

innocence

and the crisis
in the american
death penalty

A Death Penalty Information Center Report

The Death Penalty Information Center (DPIC) is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center provides in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is funded through the generosity of individual donors and foundations, including the J. Roderick MacArthur Foundation and the Open Society Institute. DPIC received particular assistance from the European Community for this publication. The views expressed herein are those of the DPIC and can therefore in no way be taken to reflect the official opinion of the European Commission.

INNOCENCE AND THE CRISIS IN THE AMERICAN DEATH PENALTY

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THE EXONERATED: NUMERICAL SUMMARY

TOTAL EXONERATIONS SINCE 1973 116

EXONERATIONS BY STATE

Florida	21	North Carolina	5	Idaho	1
Illinois	18	Pennsylvania	5	Kentucky	1
Louisiana	8	New Mexico	4	Maryland	1
Arizona	7	Ohio	4	Mississippi	1
Oklahoma	7	California	3	Nebraska	1
Texas	7	Missouri	3	Nevada	1
Alabama	5	Indiana	2	Virginia	1
Georgia	5	Massachusetts	2	Washington	1
		South Carolina	2		

EXONERATIONS BY RACE

BLACK - 58
WHITE - 45
LATINO - 12
OTHER - 1

EXONERATIONS BY GENDER

MALE - 115
FEMALE - 1

EXONERATIONS BASED UPON DNA EVIDENCE

14

BASIS FOR EXONERATION

ACQUITTAL - 40
CHARGES DROPPED - 69
PARDONED - 7

AVERAGE NUMBER OF YEARS OF INCARCERATION BEFORE EXONERATION

9 Years

TOTAL YEARS OF INCARCERATION BEFORE EXONERATION

1,042 Years

INNOCENCE AND THE CRISIS IN THE AMERICAN DEATH PENALTY

Executive Summary

This report catalogs the emergence of innocence as the most important issue in the long-simmering death penalty debate. The sheer number of cases and the pervasive awareness of this trend in the public's consciousness have changed the way capital punishment is perceived around the country. The steady evolution of this issue since the death penalty was reinstated in 1976 has been accelerated in recent years by the development of DNA technology, the new gold standard of forensic investigation. This science, along with a vigorous re-investigation of many cases, has led to the discovery of a growing number of tragic mistakes and freed inmates.

The evidence in this report presents a compelling case for many Americans that the risks associated with capital punishment exceed acceptable bounds. One hundred and sixteen people have been freed from death row after being cleared of their charges, including 16 people in the past 20 months. These inmates cumulatively spent over 1,000 years awaiting their freedom. The pace of exonerations has sharply increased, raising doubts about the reliability of the whole system.

This evidence has produced a dramatic reduction in the use of the death penalty as measured by the steep decline in death sentences around the country. Death sentences have dropped by 50% over the past 5 years. Nearly every state has experienced a significant reduction in death sentencing between the 1990s and the current decade. Many states are recording their lowest death sentencing rates in 30 years, and the number of inmates on death row has declined after steady increases for decades. Even executions have declined. And public support for the death penalty in opinion polls is significantly down from its high point in the 1990s.

But the official government response to the crisis of errors has been tepid at best. Most legislators lag behind the public in changing their perspective on this punishment. Only one state has an official moratorium on executions. Token reforms have been passed in some jurisdictions, but a thorough reinvestigation of the whole death penalty rationale and process has been avoided almost everywhere.

Ultimately, the issue of innocence, grounded in reports such as this, represents a crisis for the death penalty in America. The public's tolerance for sacrificing innocent lives for the sake of maintaining a demonstrably unfair government program with questionable benefit to society is noticeably ebbing. New voices are emerging to challenge the death penalty: judges, law enforcement officials, conservative commentators, and some legislators are discarding the former polarization of the issue as one between criminals and victims. Instead, people are noting that the injustices are often perpetrated by those mantled with the public trust, and that the victims are sometimes those condemned to death.

This is not only a crisis of public confidence but one with constitutional dimensions as well. Some justices, in both legal opinions and public statements, are calling for a new legal analysis to address the challenges posed by so many mistakes in capital cases.

The death penalty may continue to decline in the U.S. Or it may, finally, be subjected to a more searching scrutiny. As examples in this report demonstrate, there is no shortage of proposals regarding the changes needed to secure a more reliable and just system. Yet, it is always easy for the next high-profile crime to overshadow the memory of so many past mistakes. Official inertia remains the biggest obstacle to change. But beyond reform, many are saying that it may be time to acknowledge that this experiment has run its course.



INNOCENCE AND THE CRISIS IN THE AMERICAN DEATH PENALTY

I. WHAT'S NEW IN THIS REPORT

The public perception of the death penalty in the United States has radically changed in recent years. When thinking about crime and punishment, people no longer see only the threatening image of a dangerous criminal convicted of a terrible crime; they also recall the face of the innocent defendant walking into the sunshine of freedom from the confines of death row.

The issue of innocence, and the powerful examples that have thrust this issue into the public's eye, has done more to change the death penalty debate in this country than any other issue. It has slowed the death penalty down at a time when the political climate and the fears of terrorism might have led to a substantial increase in the use of capital punishment. Yet more profound changes, responsive to the enormity of the problems revealed in recent years, have so far eluded the system.

This report catalogs the many new cases of innocence, the reaction of the public to these disturbing developments, and the new challenges that this issue presents to those responsible for the death penalty in the U.S. The report includes:

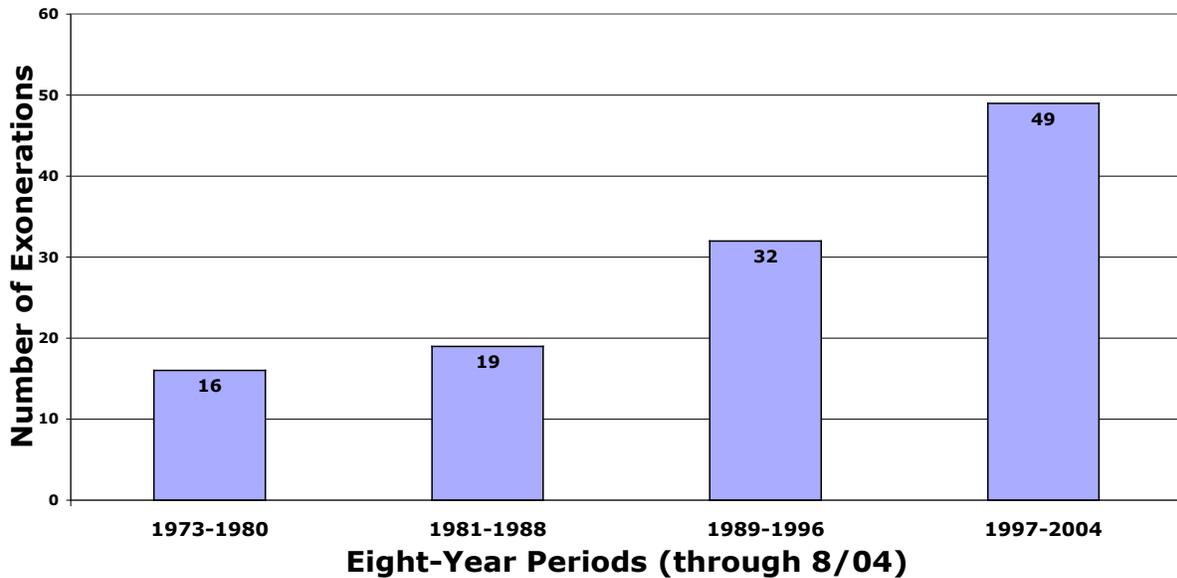
- **New Cases:** 51 cases have been added to the list of exonerated individuals since DPIC's previous report in 1997. The entire list of 116 cases is displayed in charts and graphs according to states, race, basis for exoneration, and other variables.
- **New Voices:** the issue of innocence has prompted many previous supporters of the death penalty to change their opinions and to become critics of the present system.
- **New Public Response:** data from public opinion polls and from the 50% decline in death sentencing indicate the public's growing unease with the death penalty and stronger support for life without parole as an alternative sentence.
- **New Proposals for Legal Reform:** numerous public and private commissions have made recommendations to improve the reliability and fairness of the justice system in handling capital cases. Some have called for a halt to all executions while this crisis is being addressed. For the most part, only the most modest reforms have been adopted.
- **New Constitutional Challenge:** beyond public policy, the innocence issue raises a fundamental constitutional challenge to the death penalty. Supreme Court Justices, other judges, and legal experts are grappling with the legal viability of this punishment, given the revelations of the past decade.

The drama of the exonerations from death row, the sheer number of reversals, and the nagging doubts about the justice system that produced these mistakes have altered the rhetoric of the death penalty debate and provoked doubts in the minds of jurors and the general public. The advent of DNA testing, and the definitive exonerations from death row that have followed from this advancement, have established the system's fatal flaws and perhaps mark the beginning of the end to the death penalty in America.

Virtually everyone is aware of the mistakes that have been made in capital cases. In polls, the public believes that the most tragic of errors has already happened—that innocent people have been executed in recent years. The evidence of near misses, exonerations based on fortuitous circumstances, and the obvious fallibility of the justice system inexorably leads to that conclusion.

But despite the enormity of the problems, legislators have shied away from pausing the death penalty to allow for a thorough reassessment. Capital punishment has very deep roots. It has been used in America for 400 years, and its history goes back still further. Such traditions are not easily displaced. In some jurisdictions, minor attempts are being made to reform the death penalty, perhaps in order to forestall its demise. It is not yet clear how effective these reforms will be or whether the reforms will even be monitored to see if they make a difference. There will be costs associated with these changes and it remains to be seen how much the public is willing to pay for them. However, with the cracks in the system now exposed, and with a heightened demand for the utmost care and precision whenever human life is at stake, many are asking the more basic question of whether the death penalty can realistically be cobbled into conformity with our fundamental principles of justice.

Increasing Number of Exonerations



II. DRAMATIC DEVELOPMENTS SINCE DPIC'S 1997 INNOCENCE REPORT

A Thousand Years of Mistakes

By 1997, when the Death Penalty Information Center (DPIC) released its second report on innocence,¹ the number of exonerations from death row was already accelerating. The annual number of people who had been freed from death row almost doubled from the first report in 1993. During the 20 years from 1973 to 1993, an average of 2.5 inmates were freed from death row each year. From 1993 to 1997, the average jumped to almost 5 per year. The average has increased even further since then.

The inmates who have been freed spent a total of *over 1000 years* between sentencing and exoneration. The average exoneration took 9 years.

Public Response

In any other area involving the government's failure to adequately protect against the loss of innocent lives, one might have expected an immediate halt to the process and Congressional hearings to get to the bottom of the problem. While one state has halted executions and emptied its death row, most state legislatures have taken a far more timid approach to this crisis. In many ways, the public response has been stronger than the official reaction. New voices have emerged to challenge the death penalty and public opinion has begun to shift away from capital punishment, both in opinion polls and in the jury box.

NEW VOICES

Not only have stories regarding freed death row inmates occupied the front pages of newspapers across the country and been

shown on the national news, but they have also made their way into the popular culture. Movies such as *The Green Mile* with Tom Hanks and *True Crime* with Clint Eastwood, and the non-fiction play *The Exonerated* have explored this topic with powerful stories. Fictional books such as Scott Turow's *Reversible Errors*, and non-fiction accounts of freed death row inmates in *Parade Magazine* and many other sources have reached tens of millions of people. Popular television shows such as *The Practice*, *West Wing* and *Law and Order* have also dealt with the subject.

The prominence of this issue has led some people to change their minds about the death penalty and others to speak out more publicly. Supreme Court Justices have weighed in with their personal concerns about the danger of executing an innocent person and have called upon the states to address this crisis. In a speech in 2001, Justice Sandra Day O'Connor said there were "serious questions" about whether the death penalty is fairly administered in the U.S. Noting the number of death row inmates who have been exonerated in recent years, O'Connor stated, "If statistics are any indication, the system may well be allowing some innocent defendants to be executed."²

Justice Ruth Bader Ginsburg pointed to inadequate representation as part of the problem, and even endorsed the idea of a moratorium on executions. "People who are well represented at trial do not get the death penalty," said Ginsburg. "I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial."³

And most recently, Justice John Paul Stevens concluded that "this country would be much better off if we did not have

capital punishment," partly because of the danger of error in capital convictions.⁴



Former Illinois Governor George Ryan
(Photo by Mary Hanton)

Former Missouri Supreme Court Justice Charles B. Blackmar recently called the death penalty "severely flawed" because of the risks it takes with innocent lives. He saw abolition as the only solution:

The thought of executing an innocent person is repulsive. This is so even though the accused person may be a habitual criminal guilty of numerous crimes against persons and property. Yet few have the benefit of diligent services. . . . The process is so fatally flawed that the only solution lies in abolishing capital punishment. Most nations with which we share a common heritage have already taken this step. The relatives of the victim have the right to demand swift and sure punishment, but they do not have the right to demand death when the process is so severely flawed.⁵

Conservative spokesmen, such as columnist George Will and radio personality Oliver North, have had second thoughts about the death penalty because of what has been revealed about innocent persons. Will wrote about his reaction to the book *Actual Innocence* by Barry Scheck:

You will not soon read a more frightening book. It is a catalog of appalling miscarriages of justice, some of them nearly lethal. Their cumulative weight compels the conclusion that many innocent people are in prison, and some innocent people have been executed.⁶

Even some government officials who endorsed the death penalty repeatedly in the past are now ready to stop capital punishment. Former Governor George Ryan of Illinois is perhaps the most prominent example of such a conversion. He began his term as a death penalty supporter and presided over an execution in his first year. As a legislator, he had voted for the death penalty, but he left the Governor's office echoing the words of Justice Harry Blackmun: "I no longer shall tinker with the machinery of death".⁷

Vincent F. Callahan Jr., a Republican in Virginia's House of Delegates, consistently voted for the death penalty, but he now supports a moratorium:

In the past, I have been a strong advocate of the death penalty. I voted in favor of the resumption of capital punishment in 1977, and I have supported additional provisions expanding the categories of criminal actions for which the death penalty may be imposed.

However, I have now become one of those who believe that we must take another look at the death penalty. . . . In fact, I'm now proposing a 2-year moratorium on executions. . . . I believe it is time for a new dialogue on the death penalty. New scientific evidence, such as DNA testing, has revolutionized all areas of crime detection, criminal prosecution and criminal defense.

. . . .
A moratorium on the death penalty will give elected officials and the general public the chance to take

a hard look at the evidence to see whether the death penalty is serving its purpose.⁸

State Senator Stephen F. Lynch of Massachusetts, who regularly supported the death penalty for many years, also changed his position and now supports a moratorium on executions because of the spate of wrongful convictions: "Let me put it this way," Lynch said. "I would be reckless to see that evidence before me and not take a step back."⁹

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-Vincent Callahan (R., Va. House of Delegates)

Public Opinion and Death Sentencing

In addition to the emergence of new voices, there has also been a shift in public opinion. Opinion polls have shown a very high awareness of the mistakes that have been made in capital cases and a strong support for reform. Over 90% of the public believes that innocent people have been sentenced to death in recent years, and over

70% in a recent Gallup Poll thought that innocent people have *already been executed*—most likely in Texas.¹⁰ Over 90% support allowing those in prison to have access to DNA testing in order to demonstrate their innocence.

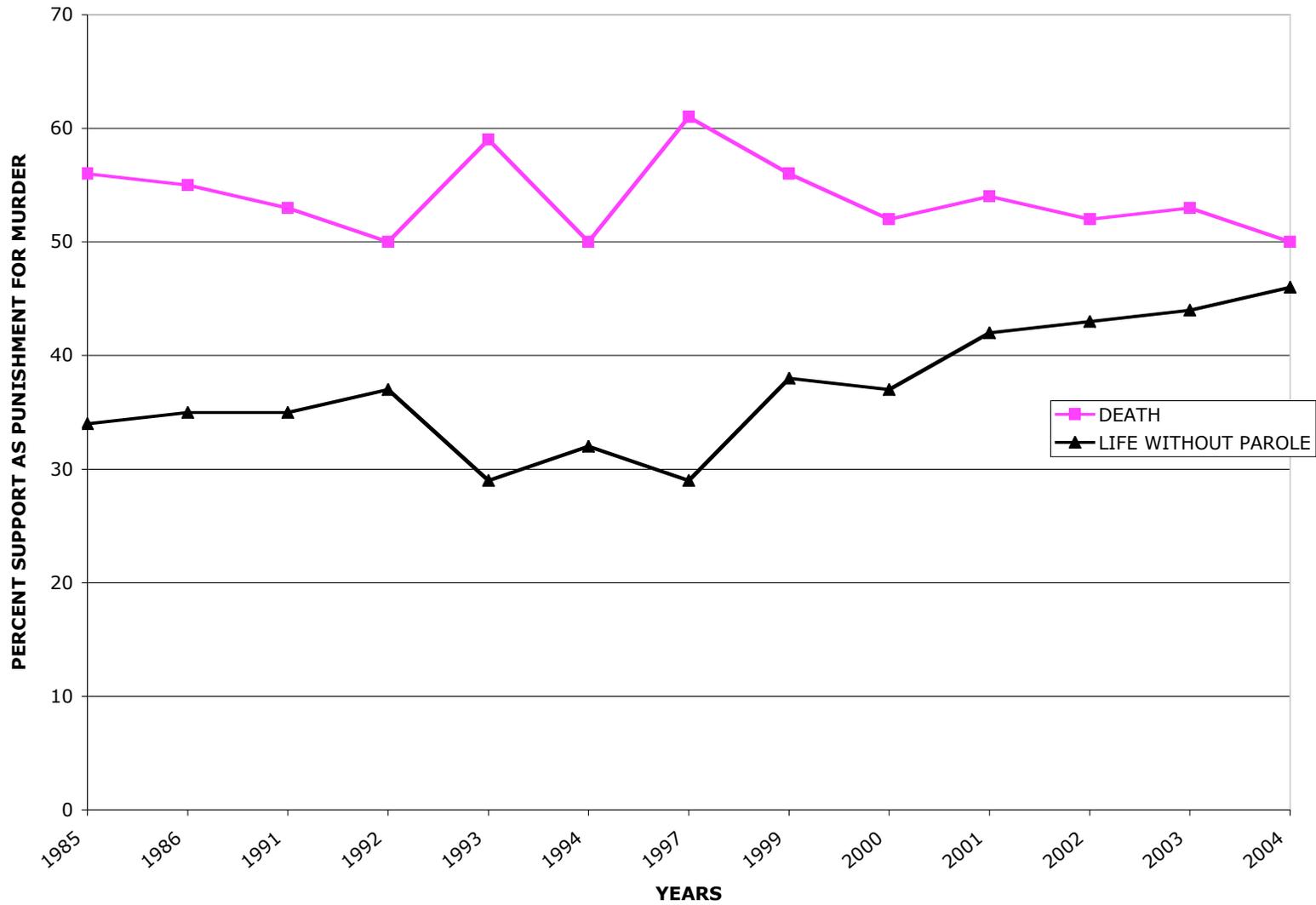
Support for the death penalty peaked at 80% in 1994. By early 2001, that support had dropped to 65%.¹¹ Since the terrorist attacks of September 11, 2001, some polls have shown a small rise in general support for the death penalty, while other polls indicate that the lower level of support measured in recent years has remained steady. For example, an ABC/Washington Post poll in 2003, recorded support for the death penalty at 64%.¹²

But even the Gallup Poll, which found a rise in death penalty support after 2001, also showed a rise in support for the alternative sentence of life-without-parole (46% supported LWOP in 2004 compared to only 37% in 2000, while support for the death penalty in this comparison dropped to 50%). There now exists a close split within the American public between the death penalty and life-without-parole sentences that has grown even narrower since the attacks of September 11. Six years ago in 1997, the gap was significantly wider (only 27% supported LWOP, while 61% preferred the death penalty) (see graph on p.6). Moreover, the majority of the public now supports a temporary halt to all executions.¹³

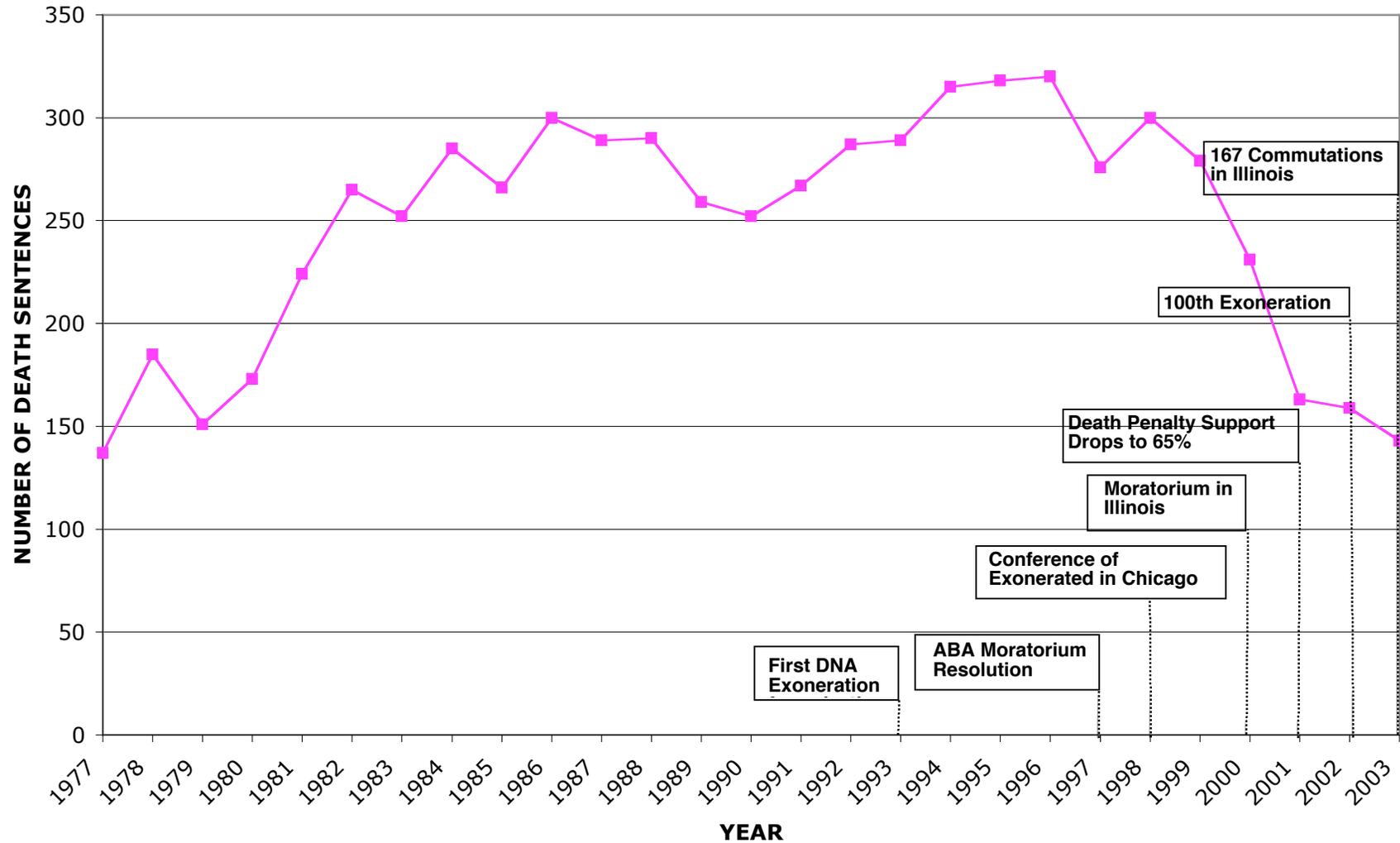
Concerns about the death penalty may also be contributing to the dramatic drop in death sentences over the past few years. Capital sentencing has declined by 50% compared to its rate in the 1990s.¹⁴ Almost every state and every region of the country have shown a marked decline in sentencing. Even though the public continues to support capital punishment in theory, they are pulling back on imposing this extreme sanction. (See graphs on p. 7 and 8).

PUBLIC NOW EVENLY SPLIT BETWEEN DEATH AND LIFE SENTENCES

(Gallup Poll Results)

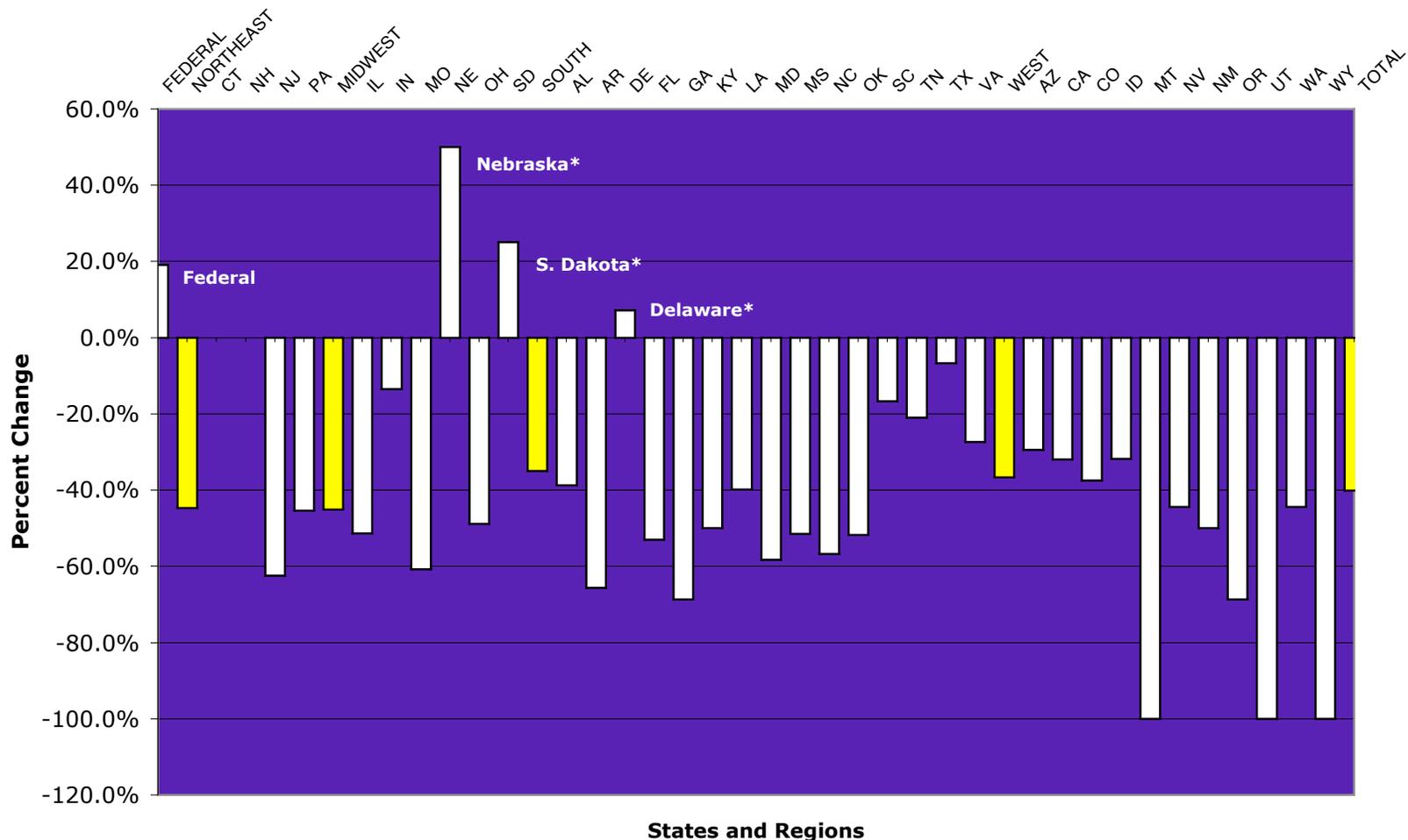


DECLINE OF DEATH SENTENCES IN U.S.



Sources: Sentences 1977-2002, Bureau of Justice Statistics; 2003, NAACP Legal Defense Fund.

Percent Change in Average Annual Death Sentences Between 1990s and 2000s



Sources: Sentences 1990-2002, Bureau of Justice Statistics; 2003, NAACP Legal Defense Fund.
 * Neb. and S. Dakota averaged less than 1 death sentence/yr; Del. averaged about 2 sentences/yr.

Key Events

Many significant events marked the transition from the expanding death penalty of the early 1990s to its attrition in the present decade. The **American Bar Association**, meeting in Texas in 1997, responded to the growing concern about the reliability of the death penalty by announcing a historic resolution calling for a national moratorium on all executions, in part to "minimize the risk that innocent persons may be executed."¹⁵ Over 2,000 organizations and governmental bodies, including numerous bar associations and county councils, have responded by similarly calling for a moratorium.¹⁶

Yet still more revelations about mistakes in capital cases continued to emerge. In particular, numerous capital convictions in Illinois that had been fiercely defended by the state for years began to crumble. The case of **Ronald Jones** was typical of the reversals that have eroded public confidence in the death penalty system.

Jones was a homeless man when he was convicted of the rape and murder of a Chicago woman. He maintained that he signed a confession only after a lengthy interrogation during which he was beaten by police. Prosecutors described him as a "cold brutal rapist" who "should never see the light of day."¹⁷ But DNA testing revealed that Jones was not the rapist, and there was no evidence that more than one person had committed the crime. The Cook County state's attorney filed a motion asking the Illinois Supreme Court to vacate Jones's conviction in 1997. In May 1999, the state dropped all charges against Jones.¹⁸

In 1998, a historic **National Conference on Wrongful Convictions** was held at Northwestern University Law School in Chicago. Many of the 74 inmates who had been exonerated over the previous 25 years appeared for the first time together on stage. Extensive national media coverage gave the country a first-hand look at

innocent people who had almost been executed. Pictures of the exonerated appeared on the evening news, on ABC-TV's *Nightline*, and in the country's major newspapers.¹⁹ Each former death row inmate rose and repeated (filling in their appropriate state): "Had the state of Illinois gotten its way, I'd be dead today."



Ronald Jones
(Photo by Loren Santow)

The Conference and the exonerations spurred investigations by the media and legislative committees to explore why so many mistakes were being made and what could be done to prevent future errors. Investigative pieces by the *Chicago Tribune* and other papers exposed the critical causes of these pervasive errors: woefully inadequate representation, misconduct by prosecutors and police, and a system that allowed jail-house snitches and paid informants to manufacture evidence that evaporated under closer scrutiny.

"Had the state of Illinois gotten its way, I'd be dead today."



The Exonerated speak at Northwestern University
(Photo by Mary Hanlon)

Executions Halted

The situation in Illinois reached a critical juncture when Steven Manning became the 13th person exonerated from death row. Manning's conviction was based on the testimony of a jailhouse informant and known liar. With that exoneration, Illinois had freed more people from death row than it had executed since the death penalty was reinstated. Governor George Ryan, a Republican and a supporter of the death penalty, declared a moratorium on all executions in January 2000. He promptly appointed a blue-ribbon commission of the state's leading criminal justice experts, including former judges, prosecutors, and defense attorneys.

Among those appointed to the **Illinois Commission on Capital Punishment** were former U.S. Senator Paul Simon, former federal Judge Frank Johnson (who chaired the committee), and noted author and defense attorney Scott Turow. The Commission was given the mandate to

explore all areas of the state's capital punishment system and to make recommendations that might begin to repair the broken system.

100th Exoneration

The year 2002 produced more important developments on the innocence issue. In the same month that the Illinois Commission on Capital Punishment released its long-awaited report on revamping the death penalty (see recommendations in section VI), Ray Krone became the 100th person exonerated after being sentenced to death. He walked out of prison in Arizona after DNA evidence clearly pointed to another suspect for the murder that had put him on death row in 1992. Bogus bite-mark evidence had convinced a jury that Krone had murdered a young woman, but other experts later agreed that no match was possible. Fortunately, new DNA testing was available to dispel all doubts, and Krone was freed.

"[Krone] deserves an apology from us, that's for sure. A mistake was made here. . . . What do you say to him? An injustice was done and we will try to do better. And we're sorry."

-Maricopa County (AZ) D.A. Rick Romley²²

In 2003, more people were exonerated and freed from death row than in any year since the death penalty was reinstated. Gov. Ryan in Illinois became convinced that the system that had produced so many errors could not be trusted to determine life and death verdicts, even for the guilty. He emptied death row, granting 4 pardons and 167 commutations for those with death sentences.

Other Developments

State Studies

In response to the increasing number of exonerations, some states, the media and private organizations conducted many reviews of the death penalty system. The *Chicago Tribune's* investigation in Illinois found that "at least 33 death row inmates had been represented at trial by an attorney who has since been disbarred or suspended; at least 35 black death row inmates had been convicted or condemned by an all-white jury; and about half of the state's capital cases had been reversed for a new trial or sentencing hearing."²⁰ In addition, at least 46 death row inmates were convicted or condemned after prosecutors used testimony from jailhouse informants.²¹

Illinois was certainly not alone among the states with serious problems in their capital punishment systems:

⇒ A 5-part investigative series in *The Tennessean* revealed that:

- Of the 151 **Tennessee** death sentences reviewed on appeal since 1977, half were overturned, primarily because of trial errors or inadequate representation.

- Since the death penalty was reinstated, at least 39 of the Tennessee lawyers who had represented defendants in capital cases had been disciplined by the state (165 death sentences were imposed during this period). The list of defense attorneys eligible for capital cases included a lawyer convicted of bank fraud, a lawyer convicted of perjury, and a lawyer whose failure to order a blood test let an innocent man linger in jail for four years on a rape charge.

- Since 1977, 25% of the black men sentenced to death in Tennessee have had all white juries and, in more than half of those cases, the victim was also white.²³

⇒ In **Washington**, an investigative series by the *Seattle Post-Intelligencer* found that one-fifth of the 84 people who have faced execution in the past 20 years were represented by lawyers who had been, or were later, disbarred, suspended or arrested. The article also noted that judges contributed to the problem by appointing inexperienced and poorly paid local lawyers to defend capital defendants, instead of those recommended by the state Supreme Court.²⁴

⇒ A study by Virginia's Joint Legislative Audit Review Commission found that the death penalty was applied inconsistently in the state, with more death sentences sought in rural and suburban jurisdictions than in urban ones, even when the underlying crimes were similar. In addition, the study noted that Virginia's Supreme Court, in its role of monitoring trial courts for disproportionate sentencing, had never found a case of excessive sentencing in the 119 capital cases that had come before it since 1977.²⁵

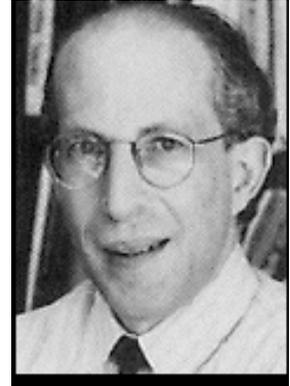
⇒ Similar reports in **New Jersey**,²⁶ **North Carolina**,²⁷ **Maryland**,²⁸ **Pennsylvania**,²⁹ **Texas**,³⁰ and other states pointed to the problems of racial disparities, inadequate representation, and related flaws in the justice system.

Thirteen official commissions studied problems in the administration of the death penalty in Arizona, Connecticut, Delaware, Illinois, Maryland, North Carolina, Indiana, Kansas, Nebraska, Nevada, Pennsylvania, Tennessee, and Virginia. The federal government also undertook a review of its capital prosecutions and found racial and geographical disparities. Top officials declared the federal findings to be "troubling" and "disturbing."³¹

In addition to the disparities in prosecutions, the federal death penalty was not immune from the taint of wrongful convictions, despite its claims of quality representation and due process. Ronald Chandler, the first person to receive the federal death penalty after it was reinstated in 1988, temporarily had his death sentence overturned because of ineffective representation by his lawyer. The death sentence was restored by a higher court, but by that time the government's chief witness had recanted his testimony against Chandler and took full responsibility for the murder. Faced with these doubts of Chandler's guilt, on his last day in office President Bill Clinton commuted Chandler's sentence to life in prison.³²

A Broken System

In 2000, Columbia University Law School released an extraordinarily comprehensive study of the death penalty in the United States.³³ Professor James Liebman studied every death penalty appeal from 1973 through 1995 and discovered disturbing patterns. Of all the thousands of cases that had completed the appeals process, an astonishing 68% were found to contain errors so serious the guilt or sentencing trials had to be done over again. Although in the early 1990s some prosecutors and legislators had tried to convince the public that the death penalty was plagued by needless and endless appeals thwarting justice, the Liebman study found that the appeals process was critical because it revealed that most trials contained serious errors.



**Professor
James Liebman**

When a significant sample of the cases that were overturned was tracked through re-trial, it was learned that very few received the death penalty. Eighty-two percent of the cases in the sample ultimately resulted in a sentence of less than death when they were done over, correcting for the error of the first trial. And 7% of those defendants turned out to be innocent. This was clearly a system that deserved the term "broken."

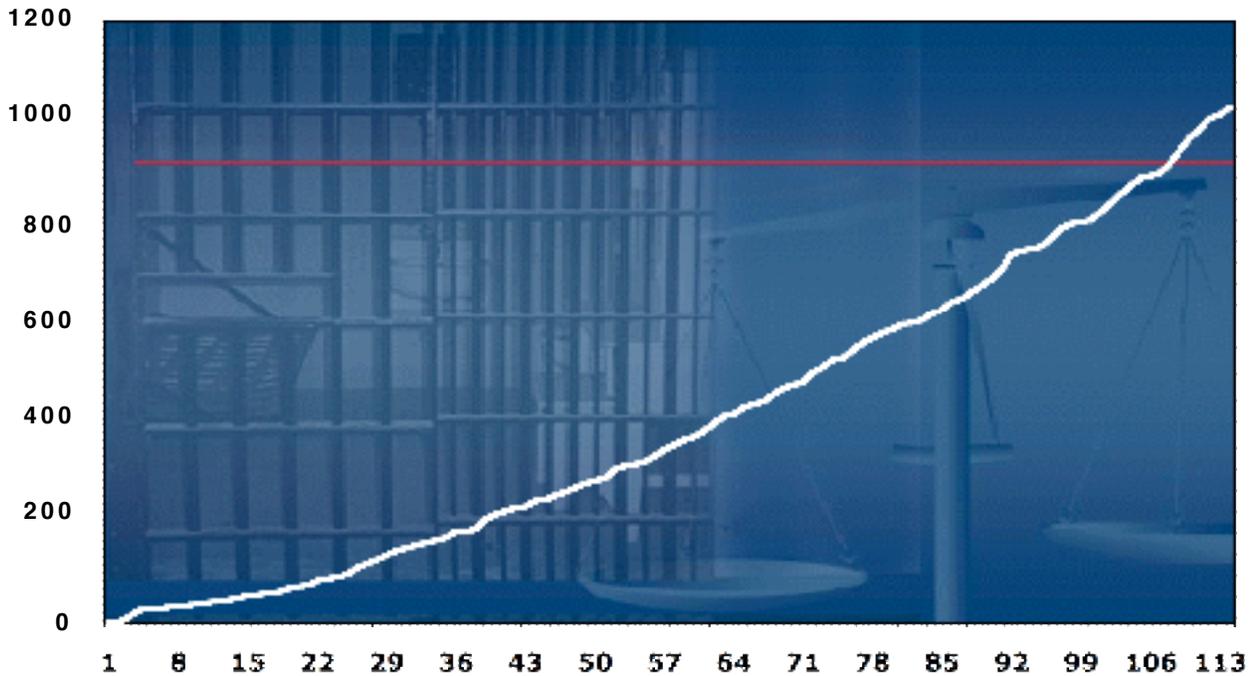
About half of the 50 states have enacted legislation to allow evidence from DNA testing to be considered after the normal appeals in capital cases have concluded. Some states have begun the process of improving their systems of representation in capital cases. In the U.S. Congress, the Innocence Protection Act (now included in S. 1700, the "Advancing Justice Through DNA Technology Act") was introduced in

2000 to encourage all states to enact comprehensive DNA legislation and to provide effective representation in death

penalty cases. However, despite receiving bi-partisan support, it was still languishing in the Senate as of August 2004.

Cumulative Years from Sentencing to Exoneration

Years



Number of Exonerees

III. NEW CASES ILLUSTRATE THE ON-GOING CRISIS



Anthony Porter
(Photo by Loren Santow)

Nothing brought home the crisis that had grown up around the death penalty more than the many individual stories of innocence revealed over the past few years. Most notable were cases like **Anthony Porter's**. Porter was scheduled to die in two days in Illinois when he received a stay from the court to look into his mental competence. That stay allowed his case to be pursued by a journalism class at Northwestern University. Fortunately, the students and an investigator were diligent enough to discover that one of the witnesses admittedly lied at the trial and they found another man, who confessed on videotape to the murder.

Porter was freed into a confusing world he had not known during his agonizing 16 years on death row. This was truly a "dead man walking."³⁵ Governor Ryan cited Porter's case repeatedly in justifying his halt to executions.

* * *

One of the nation's most poignant cases was that of **Frank Lee Smith** in Florida, the state that has had more exonerations of those on death row than any other but has

resisted all calls for a moratorium or even a study into why these mistakes keep happening.

Smith had always maintained his innocence of the murder that put him on death row. Since his alleged crime also involved a rape, it was a prime candidate for DNA testing. But the state of Florida resisted his requests for testing. Smith died from cancer while awaiting the legal skirmishes over his fate. When DNA testing was performed posthumously, it excluded Smith as the perpetrator. The prosecution offered a belated apology, but Smith was never granted the freedom that he deserved, and he died under society's worst condemnation for a crime he did not commit.³⁶

* * *

At the end of the day, perhaps the best argument against capital punishment may be that it is an issue beyond the limited capacity of government to get things right.

-Scott Turow, Author and Former Federal Prosecutor³⁴

To adequately tell all the stories of those who have been belatedly exonerated and freed from death row would take an entire book. In total, they spent 1,042 years between their death sentences and their exonerations. Below are summaries regarding the inmates who have been freed in 2004 and 2003. A complete listing of the 116 cases and summaries of the cases from 1997 (the year of DPIC's previous report) to 2002 appear in the Appendix.

Inmates Exonerated and Freed from Death Row Since DPIC's 1997 Report

Cases are listed in reverse chronological order. The numbering of the cases may be different from previous postings because of changes in the listing of earlier cases.

This list includes former death row inmates who have:

- a. Been acquitted of all charges related to the crime that placed them on death row, or**
- b. Had all charges related to the crime that placed them on death row dismissed by the prosecution, or**
- c. Been granted a complete pardon based on evidence of innocence.**

2004

116. Ryan Matthews Louisiana Convicted 1999 Charges Dismissed 2004



(photo: Reprieve)

Shortly after his 17th birthday, Ryan Matthews was arrested for the murder of a local convenience store owner. Three individuals interviewed by police were unable to definitively identify Matthews, and witnesses described the murderer as short - no taller than 5'8". Matthews is at least 6 feet tall. Matthews' court appointed attorney was unprepared, and unable to handle the DNA evidence. On the third day of the trial, the judge ordered closing arguments, and sent the jury to deliberate. When they could not agree on a verdict after several hours, the judge ordered the jury to resume deliberations until a verdict was reached. Less than an hour later, the jury returned a guilty verdict and Matthews was sentenced to death two days later.

In March 2003, Matthews' attorneys had the physical evidence (including a ski mask) re-tested. The DNA results excluded Matthews, and this time they pointed directly to another individual - one serving time for a murder that happened a few months after the convenience store murder and only blocks away.

In April of 2004, based on the new DNA testing and findings that the prosecution suppressed evidence, a new trial was ordered for Matthews. (Order of Judge Henry Sullivan overturning conviction, Division M of the 24th Judicial District Court, April 15, 2004). Released into his mother's care after she posted bond, Matthews was officially exonerated on August 9, 2004 when prosecutors dropped all of the charges against him. (New Orleans Times-Picayune, August 9 & 11, 2004; Associated Press, August 11, 2004). Matthews was the 14th death row inmate freed with the help of DNA testing.

115. Dan L. Bright Louisiana Convicted 1996 Charges Dismissed 2004

In 1996, Dan L. Bright was convicted of first-degree murder in Louisiana and was sentenced to death. On appeal, the Supreme Court of Louisiana found the evidence insufficient to support his conviction of first-degree murder and rendered a judgment of guilty of second-degree murder. (State v.

Bright, 776 So.2d 1134 (La. 2000)). The trial court imposed a sentence of life without parole at hard labor.

On May 25, 2004, the Supreme Court of Louisiana reversed Bright's conviction, vacated the sentence, and remanded for a new trial holding that the state suppressed material evidence regarding the criminal history of the prosecution's key witness, Freddie Thompson. The court noted that there was no physical evidence against Bright, and that Thompson's testimony was the only evidence that served to convict him. Thompson was very drunk on the day of the crime. Moreover, the prosecution failed to disclose that he was a convicted felon and in violation of his parole. The court held that the specific facts of Thompson's criminal record and the fact that he was still on parole when he testified against Bright raised questions about the veracity of his trial testimony: "This conviction, based on the facts of this case which include a failure to disclose what the State now admits is significant impeachment evidence, is not worthy of confidence and thus must be reversed." Because material evidence had been withheld by the state, Bright's conviction was overturned. (See *State of Louisiana v. Bright*, No. 02-KP-2793, May 25, 2004). The prosecution subsequently dismissed all charges and Bright was freed. (See Associated Press, Aug. 9, 2004, listing Bright's exoneration; also conversation with Ben Cohen, attorney for Dan Bright, July 21, 2004).

114. Gordon "Randy" Steidl Illinois Convicted 1987 Charges Dismissed 2004

Gordon "Randy" Steidl was freed from an Illinois prison on May 28, 2004, 17 years after he was wrongly convicted and sentenced to die for the 1986 murders of Dyke and Karen Rhoads. An Illinois State Police investigation in 2000 found that local police had severely botched their investigation, resulting in the wrongful conviction of Steidl and his co-defendant Herbert Whitlock. Due to the poor representation Steidl received at trial, a new sentencing hearing was granted in 1999, resulting in a sentence of life without parole. In 2003, federal judge Michael McCuskey overturned Steidl's conviction and ordered a new trial (267 F.Supp.2d 919 (C.D. Ill. 2003)), stating that if all the evidence that should have been investigated had been presented at trial, it was "reasonably probable" that Steidl would have been acquitted by the jury. The state reinvestigated the case, tested DNA evidence, and found no link to Steidl. State Attorney General Lisa Madigan decided not to appeal the ruling and Edgar County prosecutors announced that they would not retry the case. (Chicago Tribune, May 27, 2004).

113. Alan Gell North Carolina Convicted 1998 Acquitted 2004

Alan Gell was arrested for a 1995 robbery and murder of a retired truck driver named Allen Ray Jenkins. The two key witnesses presented by prosecutors were Gell's ex-girlfriend and her best friend, both teenagers. The girls, who were at Jenkins' house and pled guilty to involvement in the murder, testified that they saw Gell shoot Jenkins on April 3, 1995. However, prosecutors withheld valuable evidence that might have cleared Gell in the initial trial, including an audiotape of one of the girls saying she had to "make up a story" about the murder. (News and Observer, December 10, 2002). In 2002, a State Superior Court judge found that the prosecutors withheld evidence "favorable" to Gell, and vacated Gell's conviction. (*North Carolina v. Gell*, No. 95 CRS 1884, Order (Superior Court of Bertie County, December 16, 2002) (vacating conviction and granting new trial).



Alan Gell after his release
(Photo by Scott Lewis, News & Observer)

Convicted in 1998, Gell spent the next four years on death row until a new trial was ordered. He was re-tried in February 2004. The defense team was able to present evidence that Gell was out of state or in jail at the time of Jenkins' murder, which was placed closer to April 14th. This refuted the April 3 claim by the original prosecutors. Also challenging the state's timetable was a series of statements by as many as 17 witnesses who told investigators that they had seen Jenkins alive between April 7 and April 10. The most important new evidence was the taped conversation mentioned above, in which the state's key witness referred to making up a story about the murder. On February 18, 2004, a jury found Gell not guilty on all counts, and he left the courtroom with his family. (News and Observer, February 18, 2004.)

If we can't answer the first and simplest question correctly, "Is this person guilty?," how can we expect to answer the infinitely more difficult question correctly: "Is the death penalty the only appropriate punishment for this individual?"

Representative Harold U. Dutton Jr. of Houston³⁷

2003

112. Nicholas Yarris Pennsylvania Convicted 1982 Charges Dismissed 2003

In 1981, Nicholas Yarris was in jail on a minor charge when he learned of the murder of 32-year-old Linda Mae Craig in Delaware County, Pennsylvania. Yarris believed that he would be freed if he could tell investigators he knew the killer's identity. Yarris gave investigators a wrong name, believing he could blame the murder on a dead associate. Police leaked to other inmates that Yarris was a snitch, and Yarris endured days of regular beatings and torture. In an effort to save himself, Yarris asked what would happen if he had participated in the crime but was not the murderer. The beatings stopped, and Yarris was charged with capital murder. A fellow inmate made a deal with the D.A. and began exchanging false information about Yarris in exchange for conjugal visits and a reduced sentence. This inmate became one of the few witnesses to testify against Yarris at trial. The sole physical evidence prosecutors offered was semen that had been tested only for blood type. During the trial in June 1982, the prosecution did not hand over some 20 pages of documents that would later be revealed to include other physical evidence and conflicting witness accounts. Yarris was found guilty and sent to death row.

On appeal, a federal judge approved a motion by prosecutors to have evidence from the case tested in a lab in Alabama that was later revealed to have had no experience in DNA testing. This lab found no conclusive results to exclude Yarris or include anyone else. A 1994 motion for a new trial was denied. The DNA evidence was finally tested independently in 2000 by arrangement with the Pennsylvania Federal Defender Office that now represents Yarris, and the results of 3 tests based on evidence from the crime scene excluded Yarris.

A Philadelphia Common Pleas judge vacated Yarris's conviction and ordered a new trial (Pennsylvania v. Yarris, No 690-OF1982, Court of Common Pleas, Delaware County, September 3, 2003 (order vacating conviction).) According to Delaware County Assistant D.A. Joseph Brielmann, the D.A.'s office reviewed all of the available evidence, and "they have not uncovered enough information to proceed against Mr. Yarris. ... In fairness to Mr. Yarris, we requested that the prosecution be

dismissed." (Pittsburgh Post-Gazette, December 10, 2003; Pennsylvania v. Yarris, No 690-OF1982, Court of Common Pleas, Delaware County, December 9, 2003 (order of nolle prosequi).) District Attorney Michael Green said that he might be willing to offer an apology "in a private way." (Los Angeles Times, December 10, 2003; Pittsburgh Post-Gazette and Philadelphia Inquirer, December 10, 2003.)

111. Joseph Amrine Missouri Convicted 1986 Charges Dismissed 2003

Joseph Amrine was sentenced to death in 1986 for the murder of a fellow prisoner while housed in one of Missouri's "SuperMax" prisons. Amrine maintained his innocence, and investigators never uncovered any physical evidence linking him to the crime. Amrine was convicted on the testimony of fellow inmates, three of whom later recanted their testimony, admitting that they lied in exchange for protection. The Missouri Supreme Court found "clear and convincing evidence of actual innocence that undermines confidence" in Amrine's conviction and ordered Amrine released 30 days from their mandate (Amrine v. Roper, Mo. Sup. Ct. No. SC84656, April 29, 2003). During arguments before the court, the state argued that new evidence of innocence should have no bearing on the case. (Herald Sun, April 29, 2003.) On July 28, 2003, prosecutor Bill Tackett announced that he would not seek a new trial of Amrine and that Amrine would be released. (Associated Press, July 28, 2003.)



Joseph Amrine
(Photo: Amnesty Int.)

110. Gary Lamar James Ohio Convicted 1977 Charges Dismissed 2003

109. Timothy Howard Ohio Convicted 1977 Charges Dismissed 2003

Timothy Howard and Gary James were arrested in December 1976 for a Columbus, Ohio bank robbery in which one of the bank guards was murdered. Both men maintained their innocence throughout the trial. In 1978, Ohio's death penalty was held to be unconstitutional and all death row inmates were re-sentenced. Howard and James were given life sentences. With funding from Centurion Ministries in New Jersey, Howard and James were subsequently able to uncover new evidence not made available to their defense attorneys at the time of their trial, including conflicting witness statements and fingerprints. James agreed to and passed a state-administered polygraph test, prompting Franklin County prosecutor Ron O'Brien to dismiss all charges "in the interest of justice." Howard was freed earlier when Franklin County Common Pleas Judge Michael Watson overturned his conviction, citing evidence not disclosed or available at trial. The state dropped its appeal of the judge's ruling, thereby also clearing Howard of the same charges. O'Brien said that releasing the two men was an admission of a 26-year-old unsolved murder and robbery, but that "[w]e don't want anybody in prison serving time for something they didn't do." (Columbus Dispatch, July 16, 18, and 21, 2003.)

108. John Thompson Louisiana Convicted 1985 Acquitted 2003

John Thompson was sentenced to death in 1985 following his conviction for a New Orleans murder. Thompson, who has maintained his innocence since his arrest, was released from prison on May 9, 2003, less than 24 hours after a jury acquitted him at his retrial. (Times-Picayune, May 9, 2003).

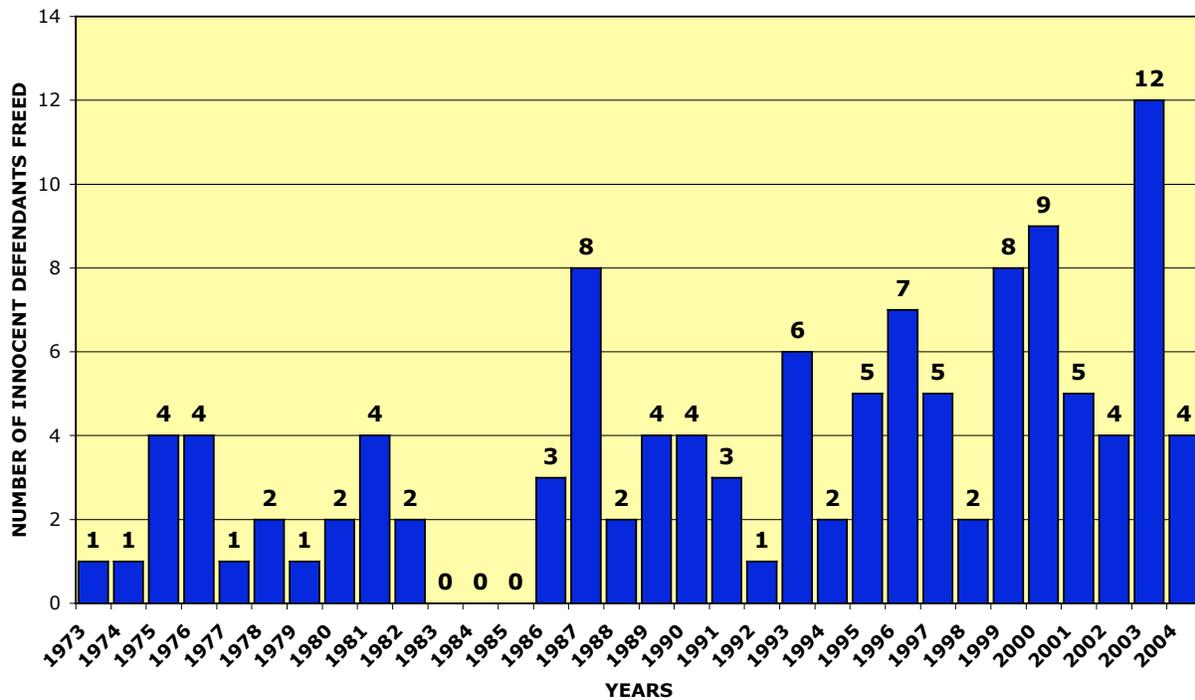
In 1999, just five weeks before his scheduled execution, Thompson's attorney discovered crucial blood analysis evidence that undermined information used to influence the jury's decision to send Thompson to death row. The blood evidence, which had been improperly withheld by the state, cleared Thompson of a robbery conviction. It was that conviction that kept Thompson from testifying on

his own behalf at his murder trial. In 2001, the trial judge vacated Thompson's death sentence, stating that the erroneous robbery conviction had likely influenced the jury's decision to send Thompson to death row. Thompson remained in jail under a sentence of life without parole.

In a later appeal to the 4th Circuit Court of Appeal of Louisiana, the court ruled that Thompson was "denied his right to testify in his own behalf based upon the improper actions of the State in the other case." (See *State v. Thompson*, 825 So. 2d 552, 557 (La. 2002)). The court held that it was "the State's intentional hiding of exculpatory evidence in the armed robbery case that led to [Thompson's] improper conviction in that case and his subsequent decision not to testify in the instant case because of the improper conviction." The court reversed Thompson's conviction and sentence, ordering a new trial.

The retrial featured Thompson's testimony professing his innocence which had never been heard before. In addition, jurors heard testimony from an eyewitness who insisted that it was not John Thompson whom she saw kill the victim. They also heard testimony that another man, Kevin Freeman, was the actual killer. Freeman was originally charged with the murder, but arranged a plea agreement with prosecutors and implicated Thompson. Although Freeman died prior to Thompson's recent trial, jurors were allowed to hear his earlier statements about the case, which were followed by questions that the defense would have asked on cross-examination. The trial concluded after jurors took less than an hour to acquit Thompson. (Times-Picayune, May 9, 2003).

**EXONERATIONS FROM DEATH ROW BY YEAR
(Through 8/04)**



[T]he argument against the death penalty has become more profound and salient. Simply put, we now know beyond dispute that the criminal-justice system wrongly sentences people to death. We even know their names, because since 1970, 101 of them have subsequently been found innocent. Moreover, the pace of exonerations has been accelerating, due in part to the wider use of DNA evidence.

...

[S]ociety can no longer ignore the practical consequences and risks of the death penalty.

-Editorial Arizona Republic, July 28, 2002

107. Wesley Quick Alabama Convicted 1997 Acquitted 2003

An Alabama jury acquitted death row inmate Wesley Quick of the 1995 double murder for which he was sentenced to death in 1997. The jury acquitted Quick at the conclusion of his third trial for this crime. Quick's first trial ended in a mistrial because of juror misconduct, but a second jury convicted him in 1997. (*Quick v. State*, 825 So. 2d 246 (2001)). During that trial, defense counsel tried to impeach the state's witness with prior inconsistent statements from the first trial, but the judge would not allow the attorney to use his notes, and would not provide counsel with a copy of the transcript from the previous trial. Quick was found guilty and sentenced to death, but the Alabama Court of Criminal Appeals overturned that verdict in 2001, stating that the judge in Quick's second trial was wrong to deny Quick a free copy of the transcript from the previous mistrial in light of his indigent status.

During Quick's third trial for the double murder, at which he received experienced representation, he testified that he did not commit the murders but said he was at the scene and saw the state's star witness against him, Jason Beninati, kill the men. (*Birmingham News*, April 22, 2003).

106. Lemuel Prion Arizona Convicted 1999 Charges Dismissed 2003

On March 14, 2003, the Pima County (Arizona) Attorney's Office dismissed all charges against death row inmate Lemuel Prion, who had been convicted of murdering Diana Vicari in 1999. In August 2002, the Arizona Supreme Court unanimously overturned his conviction, stating that the trial court committed reversible error by excluding evidence of another suspect. According to the Supreme Court, "There was no physical evidence identifying Prion as her killer," and the trial court abused its discretion in not allowing the defense to submit evidence that a third party, John Mazure, was the actual killer. Mazure, who was also a suspect in the murder, was known to have a violent temper, saw Vicari the night of her disappearance, concealed information from the police when they questioned him, and "appeared at work the next morning after Vicari's disappearance so disheveled and disoriented that he was fired." The Arizona Supreme Court held that the third-party evidence "supports the notion that Mazure had the opportunity and motive to commit this crime. . . ." (*Arizona v. Prion*, No. CR-99-0378-AP (2002)).

Prion's conviction was based largely on the testimony of Troy Olson, who identified Prion as the man who was with Vicari on the night of her murder. However, when police first showed Olson photographs of Prion, Olson could not identify Prion. According to the Court, "[Olson] stated that the person in the photograph did not look familiar." Seventeen months later, after seeing a newspaper picture of Prion labeling him as the prime suspect in the Vicari murder, Olson believed he could identify Prion. The Arizona Supreme Court also held that the trial court committed prejudicial error in

failing to sever the Vicari murder trial from Prion's trial for another crime, stating that "any connection between the two crimes is attenuated at best."

Prosecutors admitted that Prion would most likely have been acquitted if prosecuted under the standards set by the August 2002 ruling. Prion remained incarcerated in Utah for an unrelated crime. (Tucson Citizen, March 15, 2003).

105. Rudolph Holton Florida Convicted 1987 Charges Dismissed 2003



(photo: Florida Support)

Florida death row inmate Rudolph Holton was released on January 24, 2003, after prosecutors dropped all charges against him. (Miami Herald, January 25, 2003). Holton's convictions for a 1986 rape and murder were overturned in 2001 when a Florida Circuit Court held that the state withheld exculpatory evidence from the defense that pointed to another perpetrator. The court also found that new DNA tests contradicted the trial testimony of a state's witness. At trial, a prosecution witness testified that DNA hairs found in the victim's mouth linked Holton to the crime. However, more recent DNA tests conclusively excluded Holton as the contributor of the hair, and found that the hairs most likely belonged to the victim. (Florida v. Holton, No. 86-08931 (Fla. Cir. Ct. Sept. 2001) (order granting, in part, motion to vacate judgment)).

In December 2002, the Florida Supreme Court upheld the lower court's decision to reverse Holton's conviction and sentence. (Florida v. Holton, No. SC01-2671, 2002 Fla. LEXIS 2687 slip op. at 1 (Fla. December 18, 2002)). Prosecutors announced in January 2003 that the state was dropping all charges against Holton, who had spent 16 years on death row. (Miami Herald, January 25, 2003).

Illinois Pardons

On January 10, 2003, Illinois Governor George Ryan granted four pardons based on innocence. The men pardoned, Aaron Patterson, Madison Hobley, Leroy Orange and Stanley Howard, were all members of the "Death Row 10," a group of Illinois death row prisoners who claimed that they were the victims of police torture. The four pardoned men maintained that their confessions were given only after they were beaten, had guns pointed at them, were subjected to electric shock, or were nearly suffocated with typewriter covers placed over their heads. In 2002, a special prosecutor was named to conduct a broad inquiry into the allegations from more than 60 suspects who, like the Death Row 10, claimed that they were tortured by former Chicago Police Commander Jon Burge or his detectives at the Burnside Area Violent Crimes headquarters in Chicago during the 1980s. Jon Burge was fired by the Chicago Police Board in 1993 for his role in the torture of another prisoner. Governor Ryan examined the cases of all the Illinois death row inmates and selected these four for pardons based on their coerced confessions and other information.³⁸

104. Stanley Howard Illinois Convicted 1987 Pardoned 2003

Stanley Howard was convicted in 1987 of the murder of Oliver Ridgell. At trial, one of the main pieces of evidence against Howard was his statement to the police. Howard, however, always maintained that his confession was obtained through the use of police torture. Testimony at his trial contradicted information in Howard's "confession." The other evidence used against Howard was the testimony of Tecora Mullen, the passenger who was in the car when Ridgell was shot. Mullen admitted that it was dark and raining at the time of the shooting. In addition, Mullen's husband was originally a suspect in the murder. (State v. Howard, 588 N.E.2d 1044 (Ill. 1991)). Howard was granted a complete

pardon by Gov. Ryan on January 10, 2003. (Chicago Tribune, January 10, 2003). He remained incarcerated for an unrelated offense.



Leroy Orange with his attorneys
(Photo by Jennifer Linzer)

**103. Leroy Orange Illinois
Convicted 1984 Pardoned 2003**

Leroy Orange spent 19 years on death row before he was pardoned by Governor Ryan. Orange was arrested and questioned about the murders of four persons, and he subsequently confessed. Orange later stated that his confession was obtained by police torture and that he was innocent. At Orange's trial, his half-brother, Leonard Kidd, testified that although Orange was at the victims' apartment earlier in the evening he left before the murders and took no part in the crime. Kidd testified that he was solely responsible for the murders. Shirely Evans, a friend of Orange, testified that Orange was with her the night of the murders. (State v. Orange, 521 N.E.2d 69, 72

(Ill. 1988)).

At trial, Orange was represented by attorney Earl Washington, who was paid only \$400 to represent him and who had three Attorney Registration and Disciplinary Commission charges pending at the time of the trial. (State v. Orange, 659 N.E.2d 935, 947 (Ill. 1995)). The Chicago Tribune singled out Washington for his ineptitude, noting that the state had filed new disciplinary charges against him. Those charges alleged that Washington's representation of Orange and others "amounted to professional misconduct." (Chicago Tribune, November 15, 1999). Orange was granted a complete pardon by Gov. Ryan on January 10, 2003. (Chicago Tribune, January 10, 2003).

102. Madison Hobley Illinois Convicted 1987 Pardoned 2003

Madison Hobley was convicted of setting fire to an apartment building in 1987 that claimed the lives of seven tenants, including his wife and child. Hobley maintained his innocence, claiming that his confession was the product of police torture. At trial, the evidence against Hobley consisted of the testimony by Andre Council, a suspected arsonist who claimed to have seen Hobley buying gasoline before the fire, and by a gas station attendant who could not identify Hobley in a lineup and could only state that Hobley "favored" the man who purchased the gasoline.

Hobley's trial was marred by prosecutorial and juror misconduct. The Illinois Supreme Court concluded that "despite [Hobley's] pretrial requests for production, the State failed to disclose to him the evidence of two pieces of exculpatory evidence: (1) a report that defendant's fingerprints were *not* on the gasoline can introduced against him at trial, and (2) a second gasoline can found at the fire scene." (State v. Hobley, 696 N.E.2d 313, 331 (Ill. 1998) (emphasis in original)). Records also showed that police destroyed the second gasoline can after the defense issued a subpoena for it, a move the Illinois Supreme Court said supported a finding that the destruction was "motivated by bad faith." (Id.).

In addition, post-conviction affidavits of jurors stated that some jurors were intimidated by non-jurors while they were sequestered at a hotel, and that they were prejudiced by the acts of the jury foreperson, a police officer who believed Hobley was guilty. The affidavits also stated that jurors brought newspapers with articles about the case into the jury room and that they repeatedly violated the trial court's sequestration order. The Court remanded the case for an evidentiary hearing on the

issue of whether prosecutors violated Hobley's constitutional rights by withholding evidence, and on the issue of whether the jurors were intimidated during deliberations. (Id. at 345). In remanding the case, the court stated: "We stress that we are deeply troubled by the nature of the allegations in this case." (Id. at 338). Hobley was granted a complete pardon by Gov. Ryan on January 10, 2003. (Chicago Tribune, January 10, 2003).

101. Aaron Patterson

Illinois

Convicted 1986

Pardoned 2003



(Photo by Jennifer Linzer)

Aaron Patterson spent 17 years on death row and always maintained his innocence of the stabbing deaths of an elderly couple in 1986. (Chicago Tribune, January 10, 2003). During his pre-trial interrogation, Patterson etched the following words on an interrogation room bench: "I lie about murders police threatened me with violence slapped and suffocated me with plastic - no phone - no did signed false statement to murders (Tonto) Aaron." (State v. Patterson, 735 N.E.2d 616, 627-28 (Ill. 2000)).

In addition, photographs of the interrogation room revealed the phrase "Aaron lied" etched in the door of the room. There was no physical evidence tying Patterson to the crime, and fingerprints recovered from the scene did not belong to him. In addition, Patterson's former girlfriend testified that she was with Patterson on the night of the murders. In 2000, the Illinois Supreme Court granted Patterson an evidentiary hearing to determine whether his attorney was ineffective for failing to present evidence that the confession was coerced. The court stated:

Evidence identifying defendant as perpetrator consisted of (1) the oft-changing testimony of a teenager [Marva Hall] whose cousin had been a suspect in the crime; and (2) the testimony from the police officers and assistant State's Attorney concerning defendant's confession. (735 N.E.2d at 633).

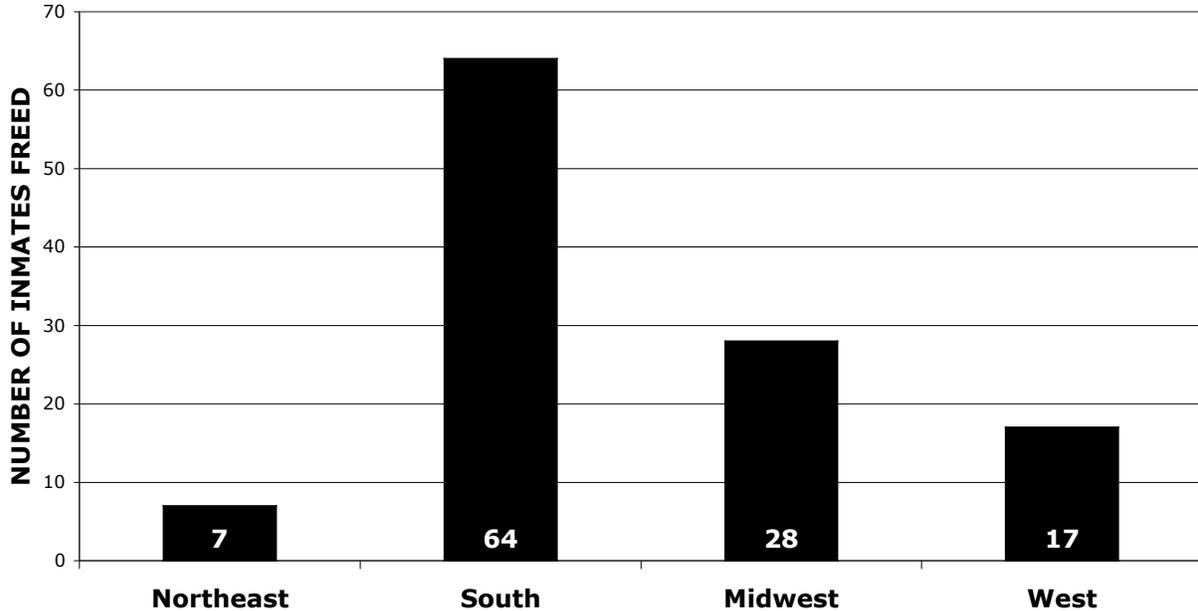
After Patterson's conviction, Marva Hall swore in an affidavit that prosecutors pressured her into implicating Patterson. "It was like I was reading a script," she said of her testimony. Hall told Northwestern University journalism students who were investigating the case: "I helped send [an] innocent man to jail." (Newsweek, May 31, 1999). Patterson was granted a complete pardon by Gov. Ryan on January 10, 2003. (Chicago Tribune, January 10, 2003).

**Additional Cases Added Since DPIC's 1997 Report on Innocence
Full Case Descriptions Included in the Appendix***

Nr.	Name	State	Race	Yr. Of Conviction	Yr. Of Release	Years Between	Reason
100	Larry Osborne	KY	W	1999	2002	3	Charges Dismissed
99	Thomas Kimbell, Jr.	PA	W	1998	2002	4	Acquitted
98	Ray Krone	AZ	W	1992	2002	10	Charges Dismissed
97	Juan Roberto Melendez	FL	L	1984	2002	18	Charges Dismissed
96	Charles Fain	ID	W	1983	2001	18	Charges Dismissed
95	Jeremy Sheets	NE	W	1997	2001	4	Charges Dismissed
94	Joaquin Jose Martinez	FL	L	1997	2001	4	Acquitted
93	Gary Drinkard	AL	W	1995	2001	6	Charges Dismissed
92	Peter Limone	MA	W	1968	2001	33	Charges Dismissed
91	Oscar Lee Morris	CA	B	1983	2000	17	Charges Dismissed
90	Albert Burrell	LA	W	1987	2000	13	Charges Dismissed
89	Michael Graham	LA	W	1987	2000	13	Charges Dismissed
88	Frank Lee Smith	FL	B	1986	2000*	14	Charges Dismissed
	* -died prior to exoneration						
87	William Nieves	PA	L	1994	2000	6	Acquitted
86	Earl Washington	VA	B	1984	2000	16	Pardoned
85	Joseph Nahume Green	FL	B	1993	2000	7	Charges Dismissed
84	Eric Clemmons	MO	B	1987	2000	13	Acquitted
83	Steve Manning	IL	W	1993	2000	7	Charges Dismissed
82	Alfred Rivera	NC	L	1997	1999	2	Charges Dismissed
81	Warren Douglas Manning	SC	B	1989	1999	10	Acquitted
80	Clarence Dexter, Jr.	MO	W	1991	1999	8	Charges Dismissed
79	Ronald Jones	IL	B	1989	1999	10	Charges Dismissed
78	Ronald Williamson	OK	W	1988	1999	11	Charges Dismissed
77	Steven Smith	IL	B	1985	1999	14	Acquitted
76	Anthony Porter	IL	B	1983	1999	16	Charges Dismissed
75	Shareef Cousin	LA	B	1996	1999	3	Charges Dismissed
74	Curtis Kyles	LA	B	1984	1998	14	Charges Dismissed
73	Robert Lee Miller, Jr.	OK	B	1988	1998	10	Charges Dismissed
72	James Bo Cochran	AL	B	1976	1997	21	Acquitted
71	Randall Padgett	AL	W	1992	1997	5	Acquitted
70	Robert Hayes	FL	B	1991	1997	6	Acquitted
69	Benjamin Harris	WA	B	1985	1997	12	Charges Dismissed

* Three cases from before 1997 were also added. See Appendix, p.A-10.

EXONERATIONS BY REGION: 1973-2004



IV. Innocence Exposes Broader Problems

The power of the innocence issue is that it throws open a window onto all capital cases as it sheds light on the fallibility of the justice system. People have always known that the system can make mistakes. But the numbers of people being released, the scientific credibility lent by DNA testing, the high media profile of many of these cases, along with the fact that an execution looms in the background, have all contributed to the greater impact of the innocence issue.

No one supports the execution of an innocent person. But these cases also raise the specter of doubt about a much larger class of capital cases: those where the defendant may be guilty, but about whom it is impossible to be certain. For the people freed from death row, the jury's vote to convict had been unanimous and beyond a

reasonable doubt, the appeals' courts often found no reversible errors, and typically the governors had shown no inclination to mercy. Yet DNA testing, or the persistent work of journalism students or volunteer lawyers, uncovered something that was entirely missed before and which turned the case completely around.

These same concerns about possible innocence prompted Governor Ryan to commute all the death sentences in Illinois. Although he did not believe all those on death row were innocent, his confidence in the system that had pronounced their guilt and sentences had been shattered. Commutation to life sentences was the only choice acceptable to him in light of the many deficiencies that had been demonstrated.

The Death Penalty in a Scientific Age

In the past, a certain degree of error was assumed and accepted. Without scientific confirmation, it was hard to conclusively prove that a mistake had been made. In death cases before the modern era, the issue of innocence did not arise often because people were executed quickly. There was little time for new evidence to emerge while the case was still open, and little science to check the evidence that did come to light. Once the defendant was executed, the case was closed, evidence was destroyed, lawyers moved on, and courts had little reason to reconsider the guilt of an executed prisoner.

But today the standards are different. We expect a higher degree of precision, especially when lives are at stake. When the space shuttle Columbia blew up no one suggested that we should just chalk this tragic loss of life up to the inevitable dangers of exploration. Rather, a thorough investigation was undertaken to find the root cause of the disaster, and to require whatever changes necessary be made so that this mistake would not happen again.

Similarly, each American life that is lost in a terrorist attack or recent war is carefully inscribed on a monument. If one life can be saved by rescue, no cost is spared. A death penalty that has the tragic consequence of sacrificing some innocent lives is not tolerated as it once was.

This may explain why jurors are apparently becoming more reluctant to impose the death penalty. In the absence of reliable remedies from legislatures or the courts, the public is taking matters into its own hands. As noted above, death sentences across the country have dropped by 50% in the past couple years, and many states such as Florida, North Carolina, and California are reporting their lowest number of new entrants to death row in 20 years.

From 1995 to 1999, the country averaged about 300 death sentences per year. By 2001, that number had plunged to 163, and it dropped even more in the next two years.

From 1995 to 1999, the country averaged about 300 death sentences per year. By 2001, that number had plunged to 163, and it dropped even more in the next two years.³⁹ (See chart on p. 7.) In the federal system, during one recent period, 20 of the 21 death penalty prosecutions resulted in sentences less than death.⁴⁰ Jurors appear to be choosing the less risky alternative of life-without-parole sentences instead of the death penalty. It is true that the number of murders has also decreased. But that decline has been over the last decade, while the drop in death sentences is more recent. Moreover, during the same period, crime in general has also declined and yet the overall prison population has *increased*, including the number of persons imprisoned for murder.⁴¹ Death sentences might have followed the same increases prompted by a “tough on crime” mentality, but instead they declined.

U. THE DPIC LIST AND RESPONSES

As the issue of innocence became prominent for the American public, those who feared that the death penalty was being weakened reacted with attacks on the very notion of persons on death row being innocent. Critics asserted that people on the list of exonerated death row inmates were not *really* innocent, despite the removal of all charges against them. In light of these criticisms, it is important to clarify the meaning of innocence in our society and to restate the criteria for DPIC's innocence list.

Since DPIC assumed a primary role in keeping this list, the only cases that have been added are those involving former death row inmates who have:

- a. Been **acquitted** of all charges related to the crime that placed them on death row, or
- b. Had all charges related to the crime that placed them on death row **dismissed** by the prosecution, or
- c. Been granted a complete **pardon** based on evidence of innocence.

Cases are included in DPIC's list based on objective criteria. These criteria differ markedly from subjective judgments about who is "actually innocent." For example, some commentators have suggested that if the original prosecutor still thinks the defendant is "guilty," even though the defendant has been unanimously acquitted, then such a person should be excluded from the list. But DPIC's list avoids such personal suspicions and relies instead on the traditional source given the authority to separate guilt from innocence—our justice system. Our principal role has been to assemble these cases. We avoid subjective judgments or a hierarchy of innocence.

The people on DPIC's list (now numbering 116) are entitled to the status of innocence conferred on them by our legal system. In this system, as in our society generally, a person who has been cleared of

all charges is just as innocent as a person who has never been charged.



(Photo by R. Dieter)

To argue that people who have been acquitted at trial are not "actually innocent" because a prosecutor holds some lingering belief in the person's guilt is to turn suspicion into a permanent stigma. That goes against the most fundamental principle of our constitutional system. No one should have to prove his or her innocence. The status of innocence is a person's full right unless the state has proven them guilty beyond a reasonable doubt. If we throw out that protection, we have abandoned one of this country's most important founding principles.

Besides the danger of establishing a class of individuals who are placed under permanent suspicion, the failure to acknowledge the innocence of those who have been exonerated retards the search for the real perpetrator. A special prosecutor in Illinois examining the wrongful convictions of the "Ford Heights Four" described the police and prosecutors as having "tunnel vision" – that is, blindly holding on to their pursuit of the wrong defendants when evidence clearly was pointing to the guilt of others.⁴²

Similarly, prosecutors persistently held on to their mistake in the case of Kirk Bloodsworth from Maryland. Bloodsworth was freed in 1993 after DNA evidence excluded him from the crime, the first such capital case in history. He constantly urged investigators to use the same evidence to find the real killer. But it took the state 10 years to discover that a DNA match existed all the time within their own prison system. For much of that time, the prosecution disseminated the notion that the DNA evidence did not prove Bloodsworth's innocence. Finally, in 2004, the state charged another man with the crime that



Kirk Bloodsworth
(Photo by Loren Santow)

sent Bloodsworth to death row. In so doing, they apologized not only for Bloodsworth's wrongful conviction, but also for not challenging the references to his possible guilt, despite the removal of all charges. (The new defendant was quietly sentenced to life in prison.)⁴³

In Florida, Innocence Doesn't Exist

Florida has had more exonerations than any other state. As a token response to this development, a state commission examined some of these cases and came to the correct conclusion that the justice system does not *prove* innocence: "Of these 23 cases, none were found 'innocent,' even when acquitted, because no such verdict exists. A

defendant is found guilty or not guilty, never innocent."⁴⁴

However, the commission then went on to the shocking conclusion that *none* of the Florida former inmates *were* innocent and that for almost all of them their guilt should not be doubted: "The guilt of only four defendants, however, was ever truly doubted," their report concluded.⁴⁵ This was said despite the fact that 8 of the 23 had all charges dropped by the prosecution, 10 were acquitted at re-trial, and 2 were pardoned. This represents a clear departure from our country's long-standing commitment to the principle of being innocent until proven guilty.

One of the commissioners ironically claimed (while he himself was campaigning for Florida Attorney General) that the innocence list was politically motivated. Moreover, he came to an even more sweeping conclusion, unsubstantiated by the report, regarding all of those on Florida's *current* death row: "Number one, the system is not broken," he said. "Number two, *there are no innocent people on death row.* And Number three, the people who use these 23 cases as a reason to call for a moratorium are making a political statement."⁴⁶ There had been no commission review of the cases of people currently on death row. This kind of unfounded extrapolation blinds the state to the true extent of the problems in its midst.

Other Critics

A criticism of the innocence list in the *National Review* revealed the subjective standards held by those seeking to downplay the significance of innocence: "Most of the people who refer to the list clearly have no idea that many of the 'innocents' on it are probably guilty," one critic stated.⁴⁷

Probably guilty is a personal assessment with no reference to an objective system. Such a judgment may exist in the mind of the original prosecutor or a magazine editor,

but its vagueness and arbitrary quality make it particularly subject to political motivations and biases. It is an example of the “tunnel vision” that prevents the discovery of the real offender in many of these cases. It certainly should not be used to brand those who have been cleared and freed by the only objective system we have.

Refinements to the List

As with any area of research, new information helps refine previous findings. DPIC’s original construction of the innocence list was made in conjunction with the U.S. House of Representatives Subcommittee on Civil and Constitutional Rights, which issued the first report as a Staff Report in 1993. That list included a small number of cases that did not

completely fulfill the criteria that DPIC alone has used in adding to the innocence list. In these cases, although there was powerful evidence of the defendant’s innocence, and although they were freed into society after being on death row, there remained a conviction for some lesser offense. We will no longer include this handful of cases, despite their original inclusion in the Staff Report mentioned above.

Accordingly, the following cases have been excluded from DPIC’s list, despite having appeared in the 1993 staff report: Henry Drake (GA 1987); John Henry Knapp (AZ 1987); William Jent and Ernest Miller (FL 1988); Jerry Bigelow (CA 1988); Jesse Keith Brown (SC 1989); and Patrick Croy (CA 1990).

Prominent Cases, But Not Included on DPIC’s Innocence List

It should be noted that others have compiled different lists of exonerated individuals who were freed from death row, and those lists may include cases that DPIC has not. The strength of the innocence claims in many of these other cases is powerful and underscores the fact that the list in this report is probably an understatement of the true extent of the problem. Nevertheless, in keeping with our objective criteria, the following cases have never been included on DPIC’s list:

Sonia Jacobs	Florida	Convicted 1976	Released 1992
Mitchell Blazak	Arizona	Convicted 1974	Released 1994
Joseph Spaziano	Florida	Convicted 1976	Not Released
Paris Carriger	Arizona	Convicted 1978	Released 1999
Kerry Max Cook	Texas	Convicted 1978	Released 1997
Lloyd Schlup	Missouri	Convicted 1985	Not Released
Donald Paradis	Idaho	Convicted 1981	Released 2001
Charles Munsey	North Carolina	Convicted 1996	Died in prison

Descriptions of these cases may be found in the Appendix.

In many of the above examples, defendants were pressured into pleading guilty to a lesser charge to escape the threat of the death penalty at a retrial and to finally gain their freedom. Under that type of pressure, many people have falsely confessed to things they did not do. These cases demonstrate the grey area that often surrounds decisions in capital cases. In many instances, it is impossible to be certain of either guilt or innocence, rendering the death sentence to be an extreme and risky punishment.

Is DNA The Solution?

The era of DNA testing has not ushered in a fool-proof criminal justice system. It is not true that the problems of wrongful convictions are in the past and will not happen anymore because technology can now precisely determine guilt. Nor is it true that the death penalty can proceed unchecked under the assumption that all the inmates on death row have had ample opportunity for DNA testing.

To begin with, exonerations from death row have not declined in recent years. In fact, the number of people that were freed in 2003 was more than in any year since death sentencing resumed in 1973. Twelve people were cleared of their original offense in 2003. Moreover, the average number of exonerations has steadily increased in each quarter of the total years covered in this report: 1973-2004 (see chart on p. 2).

Only 14 of these exonerations have been due to DNA testing. It is true that more states now allow this kind of new evidence to be tested and admitted on appeal, despite time limitations on appeals. However, the DNA exonerations represent only 12% of the total list of 116 cases. In 88% of the cases, attorneys and courts had to rely on other forms of evidence, such as a confession by the actual killer, witnesses who now admit that they were pressured into lying at trial, or the refinement of other kinds of forensic testing such as fingerprint or bite mark analysis.

There is no reason to believe that all of the innocent people among the 3,500 people on death row have been discovered. Some states like Alabama do not supply attorneys for the complete appeals process. In other states, the attorneys do not have the resources for adequate re-investigation. In California, death row inmates wait four years to be assigned an attorney to begin the appeals process, and often several more years until counsel to pursue habeas corpus proceedings is appointed. In that



Attorney Barry Scheck (L.) has helped exonerate many inmates through DNA.

(Photo: American Film Foundation)

intervening time, witnesses move, evidence is lost, and memories fade.

Many states have not passed legislation guaranteeing the right to DNA testing. Even where this right is protected by statute, such as in Texas, there are stringent limits on its use and inmates have been refused testing where the results might have affected the death sentence, even if not the determination of their guilt.

Pre-Trial Reliability

But what of the new cases coming into the system? Shouldn't DNA testing ensure that only the guilty are being convicted and sentenced to death? This is not the case because most murders do not involve the exchange of bodily materials containing DNA evidence. A single shooting where no blood of the victim appears on the perpetrator and the defendant drives away in his own car is not likely to be a DNA case. And yet, the same kind of errors that have arisen in DNA cases -- faulty

eyewitnesses, unreliable jailhouse snitch testimony, coerced confessions, withheld evidence of other suspects -- can just as easily arise in non-DNA cases. Wrongful convictions will continue to occur as long as our criminal justice system utilizes human actors. Exonerations due to DNA testing only serve to underscore the risk of mistake in every case.

When newly tested DNA evidence is presented after an inmate has been convicted and sentenced to death, it is usually checked and rechecked before that inmate is ever set free. However, it appears that the same reliability cannot be attributed to the *pre-trial* DNA testing that can often result in a conviction and a death sentence. Recent scandals from crime labs in many parts of the country have exposed the risk of wrongful convictions that shoddy forensic work can bring.

The performance of pre-trial DNA testing is not always a reliable source of forensic information. If evidence is contaminated at the scene of the crime, if the police are not skilled in the collection of such evidence, if the police lab that performs the testing is unqualified to render reliable results, or if the state's expert is incompetent or dishonest, then evidence presented under the veil of scientific certainty becomes the very source of misinformation leading to mistake.

Recent developments in Harris County (Houston), Texas are perhaps the most shocking example of such dereliction.⁴⁸ More executions occur in cases from Harris County than from most other *states* in the country. The DNA testing in the crime lab there has proven so unreliable that all of its results are being stricken from the national database of DNA profiles. The roof at the lab has been leaking for years, contaminating critical evidence. The mayor of Houston has called for a moratorium on all executions in cases from that city, and he has decided not to seek re-election in the wake of the scandal. Two grand juries have been convened to look into the scandal. And it appears that other forms of forensic

evidence, such as ballistics tests, have likewise been mishandled by the lab.

From Elephant Cages to DNA Labs

An investigation by the *Houston Chronicle* into personnel assigned to the lab revealed:

- ⇒ The founder and former head of the DNA lab, James Bolding, did not meet the standards for the job. Among other things, he originally failed both algebra and geometry in college, and he never took statistics. Bolding held a bachelor's and a master's degree from Texas Southern University, but was academically dismissed from the University of Texas Ph.D. program. Bolding resigned from the lab after Houston's police chief recommended he be fired.
- ⇒ Jobs were often given to graduates without the required degrees, such as those who had majored in chemistry or zoology. Among those hired to do DNA tests or prepare samples for testing were two workers from the city zoo. One had most recently been cleaning elephant cages. The other had done DNA research, but only on insects.
- ⇒ The lab hired Joseph Chu despite a former employer's comment that he "has difficulty in speaking English," (a serious handicap when testifying in court). In his application, he wrote, "I have skilled several equipments" and "I have experience in testing animal and sacrificing them." His supervisors rated him poorly in communication. Chu was suspended for 14 days after several errors were found in four cases, including a capital murder case. He also misrepresented his degree in a court document.⁴⁹

The importance of these events is greatly heightened when their role in the death penalty arena is considered. Texas leads the country by far in executions. About 35% of the executions in the modern era have occurred in Texas, three times as many as the next leading state. And Harris County is the leading jurisdiction in Texas in executions. Juries there, as elsewhere, put enormous weight on the sworn testimony of forensic experts who confidently link evidence to a particular defendant on trial. But reliance on that evidence is sadly misplaced.



An employee's photograph of conditions at the Houston Police Department Crime Lab.

Hundreds of cases are being reviewed including that of Josiah Sutton, who was convicted of rape but has now been freed and pardoned by the governor. The problems with DNA labs are not confined to Houston. Concerns have also been raised about Texas labs in Fort Worth. In Oklahoma, which is currently close to Texas for the most executions, the chief police chemist, Joyce Gilchrist, was fired from her position after an FBI investigation of her

lab.⁵⁰ Again, hundreds of cases are being reviewed, including many where the defendants are awaiting execution. And around the country, there are reports of improper testing techniques and erroneous testimony at labs in Arizona, Florida, and other states. The FBI's lab has also come under withering criticism and has been completely restructured.⁵¹

Demanding qualified personnel, establishing standards for forensic labs, creating an oversight mechanism to ensure quality, all will take time to implement. But in the meantime, people who were put on death row as a result of testimony by unqualified witnesses are often at the mercy of review by the same authorities that allowed such a scandal to develop in the first place. A fair review of these cases in court is not necessarily guaranteed, as the debacle in Texas shows. Houston's District Attorney, Chuck Rosenthal, refused to recuse himself from the investigation of the city's lab, despite numerous calls from editorials, the mayor, and former prosecutors. The grand juries investigating the scandal had to insist that they would operate on their own, without the usual input from the prosecutor's office.⁵²

Does the Innocence Issue Render the Death Penalty Unconstitutional?

It has always been a paramount concern of the criminal justice system to avoid the conviction of an innocent person. Generally, the emergence of convincing evidence demonstrating a prisoner's innocence should result in his or her release from prison, either through the action of the courts or a pardon by the governor. Death penalty cases, however, raise the disturbing possibility that the new evidence may come too late. Once an execution has occurred, the door on a case is closed and sealed. This prospect raises legal concerns that are unique to capital cases.

- **What should a court do if new evidence arises in a capital case that falls short of being convincing but which raises reasonable doubts about the defendant's guilt?** In particular, what should be done when this evidence comes to light after the normal appeals process has run its course? Does the system's interest in finality trump the risk that an innocent person might be executed? Should more time and tests be allowed, even if they delay an execution, so that tentative evidence might be turned into convincing evidence?

- **Apart from the evidence in a particular case, can the accumulation of mistakes in capital cases reach a critical mass so that proceeding with *any* death penalty prosecution becomes an untenable danger to innocent human life?** Or, to put the question differently, is it constitutional to deprive someone of life, given that the risk of error is so great?

[T]he Court found that the best available evidence indicates that, on the one hand, innocent people are sentenced to death with materially greater frequency than was previously supposed and that, on the other hand, convincing proof of their innocence often does not emerge until long after their convictions.

-U.S. v. Quinones (2002)

The disturbing pattern in which subsequent scientific evidence has completely discredited prior state claims in capital cases led a federal judge in New York to draw a comprehensive legal conclusion. After considering the evidence from over 100 exonerations and from the Liebman report mentioned above, Judge Jed Rakoff ruled in 2002 that the federal death penalty was unconstitutional because of the risk it posed of executing the innocent.⁵³



Judge Jed Rakoff

Judge Rakoff wrote:

[T]he Court found that the best available evidence indicates that, on the one hand, innocent people are sentenced to death with materially greater frequency than was previously supposed and that, on the other hand, convincing proof of their innocence often does not emerge until long after their convictions. It is therefore fully foreseeable that in enforcing the death penalty, a meaningful number of innocent people will be executed who otherwise would eventually be able to prove their innocence.⁵⁴

His ruling was overturned by the Court of Appeals, but his reasoning has already appeared in other cases as judges consider the prospect of such fatal mistakes. Clearly, the evidence of wrongful convictions and the risk of irrevocable error are not unique to the federal system. Such errors are probably even more likely in state courts, where the quality of representation is often inferior to the federal system, and the resources for a full investigation are more restricted.

An opinion from Judge Mark Wolf in Massachusetts did not go so far in its legal conclusion, but raised some of the same concerns:

This court agrees that "executing the innocent is inconsistent with the Constitution." The open issues in this case are whether the [Federal Death Penalty Act] FDPA will inevitably result in the execution of innocent individuals and, if so, whether this renders the statute unconstitutional, and inapplicable to [the defendant] Sampson because it is an invalid law. For the reasons described below, the court finds that: *the FDPA will inevitably result in the execution of innocent individuals*; there is not now, however, a proper basis to declare the FDPA unconstitutional for this reason; and, therefore, it is not necessary to decide Sampson's claim that he has a right not to be tried under an unconstitutional statute.⁵⁵

Judge Michael Ponsor presided over the federal capital trial of Kristen Gilbert in Massachusetts. Gilbert was not sentenced to death, but the prospect of such a sentence led the judge to write in the *Boston Globe*:

The experience left me with one unavoidable conclusion: that *a legal regime relying on the death penalty will inevitably execute innocent people - not too often, one hopes, but undoubtedly sometimes. Mistakes will be made because it is simply not possible to do something this difficult perfectly, all the time. Any honest proponent of capital punishment must face this fact.*⁵⁶

Finally, a fourth federal judge, Judge William Sessions of Vermont, ruled that the federal death penalty was unconstitutional because the sentencing process had too few safeguards to ensure against improper sentences.⁵⁷ None of these rulings or opinions has the power to overturn the entire death penalty process, or even the federal death penalty in the U.S. But they are indicative of a growing concern among prominent jurists that has been echoed by Supreme Court Justices, Senators, governors,

and leading professional organizations such as the American Bar Association.⁵⁸

[A] legal regime relying on the death penalty will inevitably execute innocent people - not too often, one hopes, but undoubtedly sometimes. Mistakes will be made because it is simply not possible to do something this difficult perfectly, all the time. Any honest proponent of capital punishment must face this fact.

-U.S. District Judge Michael Ponsor

VI. WHAT CAN BE DONE?

In its 1997 report on innocence, DPIC noted that recent legislative changes in the death penalty system were likely to *increase* the risk of executing the innocent. Many states were cutting back on appeals. The federal death penalty was expanded and two new states (NY and KS) were added to the death penalty column. The passage of the Anti-Terrorism and Effective Death Penalty Act of 1996 and the defunding in 1995 of the death penalty Resource Centers that assisted with appeals around the country meant that new evidence of innocence could easily be ignored or ruled inadmissible on procedural grounds.

Fortunately, the emergence of DNA testing has dramatically shown the danger of such cutbacks. The problem of innocence and the death penalty has now been addressed by numerous organizations and committees, and pivotal recommendations have been proposed. Most notably, the blue-ribbon commission appointed by Governor George Ryan in Illinois studied the problems in that state over a two-year period and released a series of 85 recommendations in 2003. Among their proposals for change were the following:

- ⇒ **Videotaping** of all interrogations of capital suspects conducted in a police facility.
- ⇒ **Reducing the number of crimes eligible for a death sentence** from 20 to five (cases in which the defendant has murdered two or more persons, where the victim was either a police officer or firefighter, where the victim was an officer or inmate of a correctional institution, when the murder was committed to obstruct the justice system, or when the victim was tortured in the course of the murder).
- ⇒ **Forbidding capital punishment** in cases where the conviction is based solely on the testimony of a single eyewitness.

- ⇒ **Barring capital punishment** in cases where the defendant is mentally retarded.
- ⇒ **Establishing a state-wide commission** -- comprised of the Attorney General, three prosecutors, and a retired judge -- to confirm a local state's attorney's decision to seek the death penalty.
- ⇒ **Intensifying the scrutiny of testimony provided by in-custody informants** during a pre-trial hearing to determine the reliability of the testimony before it is received in a capital trial.
- ⇒ **Requiring a trial judge to concur with a jury's determination** that a death sentence is appropriate; or, if not, sentence the defendant to natural life.⁵⁹

About 20 of these recommendations were passed by the legislature and have now been adopted by the state.⁶⁰ Death sentences have dropped considerably, but the critical step of reducing the broad scope of the state's capital punishment law was not adopted.

On a national level, the Constitution Project, which is based at Georgetown University's Public Policy Institute and which seeks consensus solutions to difficult legal and constitutional issues, also convened a blue-ribbon study commission of judges, former prosecutors and other national figures to address the crisis surrounding the death penalty. Their recommendations are broader, and would have a dramatic effect if adopted across the country.

The recommendations of the Project's report, **Mandatory Justice**, that most

directly relate to the issue of innocence, include the following:

⇒ **Effective Counsel**

Every jurisdiction that imposes capital punishment should create an independent authority to screen, appoint, train, and supervise lawyers to represent defendants charged with a capital crime. It should set minimum standards for these lawyers' performance.

⇒ **Expanding and Explaining Life without Parole (LWOP)**

Life without the possibility of parole should be a sentencing option in all death penalty cases in every jurisdiction that imposes capital punishment. The judge should inform the jury in a capital sentencing proceeding about all statutorily authorized sentencing options, including the true length of a sentence of life without parole. This is commonly known as "truth in sentencing."

⇒ **Protection Against Wrongful Conviction and Sentence**

DNA evidence should be preserved, and it should be tested and introduced in cases where it may help to establish that an execution would be unjust. All jurisdictions that impose capital punishment should ensure adequate mechanisms for introducing newly discovered evidence that would more likely than not produce a different outcome at trial or that would undermine confidence that the sentence is reliable, even though the defense would otherwise be prevented from introducing the evidence because of procedural barriers.

⇒ **Duty of Judge and Role of Jury**

If a jury imposes a life sentence, the judge in the case should not be allowed to "override" the jury's recommendation and replace it with a sentence of death. The judge in a death penalty trial should instruct the jury at sentencing that if any juror has a lingering doubt about the defendant's guilt, that doubt may be considered as a "mitigating" circumstance that weighs against a death sentence.

⇒ **Role of Prosecutors**

Prosecutors should provide "open-file discovery" to the defense in death penalty cases. Prosecutors' offices in jurisdictions with the death penalty must develop effective systems for gathering all relevant information from law enforcement and investigative agencies.⁶¹

Unfortunately, the widespread adoption of these reforms is still only on the distant horizon. The same can be said for the recommendations for reform of the system of representation in capital cases issued by the **American Bar Association**. A year after the guidelines were overwhelmingly approved and issued, no state had adopted the ABA's standards.⁶²

In the U.S. Congress, the proposed Innocence Protection Act (now part of the "Advancing Justice Through DNA Technology Act") appears to be the best current vehicle for bringing about national change to both uncover existing mistakes and prevent future ones. However, even this basic reform has met stiff political opposition and its future is uncertain.

CONCLUSION

Although some states have adopted legislation allowing DNA testing, and some have imposed special standards for lawyers to be eligible to represent defendants in capital cases,⁶³ so far no state has truly responded to the seriousness and urgency that these cases of innocence demand. Far from a few scattered mistakes, there have been frequent and continuing discoveries that many of the people slated for execution should not have been convicted of any crime at all. The death penalty is not meeting the burden that the issue of innocence presents. Fixing this system will not be quick and easy; it will not be cheap; and it is not clear that a satisfactory degree of certainty will ever be achieved.

Perhaps a far more limited punishment applied only to the most extreme cases, would have a better accuracy rate than one exoneration for every 8 people executed. Death penalty supporters such as Judge Alex Kozinski of the U.S. Court of Appeals have endorsed such a narrowing of the death penalty system,⁶⁴ but no state has cut back on their broad list of eligible cases.

A rarely applied and highly selective death penalty might still be subject to the arbitrariness, bias, and human fallibility that have always plagued this punishment. But the current system serves no one well. It is a system in which nearly every murder is eligible for the death penalty, and, as a result, an overwhelmed system does most cases poorly rather than a few cases reliably.

The accumulated revelations in recent years are more than sufficient in the majority of peoples' minds to require a moratorium on all executions. The innocence cases in this report contradict the notion that the death penalty is a cost-free panacea for crime. The high number of critical mistakes in this life-and-death matter represents a crisis in our system of justice. The first step in addressing this crisis is to at least acknowledge that it exists. A thorough, system-wide review followed by fundamental changes in the death penalty system would seem to be a minimal intermediate response. A complete resolution, though, may be beyond human capability.

ENDNOTES

References for the cases that have been added in this report are included within the case descriptions. Permission for the use of the photographs was obtained from the sources accompanying the photos.

¹ DPIC's first report on innocence, *Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions*, was released as a Staff Report by Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, 103 Cong., 1st. Sess. (1993).

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⁴ "Stevens Faults Death Penalty But Says It's Constitutional," Associated Press, May 13, 2004 (washingtonpost.com).

⁵ St. Petersburg Times, February 15, 2003, letter to the editor from Justice Blackmar.

⁶ George F. Will, "Innocent on Death Row," Washington Post, April 4, 2000 (op-ed).

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¹² ABCNews.com, January 24, 2003.

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¹⁴ See Bureau of Justice Statistics, *Capital Punishment 2002* (pub. 2003).

¹⁵ American Bar Association Resolution calling for a moratorium on executions was submitted by the Section on Individual Rights and Responsibilities (1997) (the resolution was passed by the ABA's House of Delegates on Feb. 3, 1997).

¹⁶ For a list of organizations supporting the moratorium, see *Moratorium Now, Equal Justice USA*, <http://www.quixote.org/ej>.

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¹⁸ S. Mills & K. Armstrong, "Yet Another Death Row Inmate Cleared," Chicago Tribune, May 18, 1999; Associated Press, May 18, 1999.

¹⁹ See, e.g., D. Terry, "Survivors Make the Case Against Death Row," N.Y. Times, Nov. 16, 1998, at A12 (with picture of exonerated on stage).

²⁰ S. Mills & K. Armstrong, "Governor to Halt Executions," Chicago Tribune, Jan. 30, 2000, at p.1 (summarizing the investigation).

²¹ *Id.*

²² D. Wagner, et al., "DNA Frees Arizona Inmate," Arizona Republic, April 9, 2002.

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²⁸ Prof. Raymond Paternoster, et al., AN EMPIRICAL ANALYSIS OF MARYLAND'S DEATH SENTENCING SYSTEM WITH RESPECT TO THE INFLUENCE OF RACE AND LEGAL JURISDICTION, Univ. of Maryland (Jan. 7, 2003).

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³⁰ Texas Defender Service, "Lethal Indifference: The Fatal Combination of Incompetent Attorneys and Unaccountable Courts in Texas Death Penalty Appeals," (December 2002).

³¹ See R. Bonner, "Pervasive Disparities Found in the Federal Death Penalty," N.Y. Times, Sept. 12, 2000.

³² See William J. Clinton, "My Reasons for the Pardons," N.Y. Times, Feb. 18, 2001 (op-ed).

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⁴² See S. Mills, "Ford Heights 4 Inquiry Clears Cops, Prosecutors," Chicago Tribune, Aug. 22, 2003, at p.1.

⁴³ See J. Dao, "In Same Case, DNA Clears Convict and Finds Suspect," N.Y. Times, Sept. 6, 2003; Baltimore Sun, May 22, 2004 (noting apology).

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⁴⁵ *Id.*

⁴⁶ Associated Press, "State Senator Says Review of Cases Finds No Innocence," June 20, 2002 (emphasis added).

⁴⁷ R. Ponnuru, *National Review*, Oct. 1, 2002; see also W. Campbell, "Critique of DPIC List," presentation by the author (2002), at p.10 (also using subjective criteria—questioning cases "whose guilt is debatable to say the least and whom it is hard to believe that a majority of neutral observers would conclude were innocent").

⁴⁸ See, e.g., N. Madigan, "Houston's Troubled DNA Crime Lab Faces Growing Scrutiny," N.Y. Times, Feb. 9, 2003.

⁴⁹ See L. Olsen, "DNA Lab Analysts Unqualified," Houston Chronicle, September 8, 2003.

⁵⁰ See S. Cohen, D. Hastings, "For 110 inmates freed by DNA tests, true freedom remains elusive," Associated Press, May 28, 2002 (Gilchrist's testimony refuted by the FBI).

⁵¹ See, e.g., T. Maier, "Inside the DNA Labs," Insight Magazine (Washington Times), June 10-23, 2003, at 18.

⁵² See A. Liptak, "Prosecutions Are a Focus in Houston DNA Scandal," N.Y. Times, June 9, 2003.

⁵³ See *United States v. Quinones*, 205 F. Supp. 2d 256 (S.D.N.Y. 2002), rev'd by 313 F.3d 49 (2d Cir. 2002).

⁵⁴ *Id.*

⁵⁵ U.S. District Judge Wolf's opinion in *United States v. Sampson* is quoted in *New York Times*, August 12, 2003 (internal citation omitted) (emphasis added); see A. Liptak, "U.S. Judge Sees Growing Signs That Innocent Are Executed," *N.Y. Times*, Aug. 12, 2003.

⁵⁶ U.S. District Judge Ponsor's remarks following the federal capital trial of Kristen Gilbert are in *Boston Globe*, July 8, 2001 (op-ed) (emphasis added).

⁵⁷ *United States v. Fell*, No. 2:01-CR-12-01 (Sessions, J., D. Vt. 2002).

⁵⁸ See, e.g., "Stevens Faults Death Penalty But Says It's Constitutional," Associated Press, May 13, 2004 (Washingtonpost.com).

⁵⁹ Report of the Commission on Capital Punishment, Illinois, April 2002.

⁶⁰ See "Illinois Reforms System for Death Penalty," Associated Press, in *Washington Post*, Nov. 20, 2003.

⁶¹ The Constitution Project, *Mandatory Justice: Eighteen Reforms to the Death Penalty* (2001).

⁶² See L. Post, "Adopted Nowhere: ABA death penalty guidelines languish – opponents point to cost as supporters argue for better representation," *National Law Journal*, January 5, 2004.

⁶³ See, e.g., B. Rankin, "Georgia Indigent Defense Bill Ok'd," *Atlanta Journal-Constitution*, March 15, 2004; "State Supreme Court Takes Steps to Even Scales of Justice," *Seattle-Post Intelligencer*, June 7, 2002.

⁶⁴ See Alex Kozinski and Sean Gallagher, "For an honest death penalty," *N.Y. Times*, Mar. 8, 1995.

Appendix

Additional Case Descriptions

The following are descriptions of the remaining cases added to DPIC's Innocence List since the publication of our previous Innocence Report in 1997. Case descriptions from 2004 and 2003 appear in the body of this current report.

2002

100. Larry Osborne Kentucky Convicted 1999 Acquitted 2002

Larry Osborne was acquitted at his re-trial of all charges and freed on August 1, 2002 in Kentucky. The Kentucky Supreme Court reversed his original conviction because the trial court allowed inadmissible hearsay testimony from a deceased witness, Joe Reid. (*Commonwealth v. Osborne*, 43 S.W.2d 234 (Ky. 2001)). Reid had passed away prior to the original trial and, therefore, could not face cross-examination. Osborne was sentenced to death in 1999 following his conviction for the murder of two elderly victims in Whitley County, Ky. Osborne was only 17-years-old at the time of the crime. (*Louisville Courier-Journal*, Aug. 2, 2002).

99. Thomas H. Kimbell, Jr. Pennsylvania Convicted 1998 Acquitted 2002

Kimbell had been sentenced to death in 1998 following his conviction for the murder of four members of a family in Lawrence County, Pennsylvania in 1994. However, the Pennsylvania Supreme Court overturned his conviction in 2000 because evidence that might have thrown doubt on his guilt was barred at trial. (*State v. Kimbell*, 759 A.2d 1273 (Pa. 2000)). The excluded evidence would have placed the husband of one of the victims at home, the scene of the crime, shortly before the murders. Kimbell maintained his innocence throughout his incarceration. With the excluded evidence allowed in, he was acquitted of all charges at his re-trial on May 3. (*Pittsburgh Post-Gazette*, May, 4, 2002).

98. Ray Krone Arizona Convicted 1992 Charges Dismissed 2002



On April 8, 2002, Ray Krone was released from prison in Arizona after DNA testing showed that he did not commit the murder for which he was convicted 10 years earlier. (*L.A. Times*, April 10, 2002). Maricopa County Attorney Rick Romley and Phoenix Police Chief Harold Hurtt announced at a news conference on April 8, 2002 that new DNA tests vindicated Krone and that they would seek his release pending a hearing to vacate the murder conviction. Romley stated, "[Krone] deserves an apology from us, that's for sure. A mistake was made here. . . . What do you say to him? An injustice was done and we will try to do better. And we're sorry." (*Arizona Republic*, April 9, 2002).

Krone was first convicted in 1992, based largely on circumstantial evidence and testimony that bite marks on the victim matched Krone's teeth. He was sentenced to death. Three years later he received a new trial (*State v. Krone*, 897 P.2d 621 (Ariz. 1995) (en banc)), but was again found guilty and sentenced to life in prison in 1996. Krone's post-conviction defense attorney obtained a court order for DNA tests. The results not only exculpated Krone, but they pointed to another man as the assailant. Prosecutor William Culbertson told the Maricopa County Superior Court that the chances that DNA found in saliva on the victim's tank top did not come from the other man were one in 1.3 quadrillion. (*Arizona Republic*, April 9, 2002).

97. Juan Roberto Melendez Florida Convicted 1984 Charges Dismissed 2002

Juan Roberto Melendez spent nearly 18 years on Florida's death row before being exonerated. Melendez was born in Brooklyn, New York and raised in Puerto Rico. He was sentenced to die in 1984 for the murder of Delbert Baker. In December 2001, a Florida Circuit Court overturned Melendez's capital murder conviction after determining that prosecutors in his original trial withheld critical evidence, thereby undermining confidence in the original verdict. The judge noted that no physical evidence linked Melendez to the crime. The state had used the testimony of two witnesses whose credibility was later challenged with new evidence. (Associated Press, December 5, 2001). Following the reversal of the conviction, prosecutors announced the state's decision to abandon charges against Melendez and he was freed. (Associated Press, January 3, 2002).



Juan Roberto Melendez speaks to students
(photo: Abe Bonowitz)

2001

96. Charles Irvin Fain Idaho Convicted 1983 Charges Dismissed 2001

Charles Irvin Fain, a Vietnam veteran who spent over 18 years on Idaho's death row, was freed in 2001 with all charges dismissed. Although Fain always maintained his innocence, he was convicted and sentenced to death for the 1982 kidnapping, sexual assault and drowning of 9-year-old Daralyn Johnson. At his trial, the case against Fain rested on the opinion of an FBI forensics expert who testified that hairs found on the victim's clothing may have been Fain's. However, in March 2000, a federal District Court authorized funds for additional forensic testing of the hairs. The new tests revealed that the hairs found on the victim did not come from Fain. His conviction was set aside and prosecutors announced that he would not be retried. "Justice requires the action we have taken today," said David L. Young, the Canyon County prosecutor, indicating that the investigation for the killer would be re-opened.

Fain walked out of the maximum security prison in Boise on August 23. His conviction was also based on the testimony of two jailhouse informers, who claimed Fain had confessed in lurid details. (N.Y. Times, August 24, 2001; Associated Press, July 13, 2001).

95. Jeremy Sheets Nebraska Convicted 1997 Charges Dismissed 2001

Jeremy Sheets was released after the U.S. Supreme Court declined to hear an appeal of a Nebraska Supreme Court decision overturning his conviction. Prosecutors then dropped the charges against him. (Associated Press, June 14, 2001).

In September, 2000, the Nebraska high court unanimously ruled that a tape recording made by an alleged accomplice who committed suicide prior to the trial was the kind of statement deemed "highly suspect," "inherently unreliable," and hence inadmissible without the opportunity for Sheets to cross-examine. (Nebraska v. Sheets, 618 N.W.2d 117 (2000)). The statements (later recanted) were made by Adam Barnett, who was arrested for the 1992 rape and murder of the same victim as in Sheets' case. Barnett confessed to the crime and implicated Sheets. In exchange for the taped statement, Barnett received a plea bargain in which he avoided a charge of first degree murder, did not have an additional weapons charge filed, and received a commitment for his safety while incarcerated. Barnett's statement was the key evidence used against Sheets at trial. (Id. and Associated Press, June 12, 2001).

94. Joaquin Martinez Florida Convicted 1997 Acquitted 2001

Former death row inmate Joaquin Martinez was acquitted of all charges at his retrial for a 1995 murder in Florida. Martinez's earlier conviction was overturned by the Florida Supreme Court because of improper statements by a police detective at trial. (*Martinez v. Florida*, 761 So. 2d 1074 (2000)). The prosecution did not seek the death penalty in Martinez's second trial after key prosecution witnesses changed their stories and recanted their testimony. An audiotape of alleged incriminating statements by Martinez, which was used at the first trial, was ruled inadmissible at retrial because it was inaudible. The new jury, however, heard evidence that the transcript of the inaudible tape had been prepared by the victim's father, who was the manager of the sheriff's office evidence room at the time of the murder and who had offered a \$10,000 reward in the case. (*Tampa Bay Tribune*, June 7, 2001).

Both Pope John Paul II and the King of Spain had tried to intervene on behalf of Martinez, who is a Spanish national. Spanish Prime Minister Jose Maria Aznar welcomed the verdict, saying: "I'm very happy that this Spaniard was declared not guilty. I've always been against the death penalty and I always will be." (*Tampa Bay Tribune* (AP), June 6, 2001).

93. Gary Drinkard Alabama Convicted 1995 Acquitted 2001



Gary Drinkard (c.)

(Photo from Citizens United Against the Death Penalty)

Drinkard was sentenced to death in 1995, but his conviction was overturned by the Alabama Supreme Court in 2000 because the prosecution had used improper evidence at the trial. (*Ex parte Gary Drinkard*, 777 So. 2d 295 (Ala. 2000)). A team of lawyers and investigators from Alabama and the Southern Center for Human Rights in Atlanta, mostly without compensation, spent hundreds of hours preparing for the case. Drinkard was acquitted by the jury at his second trial in 2001. (*Decatur Daily*, May 27, 2001 and *Washington Post*, May 28, 2001).

92. Peter Limone Massachusetts Convicted 1968 Charges Dismissed 2001

Thirty-three years after being convicted and sentenced to death for a 1965 murder, Peter Limone's conviction was overturned (*Commonwealth v. Limone*, 2001 Mass. Super. LEXIS 7 (2001)), and the case against him officially dropped. The move came as a result of a Justice Department task force's discovery of compelling new evidence that Limone and his co-defendants, Joseph Salvati, Henry Tamelo, and Louis Greco, were actually innocent of the murder of Edward Deegan. In 1968, all four were convicted and Limone was sentenced to die in Massachusetts' electric chair, but he was spared in 1974 when Massachusetts abolished the death penalty and his sentence was commuted to life in prison. Salvati, who was released from prison in 1997 when the governor commuted his sentence, received word from prosecutors that they were dropping the case against him as well. Tamelo and Greco both died in prison.

At trial, the main witness against the four men was Joseph Barboza, a hit man cooperating with prosecutors, who later admitted that he had fabricated much of his testimony. The recently revealed FBI documents show that informants had told the FBI before the murder that Deegan would soon be killed and by whom, and a memorandum after the crime listed the men involved. Neither list included Limone, Salvati, Tamelo or Greco. (*New York Times*, February 2, 2001; *Boston Herald*, January 21, 2001; see also U.S. House Committee on Government Reform report on the egregious conduct of the government in this case, *New York Times*, November 21, 2003).

2000

91. Oscar Lee Morris California Convicted 1983 Charges Dismissed 2000

Morris was convicted in 1983 and sentenced to death. His death sentence was vacated by the California Supreme Court in 1988. Although the court did not overturn his conviction, it later ordered an evidentiary hearing when the state's chief witness against Morris issued a deathbed recantation. After the evidentiary hearing, the Los Angeles County Superior Court granted Morris a new trial. Prosecutors decided not to retry the case and Morris was freed in 2000. (L.A. Daily Journal, October 29, 2002).

At his initial trial, Morris was represented by Ronald Slick, who was criticized in 2001 for giving prosecutors confidential documents to help them keep a former client on death row. (Id.). Morris's chief accuser was Joe West. West implicated Morris after being arrested while on parole. "Joe West testified on direct examination by the prosecutor that his motive for cooperating with the prosecution was a quarrel with defendant which resulted in his attempt on defendant's life..." (People v. Morris, 756 P.2d 843, 857 (CA 1988)). According to the California Supreme Court, "no motive or explanation for the murder was disclosed at trial other than the statement attributed to defendant by Joe West" that Morris wanted to kill someone. (Id. at 854).

The prosecutor in the case, Arthur Jean, Jr., now a L.A. County Superior Court Judge, withheld from the defense that West was given special treatment in light of his testimony. The California Supreme Court noted that Jean had written two pretrial letters on West's behalf, asking a fellow prosecutor and the parole board to grant West leniency for other crimes to reward his testimony against Morris. The California Supreme Court held that the prosecutor's failure to disclose these actions violated Morris's due process rights. The court added, "The nondisclosure was compounded, moreover, by the district attorney's affirmative representation to the jury that West had *not* received any benefits in return for his testimony." (Id. at 863). Jean told jurors in the case that "[There] is no evidence, not a shred, and you would have it if it existed, if Mr. West got any benefit from this, that is, in the handling of his criminal case." (Id.).

West later confessed that he fabricated the entire case against Morris. "The testimony I gave against Oscar Morris...in 1978 was a lie," said West in a 1997 sworn declaration a few weeks before his death. (L.A. Daily Journal, October 29, 2002). (Note: Morris was originally charged with robbery and murder. The robbery charge was reversed by the California Supreme Court in its 1988 ruling when the court overturned his sentence.)

89. Michael Graham Louisiana Convicted 1987 Charges Dismissed 2000

90. Albert Burrell Louisiana Convicted 1987 Charges Dismissed 2000

After spending 13 years on death row, Michael Graham was released from the Louisiana State Penitentiary at Angola on December 28, 2000 after the Louisiana Attorney General dismissed charges against him and his co-defendant Albert Burrell. Burrell was released on January 3, 2001. Graham and Burrell were sentenced to death in 1987 for the murder of an elderly couple. Earlier in 2000, a judge threw out their convictions because of a lack of physical evidence and suspect witness testimony used at trial. Prosecutor Dan Grady acknowledged that the case was weak and "should never have been brought to [the] grand jury." During the trial, prosecutors withheld key information from the defense, failed to produce any physical evidence, and relied only on witness testimony that has since been discredited. Dismissing the charges, the Attorney General's office cited a "total lack of credible evidence" and stated "prosecutors would deem it a breach of ethics to proceed to trial." Recent DNA tests proved that blood found at the victims' home did not belong to Burrell or Graham. The trial attorneys appointed to defend Burrell were later disbarred for other reasons. (Associated Press December 28, 2000; The Advocate Online, March 19, 2001).

88. Frank Lee Smith Florida Convicted 1985 Cleared 2000 (Died on death row)

Frank Lee Smith had been convicted of a 1985 rape and murder of an 8-year-old girl. He died of cancer in January 2000 while still on death row. After his trial, the chief eyewitness recanted her testimony. Nevertheless, Smith was scheduled for execution in 1990, but received a stay. He was cleared

of these charges by DNA testing, according to an aide to Florida Gov. Jeb Bush. Prosecutor Carolyn McCann was told by the FBI lab that conducted the DNA tests that: "He has been excluded. He didn't do it." Another man, who was in a psychiatric facility, is now the main suspect. (Washington Post(AP), December 15, 2000; St. Petersburg Times, December 15, 2000).

87. William Nieves Pennsylvania Convicted 1994 Acquitted 2000

On October 20, 2000, William Nieves was freed from death row when a Philadelphia jury acquitted him of the 1992 murder of Eric McAiley. Nieves was convicted of the murder in 1994, but maintained his innocence. In 1997, the Pennsylvania Supreme Court held that Nieves was inadequately represented at his first trial and granted him a new trial (Pennsylvania v. Nieves, 746 A.2d 1102 (2000)).

"William Nieves' first trial was not presented in the way it should have been presented, and that's wrong when someone is being sentenced to death," said Nieves' new attorney, former prosecutor John McMahon, Jr. At the re-trial, McMahon pointed out inconsistencies in the key witness's identification of the killer. (Associated Press, October 21, 2000).

**86. Earl Washington Virginia Conviction 1984 Commuted to life 1994
Absolute Pardon 2000**

Earl Washington suffers from mental retardation. After he was arrested on another charge in 1983, police convinced him to make a statement concerning the rape and murder of a woman in Culpeper in 1982. He later recanted that statement. Subsequent DNA tests confirmed that Washington did not rape the victim, who had lived long enough to state that there was only one perpetrator of the crime. The DNA results combined with the victim's statement all but exonerated Washington. Shortly before leaving office in 1994, Governor Wilder commuted Washington's sentence to life with the possibility of parole. In 2000, additional DNA tests were ordered and the results again excluded Washington as the rapist. In October 2000, Virginia Governor Jim Gilmore granted Earl Washington an absolute pardon. (Statement of Governor Jim Gilmore Regarding the Pardon of Earl Washington, October 2, 2000; New York Times, October 3, 2000; and Washington Post, September 24, 2000, October 4, 2000, and February 15, 2001).

85. Joseph Nahume Green Florida Convicted 1993 Acquitted 2000

Joseph Nahume Green was acquitted at a retrial on March 16, 2000 of the murder of Judith Miscally. Circuit Judge Robert P. Cates entered a not guilty verdict for Green, citing the lack of any witnesses or evidence tying Green to the murder. Green, who always maintained his innocence, was convicted largely upon the testimony of the state's only eyewitness, Lonnie Thompson. In 1996, Green's conviction was overturned by the Florida Supreme Court, which held that Thompson's testimony was often inconsistent and contradictory, and that he not been fit to testify during Green's trial (Nahume Green v. Florida, 688 So. 2d 301 (1996); St. Petersburg Times, March 17, 2000).

84. Eric Clemmons Missouri Convicted 1987 Acquitted 2000

Clemmons was sentenced to death for a 1985 murder that occurred in a Missouri prison. After losing all his appeals in state court and his initial appeal in federal court, Clemmons had called his mother to make his funeral plans. But new attorneys convinced a federal appeals court to reverse itself and grant a new trial, partly because of issues and evidence that Clemmons had filed himself. (Clemmons v. Delo, 124 F.3d 944 (8th Cir. 1997)). When all the new evidence was presented at re-trial, the jury acquitted him in 3 hours on February 18, 2000. Clemmons remains incarcerated on unrelated charges, which he is also challenging. (Kansas City Star, February 27, 2000).

83. Steve Manning Illinois Convicted 1993 Charges Dismissed 2000

Steve Manning became the 13th inmate exonerated in Illinois, when prosecutors announced that they were dropping charges and no longer planned to retry Manning for the 1990 slaying of trucking company owner Jimmy Pellegrino. Manning was convicted and sentenced to death on the word of informant Tommy Dye, who testified that Manning twice confessed to him when they shared a jail cell. However, secret tape recordings of the two men's conversations, made at the request of the FBI, revealed no such confession, and Manning vehemently denied confessing. In exchange for his testimony, Dye received an 8-year reduction on his prison sentence on theft and firearms charges. Manning remained in prison on unrelated charges. (*Illinois v. Manning* (695 N.E.2d 423 (1998) and *Chicago Tribune*, January 19, 2000). Subsequently, other charges against Manning in Missouri were also dropped by the prosecution and he was finally freed in 2004. (*Chicago Tribune*, Feb. 27, 2004).



Steve Manning
(Photo by Loren Santow)

1999

82. Alfred Rivera North Carolina Convicted 1997 Acquitted 1999

Rivera walked out of the Forsyth County Jail into the arms of his 3-year-old son after being acquitted at his re-trial on capital charges. Rivera had been sent to North Carolina's death row in 1997, but his conviction was overturned by the N.C. Supreme Court because jurors had not been allowed to hear testimony that Rivera may have been framed by others who pleaded guilty in the murder of two drug dealers. (*North Carolina v. Rivera*, 514 S.E.2d 720 (1999); *Winston-Salem Journal*, November 23, 1999).

81. Warren Douglas Manning South Carolina Convicted 1989 Acquitted 1999

Manning was convicted in 1989 of the slaying of a South Carolina police officer in 1988. The conviction was overturned in 1991 (*State v. Manning*, 409 S.E.2d 372 (SC 1991)). Manning was retried in 1993, but the case ended in a mistrial. Manning's third trial in 1995 resulted in another conviction, but it was overturned on December 29, 1997, when the South Carolina Supreme Court held that the trial court abused its discretion by granting the State's motion to change venue for the selection of the jury. The Court ordered a new trial. (*State v. Manning*, 495 S.E.2d 191 (SC 1997)). The subsequent trial was declared a mistrial, and prosecutors pursued the case a fifth time. In 1999, at his last trial, Manning was represented by expert death penalty attorney, David Bruck. Manning maintained that although he had been arrested by the officer for driving under license suspension, he had escaped when the officer stopped another car. The state's case was entirely circumstantial, and the jury acquitted Manning after less than 3 hours of deliberation. (*South Carolina Morning News*, October 1, 2000).

80. Clarence Richard Dexter Missouri Convicted 1991 Charges Dismissed 1999

Dexter was accused in 1990 of murdering his wife of 22 years. Police overlooked significant evidence that the murder occurred in the course of a botched robbery and quickly decided that Dexter must have committed the crime. Dexter's trial lawyer was in poor health and under federal investigation for tax fraud and failed to challenge blood evidence presented at trial. The conviction was overturned in 1997 because of prosecutorial misconduct. (*Missouri v. Dexter*, 954 S.W.2d 332 (1997)). The defense then had the blood evidence carefully examined and showed that the conclusions presented at trial were completely wrong. The state's blood expert admitted that his previous findings overstated the case against Dexter. On the eve of Dexter's retrial in June, 1999, the prosecution dismissed the charges and Dexter was freed. (*Missouri State Public Defender System Memo*, June 7, 1999; *Kansas City Star*, June 9, 1999).

79. Ronald Jones Illinois Convicted 1989 Charges Dismissed 1999

Jones was a homeless man when he was convicted of the rape and murder of a Chicago woman. After a lengthy interrogation in which Jones said he was beaten by police, he signed a confession. Prosecutors at the time of his conviction described him as a "cold brutal rapist" who "should never see the light of day." (NY Times May 19, 1999). Recent DNA testing revealed that Jones was not the rapist and there was no evidence of any accomplice to the murder. The Cook County state's attorney filed a motion asking the Illinois Supreme Court to vacate Jones's conviction in 1997. In May, 1999, the state dropped all charges against Jones. He was temporarily detained pending another matter in a different state. (Associated Press, May 18, 1999; Chicago Tribune, May 18, 1999).

78. Ronald Keith Williamson Oklahoma Convicted 1988 Charges Dismissed 1999

Ronald Williamson and Dennis Fritz were charged with the murder and rape of Deborah Sue Carter that occurred in Ada, Oklahoma in 1982. They were arrested four years after the crime. Both were convicted and Williamson received the death penalty. In 1997, a federal appeals court overturned Williamson's conviction on the basis of ineffectiveness of counsel (*Williamson v. Ward*, 110 F.3d 1508 (10th Cir. 1997), *aff'g* 904 F. Supp. 1529 (E. D. OK 1995)). The Court noted that the lawyer had failed to investigate and present to the jury the fact that another man had confessed to the crime. The lawyer had been paid a total of \$3,200 for the defense. Recently, DNA tests from the crime scene did not match either Williamson or Fritz, but did implicate Glen Gore, a former suspect in the case. All charges against the two defendants were dismissed on April 15, 1999 and they were released. Williamson suffers from bipolar depression and has been hospitalized for treatment. (Daily Oklahoman, March 18, 1999; New York Times April 16, 1999; Barry Scheck, et al., *Actual Innocence* (Doubleday 2000)).



Steven Smith
(Photo by Loren Santow)

**77. Steven Smith Illinois Convicted 1986
Directed Acquittal 1999**

Smith's conviction was overturned by the Illinois Supreme Court in 1999 because it was based on unreliable evidence. As a result, he was not subject to re-trial. Smith had been convicted of a murder outside of a Chicago tavern in 1985. The man killed was the assistant warden of the Pontiac Correctional Center. The Court said, "When the state cannot meet its burden of proof, the defendant must go free." On August 1, 2002, Illinois Governor George Ryan issued a pardon to Smith based on innocence. (*Illinois v. Smith*, 708 N.E.2d 365 (1999); Chicago Sun-Times, February 20, 1999, and August 2, 2002).

76. Anthony Porter Illinois Convicted 1983 Charges Dismissed 1999

Porter was released in February, 1999 on the motion of the State's Attorney after another man confessed on videotape to the double 1982 murder that sent Porter to death row. Charges were filed against the other man, who claimed he killed in self-defense. The case was broken by investigator Paul Ciolino working with Prof. David Protess and journalism students from Northwestern University. Their investigation also found that another witness had been pressured by police to testify against Porter. Porter came within 2 days of execution in 1998 and was only spared because the Court wanted to look into his mental competency. Porter has an IQ of 51. His conviction was officially reversed on March 11, 1999. (New York Times, February 6, 1999 and March 12, 1999).

75. Shareef Cousin Louisiana Convicted 1996 Charges Dismissed 1999

All charges were dropped in the death penalty prosecution of Shareef Cousin in Louisiana. Cousin had been convicted and sentenced to death for a murder in New Orleans when he was 16 years old. The Louisiana Supreme Court overturned his conviction because of improperly withheld evidence (*Louisiana v. Cousin*, 710 So. 2d 1065 (1998)), and the District Attorney decided on January 8, 1999 not to pursue the case further. Cousin had maintained that he was at a city recreation department basketball game at the time of the crime and his coach testified that he dropped him off at home 20 minutes *after* the slaying was said to have occurred. He remained incarcerated on unrelated charges. (Associated Press, January 8, 1999; New York Times, January 10, 1999).

1998**74. Curtis Kyles Louisiana Convicted 1984 Charges Dismissed 1998**

Kyles was first tried in November 1984, but the trial ended with a hung jury and a mistrial. In his second trial, in December 1984, Kyles was convicted and sentenced to death. On April 19, 1995, the U.S. Supreme Court reversed Kyles' conviction citing prosecutorial misconduct in suppressing exculpatory evidence. The state had withheld considerable information about a paid informant who may have been the actual murderer. (*Kyles v. Whitley*, 514 U.S. 419 (1995)). Kyles' successful appeal was in the form of a federal habeas corpus petition, since he had lost all of his appeals in state court. Kyles was then tried a third time in October 1996 and the jury deadlocked. Two additional trials, one in September 1997 and another in February 1998, also ended with a jury deadlock. After the fifth mistrial, prosecutors decided to drop charges and Kyles was released. (The Times-Picayune, February 18, 1998).

73. Robert Lee Miller, Jr. Oklahoma Convicted 1988 Charges Dismissed 1998

Miller was convicted of the rape and murder of two elderly women in 1988. In 1995, Miller's original conviction was overturned and he was granted a new trial when DNA evidence pointed to another suspect who was already incarcerated on similar charges. In February, 1997, Oklahoma County Special Judge Larry Jones dismissed the charges against Miller, saying that there was not enough evidence to justify his continued imprisonment. One month later, Oklahoma County District Judge Karl Gray reinstated the charges in response to an appeal by the District Attorney's office; however, the prosecution ultimately decided to drop all charges and Miller was released. (Barry Scheck, et al., *Actual Innocence* (Doubleday 2000); The Daily Oklahoman, March 1, 1997).

1997**72. James "Bo" Cochran Alabama Convicted 1976 Acquitted 1997**

Bo Cochran was convicted in 1982 of the murder of a Stephen Ganey, the assistant manager of a grocery store. Upon his conviction, Cochran told the judge, "I did not kill Mr. Ganey. . . . When will I get justice in the courtroom?" (Birmingham Post-Herald, December 2001). The 1982 trial was Cochran's third trial. His first trial ended in a mistrial, and the second trial, which resulted in a conviction, was reversed and remanded for a new trial after the U.S. Supreme Court overturned Alabama's death penalty statute (*Cochran v. Herring*, 43 F.3d 1404, 1404 n.1 (11th Cir. 1995)). The 1982 conviction was also overturned. The U.S. Court of Appeals for the Eleventh Circuit upheld a District Court's decision to overturn the conviction, stating that "in [Cochran's] 1982 trial race was a determining factor in the prosecution's exercise of its peremptory challenges (*Id.* at 1411 (internal citations omitted)). Cochran, who is black, was being tried for the murder of a white person, and the Eleventh Circuit found that during Cochran's previous trials, the district attorney's office that prosecuted his case had used an informal practice in

peremptory challenges of striking black jurors based on their race. The Eleventh Circuit ordered a new trial for Cochran in 1995. Cochran was retried in 1997 and acquitted by the jury not only of capital murder but also of all lesser included offenses. At re-trial, defense attorney Richard Jaffe pointed out to jurors that there were no eyewitnesses to the murder and that it would have been impossible for Cochran to move the victim's body under a trailer in a nearby mobile home park while being chased by police. (Birmingham Post-Herald, December 2001).

71. Randall Padgett Alabama Convicted 1992 Acquitted 1997

Padgett was convicted of murdering his estranged wife in 1990 and was sentenced to death. The conviction was overturned by the Alabama Court of Criminal Appeals in 1995 (Padgett v. Alabama, 668 So. 2d 78 (1995)). In October 1997, Padgett was acquitted of all charges at a retrial. There was some evidence presented that another woman had committed the crime. Padgett's brothers, children and other relatives burst into tears when the foreman read the not guilty verdict. (The Gadsden Times, October 3, 1997).

70. Robert Hayes Florida Convicted 1991 Acquitted 1997

Hayes was convicted of the rape and murder of a co-worker based partly on faulty DNA evidence. The Florida Supreme Court threw out Hayes's conviction and the DNA evidence in 1995 (Hayes v. Florida, 660 So. 2d 257 (1995)). The victim had been found clutching hairs probably from her assailant. The hairs were from a white man, whereas Hayes is black. Hayes was acquitted at a retrial in July, 1997. (Ft. Lauderdale Sun Sentinel, July 17, 1997).

69. Benjamin Harris Washington Convicted 1985 Charges Dismissed 1997

On March 2, 1994, a U.S. District Court overturned Harris' conviction and vacated his sentence of death for the 1984 murder of Jimmy Turner because his original trial lawyer had been incompetent. Harris' attorney interviewed only 3 of the 32 witnesses listed in police reports and spent less than 2 hours consulting with Harris before trial. Harris' co-defendant was acquitted. The Court ordered Harris released from custody if not brought to a speedy retrial. (Harris by & through Ramseyer v. Blodgett, 853 F. Supp. 1239 (W.D. Wash. 1994)). The decision was upheld by the 9th Circuit Court of Appeals on September 12, 1995. (Harris by & through Ramseyer v. Wood, 64 F.3d 1432 (9th Cir. 1995)). The prosecution decided not to retry Harris but tried to have him confined as insane. (They had previously argued that he was competent to stand trial.) On July 16, 1997, a jury decided that Harris should not be imprisoned at Western State Hospital. Harris maintained his innocence and said he was framed. (The Seattle Times, August 19, 1997).

Earlier Cases Added

Occasionally, DPIC is informed of an older case where an exoneration occurred years ago. Retrials resulting in acquittals are not always reported, especially on a national level. Hence, we periodically add earlier cases to this list, thereby changing the numbering of the cases. The following three cases have been added to the list, using the same criteria regarding innocence as above. They are assigned a number based on the year of the inmate's exoneration.

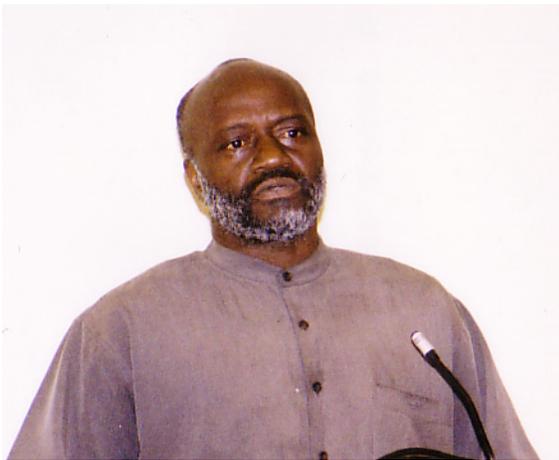
6. Christopher Spicer North Carolina Convicted 1973 Acquitted 1975

In 1975, a North Carolina jury acquitted Christopher Spicer of the murder of Donnie P. Christian. Spicer was convicted of the crime in September 1973, but the conviction was overturned the following year by the North Carolina Supreme Court. (*State v. Spicer*, 204 SE 2d 641 (1974)). At Spicer's trial, the State offered the testimony of Charles Pennington, a jailhouse snitch. Although the defense introduced two witnesses who testified that Pennington and Spicer were never cell mates, Pennington testified that Spicer admitted to the crime while he and Spicer shared a cell. After sharing this "confession" with police, Pennington's bond was reduced from \$5,000 to \$400 and he was released from jail.

In overturning Spicer's conviction, the North Carolina Supreme Court held that the trial judge committed reversible error by not allowing defense counsel to cross examine Pennington "to discover whom the witness was indebted for such favors and to ascertain to what extent the favors colored his testimony against Spicer." *Id.* at 646. Defense counsel tried to question Pennington as to who was paying the living expenses of Pennington and his wife, neither of whom was working at the time.

The court also found that the trial court committed reversible error when it "succeeded in pressuring the defendant and his counsel into withdrawing the request for an appropriate instruction" with regard to how the jury should scrutinize the testimony of another witness for the State, Bertie Brailford. (*Id.* at 648). At Spicer's retrial, the jury took only 15 minutes to unanimously acquit him. (*Wilmington Morning Star*, February 21, 1975).

20. Ernest (Shujaa) Graham California Convicted 1976 Acquitted 1981



Ernest Graham speaking to students
(Photo by R. Dieter)

In November 1973, while incarcerated in a state prison facility, Ernest Graham and co-defendant Eugene Allen were charged with killing a state correctional officer. Graham's first trial resulted in a mistrial when the jury could not agree on a verdict. Graham was sentenced to death in 1976 after his second trial. The Supreme Court of California reversed the conviction because prosecutors improperly used their peremptory challenges to exclude prospective jurors who were black. Graham and Allen, who are both black, "belonged to the group whose members the district attorney had excluded whereas the alleged victim was a member of the group to which [all] of the remaining jurors belong." (*People v. Allen*, 590 P.2d 30, 34 (Cal.1979) (internal citations omitted)). Graham's third trial ended in another hung jury, and he was acquitted by the jury in his fourth trial. (Phone conversation with now Magistrate-Judge James Larson, October 6, 2003, who represented Graham).

67. David Wayne Grannis Arizona Convicted 1991 Charges Dismissed 1996

On November 6, 1996, Pima County, Arizona, Superior Court Judge Bernardo Valesco dismissed the murder charges against David Wayne Grannis, and he was freed. (*Arizona Daily Star*, Nov. 7, 1996). Grannis was sentenced to death in 1991 for first degree murder, but his conviction was overturned and remanded for a new trial in July 1995 by the Supreme Court of Arizona. (*State v. Grannis*, 900 P.2d 1 (Az. 1995)). At trial, Grannis testified that he and his co-defendant, Daniel Webster were hitchhiking and were picked up by the victim, Richard Sutcliffe. Sutcliffe offered the men a place to stay. Although the state argued that Grannis and Webster killed Sutcliffe in the course of robbing him or burglarizing his home, Grannis testified that he did not know Sutcliffe was dead until he was arrested.

Grannis testified that he was sexually propositioned by Sutcliffe, who became aggressive. Grannis stated that his screams awakened Webster, who killed Sutcliffe after Grannis ran out of the house. At trial, Webster's friend, Eva Marie Lopez, stated that she "overheard Webster bragging to [her cousin] Baker about committing a murder. In addition, she testified that she heard Webster tell Baker that he (Webster) killed someone and that he liked the feeling it gave him." (*Id.* at 4).

At trial, the state offered into evidence photos depicting homosexual activity that were found in Grannis' room at the time of his arrest. In overturning the conviction, the Arizona Supreme Court held that the photos were "marginally relevant" and that the trial court abused its discretion in admitting them. The Court stated that the probative value of the photos was substantially outweighed by the danger of unfair prejudice. "The jurors' verdict may well have been improperly influenced by their revulsion and not entirely based on a belief that the state proved the elements of the crime." (*Id.* at 6). Although *Webster* was again convicted for Sutcliffe's murder, the charges against Grannis were dismissed at retrial because of insufficient evidence.

Prominent Cases, But Not Included on DPIC's Innocence List

Others have compiled different lists of exonerated individuals who were freed from death row, and those lists may include cases that DPIC has not. The strength of the innocence claims in many of these other cases is powerful and underscores the fact that the list in this report is probably an understatement of the true extent of the problem. Nevertheless, in keeping with our objective criteria, the following cases have never been included on DPIC's list:

Sonia Jacobs Florida Convicted 1976 Released 1992

Jacobs and her companion, Jesse Tafero, were sentenced to death for the murder of two policemen at a highway rest stop in 1976. A third co-defendant received a life sentence after pleading guilty and testifying against Jacobs and Tafero. The jury recommended a life sentence for Jacobs, but the judge overruled the jury and imposed death. A childhood friend and filmmaker, Micki Dickoff, then became interested in her case. Jacobs's conviction was overturned on a federal writ of habeas corpus in 1992. Following the discovery that the chief prosecution witness had given contradictory statements, the prosecutor accepted a plea in which Jacobs did not admit guilt, and she was immediately released. Jesse Tafero, whose conviction was based on much of the same highly questionable evidence, had been executed in 1990 before new evidence had been uncovered. (See *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992); "Play revives Broward death-penalty case," *Miami Herald*, October 13, 2002).



Sonia Jacobs
(Photo by Loren Santow)

Mitchell Blazak Arizona Convicted 1974 Released 1994

Blazak was originally convicted of a murder in which a ski-masked gunman killed a bartender and a customer at a bar in Tucson in 1973. The conviction was based largely on the testimony of a small time

con man, Kenneth Pease, who was arrested for a number of felonies in New Mexico and Arizona. Pease testified after being granted immunity. A federal District Court in 1991 termed Pease's testimony to be "a mass of contradictions." (See *Blazak v. Ricketts*, 971 F.2d 1408 (9th Cir. 1992)). The court also ruled that the trial judge had failed to ensure that Blazak was competent to stand trial. Rather than pursue a new trial, the prosecutor offered a no contest plea in September, 1994, which allowed Blazak to be released before the end of the year. (See M. Radelet, et al., "Prisoners Released from Death Rows Since 1970 Because of Doubts about Their Guilt," 13 *Thomas M. Cooley L. Rev.* 907, 925-26 ((1996). There was some evidence that a deputy sheriff named Michael Tucker planted hair evidence in the case. Three days after Blazak walked out of prison, Tucker was arrested for car theft.

Joseph Spaziano Florida Convicted 1976 Not Released

Spaziano was tried for the murder of a young woman that had occurred two years earlier. No physical evidence linked him to the crime. He was convicted primarily on the testimony of a drug-addicted teenager who, after hypnosis and "refreshed-memory" interrogation, thought he recalled Spaziano describing the murder. This witness eventually said that his testimony was totally unreliable and not true. Hypnotically induced testimony is no longer admissible in Florida. Death warrants were repeatedly signed for Spaziano, even though the jury in his case had recommended a life sentence. In January, 1996, a Florida Circuit Court granted Spaziano a new trial, and this decision was upheld by the Florida Supreme Court in 1997. In November, 1998, Spaziano pleaded no contest to second degree murder and was sentenced to time served. He maintains his complete innocence and remains incarcerated on another charge. (Order of Judge O.H. Eaton, Jr., vacating judgment, *State v. Spaziano*, No. 75-430-CFA (Jan. 22, 1996); affirmed by *State v. Spaziano*, No. 87, 364 (Fla. Sup. Ct., April 17, 1997); "Fla. Murder Convict Gets New Trial," Associated Press, April 17, 1997).

Paris Carriger Arizona Convicted 1978 Released 1999

Carriger was scheduled to die on December 6, 1995 for a murder he steadfastly maintains he did not commit. Another man, Robert Dunbar, twice confessed that he lied at Carriger's trial, and that it was he who committed the murder. As a result of his original trial testimony against Carriger, Dunbar was given immunity from other charges. Dunbar has since died. A three-judge panel of the U.S. Court of Appeals for the 9th Circuit upheld Carriger's death sentence, noting that while his case raised doubts, he must prove by clear and convincing evidence that "he is unquestionably innocent." Review of the case by the entire 9th Circuit was granted in February, 1997. Carriger was granted a new trial by the 9th Circuit in December, 1997 because of the new evidence. In January, 1999, he accepted a plea to a lesser offense and was immediately released from prison. (*Carriger v. Stewart*, 132 F. 3d 463 (9th Cir. 1997); *Arizona Daily Star*, January 24, 1999).

Kerry Max Cook Texas Convicted 1978 Released 1997 Case Concluded 1999



Kerry Max Cook
(Photo by Mary Hanlon)

Cook was originally convicted of killing Linda Jo Edwards in 1978. In 1988, he came within 11 days of execution, when the U.S. Supreme Court ordered the Texas Court to review its decision. Cook's conviction was overturned in 1991. He was re-tried in 1992, but the trial ended in a hung jury. In 1993, a state district judge ruled that prosecutors had engaged in systematic misconduct, suppressing key evidence. In 1994, Cook was tried again, and this time found guilty and again sentenced to death. On Nov. 6, 1996, the Texas Court of Criminal Appeals reversed his conviction, saying that "prosecutorial and police misconduct has tainted this entire matter from the outset." The court ruled that key testimony from the 1994 trial could not be used in any further prosecution. Prior to the start of his fourth trial in

February 1999, Cook pleaded no contest to a reduced murder charge and was released. He continued to maintain his complete innocence, but accepted the deal to avoid the possibility of another wrongful conviction. Recent DNA tests from the victim matched that of an ex-boyfriend, and not that of Cook. This tended to contradict testimony from the ex-boyfriend. (Cook v. State, 940 S.W. 2d 623 (Tex. Cr. App. 1996); Dallas Morning News, April 17, 1999).

Lloyd Schlup Missouri Convicted 1985 Not Released

Schlup was convicted in 1985 of a murder while in prison. However, a prison videotape shows him to be in the cafeteria around the time of the murder at a different location. One prison guard has testified that the tape, along with his observation of Schlup just before he went to the cafeteria, proved he could not have been present at the murder. Twenty other witnesses also swear that he was not at the scene of the crime. The U.S. Supreme Court gave Schlup the opportunity for a hearing concerning his new evidence, despite the fact that he had exhausted his ordinary appeals. (Schlup v. Delo, 513 U.S. 298 (1995)). Following the hearing in federal District Court in December 1995, the court held that no reasonable juror would have found Schlup guilty. On May 2, 1996, Schlup was granted a writ of habeas corpus on the ground that his original trial attorney failed to adequately represent him. The State of Missouri unsuccessfully attempted to apply the new federal habeas corpus law that was signed on April 24, 1996 to Schlup's case. Under the new law, Schlup probably would have been executed. On the second day of his re-trial, Mar. 23, 1999, Schlup agreed to plead guilty to second degree murder to avoid the danger of another death sentence. Schlup's appellate lawyer, Sean O'Brien, said he remained convinced of Schlup's innocence. (Schlup v. Delo, 912 F. Supp. 448 (E.D.Mo. 1995); T. O'Neill, St. Louis Dispatch, March 25, 1999).

Donald Paradis Idaho Convicted 1981 Released 2001

After spending 14 years on death row, Donald Paradis was released from prison when his 1981 murder conviction was overturned. Judge Gary Haman, who originally sentenced Paradis to death, came out of retirement to accept Paradis' plea to moving the body after the murder. Paradis, who always maintained that he was not involved in the slaying of Kimberly Anne Palmer, was sentenced to 5 years and released for time already served. The deal came after a federal court of appeals ruling that Paradis was denied a fair trial because prosecutors withheld potentially exculpatory evidence. Paradis was scheduled for execution three times before his sentence was commuted to life imprisonment in 1996 by then-Governor Phil Blatt who had doubts about Paradis' guilt.

Paradis' trial lawyer, William Brown, never studied criminal law, never tried a felony case, and never tried a case before a jury. While representing Paradis, Brown also worked as a police officer. His defense lasted only three hours. In addition, Dr. Brady, the pathologist who performed the autopsy of Ms. Palmer, testified that Palmer had been killed in Idaho, not in Washington where Paradis had already been acquitted of the murder, thus allowing for the trial that put Paradis on death row. Dr. Brady was fired as a medical examiner soon after the Paradis trial when it was discovered that he had sold human tissue for profit and saved human blood, collected during autopsies, for use in his garden. (Associated Press, April 11, 2001; New York Times, April 12, 2001; Paradis v. Arave, 240 F. 3d 1169 (9th Cir. 2001); B. Herbert, "Death Row Survivor," New York Times, April 12, 2001 (op-ed)).

Charles Munsey North Carolina Convicted 1996 Died in prison

In May 1999, Superior Court Judge Thomas Ross threw out Munsey's murder conviction and ordered a new trial in the beating death of Shirley Weaver. The judge cited evidence that the state's key witness had lied, that prosecutors had withheld exculpatory evidence, and that another man's confession to the crime was probably true. The state decided not to appeal Judge Ross's ruling and planned to indict the man who confessed to the murder. Munsey may have been re-tried, perhaps for a lesser charge involving the sale of the gun used in the murder. However, Munsey died in prison before an official decision was made on dropping the charges against him or retrying his case. (Order of Superior Court Judge Thomas Ross, No. 93 CRS 4078 (Wilkes County, May 14, 1999); L. Chandler, "Jury ruled death for innocent man: Mistakes in case expose systems vulnerabilities," Charlotte Observer, September 9, 2000).

List of Exonerees by Year: 1973-2004

NR	NAME	STATE	RACE	CON-VICTED	EXONER-ATED	YEARS BETWEEN	REASON	DNA ?*
1	David Keaton	FL	B	1971	1973	2	Charges Dismissed	
2	Samuel A. Poole	NC	B	1973	1974	1	Charges Dismissed	
3	Wilbert Lee	FL	B	1963	1975	12	Pardoned	
4	Freddie Pitts	FL	B	1963	1975	12	Pardoned	
5	James Creamer	GA	W	1973	1975	2	Charges Dismissed	
6	Christopher Spicer	NC	B	1973	1975	2	Acquitted	
7	Thomas Gladish	NM	W	1974	1976	2	Charges Dismissed	
8	Richard Greer	NM	W	1974	1976	2	Charges Dismissed	
9	Ronald Keine	NM	W	1974	1976	2	Charges Dismissed	
10	Clarence Smith	NM	W	1974	1976	2	Charges Dismissed	
11	Delbert Tibbs	FL	B	1974	1977	3	Charges Dismissed	
12	Earl Charles	GA	B	1975	1978	3	Charges Dismissed	
13	Jonathan Treadway	AZ	W	1975	1978	3	Acquitted	
14	Gary Beeman	OH	W	1976	1979	3	Acquitted	
15	Jerry Banks	GA	B	1975	1980	5	Charges Dismissed	
16	Larry Hicks	IN	B	1978	1980	2	Acquitted	
17	Charles Ray Giddens	OK	B	1978	1981	3	Charges Dismissed	
18	Michael Linder	SC	W	1979	1981	2	Acquitted	
19	Johnny Ross	LA	B	1975	1981	6	Charges Dismissed	
20	Ernest (Shuhaa) Graham	CA	B	1976	1981	5	Acquitted	
21	Annibal Jaramillo	FL	L	1981	1982	1	Charges Dismissed	
22	Lawyer Johnson	MA	B	1971	1982	11	Charges Dismissed	
23	Anthony Brown	FL	B	1983	1986	3	Acquitted	
24	Neil Ferber	PA	W	1982	1986	4	Charges Dismissed	
25	Clifford Henry Bowen	OK	W	1981	1986	5	Charges Dismissed	
26	Joseph Green Brown	FL	B	1974	1987	13	Charges Dismissed	
27	Perry Cobb	IL	B	1979	1987	8	Acquitted	
28	Darby (Williams) Tillis	IL	B	1979	1987	8	Acquitted	
29	Vernon McManus	TX	W	1977	1987	10	Charges Dismissed	
30	Anthony Ray Peek	FL	B	1978	1987	9	Acquitted	
31	Juan Ramos	FL	L	1983	1987	4	Acquitted	
32	Robert Wallace	GA	B	1980	1987	7	Acquitted	
33	Richard Neal Jones	OK	W	1983	1987	4	Acquitted	
34	Willie Brown	FL	B	1983	1988	5	Charges Dismissed	
35	Larry Troy	FL	B	1983	1988	5	Charges Dismissed	

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NR	NAME	STATE	RACE	CON-VICTED	EXONER-ATED	YEARS BETWEEN	REASON	DNA ?*
36	Randall Dale Adams	TX	W	1977	1989	12	Charges Dismissed	
37	Robert Cox	FL	W	1988	1989	1	Charges Dismissed	
38	Timothy Hennis	NC	W	1986	1989	3	Acquitted	
39	James Richardson	FL	B	1968	1989	21	Acquitted	
40	Clarence Brandley	TX	B	1981	1990	9	Charges Dismissed	
41	John C. Skelton	TX	W	1983	1990	7	Acquitted	
42	Dale Johnston	OH	W	1984	1990	6	Charges Dismissed	
43	Jimmy Lee Mathers	AZ	W	1987	1990	3	Acquitted	
44	Gary Nelson	GA	B	1980	1991	11	Charges Dismissed	
45	Bradley P. Scott	FL	W	1988	1991	3	Acquitted	
46	Charles Smith	IN	B	1983	1991	8	Acquitted	
47	Jay C. Smith	PA	W	1986	1992	6	Acquitted	
48	Kirk Bloodsworth	MD	W	1984	1993	9	Charges Dismissed	Yes
49	Federico M. Macias	TX	L	1984	1993	9	Charges Dismissed	
50	Walter McMillian	AL	B	1988	1993	5	Charges Dismissed	
51	Gregory R. Wilhoit	OK	W	1987	1993	6	Acquitted	
52	James Robison	AZ	W	1977	1993	16	Acquitted	
53	Muneer Deeb	TX	O	1985	1993	8	Acquitted	
54	Andrew Golden	FL	W	1991	1994	3	Charges Dismissed	
55	Joseph Burrows	IL	W	1989	1994	5	Charges Dismissed	
56	Adolph Munson	OK	B	1985	1995	10	Acquitted	
57	Robert Charles Cruz	AZ	L	1981	1995	14	Acquitted	
58	Rolando Cruz	IL	L	1985	1995	10	Acquitted	Yes
59	Alejandro Hernandez	IL	L	1985	1995	10	Charges Dismissed	Yes
60	Sabrina Butler	MS	B	1990	1995	5	Acquitted	
61	Verneal Jimerson	IL	B	1985	1996	11	Charges Dismissed	Yes
62	Dennis Williams	IL	B	1979	1996	17	Charges Dismissed	Yes
63	Roberto Miranda	NV	L	1982	1996	14	Charges Dismissed	
64	Gary Gauger	IL	W	1993	1996	3	Charges Dismissed	
65	Troy Lee Jones	CA	B	1982	1996	14	Charges Dismissed	
66	Carl Lawson	IL	B	1990	1996	6	Acquitted	
67	David Wayne Grannis	AZ	W	1991	1996	5	Charges Dismissed	
68	Ricardo Aldape Guerra	TX	L	1982	1997	15	Charges Dismissed	
69	Benjamin Harris	WA	B	1985	1997	12	Charges Dismissed	
70	Robert Hayes	FL	B	1991	1997	6	Acquitted	
71	Randall Padgett	AL	W	1992	1997	5	Acquitted	
72	James Bo Cochran	AL	B	1976	1997	21	Acquitted	
73	Robert Lee Miller, Jr.	OK	B	1988	1998	10	Charges Dismissed	Yes
74	Curtis Kyles	LA	B	1984	1998	14	Charges Dismissed	
75	Shareef Cousin	LA	B	1996	1999	3	Charges Dismissed	
76	Anthony Porter	IL	B	1983	1999	16	Charges Dismissed	
77	Steven Smith	IL	B	1985	1999	14	Acquitted	
78	Ronald Williamson	OK	W	1988	1999	11	Charges Dismissed	Yes
79	Ronald Jones	IL	B	1989	1999	10	Charges Dismissed	Yes

Innocence and the Death Penalty 2004, Appendix p. A-16

NR	NAME	STATE	RACE	CON- VICTED	EXONER- ATED	YEARS BETWEEN	REASON	DNA ?*
80	Clarence Dexter, Jr.	MO	W	1991	1999	8	Charges Dismissed	
81	Warren Douglas Manning	SC	B	1989	1999	10	Acquitted	
82	Alfred Rivera	NC	L	1997	1999	2	Charges Dismissed	
83	Steve Manning	IL	W	1993	2000	7	Charges Dismissed	
84	Eric Clemmons	MO	B	1987	2000	13	Acquitted	
85	Joseph Nahume Green	FL	B	1993	2000	7	Charges Dismissed	
86	Earl Washington	VA	B	1984	2000	16	Pardoned	Yes
87	William Nieves	PA	L	1994	2000	6	Acquitted	
88	Frank Lee Smith ** -died prior to exoneration	FL	B	1986	2000**	14	Charges Dismissed	Yes
89	Michael Graham	LA	W	1987	2000	13	Charges Dismissed	
90	Albert Burrell	LA	W	1987	2000	13	Charges Dismissed	
91	Oscar Lee Morris	CA	B	1983	2000	17	Charges Dismissed	
92	Peter Limone	MA	W	1968	2001	33	Charges Dismissed	
93	Gary Drinkard	AL	W	1995	2001	6	Charges Dismissed	
94	Joaquin Jose Martinez	FL	L	1997	2001	4	Acquitted	
95	Jeremy Sheets	NE	W	1997	2001	4	Charges Dismissed	
96	Charles Fain	ID	W	1983	2001	18	Charges Dismissed	Yes
97	Juan Roberto Melendez	FL	L	1984	2002	18	Charges Dismissed	
98	Ray Krone	AZ	W	1992	2002	10	Charges Dismissed	Yes
99	Thomas Kimbell, Jr.	PA	W	1998	2002	4	Acquitted	
100	Larry Osborne	KY	W	1999	2002	3	Charges Dismissed	
101	Aaron Patterson	IL	B	1986	2003	17	Pardoned	
102	Madison Hoble	IL	B	1987	2003	16	Pardoned	
103	Leroy Orange	IL	B	1984	2003	19	Pardoned	
104	Stanley Howard	IL	B	1987	2003	16	Pardoned	
105	Rudolph Holton	FL	B	1986	2003	16	Charges Dismissed	
106	Lemuel Prion	AZ	W	1999	2003	4	Charges Dismissed	
107	Wesley Quick	AL	W	1997	2003	6	Acquitted	
108	John Thompson	LA	B	1985	2003	18	Acquitted	
109	Timothy Howard	OH	B	1976	2003	26	Charges Dismissed	
110	Gary Lamar James	OH	B	1976	2003	26	Charges Dismissed	
111	Joseph Amrine	MO	B	1986	2003	17	Charges Dismissed	
112	Nicholas Yarris	PA	W	1982	2003	21	Charges Dismissed	
113	Alan Gell	NC	W	1998	2004	6	Acquitted	
114	Gordon Steidl	IL	W	1987	2004	17	Charges Dismissed	
115	Dan L. Bright	LA	B	1996	2004	8	Charges Dismissed	
116	Ryan Matthews	LA	B	1999	2004	5	Charges Dismissed	Yes

*A "yes" in the DNA column indicates DNA testing played a significant role in the exoneration.

List of Exonerees by State

ALABAMA

Walter McMillian	1993
James Bo Cochran	1997
Randall Padgett	1997
Gary Drinkard	2001
Wesley Quick	2003

ARIZONA

Jonathan Treadway	1978
Jimmy Lee Mathers	1990
James Robison	1993
Robert Charles Cruz	1995
David Wayne Grannis	1996
Ray Krone	2002
Lemuel Prion	2003

CALIFORNIA

Ernest (Shujaa) Graham	1981
Troy Lee Jones	1996
Oscar Lee Morris	2000

FLORIDA

David Keaton	1973
Freddie Pitts	1975
Wilbert Lee	1975
Delbert Tibbs	1977
Annibal Jaramillo	1982
Anthony Brown	1986
Anthony Ray Peek	1987
Joseph Green Brown	1987
Juan Ramos	1987
Larry Troy	1988
Willie Brown	1988
James Richardson	1989
Robert Cox	1989
Bradley P. Scott	1991
Andrew Golden	1994
Robert Hayes	1997
Frank Lee Smith	2000
(Died prior to exoneration)	
Joseph Nahume Green	2000
Joaquin Jose Martinez	2001
Juan R. Melendez	2002
Rudolph Holton	2003

GEORGIA

James Creamer	1975
Earl Charles	1978
Jerry Banks	1980
Robert Wallace	1987
Gary Nelson	1991

IDAHO

Charles Fain	2001
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ILLINOIS

Darby (Williams) Tillis	1987
Perry Cobb	1987
Joseph Burrows	1994
Alejandro Hernandez	1995
Rolando Cruz	1995
Carl Lawson	1996
Dennis Williams	1996
Gary Gauger	1996
Verneal Jimerson	1996
Anthony Porter	1999
Ronald Jones	1999
Steven Smith	1999
Steve Manning	2000
Aaron Patterson	2003
Leroy Orange	2003
Madison Hobley	2003
Stanley Howard	2003
Gordon Steidl	2004

INDIANA

Larry Hicks	1980
Charles Smith	1991

KENTUCKY

Larry Osborne	2002
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LOUISIANA

Johnny Ross	1981
Curtis Kyles	1998
Shareef Cousin	1999
Albert Burrell	2000
Michael Graham	2000
John Thompson	2003
Dan L. Bright	2004
Ryan Matthews	2004

MASSACHUSETTS

Lawyer Johnson 1982
Peter Limone 2001

MARYLAND

Kirk Bloodsworth 1993

MISSOURI

Clarence Dexter, Jr. 1999
Eric Clemmons 2000
Joseph Amrine 2003

MISSISSIPPI

Sabrina Butler 1995

NORTH CAROLINA

Samuel A. Poole 1974
Christopher Spicer 1975
Timothy Hennis 1989
Alfred Rivera 1999
Alan Gell 2004

NEBRASKA

Jeremy Sheets 2001

NEW MEXICO

Clarence Smith 1976
Richard Greer 1976
Ronald Keine 1976
Thomas Gladish 1976

NEVADA

Roberto Miranda 1996

OHIO

Gary Beeman 1979
Dale Johnston 1990
Gary Lamar James 2003
Timothy Howard 2003

OKLAHOMA

Charles Ray Giddens 1981
Clifford Henry Bowen 1986
Richard Neal Jones 1987
Gregory R. Wilhoit 1993
Adolph Munson 1995
Robert Lee Miller, Jr. 1998
Ronald Williamson 1999

PENNSYLVANIA

Neil Ferber 1986
Jay C. Smith 1992

William Nieves 2000
Thomas Kimbell, Jr. 2002
Nicholas Yarris 2003

SOUTH CAROLINA

Michael Linder 1981
Warren D. Manning 1999

TEXAS

Vernon McManus 1987
Randall Dale Adams 1989
Clarence Brandley 1990
John C. Skelton 1990
Federico M. Macias 1993
Muneer Deeb 1993
Ricardo Aldape Guerra 1997

VIRGINIA

Earl Washington 2000

WASHINGTON

Benjamin Harris 1997