

STOLEN TIME. HIDDEN VOICES.

Real stories of innocence and wrongful convictions.

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ROBERT SANDERS

Former Chairman of the Kansas Parole Board

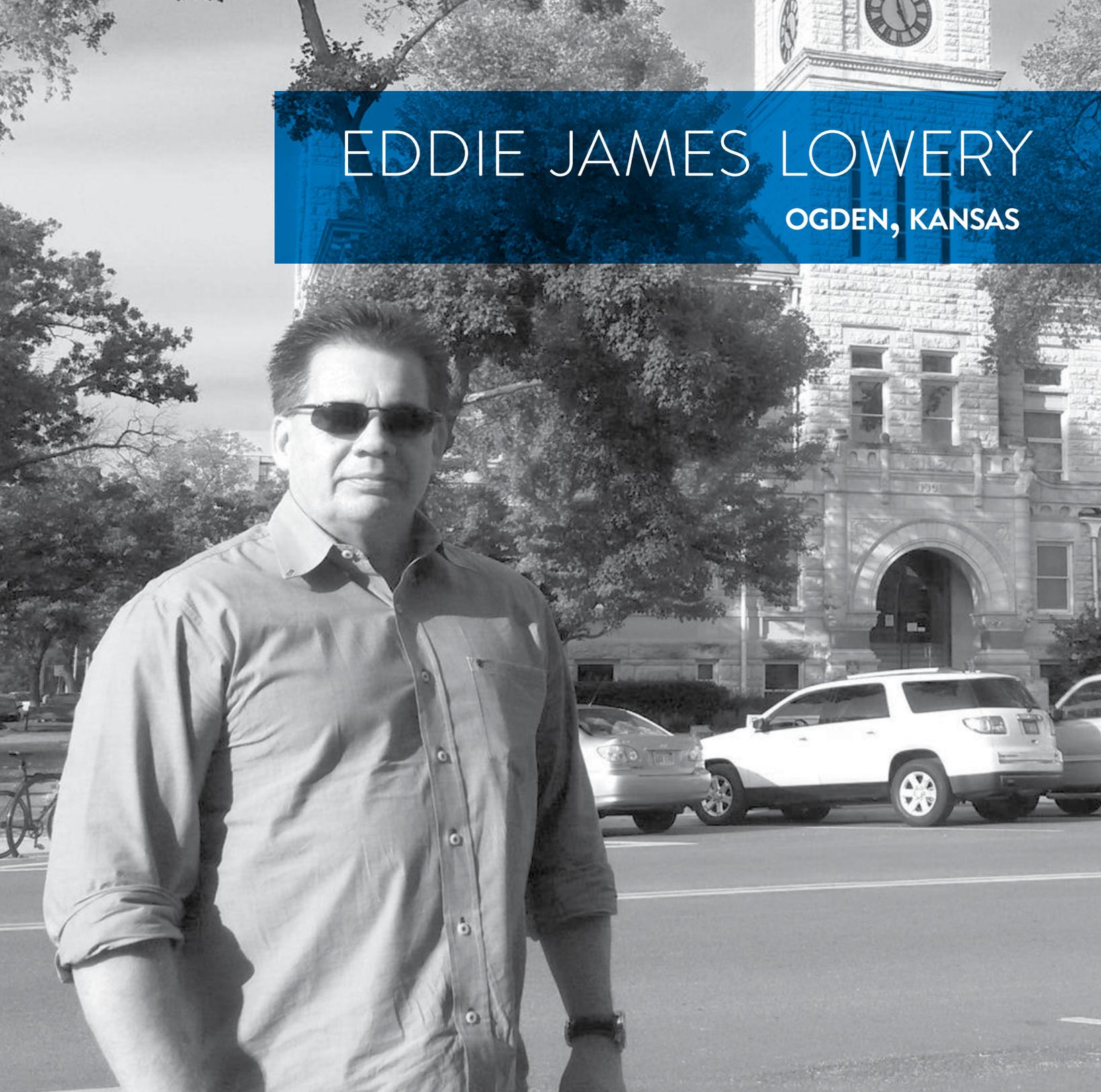
responsibility. I feel they could use more resources and training, which directly translates to a safer working environment. Multiple studies have found that the death penalty has a staggering financial cost, and it does nothing to reduce violent crime. Instead, it drains resources that could—and should—be used in ways that actually keep our prisons and the people of Kansas safe.

During my time as a member of the Kansas Parole Board, I interviewed hundreds of inmates. To this day, I doubt the guilt of several of those that I interviewed, and I’m sure I am not the only member of the parole board with similar doubts. Prior to serving seven years on the parole board, I spent 26 years working for the Kansas Department of Corrections, both in our prisons and in community and field services. I always opposed the death penalty, and, fortunately, was never required to carry out any duties associated with capital punishment. It wasn’t until the past few years that I started doing more research on the issue, and talking with people directly affected by the death penalty system. After hearing the stories of the wrongfully convicted, many who were sentenced to death, I find it impossible to justify capital punishment.

The death penalty, besides being cruel, immoral, and ineffective in reducing crime, is so prone to error that as a civilized nation we should not tolerate its use. Since 1973, 152 individuals (and counting) have been exonerated after spending years on death rows across the nation. According to one study, at least four percent of all death row inmates in the United States have been wrongly convicted. In the past year alone, nine people who had been sentenced to death were released. The great responsibility shouldered by our criminal justice system is at odds with the risk it carries as long as we have the death penalty. Executing an innocent person is not justice. It is simply legalized murder by the state.

The men and women who serve in our criminal justice system are tasked with incredible

I hope you will find these exoneration stories as courageous and compelling as I have found them, and that you will consider the great weight carried by a state with the death penalty. I strongly believe in the integrity of the criminal justice system, but even on its best days, it still makes mistakes. Innocent people get convicted for many reasons including false confession, misidentification by eyewitnesses, improper forensics, ineffective counsel and prosecutorial misconduct. There is simply no way to make sure the correct person is convicted every time. But we can make sure that the state of Kansas does not make the biggest mistake of all: executing an innocent person. It is time to end the death penalty for good.



EDDIE JAMES LOWERY

OGDEN, KANSAS

Convicted: 1982

Sentence: 11 Years to Life

Served: 10 Years



Vindication: 2003

—DNA Proved Innocence

In 1982, I was a soldier in the United States Army when I was convicted of rape, aggravated assault, and aggravated burglary. I did not commit these crimes, but through a failure of our justice system, I was convicted. I spent 10 years in the Lansing State Penitentiary and after my release I spent another 11 years registering as a sex offender until I was proven innocent through DNA testing. It took me another 8 years to begin to truly put my life back together and request the military to change my dishonorable discharge, not to mention to rebuild my relationship with my child who I had not seen since she was three years old.

Out of the over 320 men and women exonerated through post-trial DNA testing—and that number includes me—there have been 20 men exonerated from death row by DNA. Our system claims that a person is innocent until proven guilty. But today it's guilty until proven innocent. Overall, since 1973, over 150 people have been fully exonerated from death row nationwide.

The use of DNA has shown us time and again that convictions based on eyewitness testimonies, circumstantial evidence, photo identification, and even victim testimonies are many times flawed. These forms of evidence are not conclusive enough to decide whether a person is guilty or innocent, let alone whether that person should receive the death penalty, yet they continue to decide cases in courts around the country, including right here in Kansas. DNA exonerations do not solve the problem, however, but rather, only prove to us that there is a problem in our justice system that needs to be addressed. DNA testing is only available in 5–10 percent of criminal cases.

As a threat to me during my interrogation, one detective said that if the elderly women had died in my case, and Kansas had the death penalty (back in 1982), he would ask for it. Even though that was just a threat during my interrogation, I was still an innocent man, and I was being threatened with the death penalty. I cannot even begin to articulate the pain and personal suffering that I have been through. The impact that my wrongful conviction has had on every aspect of my life is difficult to express with words.

I have lived the errors of our justice system. We all know that our system isn't perfect and has many flaws. Knowing these flaws, I do not believe we should be punishing people with the death penalty. If the flaws that invaded my case somehow make their way into a death penalty case, the State of Kansas could commit one of the gravest miscarriages of justice imaginable. And that is why, in my humble opinion and experience, I believe that the death penalty should be abolished.



Curtis Edward McCarty was exonerated in 2007 after serving 21 years—including 19 years on death row—for a 1982 Oklahoma City murder he didn't commit.

CURTIS McCARTY

OKLAHOMA CITY, OKLAHOMA

McCarty was convicted twice and sentenced to death three times based on prosecutorial misconduct and testimony from forensic analyst Joyce Gilchrist, whose lab misconduct has contributed to at least two other convictions later overturned by DNA evidence.

On December 10, 1982, 18-year-old Pamela Kaye Willis was found murdered in the Oklahoma City home where she was staying. Willis was nude and she had been stabbed and strangled.

Curtis McCarty became a suspect because he was an acquaintance of the victim. Soon after the murder, in 1983, Gilchrist compared hairs from the crime scene with McCarty's and found that they were not similar. Police interviewed McCarty several times over the next three years, but he was not arrested until 1985. At that time, Gilchrist covertly changed her notes and reversed her findings, saying now that the crime scene hairs could have been McCarty's. Attorneys for McCarty did not discover the change in Gilchrist's notes until 2000, when she was under investigation for fraud in other cases.

At McCarty's trial in March 1986, the prosecution relied on the testimony of Gilchrist, an Oklahoma City Police chemist, who said that hairs from the crime scene could be attributed to McCarty. Based on the hairs, Gilchrist said McCarty "was in fact" at the crime scene. She also testified that

McCarty's blood type matched the blood type of sperm found on the victim's nude body. Oklahoma City District Attorney Robert H. Macy committed misconduct in presenting the case to the jury withholding key evidence. The jury convicted McCarty and he was sentenced to death.

McCarty was on death row for two years before Oklahoma's highest court overturned his conviction due to prosecutorial misconduct, improper forensic procedures and comments made on the stand by Gilchrist. McCarty was retried in 1989 with Gilchrist again testifying for the state. The jury was again told that hairs from the crime scene could have come from McCarty. He was again convicted and sentenced to death.

Macy, who led both prosecutions against McCarty, sent 73 people to death row during his 21-year career—more than any other prosecutor in the country. Twenty of those 73 have been executed. In 1995, an appellate court upheld McCarty's conviction but ordered new sentencing due to a jury instruction problem in the second trial. A new jury heard four days of testimony in 1996 and handed down McCarty's third death sentence.

Attorneys for McCarty were able to secure DNA testing in 2002 on sperm recovered from the victim's body, and test results showed that the sperm did not match McCarty. This was crucial to securing a third trial. In 2007, additional DNA testing showed that evidence recovered from scrapings of the victim's fingernails was from a male and did not match McCarty. Further forensic analysis showed that a bloody footprint on the victim's body could not have been McCarty's. Based on this exculpatory evidence, as well as the misconduct by Gilchrist, McCarty's attorneys moved to dismiss the charges before a third trial was held.

He is the 15th person nationwide—and the third in Oklahoma—to be exonerated by DNA testing after serving time on death row.

Case description courtesy of the Innocence Project

Convicted: 1986
Sentence: Death
Served: 21 years—19 on death row

 **Vindication: 2007**
—DNA Proved Innocence
—Misconduct

In November 1979, John McGinest was shot and killed on the street in Long Beach, California. Several eyewitnesses provided police with an initial description of the shooter. Six eyewitnesses were shown a photo lineup, but none could identify the shooter. After being shown Thomas Goldstein's photo a second time, however, one witness—Loran Campbell—said it was possible Goldstein was the shooter, which the police took as a positive identification. The police arrested Goldstein, a Vietnam veteran who lived near the murder scene, even though he was white and the other witnesses identified the shooter as black or Mexican. Goldstein was put in a cell with Edward Fink, a jailhouse snitch who had been a police informant for ten years and had previously benefited from telling police about “confessions” from his cellmates. The next day, Fink told police that Goldstein had confessed to him.

At trial, Fink falsely testified that he received no benefit for his testimony and had never received benefits from cooperating with police. Loran Campbell also testified against Goldstein. No physical evidence connected Goldstein to the shooting. Prosecutors claimed that Goldstein had killed McGinest because McGinest owed him money, but presented no evidence to support that theory. In 1980, a jury convicted Goldstein of murder, and he was sentenced to 27 years to life in prison.

After the trial, Goldstein filed numerous appeals on his own behalf, but was unsuccessful. In 1990, a grand jury report revealed that Los Angeles County prosecutors regularly presented false testimony by jailhouse informants between 1979 and 1990. Goldstein eventually tracked down a lawyer who had information showing that Fink had lied in a number of cases, and discovered that Fink had received benefits in exchange for his testimony. Goldstein filed his second federal habeas corpus petition, and the federal public defender's office was appointed to represent him. The office's investigator tracked down Loran Campbell. Campbell recanted his testimony in 2000, saying that the police had coached him to identify Goldstein. In November 2002, a federal district court overturned Goldstein's conviction, ruling that he had been deprived of a fair trial because the prosecution failed to reveal that Fink had received benefits in exchange for his testimony. The prosecution appealed.

In December 2003, the United States Court of Appeals for the Ninth Circuit upheld the district court's decision, overturning Goldstein's conviction and granting him a new trial. The court also ordered Goldstein's immediate release, but local officials did not comply with the order. Instead, when a Los Angeles County Superior Court judge dismissed the original charges against Goldstein in February 2004, the prosecution immediately filed new charges and Goldstein remained in custody.

Goldstein was not released until April 2004, after a judge ruled that the prosecution could not use Campbell's testimony from 1980, leading prosecutors to drop the charges.

Goldstein filed a civil suit against the city and county, the police department, the district attorney and the district attorney's chief deputy. In August 2010, Goldstein settled his lawsuit against the city of Long Beach for nearly \$8 million.

Case description courtesy of the National Registry of Exonerations

Convicted: 1980 in Long Beach, CA

Sentence: 27 Years to Life

Served: 24 Years



Vindication: 2004

—Perjury or False Accusation

—Official Misconduct

THOMAS GOLDSTEIN

FROM PRAIRIE VILLAGE, KANSAS

Donald Ball was murdered at a St. Louis, MO, Amoco gas station at about 9:45pm on June 4, 1984. Witnesses said that Ball was pumping gas into his car when a lone gunman approached him and fired a shot hitting Ball in the arm. Ball immediately ran and the shooter chased him, firing another shot into Ball's leg, which brought him to the ground. The assailant stood over the bleeding body of Donald Ball, fired the fatal shot into his back at point blank range, and then ran off into the night.

Customers of the gas station who witnessed the crime could only give a vague description of a light skinned black male with a short afro wearing khaki pants and a yellow shirt. The crime scene yielded no physical evidence outside of the bullet casing. Two of Donald Ball's relatives told police that Ball had been shot just a year earlier by Jesse Watson, a drug dealer with whom Ball was having a drug turf war. Watson, they said, tried to kill Ball and skipped town after the failed attempt.

Police stated that two days after the crime they received a tip. Eddie Walker who was accompanied by a man only known as "Tampa Red" approached the police saying he'd witnessed the crime and that Darryl Burton was the shooter. Soon, another man, Claudix Simmons, identified Burton as the shooter as

well. Less than a month after the crime, Darryl Burton was arrested. The state's two key witnesses, Eddie Walker and Claudix Simmons, were the key to Burton's conviction. While Burton knew the victim, there was no bad blood between them and no motive was ever presented by police.

Centurion Ministries (CM) found that Eddie Walker's story of what happened varied greatly every time he gave a statement. Walker died in 1996, but was characterized by friends as a drunkard, a liar and devoid of any scruples. Danny Pennington, a friend of Walker's, stated that he was with Mr. Walker one block away from the shooting when it occurred. In response to Walker's testimony, Pennington blurted out, "That's a lie! I was with Eddie when he heard the shots! We didn't see nobody!"

CM found "Tampa Red" who stated in an affidavit that he didn't remember anyone named Eddie Walker from his neighborhood and did not even recognize Walker when shown a photo of him.

Claudix Simmons admitted to CM that he had lied at trial as a part of a deal to avoid many years of state prison time for the crimes he was charged with at the time.

The gas station cashier, an African American woman named Joan Williams, she said that she had told the police that they'd gotten the wrong man because the shooter, whom she had plainly seen, was an African American much lighter in skin color than the dark skinned Darryl Burton.

By August of 2008, Darryl Burton's conviction was reversed and charges were dropped. In his decision, the judge in the case ruled that "the evidence of guilt presented at trial was extremely weak" and the testimony of the cashier to be "clear, credible, and powerful."

Case description courtesy of Centurion Ministries

Convicted: 1985

Sentence: Life in prison

Served: 24 Years



Vindication: 2008

—Perjury or False Accusation

—Official Misconduct

DARRYL BURTON

ST. LOUIS, MISSOURI



Helen Wilson was murdered and then raped in her apartment in Beatrice, Nebraska, on February 6, 1985. Six individuals—the “Beatrice Six”—were convicted for involvement in this crime: James Dean, Kathy Gonzalez, Debra Shelden, Ada Joann Taylor, Joseph White and Thomas Winslow, who collectively spent over 75 years in prison.

THE “BEATRICE SIX”

BEATRICE, NEBRASKA

The threat of the death penalty was a key factor leading to confessions in this case. DNA testing in 2008 led to the exoneration of the Beatrice Six and linked the biological evidence at the crime scene to Bruce Allen Smith.

From the autopsy and crime scene, investigators recovered semen and blood. Initial testing of biological samples given by the Beatrice Six showed that none of them matched the blood or semen from the crime scene. Despite having this information, officials still prosecuted and obtained convictions against them.

The initial investigation focused on Bruce Allen Smith as a suspect. He was found in Oklahoma City, where police laboratory technician Joyce Gilchrist—later fired for her involvement in years of forensic fraud—tested Smith’s biological sample and mistakenly eliminated him as a suspect.

The Gage County Sheriff’s office began relying on rumors, statements contradicted by crime scene evidence, and statements from an individual known to be mentally challenged, to obtain arrest warrants for Joseph White, Ada Joann Taylor, and Thomas Winslow. White denied knowing anything about the Wilson murder. Officials fed Taylor false information that White had implicated her in Wilson’s murder. Taylor had a significant psychiatric disorder making her prone to delusional thought,

and under the stress of interrogation began imagining a murder inconsistent with the crime scene evidence. She later recanted.

When testing proved that White, Taylor and Winslow were not the source of the blood in Wilson’s apartment, Beatrice Police became convinced that they had no involvement in the murder and told the Sheriff. The Sheriff and County Attorney told the Police Chief to keep quiet and “don’t muddy the water.”

After five hours of interrogation, Debra Shelden, who had significant mental health issues, eventually claimed to be with White, Taylor, and Winslow at Wilson’s rape and murder. Officials obtained Shelden’s confession through threats that she would lose custody of her infant daughter if she did not cooperate.

After a session with a psychologist, Shelden claimed to remember James Dean being present. Officials arrested Dean and interrogated him over 22 days. He continually denied any knowledge of Wilson’s murder. The same psychologist who worked on Shelden came to the jail to calm Dean when he became hysterical over death penalty threats made by interrogators.

After a session with a psychologist, Dean started “recalling” Wilson’s murder in his dreams. He, along with Shelden, claimed to recall from dreams that Kathy Gonzalez was present in Wilson’s apartment, which led to Gonzalez’s arrest. The Sheriff and County Attorney knew that their “dreams” were not an accurate account of Wilson’s rape because White and Winslow were not the source of the crime scene semen, but their testimony was still used as evidence at trial.

In 2006, White and Winslow petitioned the district court for DNA testing of the crime scene evidence. The same County Attorney who knew neither could be the source of the crime scene semen fought their request. Finally, in 2008, DNA tests proved that the crime scene semen and blood came from the same source—Bruce Allen Smith—not White, Winslow, or any other members of the Beatrice Six.

Convicted: 1990

Served: Over 75 Years Collectively



Vindication: 2008

- DNA Proved Innocence
- False Confessions or Admissions
- Unvalidated or Improper Forensic Science

AN OVERVIEW OF WRONGFUL CONVICTIONS IN THE UNITED STATES

OVER
1,500

Since 1989, year of the first DNA exoneration, there have been over 1,500 exonerations of individuals wrongfully convicted.

OVER
320

Since 1989, post-conviction DNA testing has played a role in exonerating and proving the innocence of over 320 individuals wrongfully convicted.

OVER
150

Since 1973, over 150 individuals have been wrongfully sentenced to death and later exonerated. DNA played a role in 20 of these death row exonerations.

OVER
30

For individuals exonerated from death row, it has taken on average 11 years for them to prove their innocence, with some exonerees having to wait in prison over 30 years.

CAUSES OF WRONGFUL CONVICTIONS

- **Eyewitness misidentification:** Social science research has shown that eyewitness testimony can be unreliable. Memory is not like a tape-recorder, but is vulnerable to bias and error. Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in about 75% of convictions overturned through DNA testing.
- **Unreliable or improper forensic science:** Unlike DNA, many forensic techniques—such as microscopic hair comparison and bite mark comparisons—have never been subjected to scientific evaluation. Meanwhile, forensic techniques that have been properly validated—such as serology or blood typing—are sometimes improperly conducted or inaccurately conveyed in trial testimony.
- **False confessions:** It seems hard to believe that anyone would confess to a crime that they never committed. But false confessions do occur, as DNA evidence has shown in numerous cases that innocent people admitted to crimes they did not commit. Duress, coercion, threat of a harsh sentence (e.g., the death penalty), and mental impairment are among the factors leading to false confessions.
- **Government misconduct:** Though many prosecutors and law enforcement officials do their work with honesty and integrity, misconduct by a few can put innocent individuals in prison. Failure to turn over exculpatory evidence, falsifying or destroying evidence, and coercing false confessions are examples of government misconduct leading to wrongful convictions.
- **Informant and snitch testimony:** In 15% of wrongful conviction cases overturned through DNA testing, an informant testified against the defendant at the original trial. Often statements from those with incentives to testify—particularly incentives not disclosed to the jury—are key to convicting an innocent person.
- **Bad lawyering:** The failure of overworked lawyers to investigate, call witnesses, or prepare for trial has led to the conviction of innocent people.

DNA DOES NOT SOLVE PROBLEM OF WRONGFUL CONVICTIONS

- **DNA evidence** is available for testing in only 5-10% of criminal cases. As a result, the only evidence available in many cases—including many capital cases—is evidence not as foolproof as DNA.
- **A variety of forensic evidence** commonly introduced in court is unreliable—a point emphasized by a National Academy of Sciences report on the state of forensic science.
- **Microscopic hair comparison:** This practice has been found to be highly unreliable, and many analysts have overstated the significance of finding similarities between hairs. The FBI is reviewing over 2,000 cases in which microscopic hair comparison was used improperly.
- **Bite mark analysis:** Numerous convictions based on bite mark analysis have been overturned as a result of new DNA evidence. Several studies have shown that the error rate in bite mark analysis ranges from 11.9% to as high as 91%.
- **Fingerprint analysis:** For years, fingerprint analysis represented the gold standard of forensic science. DNA exonerations of individuals convicted on the basis of a fingerprint analysis—e.g., Stephan Cowans in Boston—have shown that fingerprint analysis is not 100% foolproof.
- **Crime lab scandals:** Even if DNA or other biological evidence is available at a crime scene, it is useless or deceptive if crime lab officials mishandle, destroy, or falsify evidence. There have been a number of crime lab scandals across the country, with one in Boston compromising over 40,000 cases



For more information on wrongful convictions, visit:

- Centurion Ministries: www.centurionministries.org
- Death Penalty Information Center: www.deathpenaltyinfo.org
- Innocence Project: www.innocenceproject.org
- National Registry of Exonerations: www.law.umich.edu/special/exoneration/Pages/about.aspx

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Your voice counts. You can help:

- Join our 4,000+ members and 31 endorsing organizations!
- Ask a friend to join.
- Contact your legislators to let them know you support repeal.
- Come hear our speakers. Check out our website for upcoming events.
- Write a letter to the editor of your community paper.

VISIT OUR WEBSITE FOR MORE RESEARCH,
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PO Box 2065 | Topeka KS 66601 | 785.235.2237
info@ksabolition.org | www.ksabolition.org
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