor eventually apologized "for so many lost years" and said that Willis "simply did not do the crime."

In each of these cases—only a few among many convictions overturned in Texas without the benefit of DNA evidence—flawed evidence was fortuitously exposed. In some cases, evidence of guilt evaporated under greater scrutiny; in others, affirmative evidence of innocence was found. Yet in all of these cases it was exceedingly difficult to undo the damage of flawed evidence in the courtroom and to rectify the wrongful conviction.

A recent review of evidence used in non-DNA cases reinforces the importance of implementing procedures that enhance the quality of evidence relied upon by the system. In October 2008, the *Dallas Morning News* published an investigative series on the alarming number of exonerations that

have emerged from Dallas County. The newspaper reviewed numerous cases and documented, for example, that eyewitness evidence is routinely relied upon in robberies, where it is rare to have DNA evidence, even with little or no corroboration of the eyewitness evidence.

It is no accident that the vast majority of DNA exonerations involve sexual assault cases where biological evidence is often present with the potential to clearly indicate guilt. In these cases, DNA testing reveals errors and weaknesses in many types of evidence and procedures. Our criminal justice system relies on these same kinds of evidence and procedures in cases where DNA evidence is not available, putting additional innocent suspects at risk. DNA exonerations are but a window to the larger, unseen problem. We know that the same evidence suffers the same flaws in non-DNA cases. What we do not

### Texas DNA Exoneration Facts

Texas has had more wrongful convictions exposed by DNA than any other state in the country.

Collectively, these thirty-nine men have spent more than 548 years in prison with an average of fourteen years.

Over \$17 million dollars have been paid by state and local governments in civil settlements and statutory compensation to those wrongfully convicted.

Twelve counties in Texas have uncovered wrongful convictions through DNA evidence.

Dallas County leads the state in the number of wrongful convictions, a direct result of preserving DNA evidence while other counties destroyed it.

Nine people have been released from Texas' death row based on evidence of their innocence.

85% of the cases involve mistaken eyewitness identification.

18% of the cases involve false forensic testimony.

28% of the cases involve the use of unreliable or limited forensic methodologies (e.g., microscopic hair comparison, serology inclusion, bite mark matches, voiceprint analysis).

13% of the cases involve informant or accomplice testimony from witnesses with incentives to lie.

13% of the cases involve false confessions or guilty pleas.

18% of the cases involve suppression of exculpatory evidence or other misconduct.

know is how many innocent individuals have been convicted based on faulty evidence.

## Jurors Deserve the Most Reliable Evidence

In the criminal justice system, jurors determine guilt or innocence by evaluating the evidence presented to them. If that evidence is incomplete, biased, or incorrect and the innocent are wrongly convicted, jurors are placed in a terrible situation that benefits no one involved. As one juror from the Richard Danziger case stated, “I think any one of us resents the position we were put in. You know, we were made a party to ruining [Danziger’s] life.”

The only direct evidence in the case linking Danziger to the murder of Nancy DePriest in Austin was the confession of his friend Christopher Ochoa—a confession that DNA evidence later revealed to be false. The jurors were not given the full story of how that confession was elicited in a threatening and coercive interrogation that lasted more than twenty hours. Without that context, the confession and testimony from Ochoa led jurors to believe that there was no decision other than to find Danziger guilty.

Another juror from the case said, “I think we should hear how that testimony came about because we had no choice with what we heard. . . . And I was uneasy about the verdict, but if you believed what you were hearing, and it was hard not to, you had to find him guilty.” Another juror agreed and stated, “It would have made a difference to me if I had known that [Ochoa] had sat there for nineteen hours before he was allowed to go home only if he confessed.” It took the confession of the true killer and DNA confirmation years later to finally reach the truth.

One of the Danziger jurors said when she learned of the true killer’s confession and the DNA evidence, “That’s when I really learned that you can make somebody say something or admit to something that’s just not true.” Knowing that they sentenced Danziger to prison based on a false confession has left these jurors with anger and guilt. One juror stated, “I feel guilty for what I’ve done. It

makes me sick to my stomach that those two men were destroyed.”

The wrongful convictions of Ochoa and Danziger are a troubling reminder of the importance of giving jurors all the evidence they need in order to reach justice. When custodial interrogations are not recorded, jurors miss essential information they need to effectively and accurately evaluate the reliability of a confession. Had the evidence been thoroughly documented by recording the interrogation, and jurors given the full story, they might have avoided the injustice suffered by the two men, not to mention the millions of dollars in settlements the taxpayers had to pay.

## Reform: Improving the Reliability of Evidence

By implementing a reform agenda, Texas can ensure that the best evidence possible reaches courtrooms and can enhance the fairness and accuracy of its criminal justice system.

### Eyewitness Identification

Eyewitness identification testimony is one of the most widespread and powerful forms of evidence in our criminal justice system. Much like trace physical evidence, however, eyewitness evidence is highly susceptible to contamination if it is not collected carefully according to scientific protocols. In Texas, eighty-five percent of all wrongful convictions exposed by DNA testing have involved incorrect eyewitness identifications.

The criminal justice system cannot do without eyewitness evidence. Though DNA exonerations have highlighted its inherent flaws, the good news is that extensive research conducted over decades has identified ways to minimize the risk of mistakes.

Texas currently has no statutory standards regarding the conduct of photo or live lineups. Furthermore, though scientifically-grounded best practices for conducting identification procedures have been around for more than a decade, a recent survey by The Justice Project of over 1000 Texas police and sheriff’s departments yielded an even more troubling finding: eighty-eight percent of law enforcement agencies have no written policies or

“I think any one of us resents the position we were put in. You know, we were made a party to ruining [Danziger’s] life.”—A DANZIGER JUROR

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procedures for the conduct of photo or live lineups. The few policies that do exist are more often than not vague and incomplete. Only a tiny fraction of the departments have implemented best practices for eyewitness procedures recommended by the U.S. Department of Justice, the International Association of Chiefs of Police, the American Bar Association, and others.

Texas must require law enforcement agencies to adopt written policies and procedures for the conduct of photo and live lineups that implement the following key safeguards:

- Complete documentation of identification procedures:** Given the overwhelming importance of eyewitness testimony and the weight afforded to it by juries,

it is essential to fully document photo or live lineups. Thorough documentation helps a jury to assess the eyewitness evidence appropriately and minimizes the effects of reinforcing feedback that can distort the confidence level of an eyewitness between the time of the identification and the trial.

Documentation of an eyewitness identification procedure must include the photos used in a photo lineup or a photograph of a live lineup and all dialogue and witness statements made during the procedure. When an identification is made, it is essential to have documentation of the witness's degree of confidence in the identification, in the witness's own words and prior to any feedback from authorities. It is important to fully document all procedures, even those that do not result in an identification. Electronic recording of photo and live lineups provides the most complete record of these critically important investigative procedures.

- Cautionary instructions:** Regardless of whether the true perpetrator is in a lineup, an eyewitness may feel pressure to make an identification. Prior to presenting the lineup, the eyewitnesses should be instructed that the perpetrator may or may not be included in the lineup and that they should not feel compelled to make an identification. Cautionary instructions of this sort remove some of the pressure on the eyewitness to choose a suspect when the culprit may not be in the

**Eighty-eight percent of Texas law enforcement agencies have no written policies or procedures for the conduct of photo or live lineups.**

lineup. Extensive research has demonstrated that cautionary instructions reduce incorrect identifications with no decrease in correct picks.

- Fair lineup composition:** Effective selection of fillers when composing a lineup can help reduce the risk of identifying an innocent suspect. Only one suspect should appear in each lineup and at least five fillers should be included. Rather than selecting fillers based on their resemblance to the suspect, which makes the witness's task more complicated, fillers should be selected to resemble the witness's description of the perpetrator. Most importantly, the suspect or the suspect's photo should not unduly stand out and should be presented in a uniform format to that of the fillers. Fair composition of photo and live lineups allows authorities to judge the reliability of an eyewitness effectively.

- Neutral blind lineup administration:** The person who administers the photo or live lineup to a witness should not know the identity of the suspect. The purpose of keeping the administrator "blind" as to which person in the lineup is the suspect is to prevent the administrator from unintentionally influencing the results. This is generally done inadvertently through verbal or non-verbal behavior. Witnesses may be very motivated to make an identification and seek to interpret the behavior of the lineup administrator for cues about the suspect, even if no such cues exist. Finally, a double-blind protocol also eliminates the problem of investigators interpreting ambiguous witness comments and other behavior through the lens of their theory of a suspect's guilt.

**Regardless of whether the true perpetrator is in a lineup, an eyewitness may feel pressure to make an identification.**

- Avoidance of repeated exposure of the suspect to a witness:** Police departments must adopt policies that address the inherent risk in repeatedly presenting a witness with a suspect or a suspect's photograph. In some exonerations, a witness did not identify a suspect in an initial lineup but subsequently identified him in a later lineup (in which the only common person was

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the one wrongfully convicted). Because of the fragile nature of witness memory, particularly the possibility of “memory transference” between events, multiple exposures undermine the reliability of an identification.

- **Sequential presentation option:** In addition to the above measures, police departments should consider implementing sequential presentation of lineups. Traditionally, eyewitnesses are shown a photo or live lineup in which the lineup members are presented as a group. An eyewitness viewing a lineup tends to make a judgment about which individual looks most like the perpetrator relative to the other members of the lineup. This natural tendency toward “comparison shopping” is problematic when the suspect in the lineup is not in fact the perpetrator. Presenting the photos or lineup members one at a time discourages the tendency to judge the lineup members against each other and to make an identification through a process of elimination, in favor of a more direct comparison of each person to the witness’s memory.

Many studies indicate that sequential presentation reduces error, although some researchers believe that the superiority of sequential presentation has not been established. Texas departments may want to consider the sequential option as more field-testing data is accumulated.

Juries will sometimes convict an individual based on a confession alone, so special care must be taken to ensure that the suspect’s statements are as reliable as possible.

While documented false confessions indicate the need for safeguards, powerful benefits to law enforcement have also made recording very popular with the police who do it. A survey of police departments that record interrogations conducted by former United States Attorney Thomas P. Sullivan found overwhelming support for electronic recording of interrogations. Among the benefits cited were the protections against false claims of coercion or misconduct, the ability to concentrate on the suspect

and his demeanor rather than taking notes, and the usefulness of recorded interrogations for training officers. With electronic recording, motions to suppress confessions are reduced, and the “he said-she said” swearing matches about what took place in the interrogation room are essentially eliminated. The result is that judges and juries have the complete story that allows them to effectively weigh the evidence,

convict the guilty, and protect the innocent.

Although Texas currently requires that oral confessions be recorded to be admissible in court, there is no provision stating that the interrogation preceding an oral confession must be recorded. Further, authorities overwhelmingly rely on written statements signed by the suspect, which have no requirement for electronic recording at all. In any case, Texas currently does not require that interrogations that lead to confessions be recorded.

Texas should require the electronic recording of full custodial interrogations in serious crimes with the following considerations in mind:

- **“Stem to stern” recording:** In order to reap the benefits that electronic recording affords police, prosecutors, innocent suspects, and the system as a whole, the entire custodial interrogation must be recorded—not merely the confession. Recording should begin at and include the delivery of the suspect’s Miranda rights and continue uninterrupted until the end of the interview. Implementing this requirement guarantees that the best, most complete evidence will be available at trial. Questions as to whether Miranda warnings were given and false claims of abuse or coercion will be avoided, resulting in fewer

## Electronic Recording of Custodial Interrogations

The idea that someone would falsely confess to a serious crime seems counterintuitive to most people. False confessions are a well-documented reality, particularly among more vulnerable groups such as juveniles and the mentally disabled, and they have resulted in wrongful convictions in Texas and across the country. Confessions are so powerful, in fact, that they can even overcome other exculpatory evidence. Juries will sometimes convict an individual based on a confession alone, so special care must be taken to ensure that the suspect’s statements are as reliable as possible.

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motions to suppress confessions. Recording may also encourage guilty suspects to enter into plea bargains rather than going to trial.

Innocent suspects will likewise be protected from wrongful conviction by providing courts with the information necessary to accurately assess whether a defendant's statement is reliable and voluntary.

- **Audio or video:** While video recording devices are preferable, some departments have expressed concern about the costs of implementation. Audio recording is an acceptable alternative that can be implemented at very low cost. It should be left to the discretion of the agency to choose the system that best fits its needs and resources.
- **Scope of recording:** Recording in all criminal cases promises the most benefits, but at a minimum, recording interrogations conducted in connection with felony investigations should be required. It is especially urgent to record interrogations involving juvenile suspects and those whom authorities have reason to believe are mentally disabled or mentally ill.
- **Exceptions:** Recording requirements must include reasonable exceptions so as not to place an undue burden on law enforcement and to allow for the admission of voluntary statements that were not

recorded for valid reasons. For example, a suspect's statement should be admissible if officers made a good faith effort to record but were unable to do so because of equipment malfunction or power outage. Additionally,

spontaneous statements made by the defendant, or statements made during routine processing of the defendant, may be admissible in court because they were made outside the context of an interrogation. Statements made by a suspect who refuses to speak if recorded might also be deemed admissible as long as the refusal itself is recorded.

Electronic recording of custodial interrogations has emerged as a powerful innovation and

fact-finding tool for the criminal justice system. The virtue of electronic recording of custodial interrogations lies not only in its ability to help guard against false confessions, but also in its ability to develop the strongest evidence possible to help convict the guilty.

### Jailhouse Informant Testimony

**B**ecause jailhouse informants are so desperate to attain sentence reductions and other benefits, informant testimony is widely regarded as the least reliable testimony in the criminal justice system. When the state offers a benefit in exchange for testimony, whether that benefit is explicit or implied, the incentive for incarcerated individuals to fabricate evidence dramatically increases. Some informants may fabricate testimony in an effort to curry favor with prosecutors apart from any promise or implied benefit.

The protections currently in place have proven inadequate to safeguard against unreliable testimony by witnesses with powerful incentives to lie. Remarkably, the use of jailhouse informant testimony continues to be largely unregulated by state legislatures or courts despite frequent, documented cases of injustice and instances of wanton abuse. Texas is no exception as no statutes regulating the use of jailhouse informant testimony exist.

About fifteen percent of all DNA exonerations nationally included jailhouse informant testimony. Texas must implement safeguards designed to subject this testimony to more transparency and higher scrutiny. Specifically, Texas should require the following reforms:

- **Written pretrial disclosures:** Texas should require written pretrial disclosure of all inducements a jailhouse informant may have been given or promised in exchange for testimony, including pay, immunity from prosecution, leniency in prosecution, or other personal advantage, along with the proffered testimony the prosecution seeks to present. In addition, any past cooperation agreements of the informant should be disclosed along

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with other information bearing on the informant's credibility. Timely disclosure of this information ensures that defendants can conduct meaningful investigation and cross-examination.

- **Pretrial reliability hearings:** Texas should follow Illinois in providing for pretrial reliability hearings in cases where the prosecution intends to use informant testimony. In a pretrial reliability hearing, the court performs a “gatekeeper” function where it should be required to determine that the informant’s testimony is sufficiently reliable to be presented to a jury.
- **Require corroboration:** Texas should adopt corroboration requirements for informant testimony to mitigate the inherent risks presented by witnesses with incentives to lie.
- **Cautionary jury instructions:** Texas should adopt cautionary jury instructions in all cases where the testimony of a jailhouse informant is used.

Greater scrutiny and transparency of jailhouse informant testimony in Texas will prevent unreliable evidence from being used in the courts and will produce more reliable outcomes in criminal cases.

## Forensic Oversight

Inaccurate forensic evidence and testimony is the second leading cause of wrongful convictions exposed by DNA in Texas. The Houston Police Department’s (HPD) crime lab debacle is a striking example of how poorly a forensics lab can operate without proper oversight. Independent investigator Michael Bromwich found that analysts at the HPD crime lab repeatedly tested DNA samples incorrectly and, in some cases, made up results without actually testing evidence. Clearly, a lack of oversight of forensic labs in Texas had devastating consequences on the accuracy of the criminal justice system—to date, three wrongful convictions have been traced to the HPD lab.

Fortunately, Texas has taken important steps forward since the disclosure of the problems in the

HPD lab. The establishment of the Texas Forensic Science Commission provides an independent body to review allegations of forensic negligence and misconduct and to recommend corrective action.

The statutory tasks of the Forensic Science Commission are essentially backward-looking. While the commission is able to make recommendations for

remedial action regarding complaints of negligence and misconduct, it is primarily oriented to be a reactive entity. It is essential to establish a forensic oversight system that is more proactive in setting quality standards in order to ensure the best evidence possible.

While DNA tends to get the attention of the media and policy-makers, forensic labs are engaged in a variety of sub-disciplines beyond DNA, and the need for oversight and quality standards in those areas is great. The proactive quality assurance role needed in Texas must address all aspects of forensic science that are relied upon in criminal trials—not just DNA evidence. The following changes would help to implement those goals:

- **Texas should give the Forensic Science Commission a proactive role in reviewing, setting, and enforcing quality standards:** These expanded duties should include a review of existing private accreditation program requirements and the development of proposals for supplementing those requirements as appropriate to best ensure objectivity and reliability. Commission staff and budget should be augmented to accommodate these functions.
- **Independence and blind testing:** Texas should develop and require all forensic science laboratories to adopt structures and policies to prevent bias in testing and analysis, such as regulating the amount of extraneous contextual information an analyst receives prior to testing to reduce the risk of confirmation bias or other observer effects. Forensic labs should also move toward becoming independent from law enforcement and prosecutorial agencies to best insulate analysts from the risk of “group think” that occurs from working closely with police as part of a crime-solving “team.”

Clearly, a lack of oversight of forensic labs in Texas had devastating consequences on the accuracy of the criminal justice system—to date, three wrongful convictions have been traced to the HPD lab.

## Convicting the Innocent: TEXAS JUSTICE DERAILED

Recent studies have demonstrated the risk of inadvertent bias affecting the outcome of forensic testing. One 2006 study in the *Journal of Forensic Identification* asked experienced analysts to evaluate a series of fingerprints to determine if they matched. These analysts believed they were examining prints for an open, unsolved case, but they were in fact re-examining prints that they had previously analyzed accurately. The prints were given to the analysts along with artificial contextual information, such as the fact that the suspect had confessed. In cases where analysts were given contextual information about the fingerprints, they were wrong in almost seventeen percent of the cases. This study highlights the need to ensure that extraneous contextual information does not undermine the objectivity of analysts. By ensuring that labs are independent of law enforcement and prosecutorial agencies, along with regulating the flow of information between investigators and forensic analysts, these kinds of errors can be minimized.

While some jurisdictions have voluntarily adopted more expansive discovery practices, the lack of statewide standards means too many Texans are being tried without a fair opportunity to review the evidence the state wants to use against them in court.

Discovery to occur in advance of trial, often leaving defense counsel without adequate time to review the materials and prepare. While some jurisdictions have voluntarily adopted more expansive discovery practices, the lack of statewide standards means too many Texans are being tried without a fair opportunity to review the evidence the state wants to use against them in court.

The adoption of open-file discovery rules for criminal trials creates a more level playing field by ensuring that evidence can be meaningfully challenged and tested, and by removing much of the uncertainty inherent in the discretionary disclosure decisions prosecutors now make.

The record of wrongful convictions has demonstrated that exculpatory evidence can be withheld for years, even decades, while an innocent person sits in prison. Whether the state fails to disclose evidence inadvertently or intentionally, clear rules about what is subject to discovery—and clear consequences for failure to disclose discoverable information—minimize the risk of these mistakes.

Texas should implement the following changes:

- **Require an open-file discovery policy** to allow access to all relevant, unprivileged information in the possession, custody, or control of the state, subject to appropriate regulation by the courts.
- **Require automatic disclosure of key documents** such as police reports and witness statements prior to trial.
- **Provide for adequate timelines** to ensure access to information to allow investigation and review.
- **Enforce remedies** in cases where discoverable material is willfully suppressed, or when discovery obligations are not or only partially met.

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The Justice Project has published comprehensive policy reviews on the above reforms in addition to a policy review on post-conviction DNA testing. The policy reviews can be downloaded from The Justice Project's website at [www.thejusticeproject.org](http://www.thejusticeproject.org).

## Stories of Injustice: The Texas DNA Exonerated

**D**espite the great injustices they have suffered, the thirty-nine men whose stories are described below are actually the lucky ones. Unlike most cases in the criminal justice system, each of these cases involve DNA evidence, which can expose the guilty and reveal the innocent. It is fortuitous that DNA was preserved and available for testing. Without DNA evidence, these profiles of injustices likely would never have been exposed, and the systemic problems that caused these wrongful convictions may never have been discovered. These thirty-nine cases highlight the need for reform as it is impossible to know how many similar mistakes have been made in cases without DNA evidence to expose them. Texas must address these flaws and implement the reforms that can prevent them to ensure that no innocent person suffers as these thirty-nine men have suffered.

### Gilbert Alejandro

**G**ilbert Alejandro was wrongfully convicted of sexual assault in 1990 based largely on the faulty testimony of forensic expert Fred Zain. At trial, Zain testified that DNA tests established that semen found on the victim's clothes "could only have originated from [Alejandro]." A reexamination of the original DNA testing years later showed that Alejandro was actually excluded as the perpetrator. In fact, records showed that Zain's testimony

was based on DNA testing that had not yet been completed at the time he testified against Alejandro.

Inaccurate eyewitness testimony also contributed to Alejandro's wrongful conviction. He initially became a suspect when the victim identified him from a book of mug shots. After the initial identification, police then showed the victim several photo lineups that included

Alejandro, but she failed to identify him. Regardless, police still chose to focus on Alejandro because of the victim's initial identification from the mug book. The victim described her attacker as Hispanic, about six feet tall, and wearing a white cap. She could not provide a more detailed description

because she said her face was covered with a pillow during the attack. Although the defense questioned the strength of her eyewitness identification, the jury found Alejandro guilty.

Because of the false testimony of forensic expert Fred Zain and the mistaken eyewitness identification, Gilbert Alejandro spent almost four years in prison for a crime he did not commit.

### Michael Blair

**M**ichael Blair became the prime suspect in the 1993 murder of seven-year-old Ashley Estell of Plano when two crime scene investigators noticed him near the scene and thought he looked suspicious. Police interrogated Blair for over nine hours. Throughout the interrogation, Blair maintained his innocence and was released. An eyewitness came forward stating that he saw Blair in the park where the girl was abducted.

At trial, a forensic scientist testified that strands of hair found at the crime scene on the day of the girl's abduction appeared to match hairs taken from the victim and Blair. In addition, the forensic expert testified that hairs found in Blair's car closely resembled hairs taken from the victim, and he could not "tell the difference, microscopically" between fibers taken from Ashley's body and fibers found in Blair's car. An FBI analyst also testified to similarities in the chemical composition of the fibers. The jury took only ninety minutes to convict Blair and sentence him to death.

Post-conviction DNA testing of the hair samples in 1998, 2000, and 2002 revealed that none of the hairs came from either the victim or Blair. In 2006, DNA testing showed that material taken from under the victim's fingernails did not come from Blair. Blair's conviction was thrown out in 2008.

Because of faulty forensic evidence and a mistaken eyewitness identification, Michael Blair spent fourteen years on Texas' death row for a crime he did not commit.

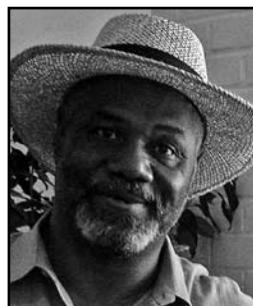
*Michael Blair spent fourteen years on death row due to faulty forensic science and a mistaken eyewitness identification.*

*Gilbert Alejandro spent almost four years in prison due to false testimony about DNA and a mistaken eyewitness identification.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

## A.B. Butler

In 1983, a mistaken eyewitness identification led to the wrongful conviction of A.B. Butler for the aggravated kidnapping of a woman in Smith County. The victim initially identified Butler as her attacker from a book of mug shots. She also identified him in a live lineup and again during the trial.



CLAY GRAHAM

*A.B. Butler spent seventeen years in prison due to one mistaken eyewitness identification.*

After learning about emerging DNA technology, Butler repeatedly petitioned for DNA testing of evidence found at the crime scene. In 1999, the first set of tests were conducted by a private lab and the results were inconclusive. A second set of tests were conducted by a lab in New York using a newly developed technique that allowed scientists to better isolate male DNA and provide more sophisticated analysis. These tests proved conclusively that Butler's DNA did not match DNA found on the victim. Butler was released in January 2000 and was granted an official pardon from Governor George W. Bush.

Because of one mistaken eyewitness identification, A.B. Butler spent seventeen years in prison for a crime he did not commit.

## Kevin Byrd

Wrongfully identified as the perpetrator of a violent rape in Harris County in 1985, seventeen-year-old Kevin Byrd did not match the description of the attacker that the victim originally gave to police. The victim initially described the perpetrator as a thirty-five-year-old white male with an unusual "honey brown" complexion. Byrd was arrested even though he was significantly younger than the description and more importantly, he is black. Byrd voluntarily provided blood, saliva, and hair samples to police, but the science at

the time was not advanced enough to exclude him as the perpetrator.

Harris County prosecutors used the victim's identification as the centerpiece of their case against Byrd. He was convicted and sentenced to life in prison. Not everyone was convinced of Byrd's guilt, though. The trial judge sent a letter to the chief of police complaining about the investigation. In addition, although evidence was routinely destroyed in Harris County, a deputy district clerk happened to save the trial exhibit containing the biological evidence in Byrd's case.

Post-conviction DNA testing provided irrefutable proof that Byrd was not the attacker. Byrd was released and eventually granted an official pardon from Governor George W. Bush in October 1997.

Because police and prosecutors ignored contradictions in a mistaken eyewitness's testimony, Kevin Byrd spent twelve years in prison for a crime he did not commit.

## Charles Chatman



DALLAS MORNING NEWS

In 1981, police placed Charles Chatman's picture in a photo lineup after a woman in his Dallas County neighborhood was sexually assaulted. The victim told police that she remembered her attacker as a neighbor. That same day she identified Chatman from a photo lineup and a live lineup. The victim did not mention Chatman's most distinguishing characteristic in her initial description of the perpetrator—Chatman was missing his front teeth.

At trial, the state's case consisted of little more than the victim's previous identifications and her in-court identification of Chatman. The state also presented forensic results showing the assailant's blood type characteristics were consistent with

## Convicting the Innocent: TEXAS JUSTICE DERAILED

those of Chatman. These characteristics were also consistent with forty percent of all black males. Chatman's defense presented alibi testimony that he was at work, employed as a custodian, during the attack. Chatman's sister, who also worked at the custodial service, corroborated his alibi. Nevertheless, Chatman was convicted of aggravated sexual assault and sentenced to ninety-nine years in prison.

Chatman applied for post-conviction DNA testing. After two inconclusive results, a more advanced DNA test proved that he did not commit the rape. Chatman was released from prison on January 3, 2008, and a formal exoneration followed on February 26, 2008. Chatman missed three chances at parole because he refused to admit to the crime or apologize for it.

Because of one mistaken eyewitness identification, Charles Chatman spent twenty-seven years in prison for a crime he did not commit.

## Timothy Brian Cole

**T**imothy Cole became the prime suspect in a series of rapes on the Texas Tech campus in 1985 after he engaged in small talk with an undercover female officer sent to the area where the attacks occurred. The Lubbock police placed the undercover officer in the area with the hope of luring out the "Texas Tech rapist."

The last victim in the Texas Tech rapes was shown a photo lineup that included a picture of Cole. The victim identified Cole as her attacker. Cole's picture was the only color Polaroid photo in a group of five black and white mug shots, and the victim later stated that police and prosecutors repeatedly described Cole as a "low-life hood." At a subsequent live lineup, four other Texas Tech rape victims failed to identify Cole as their attacker. Only the final victim of the most recent rape stated she had no doubt about Cole. Cole was convicted and sentenced to twenty-five years in prison.

Years later, Jerry Wayne Johnson, the defense team's prime suspect, made two attempts to confess to the crime that placed Cole behind bars, but they went ignored. Cole and his family did not know about either

of these attempted confessions until years later. Cole died in prison in 1999 from a severe asthma attack.

DNA testing conducted after Cole's death revealed that Johnson had indeed raped the Texas Tech student, not Cole. In an unprecedented hearing in February 2009, Johnson took the stand and confessed to the crime for which Cole had been convicted. As a result, Cole was exonerated and his criminal record was ordered expunged. Michele Mallin, the victim who misidentified Cole, came forward and spoke out publicly in support of eyewitness identification reform.

Because of one mistaken eyewitness identification, Timothy Cole spent thirteen years in prison for a crime he did not commit.

## Roy Criner

**F**our years after the 1986 Montgomery County sexual assault and murder of Deanna Ogg, Roy Criner became a suspect in the case. Three men alleged that Criner made statements in which he referred to a hitchhiker with whom he had sex. There were numerous inconsistencies among the stories of the three men and with known facts in the case.

At trial, a forensic analyst with the Texas Department of Public Safety testified that numerous hairs collected from the crime scene and from Criner's truck could not link Criner to the crime. Serology tests on semen from the crime scene did not yield probative results either. Further, several alibi witnesses testified that Criner was at work at the time of the crime. Despite the scant and questionable evidence tying him to the crime, Criner was convicted of murder and sentenced to ninety-nine years.

*Roy Criner spent ten years in prison due to false witness testimony.*

In 1997, DNA testing excluded Criner as the source of the semen found on the victim, but his ordeal did not end there. The prosecution said the semen found on the victim was the result of consensual sex the victim had before the rape, and they suggested Criner might have used a condom or simply did not deposit semen during the rape. As such, Criner was denied a new trial. Additional DNA testing on a cigarette butt found near the victim matched that from the semen, undermining the prosecution's theory that the semen did not belong



*Timothy Cole was wrongfully convicted based on a false eyewitness identification. He died in prison after serving thirteen years.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

to the perpetrator. Based on these findings, Criner was released and he was granted an official pardon by Governor George W. Bush on August 15, 2000.

Because of faulty witness testimony, Roy Criner spent ten years in prison for a crime he did not commit.

## Wiley Fountain

DALLAS MORNING NEWS



*Wiley Fountain spent sixteen years in prison as a result of a mistaken identification from a photo lineup.*

Wiley Fountain's picture was included in a photo lineup and shown to the victim of a sexual assault in Dallas. In that lineup, Fountain was the only man wearing a dark baseball cap and a warm-up suit, the clothing worn by the attacker as described by the victim. The victim picked Fountain as her attacker and police closed the case the following day. Even though semen was recovered from the victim's clothing, samples were too small for serological analysis. Based entirely on the eyewitness identification of the victim, Fountain was convicted of aggravated sexual assault and sentenced to forty years in prison.

After spending fifteen years in prison, Fountain was paroled and required to register as a sex offender. Unable to find a job, his sex offender registration fees went unpaid and Fountain's parole was revoked. He was sent back to prison in 2001.

In 2002, post-conviction DNA testing proved Fountain's innocence. He was released from prison on September 27, 2002 and was granted an official pardon by Governor Rick Perry on March 18, 2003.

Because of a suggestive photo lineup that led to a mistaken eyewitness identification, Wiley Fountain spent sixteen years in prison for a crime he did not commit.

## Larry Fuller

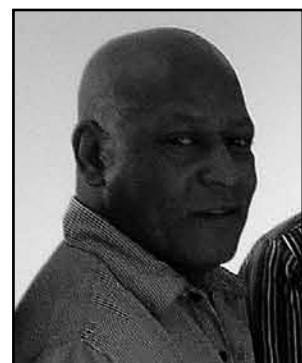
After a Dallas woman was attacked and raped in her home in 1981, Larry Fuller's picture was included in a photo lineup, even though he had no history of sex crimes. Fuller was a decorated Vietnam veteran raising two young children. The victim failed to conclusively identify Fuller as her attacker, and the investigating officer issued a report recommending that the investigation be suspended because the victim "was unsure of the suspect at this time." Months later, police showed the victim another photo lineup. Fuller's photograph was again included in the photo lineup and was the only picture that was included in both lineups. This time the victim identified Fuller as her attacker.

The victim initially stated that she did not remember any facial hair on her attacker. However, the photo of Fuller she identified showed him with a heavy and distinct beard. At trial, the prosecution relied heavily on the eyewitness identification, saying that the victim had "never wavered" in her identification.

The prosecution also relied on misleading forensic testimony to convict Fuller. A serologist testified that Fuller was included within twenty percent of the population that shared blood type characteristics of the attacker. Because the victim's own blood type was not properly considered, the evidentiary value of that test was greatly overstated. Fuller was convicted of aggravated rape and sentenced to fifty years in prison.

An initial DNA test in 2000 was unable to obtain a profile, but a more advanced DNA test conducted in November of 2004 conclusively excluded Fuller as the attacker. Fuller was released on October 31, 2006 and granted an official pardon by Governor Rick Perry on January 25, 2007.

Because of unreliable eyewitness and forensic



CLAY GRAHAM

*Larry Fuller spent almost twenty years in prison as the result of a mistaken identification and misleading forensic testimony.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

evidence, Larry Fuller spent almost twenty years in prison for a crime he did not commit.

## James Curtis Giles

**S**everal weeks after an attack on a Dallas couple in their home, police received an anonymous tip implicating two men in the crime. According to the tip, one of the accomplices was named James Giles.

In a photo lineup presented to the victims a few days later, police included a photo of James Curtis Giles, a twenty-nine-year-old married construction worker from Duncanville. The female victim identified Giles, but her husband did not. Although there were significant discrepancies between Giles and the initial description the victims gave of their attacker (Giles was significantly older and had two prominent gold teeth), Giles was arrested and charged with aggravated sexual assault in 1983.

At trial, the female victim identified Giles from the stand, telling the jury she would “never forget his face.” Giles and his wife testified to his alibi and explained that they lived twenty-five miles from the crime scene. Giles was convicted and sentenced to thirty years. After spending ten years in prison, Giles was paroled and required to register as a sex offender.

He was not allowed to travel more than ten miles from his home without permission and was required to have a chaperon present to spend time with his child.

An investigation revealed that the lead detective and prosecutor withheld exculpatory evidence from Giles’ defense team during trial. The investigation pointed to a man named James *Earl* Giles who had a history of violence and lived across the street from the victims. In addition, his age matched the initial description the victims gave of their attacker.

In 2003, post-conviction DNA testing revealed the profiles of two perpetrators—neither of which matched James Curtis Giles. The tests identified one man with links to James *Earl* Giles. The female victim was contacted and was no longer certain of her identification. Authorities contacted the victim’s husband and showed him a photo lineup that in-

cluded a photo of James *Earl* Giles, and he identified James Earl Giles as one of the attackers. James Curtis Giles was officially exonerated on June 20, 2007.

Because of faulty eyewitness evidence and misconduct by police and prosecutors, James Curtis Giles spent ten years in prison for a crime he did not commit.

## Donald Wayne Good

**D**onald Wayne Good was arrested in 1983 when a police officer came to believe that he resembled the composite sketch of a man wanted for a rape and burglary. The officer placed Good’s picture in a photo lineup shown to the victim and her daughter, who was present during the crime. The poor quality of Good’s photo obscured his facial scar and tattoo—two potentially important distinguishing characteristics—and both women identified him as the man who broke into their home.

Good’s first trial ended in a hung jury. At his second trial, Good was convicted and sentenced to life in prison. On appeal, his conviction was overturned based on prosecutorial misconduct. Good made an argument that the prosecutor had improperly told the jury to find him guilty because he did not show enough emotion when the victim took the stand. A third trial resulted in another conviction, and he was again sentenced to life in prison in 1987.

The evidence presented at all three trials was minimal, including little else than the eyewitness testimony of the victim and her daughter and serological testing that could not exclude Good—nor thirty percent of the white male population—as the perpetrator of the attack. In 2003, DNA testing proved Good’s innocence.

Because of a mistaken eyewitness identification, Donald Wayne Good spent ten years in prison for a crime he did not commit.



GREG KENDALL-BALL / INNOCENCE PROJECT OF TEXAS

*James Curtis Giles spent ten years in prison due to a mistaken eyewitness identification and police and prosecutorial misconduct.*

*Donald Good spent ten years in prison based on a mistaken eyewitness identification.*

DALLAS MORNING NEWS

## Convicting the Innocent: TEXAS JUSTICE DERAILED

### Andrew Gossett

**A**ndrew Gossett originally became a suspect in the abduction and sexual assault of a Garland woman after a patrol officer saw him in the vicinity of the crime scene and thought he looked suspicious. Gossett was arrested and his photo was placed in a photo lineup. The victim identified Gossett from the photo lineup so quickly that the officers were taken aback by her haste. Yet her confidence that he was her attacker ultimately assured police. At trial, the testimony of the victim was significantly inconsistent with earlier statements made to police.

Gossett's alibi placed him at his girlfriend's apartment the entire night, except for two brief trips to a convenience store. A surveillance video at the store showed a customer resembling Gossett making a purchase around the time of the assault. In addition, Gossett passed a polygraph test and hair samples taken from the victim's car were dissimilar to those of Gossett. However, Gossett was convicted of aggravated sexual assault and sentenced to fifty years in prison. Post-conviction DNA testing proved Gossett's innocence and he was released on January 4, 2007.

Because of a mistaken eyewitness identification, Gossett spent over seven years in prison for a crime he did not commit.

### Eugene Henton



**E**ugene Henton was just seventeen years old in 1984 when he was falsely identified as the attacker in a sexual assault. Although the attacker wore a mask, the victim told police she was certain she could identify him because he had spent such a long time in her home. In addition, the victim also noted seeing her attacker from her window while he waited at the bus stop and could thus identify him.

Young and scared, Henton accepted a plea bar-

gain and was sentenced to four years in prison. He was released on parole after eighteen months. While on parole, Henton was convicted of assault and two felony drug charges. Because he was on parole, the judge handed down a harsh sentence—twenty years for aggravated assault and forty-two years for the drug conviction.

In 2005, post-conviction DNA testing revealed that Henton was indeed innocent of the 1984 sexual assault. Henton's 1984 conviction was overturned and eventually his other sentence was thrown out because it was based on his wrongful conviction. He was re-sentenced to time already served and released on October 26, 2007.

Because of a mistaken eyewitness identification, Henton spent nearly two years in prison for a crime he did not commit.

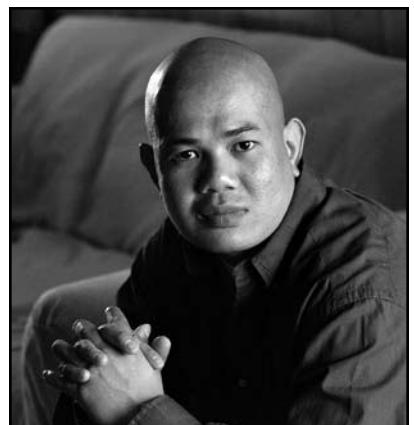
### Entre Nax Karage

**W**hen fourteen-year-old Nary Na was murdered in Dallas in 1994, police quickly focused their attention on her boyfriend, Entre Karage, despite strong evidence indicating an alternate suspect.

At trial, a forensic expert testified that a hair sample recovered from the victim's body had characteristics consistent with an African-American, and two other hairs had Caucasian characteristics. Karage is Cambodian. In addition, the expert testified that Karage's DNA did not match DNA samples taken from the victim.

Prosecutors argued jealousy as a motive based on evidence that sexual intercourse had taken place and there was no evidence of a rape. The state presented numerous witnesses, all of whom provided remarkably different accounts of activities on the night of the murder. However, they did present consistent testimony concerning the contentious relationship between Karage and the victim.

Karage was convicted of murder and sentenced to life in prison. Post-conviction DNA testing revealed that sperm found in the victim actually be-



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*Entre Karage spent seven years in prison because DNA evidence pointing to the true perpetrator was discounted.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

longed to Keith Jordan, who was already in prison for a similar offense. Jordan was convicted of aggravated sexual assault of a child and aggravated kidnapping in Dallas in 1997. He has since been charged with the murder of Nary Na. Karage was officially exonerated in December 2005 when Governor Rick Perry pardoned him.

Because prosecutors neglected to pursue evidence pointing to the true perpetrator, Entre Karage spent seven years in prison for a crime he did not commit.

## Carlos Lavernia

Fourteen months after the 1983 sexual assault of a jogger in Austin, Carlos Lavernia became the primary suspect after the victim was shown three photo lineups and stated that Lavernia was the only one that “anywhere near resembled” her attacker.

Based on this identification, police came to suspect Lavernia for a string of seven similar attacks in the area. The other victims were also shown a photo lineup that included Lavernia and two victims identified him. Lavernia was placed in a physical lineup and was identified by two of the victims—the Austin jogger victim and another victim who identified him in the photo lineup. Two additional victims identified a filler standing next to Lavernia in the physical lineup. Lavernia was charged with the two rapes in which identifications had been made, and the Austin jogger case went to trial first. Lavernia was convicted of aggravated rape and sentenced to ninety-nine years in prison. The second case against Lavernia was dropped after this conviction and sentence.

In 1999, Lavernia was questioned by Austin police about an unsolved murder, and the interview convinced them that Lavernia might be innocent of the Austin jogger rape. DNA testing revealed Lavernia’s innocence and his conviction was vacated.

Because of mistaken eyewitness testimony, Carlos Lavernia spent nearly sixteen years in prison for a crime he did not commit.

*Carlos Lavernia spent nearly sixteen years in prison due to a mistaken eyewitness identification.*

a year earlier. In addition to the highly problematic nature of the photos being mailed to the witness, the photo lineup itself was highly suggestive. Lindsey was one of only two men in the photo lineup not wearing a shirt, and the victim had described her attacker as shirtless. The victim identified Lindsey as her attacker.

At trial, the victim’s identification of Lindsey was the sole piece of evidence against him. Lindsey presented an alibi that he was at work, pressing pants at a commercial laundry business during the time of the attack. He even had time cards that showed he was at work when the crime occurred. However, Lindsey was convicted and sentenced to life in prison.

Post-conviction DNA testing of the biological material from his case excluded Lindsey as the perpetrator of the rape, and he was released on September 19, 2008.

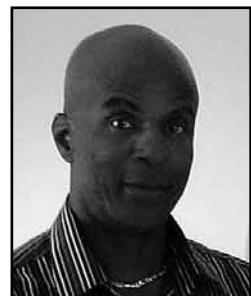
Because of a mistaken eyewitness identification, James Earl Lindsey spent almost twenty-six years in prison for a crime he did not commit.

*Johnnie Lindsey spent nearly twenty-six years in prison as a result of a highly suggestive photo lineup.*

## Thomas McGowan

Following a series of flawed lineups, Thomas McGowan was charged with rape and burglary. The victim was first shown a live lineup that included McGowan, two other suspects, and three fillers. Experts have long known that the inclusion of multiple suspects in the same lineup greatly undermines the validity of the procedure. The victim did not identify anyone as her attacker in that initial lineup.

Police then showed the victim a photo lineup that also included a photo of McGowan. The victim hesitantly identified McGowan as her attacker. She later said the detective conducting the lineup told her that she “had to make a positive ID. I had to say yes or no.”



CLAY GRAHAM

*Thomas McGowan spent twenty-three years in prison due to suggestive identification procedures.*

## Johnnie Earl Lindsey

In 1982, Johnnie Earl Lindsey’s picture was included in a photo lineup that police sent in the mail to a White Rock Lake woman who had been raped

## Convicting the Innocent: TEXAS JUSTICE DERAILED

The photo lineup was equally as problematic as the live lineup because four of the seven photos, including McGowan's, were color originals. In addition, three of the color photos were marked "Richardson Police" and the other was marked "Garland Police." The remaining black and white photos included one original and two photocopies. The lack of uniformity in the photos, combined with the multiple presentations of McGowan in photo and live lineups, tainted the identification and contributed to the witness's mistaken identification of McGowan.

McGowan was eventually convicted and sentenced to life in prison. Post-conviction DNA testing excluded McGowan as the perpetrator and he was released April 16, 2008. A DNA state database search identified the true perpetrator, Kenneth Wayne Woodson, who is currently serving a thirty-year sentence for another Dallas rape committed the year after McGowan was arrested.

Because of the suggestive identification procedures that led to a mistaken eyewitness identification, Thomas McGowan spent twenty-three years in prison for a crime he did not commit.

### Billy Wayne Miller

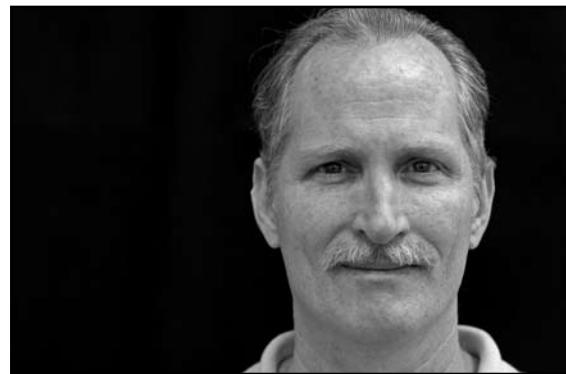
In 1983, a Dallas woman waiting at a bus stop accepted a ride from a man who subsequently assaulted her. The victim remembered some of the numbers from the license plate of the car driven by her attacker. During the attack, the victim memorized street names and the location of a house where a part of the assault took place. Following up on the victim's statements, police found a car in front of the house with a license plate that differed from the victim's memory by only one digit. Police entered the house and arrested Billy Wayne Miller. The car was registered to his father.

The lead prosecutor in the case now believes that the victim's memory of specific details—down to the brand of beer the attacker drank—was likely a result of the police having fed her that information.

Post-conviction DNA testing excluded Miller as the attacker. He was released in May 2006 and officially pardoned by Governor Rick Perry in December of 2006.

Because of a mistaken eyewitness identification, Billy Wayne Miller spent over twenty-two years in prison for a crime he did not commit.

### Brandon Moon


GREG KENDALL-BALL / INNOCENCE PROJECT OF TEXAS

**F**ollowing the sexual assault of an El Paso woman in the spring of 1987, police created a photo lineup that included Brandon Moon, a twenty-five-year-old military veteran and aspiring jet pilot. The victim tentatively chose Moon's picture and later firmly identified him in a live lineup. Moon was the only person present in both the photo and live lineups. Based on the identification, police contacted two other women who had been victims of similar attacks. Each victim identified Moon even though the crimes against them had been committed years before these lineups were conducted.

At trial, a serologist testified that semen stains from the crime scene definitively excluded the victim's husband and indicated Moon could have been the source. This testimony would later prove to be patently false.

In 1989, DNA testing showed that Moon was not the source of the semen taken from the crime scene, but the results were considered inconclusive because reference samples were not collected from the victim's husband or teenage son. Eventually, testing revealed that the victim's husband's DNA matched a stain on the comforter, but not the bathrobe. Additional testing proved that the son was not the source of the bathrobe stain, leaving only the rapist, whom previous tests had already revealed could not be Moon. In December 2004, Moon was released from prison.

Because of false forensic testimony and the mishandling of exculpatory DNA, Brandon Moon spent seventeen years in prison for a crime he did not commit.

*Brandon Moon spent seventeen years in prison due to false forensic testimony and the botched handling of exculpatory DNA.*

## Arthur Mumphrey

**D**uring a police interrogation in 1986, Steve Thomas admitted to raping a thirteen-year-old girl and implicated Arthur Mumphrey as his accomplice in the crime. Police made a deal with Thomas, offering him a fifteen-year sentence in exchange for his “truthful testimony” against Mumphrey.

At trial, Thomas testified to the same horrific details he had relayed to the police during his interrogation. In addition, another witness testified that he saw Thomas and Mumphrey one night and Thomas told him all about the crime while Mumphrey stood silent, tacitly endorsing the story. The victim testified that she did not look at the faces of her attackers and could not identify them. Mumphrey was convicted.

Mumphrey was paroled in 2000, but he failed to meet the strict terms of his parole and returned to prison in 2002. Post-conviction DNA testing on the rape kit evidence confirmed that Thomas was indeed one of the perpetrators, but the other perpetrator was not Mumphrey.

Mumphrey was released on January 27, 2006, and was granted an official pardon by Governor Rick Perry on March 17, 2006.

Because of the false testimony of Steve Thomas, Mumphrey spent nearly eighteen years in prison for a crime he did not commit.

## Christopher Ochoa and Richard Danziger

**C**hristopher Ochoa was working at a Pizza Hut when he and his friend, Richard Danziger, became suspects in the 1988 murder of Nancy DePriest, a manager for another of the chain’s restaurants in Austin. Employees of the restaurant contacted police after Ochoa and Danziger were seen giving a toast in the victim’s honor. Acting on the tip, police brought Ochoa in for questioning.

During the interrogation, Ochoa was subjected to both physical and verbal intimidation, and police officers threatened him with the death penalty unless he confessed to the crime. After two days of intense questioning and threats, Ochoa eventually gave the police what they wanted. He signed a confession writ-

ten by the police and accepted the state’s offer of a life sentence. In exchange, Ochoa pled guilty to murder and testified against Danziger at trial. Danziger was convicted of aggravated sexual assault and sentenced to life in prison.

While Ochoa and Danziger were serving life sentences, a Texas inmate named Achim Josef Marino confessed to DePriest’s murder. Marino professed he alone committed the crime and provided a detailed description of the crime scene and information regarding the location of items stolen from the Pizza Hut.

DNA testing of semen collected from the crime scene conclusively proved the innocence of Ochoa and Danziger. Ochoa and Danziger both settled civil lawsuits with the City of Austin. Danziger sustained permanent brain damage as a result of a violent prison assault, rendering him unable to care for himself without help.

Because of the threatening and intimidating interrogations that led to Ochoa’s false confession, Richard Danziger and Christopher Ochoa each spent twelve years in prison for a crime they did not commit.

## Steven Charles Phillips

**I**n 1982, Steven Phillips became the chief suspect in an unusual string of sexual assaults and burglaries in Dallas, Texas and Kansas City, Missouri. Police were confident that the same assailant was responsible for the crimes in both cities.

After Dallas police turned their focus to Phillips, ten separate victims picked his photo out of dozens shown by police. None of the photo lineups were preserved as evidence, however, making it impossible to analyze the accuracy and quality of the procedures used. Phillips was convicted of sexual assault and burglary based largely on the eyewitness accounts, and



DALLAS MORNING NEWS

*After serving twenty-six years in prison, DNA testing exonerated Steven Charles Phillips of multiple crimes and exposed many investigative errors.*

*Christopher Ochoa and Richard Danziger each spent twelve years in prison as a result of a long, intimidating interrogation that produced Ochoa’s false confession.*

questioning and threats, Ochoa eventually gave the police what they wanted. He signed a confession writ-

## Convicting the Innocent: TEXAS JUSTICE DERAILED

he was sentenced to forty years in prison.

In 2007, post-conviction DNA testing on the biological material from the Dallas case cleared Phillips of the sexual assault and burglary charges. Because police and prosecutors believed the same person committed all the crimes, the Court of Criminal Appeals fully exonerated Phillips on August 5, 2008.

A reinvestigation of the case revealed that Kansas City police had previously identified another suspect, Sydney Alvin Goodyear, and notified the Dallas police. At least one Dallas victim identified Goodyear from a photo lineup, and a warrant had been issued for his arrest prior to Dallas police focusing on Phillips. This exculpatory information was never disclosed to Phillips' defense.

Because of misconduct and mistaken eyewitness identifications, Steven Charles Phillips spent twenty-six years in prison for crimes he did not commit.

### David Shawn Pope

DALLAS MORNING NEWS



*DNA testing proved David Pope's innocence fifteen years after he was wrongfully convicted based on junk science.*

Pope as her attacker, police suspected him based on the sound of his voice. In the days after the attack, the victim received several threatening phone calls from her attacker. In addition to an answering machine message, police recorded a phone call from the attacker lasting about ten minutes.

In August 1985, a woman who lived in David Shawn Pope's apartment complex was sexually assaulted at knifepoint. Police included a photo of Pope in a photo lineup presented to the victim. Even though the victim did not identify

The victim was shown a physical lineup one month after the photo lineup in which Pope was the only man who had the blonde hair and tan skin described by the victim. The victim identified Pope as her attacker.

In 1986, Pope was convicted of aggravated sexual assault and sentenced to forty-five years in prison. The prosecution's case rested primarily on the victim's identification of Pope from the live lineup and expert testimony about "voice print analysis" that was said to match Pope's voice to the taped calls made to the victim. The victim testified at trial that she not only recognized him as her attacker, but also that she could unequivocally identify his voice.

In January of 1999, prosecutors received an anonymous tip that someone else had committed the crime. By that time, voice print analysis was no longer considered reliable evidence, and prosecutors decided the anonymous tip warranted serious consideration. Post-conviction DNA testing proved Pope's innocence and identified the true perpetrator: a convicted rapist imprisoned in another state. Pope was granted an official pardon by Governor Rick Perry in February 2001.

Because of faulty forensic evidence and a mistaken eyewitness identification, David Shawn Pope spent fifteen years in prison for a crime he did not commit.

### Ricardo Rachell

The 2002 sexual assault conviction of Ricardo Rachell rested solely on testimony from the eight-year-old victim and a friend who was with the boy before the attack. Police relied so heavily on the identifications made by the victim and his friend that they did not conduct DNA testing on either the biological evidence collected in the case or on the reference sample voluntarily provided by Rachell.

Although both the victim and his friend identified Rachell, it is difficult to understand how this identification held up in court because Rachell's face was significantly disfigured in a shotgun accident years ago, making it difficult for him to talk. The victim's friend told police that the man spoke clearly. Rachell took the stand in his own defense and demonstrated

*Ricardo Rachell spent six years in prison while the biological evidence that would exonerate him sat untested in a Houston crime lab.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

that the gunshot wound had left him with a significant speech impediment. Despite these discrepancies, Rachell was convicted and sentenced to forty years in prison.

In October of 2008, DNA testing established that Rachell could not have committed the crime and Harris county prosecutors endorsed the reversal of his conviction.

Because of two mistaken eyewitness identifications and the failure to disclose DNA evidence, Ricardo Rachell spent six years in prison for a crime he did not commit.

## Anthony Robinson

GREG KENDAL-L-BALL / INNOCENCE PROJECT OF TEXAS



*Anthony Robinson spent ten years in prison due to a mistaken eyewitness identification.*

In 1986, Anthony Robinson, a twenty-six-year-old college graduate and U.S. Army veteran, was put on trial for the rape of a University of Houston woman. The victim told police that her attacker was a black man with a moustache wearing a plaid shirt. That same day Robinson was on campus picking up a car for a friend. Even though Robinson did not have a moustache, police arrested him. Robinson was placed in a lineup and identified by the victim. Although no physical evidence linked him to the crime, the victim's confident identification led to Robinson's conviction and he was sentenced to twenty-seven years in prison.

After being released on parole in 1997, Robinson took odd jobs to save enough money to hire an attorney and pay for post-conviction DNA tests on the case's biological material. On September 19, 2000, DNA test results proved Robinson's innocence. Even though the Harris County District Attorney's Office confirmed the results with their

own test, they still did not believe Robinson to be an innocent man. The DA's office argued that the semen came from an unknown man with whom the victim had consensual sex and that Robinson still had something to do with the crime. There was no evidence to back up this theory.

On November 7, 2000, the Texas Board of Pardons and Paroles unanimously voted to recommend Robinson's pardon, and he was granted an official pardon by Governor George W. Bush seven days later. After spending a decade behind bars for a crime he did not commit, Robinson went back to school and received his law degree from the Thurgood Marshall School of Law at Texas Southern University.

Because of a mistaken eyewitness identification, Anthony Robinson spent ten years in prison for a crime he did not commit.

## George Rodriguez

Following her 1987 abduction and sexual assault, a fourteen-year-old Houston girl gave police basic descriptions of the two perpetrators. The victim said that one of her attackers called the other "George," though she told police that she believed it was a fake name. Based on the victim's description of the house where the crime occurred and the surrounding area, police went to the home of Manuel and Uvaldo Beltran. George Rodriguez became a suspect in the case because he was an acquaintance of one of the Beltran brothers.

Police conducted a photo lineup and the victim identified Rodriguez as one of the attackers.

Even though Manuel Beltran confessed to police that he had sexually assaulted the girl and stated that Isidro Yanez was his accomplice, police continued to focus on Rodriguez. In a one-person show-up, the victim again identified Rodriguez as her attacker. The victim was also shown a collection of photos that included both Rodriguez and Yanez, but the victim again identified Rodriguez as her attacker.

At trial, a forensic analyst testified that a pubic

*George Rodriguez spent seventeen years in prison after compelling evidence of his innocence was overlooked in favor of a mistaken eyewitness.*

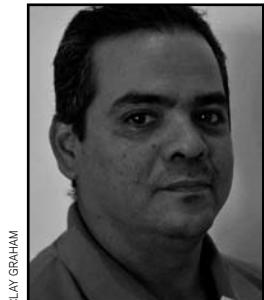
## Convicting the Innocent: TEXAS JUSTICE DERAILED

hair found on the victim's underwear was microscopically similar to Rodriguez's hair, and that the semen from the rape kit could not exclude Rodriguez as the perpetrator, and it could not belong to Yanez. Even though Rodriguez presented evidence that he was at work during the time of the crime, Rodriguez was convicted of aggravated sexual assault and kidnapping and sentenced to sixty years in prison.

In 2004, DNA testing established that Rodriguez was not the source of the pubic hair found on the victim's clothing, and Yanez could not be excluded. Further testing also established that Yanez was mistyped by the Houston Crime Lab during the initial testing and could not have been excluded as the source of the semen—directly contradicting the forensic testimony at trial. Rodriguez's conviction was vacated in August 2005 and all charges were dismissed a month later.

Because of faulty forensic testimony and a mistaken eyewitness identification, George Rodriguez spent seventeen years in prison for a crime he did not commit.

### Ben Salazar



CLAY GRAHAM

*Ben Salazar spent five years in prison due to a mistaken eyewitness identification.*

Identify her assailant, police showed her two books with mug shots of Hispanic males and she picked Salazar as her attacker.

Salazar agreed to go to the station to have his picture taken. The victim viewed several new line-ups and again identified Salazar's new photo as her

attacker. Defense attorneys would later note that Salazar was wearing a turquoise shirt in the second picture the police showed the victim, the same color shirt from her description.

Salazar voluntarily gave blood, saliva, and hair samples to prove his innocence, but the results of the forensic testing could not exclude him as the source of the semen found on the victim. At trial, a forensic analyst testified that the blood typing characteristics found could only come from two percent of the Hispanic population which included Salazar. Salazar was convicted of aggravated sexual assault and sentenced to thirty years in prison.

Post-conviction DNA testing excluded Salazar as the source of the semen found on the victim. Two additional DNA tests were performed to finally convince prosecutors and the parole board that Salazar was indeed innocent. He was granted an official pardon by Governor George W. Bush on November 20, 1997.

Because of a mistaken eyewitness identification, Ben Salazar spent five years in prison for a crime he did not commit.

### Billy James Smith

**B**illy Smith became a suspect for rape and robbery when his building manager requested he step out on the balcony of Dallas County apartment in 1986. The building manager's girlfriend stated that Smith was the man who had robbed and raped her two hours earlier and they immediately called police.

An extensive search of Smith's belongings did not reveal any clothing matching the description given by the victim, nor did it turn up any physical evidence tying him to the crime. Despite the lack of evidence, the case proceeded to trial. The prosecution argued that the victim had not had sex with anyone twenty-four hours prior to the rape, and therefore, the presence of semen in the rape kit must prove that a rape occurred. The prosecution then used the eyewitness identification to solidify the case.

Although Smith and his sister both testified that he was home dur-



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*Billy James Smith spent nineteen years in prison due to a mistaken eyewitness identification.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

ing the time the crime occurred, he was convicted of aggravated sexual assault and sentenced to life in prison. Smith petitioned for post-conviction DNA testing, but the prosecution argued that the semen from the rape kit could belong to her live-in boyfriend and as a result could not be probative. The argument was the exact opposite of the argument made at trial, where prosecutors maintained that the presence of semen meant a rape occurred.

Eventually, Smith was given access to testing that revealed he did not rape the victim. Smith was released in July 2006 and officially exonerated on December 13, 2006.

Because of a mistaken eyewitness identification, Billy James Smith spent nineteen years in prison for a crime he did not commit.

## Josiah Sutton

In October 1998, the victim of an abduction and rape in Houston initially described her attacker as five feet, seven inches tall and weighed 135 pounds.

*An eyewitness identification and false DNA testimony resulted in the wrongful conviction of Josiah Sutton.*

Even though he was six feet tall weighing 200 pounds, Josiah Sutton was identified as the perpetrator and was arrested.

The Houston Crime Lab compared DNA samples from Sutton to the two DNA profiles obtained from the biological evidence at the crime scene. According to the lab, Sutton's DNA was a match. At trial, an analyst from the crime lab testified that the DNA match was solid—the DNA profile was shared by only one person in almost 700,000. Sutton was convicted and sentenced to twenty-five years in prison.

In 2002, journalists with KHO-TV in Houston exposed pervasive flaws with the Houston Police Department Crime Lab, causing several cases to be reexamined, including Sutton's. Independent experts concluded that the forensic testimony at Sutton's trial was false. When the lab retested the evidence, the DNA results excluded Sutton as the perpetrator.

Because of faulty forensic testing, false forensic testimony, and a mistaken eyewitness identification, Sutton spent over four years in prison for a crime he did not commit.

## Ronald Gene Taylor

Ronald Gene Taylor became a suspect in a 1993 rape in Houston when a neighbor told police that he saw Taylor near the crime scene on the night of the attack. Police placed Taylor in a video lineup because the victim was unable to travel to the police station to view a live lineup. After two viewings of the lineup, the victim identified Taylor as her attacker.

At trial, the victim's identification testimony was the primary evidence against Taylor. When the witness included new details that were not present in her initial statement, however, Taylor's attorneys argued that police leaked details of the investigation to her and that her identification of Taylor was tainted. A forensic analyst from the Houston Police Department also testified for the prosecution stating that there was no semen on the sheets found at the crime scene and Taylor could not be eliminated as a suspect through DNA testing. Taylor was convicted and sentenced to sixty years in prison.

A re-examination of the sheets from the crime scene revealed that the sheets actually did contain biological evidence that could be used to extract a profile. Post-conviction DNA testing excluded Taylor and revealed the identity of the true perpetrator, Roosevelt Carroll. Carroll lived just a mile from the victim at the time of the attack and had already been convicted of two other rapes. He was serving a fifteen-year sentence for failing to register as a sex offender when Taylor was finally exonerated. Unfortunately, the statute of limitations had already passed on the 1993 rape case and Carroll could not be charged. Taylor was released on October 9, 2007.

Because of faulty forensic work and a mistaken eyewitness identification, Taylor spent fourteen years in prison for a crime he did not commit.



CLAY GRAHAM

*Ronald Gene Taylor spent fourteen years in prison due to forensic work and a mistaken eyewitness identification.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

## Victor Larue Thomas

**W**hen a woman was raped during the robbery of a Waxahachie convenience store in 1985, Victor Larue Thomas was a suspect in an unrelated sexual assault that occurred in the area. Although their initial suspicions of Thomas in the unrelated case were unsubstantiated and police did not pursue that case against Thomas, he was taken in for questioning for the convenience store rape.

Statements made by Thomas during his interrogation eventually led police to suspect him in the convenience store rape case. The victim identified Thomas as her attacker, and he was arrested and charged with robbery, kidnapping, and rape. Based almost entirely on the victim's in-court eyewitness identification, Thomas was convicted of all charges and sentenced to life in prison.

Post-conviction DNA testing proved that Thomas had not committed the crime, and he was released on June 27, 2001. The District Court Judge noted that Thomas should never have been prosecuted. Thomas was granted an official pardon by Governor Rick Perry in 2002.

Because of a mistaken eyewitness identification, Victor Larue Thomas spent fifteen years in prison for a crime he did not commit.

## Keith E. Turner



DALLAS MORNING NEWS

*Keith E. Turner spent four years in prison and eight years on parole after a rape victim incorrectly identified him.*

**I**n 1982, Keith Turner was wrongly identified as the perpetrator of a Dallas coworker's rape. The victim called police when she thought she recognized Turner at work as her attacker. She also picked Turner out of a lineup police arranged that same day. At trial, the victim testified that she could identify Turner based on his basic physical appearance and the sound of his voice. Turner provided an alibi for his whereabouts during the attack, but he was convicted of rape and sentenced to twenty years in prison.

On appeal, Turner's conviction was reversed based on a prosecutorial error at trial. A higher court overruled that decision and Turner's sentence was reinstated.

Turner was paroled after spending four years in prison. In 2005, post-conviction DNA testing proved Turner's innocence and he received an official pardon by Governor Rick Perry on December 22, 2005.

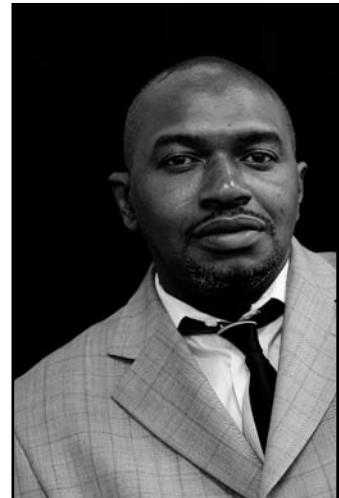
Because of a mistaken eyewitness identification, Keith Turner spent four years in prison for a crime he did not commit.

## James Douglas Waller

**W**hile shopping in a convenience store in his neighborhood, James Waller was identified by a twelve-year-old boy as the man who had sexually assaulted him in his family's apartment. The boy initially described the intruder as an African-American man who wore a cowboy hat and a bandana around the lower half of his face. Waller and his family lived in the same apartment complex and were the only African-American residents of the complex.

Police arrested Waller based on the boy's identification. The apartment manager had also reported seeing an unknown male with a cowboy hat and bandana. After the boy's identification, the apartment manager also identified Waller as the person she had seen.

At trial, the state's case rested almost solely on the testimony of the two eyewitnesses. The victim testified that he knew Waller was his attacker based on Waller's eyes and voice. The boy admitted that he had been unable to see his assailant's face. Moreover, Waller was substantially taller and heavier than the man described by the victim in his initial conversation with the police. The apartment manager also identified Waller at trial as the man she spotted wearing the hat and bandana near the scene. However, her testimony was inconsistent with her original description because she had previously de-



GREG KENDALL-BALL / INNOCENCE PROJECT OF TEXAS

*Questionable voice and eyewitness identifications put James Waller in prison for eleven years for a crime he did not commit.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

scribed an “unknown” man and she knew Waller as a resident of the building.

Despite the discrepancies in the identifications, and alibi testimony given by Waller’s girlfriend, Waller was convicted of aggravated sexual abuse and sentenced to thirty years in prison.

Waller was paroled in 1993 after spending eleven years in prison and was required to register as a child sex offender. In 2003, post-conviction DNA tests were unable to extract a DNA profile from the small amount of biological evidence available, but Waller received permission to have previously unavailable advanced DNA testing conducted on liquid extracts of the semen evidence that had been preserved. In 2006, those results conclusively proved that Waller did not commit the rape. Waller was officially pardoned by Governor Rick Perry in March 2007.

Because of the mistaken eyewitness identifications in his case, James Douglas Waller spent eleven years in prison for a crime he did not commit.

## Patrick Waller



CLAY GRAHAM

*False eyewitness identifications sent Patrick Waller to prison for over fifteen years.*

Waller was convicted of aggravated robbery and sentenced to life in prison. He pled guilty to two counts of kidnapping to avoid more jail time, but he proclaimed his innocence throughout his appeals.

In June of 2008, DNA testing excluded Waller in the crime. Investigators ran the DNA profile from the crime scene through the state DNA database and

it matched with Byron Demond Bell, a man who had been paroled in February of 2008 after serving fifteen years of a forty-five-year sentence for burglary. When questioned, Bell admitted to the attack and named Lemondo Simmons as his accomplice in the crimes. Both men testified to their guilt in front of a grand jury, but neither would be prosecuted for the crimes because the statute of limitations had expired. Bell’s parole officer stated that the crimes would be taken into consideration if Bell ever violated the terms of his parole.

Because of mistaken eyewitness identifications, Patrick Waller spent more than fifteen years in prison for a crime he did not commit.

## Gregory Wallis

Four months after police circulated a flier and composite sketch in a local jail about a 1988 sexual assault of an Irving woman, an inmate told police that Gregory Wallis had a tattoo similar to the description given by the victim. A photo of Wallis was included in a photo lineup presented to the victim and she identified Wallis as her attacker. Investigators found no physical evidence linking Wallis to the attack.

Although biological evidence was taken from the scene, forensic DNA analysis was not available at the time. At trial, the prosecution relied entirely on the victim’s eyewitness testimony, and Wallis was convicted and sentenced to fifty years in prison.

In 2004, DNA testing could not entirely exclude Wallis as the attacker, but the test results had cast enough doubt to motivate prosecutors to offer a deal. Prosecutors offered Wallis his freedom if he agreed to spend the rest of his life as a registered sex offender. Wallis refused and remained in prison. A few months later, a more sophisticated DNA test proved that Wallis was not the perpetrator. Wallis was released in March 2006.

Because of a mistaken eyewitness identification, Gregory Wallis spent eighteen years in prison for a crime he did not commit.

*Gregory Wallis spent eighteen years in prison due to a mistaken eyewitness identification*

## Calvin Washington

Jailhouse informants provided damaging testimony against Calvin Washington and Joe Sydney Williams for the March 1986 rape and murder of Juanita White of Waco. One man testified that he walked past a hotel room in the middle of the night and overheard Williams and Washington implicating themselves. Several other witnesses testified that Washington and Williams were spotted in the victim's car after the murder and that they had sold some of her property. The testimony of a dental expert, Homer Campbell, who claimed that the marks on the victim's body were bite marks that matched Williams' teeth, helped convict both men. Williams' conviction was overturned on direct appeal, and he was released when the prosecutor declined to retry him.

Washington remained in prison. He was released when post-conviction DNA testing showed that blood found on a shirt in Washington's home was not the victim's, as the prosecutor had alleged. Also, DNA found on the victim implicated another man, Bennie Carroll, who had previously confessed to raping Juanita White's next door neighbor prior to committing suicide.

Because of unreliable jailhouse informants, Calvin Washington spent thirteen years in prison for a crime he did not commit.

## Mark Webb

Mark Webb was wrongfully convicted of a 1985 rape based on the victim's mistaken eyewitness identification.

Although biological evidence from the crime scene was tested and the results were presented in court, the tests at the time were not sophisticated enough to exclude Webb as the attacker. The tests also could not exclude a large portion of the rest of the population. The defense called several alibi witnesses who testified that Webb was at work at the time of the crime. Unfortunately, the eyewitness identification held more weight with the jury, and Webb was convicted of rape and sentenced to thirty years in prison. In 2001, post-conviction DNA testing proved Webb's innocence.

Because of a mistaken eyewitness identification, Mark Webb spent thirteen years in prison for a crime he did not commit.

## James Lee Woodard

James Lee Woodard quickly became a suspect in the December, 1980 rape and murder of his former girlfriend, Beverly Ann Jones. Woodard was taken into custody on New Year's Day.

Two eyewitnesses placed Woodard with the victim close to the time when the crime occurred, but there was no evidence that tied Woodard to the crime. The defense provided two alibi witnesses who stated that Woodard had been thirty miles away from the scene on the night of the murder. Woodard was convicted and sentenced to life in prison.

DNA testing excluded Woodard as the perpetrator of the sexual assault, but because the other charge against him was murder, he needed to prove that the same person committed both crimes.

An investigation by Woodard's lawyers revealed that the Dallas County prosecutors withheld key evidence from the defense in 1981. Several days before Woodard's trial, authorities learned that three men had been with the victim on the night of her death: a man told investigators he went with Jones to a South Dallas convenience store where she got into another car with three men and left. He could not identify the car or the men in question. In addition, police neglected to investigate the three men as suspects, even though one was in prison on a charge of aggravated rape during Woodard's trial. This finding, along with a forensic pathologist's conclusion that the rape and murder "were tied together in such a way that the rape results would conclusively show who the perpetrator was," helped prove Woodard's innocence. Woodard was released on April 29, 2008.

Because of two mistaken eyewitness identifications and prosecutorial misconduct, James Lee Woodard spent twenty-seven years in prison for a crime he did not commit, more time than any other DNA exoneree in the country.



DALLAS MORNING NEWS

*James Lee Woodard spent twenty-seven years in prison due to prosecutorial misconduct and two mistaken eyewitness identifications.*

## Convicting the Innocent: TEXAS JUSTICE DERAILED

**The Texas DNA Exonerated**

Last Name	First Name	Year Convicted	Year Exonerated	County	Crime	Mistaken Eyewitness Identification	Faulty Forensic Testimony	Unreliable or Limited Forensic Methods	Jailhouse Informant & Accomplice Testimony	False Confession or Plea	Suppression of Exculpatory Evidence or Other Misconduct	Approximate Years in Prison
Alejandro	Gilbert	1990	1994	Uvalde	rape	✓	✓					4
Blair	Michael Nawee	1994	2008	Collin	rape, murder	✓	✓	✓				14
Butler	A.B.	1983	2000	Smith	rape, kidnapping	✓						17
Byrd	Kevin	1985	1997	Harris	rape	✓		✓				12
Chatman	Charles	1981	2007	Dallas	rape	✓		✓				27
Cole*	Timothy Brian	1986	2008	Lubbock	rape	✓		✓			✓	13*
Criner	Roy	1990	2000	Montgomery	rape, murder				✓			10
Danziger	Richard	1990	2001	Travis	rape, murder			✓	✓	✓		12
Fountain	Wiley	1986	2003	Dallas	rape	✓						16
Fuller	Larry	1981	2006	Dallas	rape	✓	✓					20
Giles	James Curtis	1983	2007	Dallas	rape	✓					✓	10
Good	Donald	1984	2004	Dallas	rape	✓		✓			✓	10
Gossett	Andrew	2000	2007	Dallas	rape	✓						7
Henton	Eugene	1984	2006	Dallas	rape	✓				✓		2
Karage	Entre Nax	1997	2004	Dallas	murder							7
Lavernia	Carlos	1985	2000	Travis	rape	✓						16
Lindsey	Johnnie Earl	1983	2008	Dallas	rape	✓						26
McGowan	Thomas	1985	2008	Dallas	rape, burglary	✓						23
Miller	Billy Wayne	1984	2006	Dallas	rape	✓						22
Moon	Brandon	1988	2005	El Paso	rape	✓	✓				✓	17
Mumphrey	Arthur	1986	2006	Montgomery	rape				✓			18
Ochoa	Christopher	1989	2001	Travis	murder					✓		12
Phillips	Steven Charles	1983	2007	Dallas	rape, burglary	✓		✓		✓	✓	26
Pope	David Shawn	1986	2001	Dallas	rape	✓		✓				15
Rachell	Ricardo	2003	2008	Harris	child sex assault	✓					✓	6
Robinson	Anthony	1987	2000	Harris	rape	✓						10
Rodriguez	George	1987	2004	Harris	rape, kidnapping	✓	✓	✓	✓			17
Salazar	Ben	1992	1997	Travis	rape	✓		✓				5
Smith	Billy James	1987	2006	Dallas	rape	✓						19
Sutton	Josiah	1999	2004	Harris	rape	✓	✓					4
Taylor	Ronald	1995	2007	Harris	rape	✓	✓					14
Thomas	Victor Larue	1986	2002	Ellis	rape	✓						15
Turner	Keith E.	1983	2005	Dallas	rape	✓						4
Waller	James	1983	2007	Dallas	rape	✓						11
Waller	Patrick	1992	2008	Dallas	robbery, kidnapping	✓				✓		16
Wallis	Gregory	1989	2007	Dallas	rape	✓						18
Washington	Calvin	1987	2001	McLennan	rape, murder			✓	✓			13
Webb	Mark	1987	2001	Tarrant	rape	✓						13
Woodard	James Lee	1981	2008	Dallas	murder, rape	✓					✓	27
<b>TOTALS</b>						33	7	11	5	5	7	548

\*Died in prison in 1999

*“Law’s evolution is never done,  
and for every improvement made  
there is another reform that is overdue.”*

— JUSTICE WILLIAM J. BRENNAN, JR.



# Convicting the Innocent: TEXAS JUSTICE DERAILED

Stories of Injustice and the Reforms  
That Can Prevent Them

Texas has had more wrongful convictions exposed by DNA evidence than any other state in the country. The thirty-nine cases in this report—all of which have been exposed by DNA evidence—highlight the systemic problems that have resulted in the wrongful convictions of the innocent. By identifying the causes of wrongful convictions and implementing practical reforms, Texas can increase the fairness, accuracy, and reliability of its criminal justice system.

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