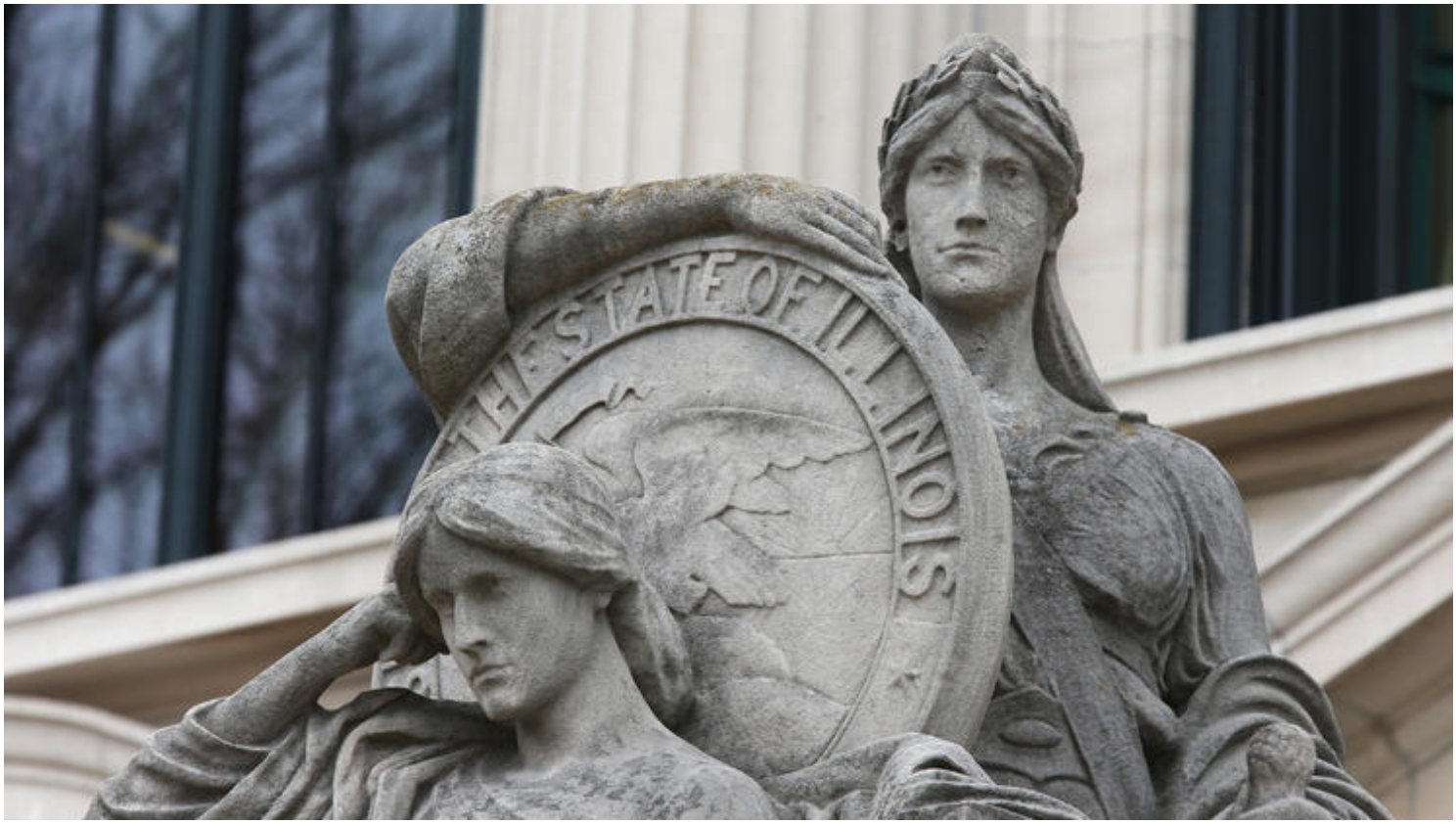
Illinois Supreme Court opens door to expert testimony on eyewitness IDs



A statue at the entrance of the Illinois Supreme Court Building in Springfield. (John J. Kim / Chicago Tribune)

By **Dan Hinkel · Contact Reporter**
Chicago Tribune

JANUARY 25, 2016, 5:58 PM

The Illinois Supreme Court has affirmed the reversal of a Chicago man's murder conviction in a ruling that could lead to jurors more frequently hearing expert testimony on the unreliability of eyewitness identifications.

Eduardo Lerma was convicted of the May 2008 shooting of Jason Gill in the Back of the Yards neighborhood, but appeals court judges overturned his conviction in 2014, according to court records and Tribune archives. On Friday, the state Supreme Court issued a 7-0 decision affirming the reversal of Lerma's conviction and sending the case back for a new trial. Lerma, 36, remains at Stateville Correctional Center in Joliet, state records show.

The only evidence against Lerma was his identification as the shooter by the victim and another eyewitness, the justices wrote. The justices ruled that Cook County Judge Timothy Joyce abused his

discretion by barring Lerma's lawyers from calling experts to explain to jurors the fallibility of eyewitness identifications.

The state Supreme Court had not addressed the admission of expert testimony on eyewitnesses in more than 25 years, and experts' understanding of the issue has advanced since then, the justices wrote. The justices noted that DNA evidence has routinely contradicted eyewitness identifications. About one-third of the approximately 150 wrongful convictions revealed in Illinois since 1989 have involved a mistaken eyewitness identification, according to the National Registry of Exonerations.

"We have not only seen that eyewitness identifications are not always as reliable as they appear, but we also have learned, from a scientific standpoint, why this is often the case," the justices wrote in the 16-page opinion.

Advocates for criminal defendants lauded the ruling, saying they hoped and expected it would lead to experts more frequently being allowed to tell jurors about research on the shortcomings of witness identifications.

"This is a huge step forward for criminal defense," said Amy Campanelli, who leads the Cook County public defender's office, which represented Lerma at trial. "We have been trying to call expert witnesses regarding eyewitness identification at least for the last decade, if not more, and we have always been shut down."

Cook County prosecutors are considering whether to retry Lerma, said Sally Daly, a spokeswoman for State's Attorney Anita Alvarez. Joyce said it would be inappropriate for him to comment on the case.

Gill and Lerma, known as "Lucky," lived across the street from one another and were friends for years, but Lerma had been fighting with one of Gill's family members before the shooting, according to the court ruling. Before he died, Gill told others that Lerma had shot him, the justices wrote. A woman who'd been sitting with Gill on his steps before he was shot also identified Lerma as the shooter, the justices wrote. But that woman gave conflicting information as to whether the assailant's hood was up during the shooting, and she acknowledged in court that she had seen Lerma only once or twice from a distance before the killing, according to the ruling.

At several points before and during trial, Lerma's lawyers sought to call experts to testify that eyewitness identifications aren't always reliable and that a person could even be mistaken in identifying an acquaintance. But the judge rebuffed those attempts, the justices wrote.

Noting that the eyewitness identifications were the only evidence against Lerma, the justices wrote that Joyce's failure to allow the expert testimony was "arbitrary and unreasonable to an unacceptable degree."

If prosecutors retry Lerma, the judge must allow expert testimony on eyewitness identifications, the justices wrote.

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The Washington Post

Local

Va. murder trial may become part of national debate on jail informants

By Tom Jackman February 3

When a Virginia man faces a possible death sentence in a murder trial later this year, his fate may rest on the testimony of four jailhouse informants, two of whom were initially found mentally incompetent to stand trial in their own cases.

The case of Joaquin S. Rams could soon become part of a growing national backlash over the government's use of testimony from "snitches" — inmates who offer information against other inmates in exchange for lighter sentences or other benefits — to obtain convictions, sparked by a significant number of wrongful convictions attributed to false informant testimony.

The issue erupted last year in Orange County, Calif., when a capital case against an admitted mass-murderer, and numerous other murder cases, stalled because of the discovery of a "snitch tank": a ring of county jail informants, closely managed by jail deputies, dedicated to testifying against fellow inmates. A judge ordered the county district attorney off the case, and the prosecution of a man accused of killing eight people in 2011 has been delayed indefinitely.

And in Washington last year, a judge ordered a new trial for the man accused of killing federal intern Chandra Levy in 2001 after defense attorneys successfully challenged the history and credibility of a key jailhouse informant in the 2010 trial.

The use of informants is not new, nor are the challenges to their credibility. But informants' role in recent wrongful convictions and high-profile cases is causing lawmakers nationwide to look at regulating their use.

In Texas, the revelation of false testimony by a snitch against a man who was later executed led to the introduction of legislation to ban informant testimony in death penalty cases. In Illinois, the law requires courts to hold "reliability hearings" before a jailhouse informant can testify. A similar proposed law in North Carolina failed last year. In Washington state, the legislature is considering a bill requiring judges to weigh informants' "incentivized" credibility before trial. And several high-profile murder cases in the Tidewater area of Virginia took drastic turns in recent years when jailhouse snitches were found to be unreliable.

In Rams's case, in Prince William County, Va., one of the informants, who pleaded guilty to the murders of three

people in Manassas, Va., in 2011, reported frequent hallucinations and said he knew the whereabouts of Osama bin Laden. Another was diagnosed as a "malingerer" who was purposely lying to evade trial.

In arguing to exclude the informants from the Rams trial, defense attorney Joni C. Robin argued that such testimony was "inherently unreliable, that it involves witnesses who categorically are more willing to lie or perjure themselves than other categories of witnesses."

Calls for safeguards

The Center on Wrongful Convictions at Northwestern University's law school found in 2005 that of the 111 people sentenced to death since the 1970s and later exonerated, "snitch" testimony was involved in 45.9 percent of the cases. "That makes snitches the leading cause of wrongful convictions in U.S. capital cases," the report concluded.

Defense attorneys and academics have long called on states to initiate safeguards so that jail cell information is either recorded or corroborated, but only Illinois has written anything into law.

"There have been multiple snitch scandals in multiple places," said Brandon Garrett, a University of Virginia law professor who studies wrongful convictions. "Since more states are looking at wrongful convictions, it's becoming part of the conversation."

Informants present dilemmas to both sides of a criminal case. For prosecutors, they must decide whether to believe that one inmate confessed crucial information to the informant, what the informant's history is, whether to wire the informant for recorded conversation with the target and what they are willing to trade for the information. For the defense, attorneys must try to refute a typically unrecorded conversation, investigate the background of the informant and then convince a jury that sworn testimony is a lie.

Officials with two national prosecutors' groups said they would tread very carefully with jailhouse informants. David LaBahn, president of the Association of Prosecuting Attorneys and a former deputy prosecutor in California, said prosecutors "have to be able to specifically articulate the reason you're using an informant and making a deal." And judges must exercise "court oversight before that testimony is admitted. Can you corroborate it, or did they just pick up the newspaper?"

But prosecutors don't necessarily favor laws that regulate informant use. Josh Marquis, a county prosecutor in Oregon who is with the National District Attorneys Association, said: "I think jurors are very discerning. We don't believe it's appropriate for Congress or state legislatures to take away from juries what weight to give evidence."

Defense attorneys strongly disagree. "Jurors believe jailhouse informants," said Doug Ramseur, a Virginia capital public defender. "They think criminals are not that smart and they sit around and brag about their crimes."

Prince William Commonwealth's Attorney Paul B. Ebert, the chief prosecutor in the county for 47 years, said it was "amazing to me that these people [defendants] will talk [to informants], despite their counsel's advice not to. Informants do have very valuable information at times." Asked how his office corroborates an informant's claims, he said, "Many times they will know things that only the defendant would know."

Ebert acknowledged having to cut deals with convicts but added, "I've often told juries, 'Sometimes you have to pet a skunk to catch another one.' "

Ebert declined to discuss the pending Rams capital case, in which the defendant is accused of drowning his 15-month-old son in his Manassas home in 2012 to collect more than $500,000 in life insurance. Rams's attorneys argued in one motion that investigators "sought out and elicited the testimony of at least two jailhouse snitches" after Virginia's chief medical examiner reversed the initial autopsy finding of drowning and ruled that the child's cause of death couldn't be determined.

Potential witnesses

In October, prosecutors disclosed four jail informants who may testify against Rams. The most notable was Jose Reyes Alfaro, who in February 2011 fatally shot three people and nearly killed a fourth during a rampage in Manassas. In 2011 and 2012, a judge found Reyes Alfaro incompetent to stand trial. A psychologist wrote in 2012 that "Reyes Alfaro's reporting of past events, actions and relationships give me pause to question his ability to distinguish memories from fantasy."

Reyes Alfaro was later sent to Central State Hospital, administered psychiatric drugs and treatment, and found to be restored to sanity in 2013, although a psychiatrist noted that Reyes Alfaro "described a number of far-fetched ideas about his past" such as being a member of an elite paramilitary force and "claiming to know the existence of Osama bin Laden in Venezuela."

Reyes Alfaro also "has previously falsely incriminated other individuals," Robin, the defense attorney, argued in November, "leading to the arrest of those other individuals," who were later released. He pleaded guilty in 2014 to three counts of capital murder and received seven life sentences.

In exchange for Reyes Alfaro's testimony, prosecutors said they asked the state Department of Corrections to move him away from Wallens Ridge State Prison, which houses many of the state's most serious offenders.

Prosecutors also want to use Jamal A. Thompson, an Oakland, Calif., man arrested on charges of prostituting a 15-year-old runaway girl at a Manassas hotel, against Rams. Thompson also was initially found incompetent to stand trial, but when he was sent to Central State, doctors there found him to be engaged in "volitional malingering . . . intentional feigning or exaggeration of psychiatric, cognitive or physical symptoms for secondary gain, such as . . . to avoid prosecution."

Prince William prosecutors also listed Gavin Simms, who had multiple convictions for theft, as a witness and said he received no considerations for his testimony. But when one of Rams's attorneys attended Simms's sentencing several weeks later, court records show, they found that prosecutors had agreed to dismiss nine felony theft charges and recommend a sentence of 18 months. He faced up to four years in prison.

The prosecutors also said they may call Aric A. Smith, who pleaded guilty to randomly shooting and killing retired ATF agent Gregory Holley as he walked his dog in Woodbridge, Va., in 2013.

Rams's attorneys asked Prince William Circuit Court Judge Craig D. Johnston to hold a "reliability hearing" to determine whether the four informants could testify, similar to a "Daubert" hearing held in civil cases to rule whether scientific evidence is admissible.

Johnston declined. "There's no Virginia case that I know of that authorizes such," the judge said. "I understand the defense's frustration. . . . But that said, that's the way we do business in criminal cases, rightly or wrongly."

Rams's attorneys declined to comment on the case. The trial was scheduled to begin this week but was postponed at the defense's request. Rams, 43, has maintained his innocence in the death of his son, Prince McLeod Rams. Three other people who were in the house when the boy fell unconscious say that Rams did not kill him.

A 'snitch factory'

Before another capital murder trial, Ramseur was the attorney for Christopher Artis in a Suffolk, Va., case in 2012. Ramseur listened to jailhouse phone recordings because he had been warned that the Western Tidewater Regional Jail in Suffolk "was a snitch factory." He said he found "there was a network of guys trying to corroborate stories so they could get on a capital case and reduce their own case. I heard a guy call his mother and instruct her on how to look at my client's file."

At trial, he said four informants were "clearly on tape admitting they were lying to get their sentence reduced." Prosecutors quickly agreed to a mid-trial plea deal for second-degree murder and 10 years for Artis. In Virginia Beach, the 2010 slaying of a Norfolk police officer remains unsolved after prosecutors in 2014 dropped all charges against two men because they found jailhouse witnesses had lied.

Prosecutors in the District last year acquiesced in the high-profile Chandra Levy case, in which Ingmar Guandique was convicted largely on the testimony of jailhouse informant Armando Morales. Morales testified that Guandique confessed the slaying to him.

But Morales, a convicted drug dealer and gang member, lied when asked whether he had cooperated with authorities in other cases, and Guandique's attorneys claim the confession testimony was also false. Last May, the U.S. attorney's office dropped its opposition to Guandique's demand for a new trial.

Now, "we understand the full scope of just how problematic criminal informants can be," said Alexandra Natapoff, a professor at Loyola Law School in Los Angeles.

"The rules permit precisely this result. Weak discovery rules, unfettered prosecutorial discretion and payments to criminals. What did we think would happen? It's time to ask why the American criminal justice system permits these practices to exist."

An earlier version of this article stated that Armando Morales, the chief informant in the Chandra Levy trial, was accused of lying about testifying in other cases. He was accused of lying about his cooperation with law enforcement.

Tom Jackman has been covering criminal justice for The Post since 1998, and now anchors the new "True Crime" blog.

GRITS FOR BREAKFAST

WELCOME TO TEXAS JUSTICE: YOU MIGHT BEAT THE RAP, BUT YOU WON'T BEAT THE RIDE.

FRIDAY, JUNE 03, 2016

Convicted by media, exonerated by prosecutors

A case out of Houston gives Grits modest hope that some of the innocence-related criminal justice reforms implemented in recent years are beginning to pay off, not just by creating procedural changes but changing the culture of how police and prosecutors approach evidence. In a horrific case last month, an 11-year old boy was brutally stabbed to death and police arrested the wrong guy. Eventually, charges were dropped after his alibi was confirmed, reported the Houston Chronicle. So in this case, law enforcement did the right thing. The press, though, not so much.

In a May 18 story, the Chron's Dane Schiller reported that, "the 11-year-old was savagely attacked, without apparent provocation, by a man with a history of mental illness" who they identified as Che Lajuan Calhoun. The paper informed readers Calhoun was homeless, though he was staying with his fiance in Pearland the night of the attack. Schiller reported that he had a "string of arrests ... since 2012, for making terroristic threats, assaults, violating a protective order and resisting arrest." A story the next day said neighbors, when told of these arrests (by the reporter), were "wondering how Calhoun built such a long criminal history so short on punishment."

Schiller also suggested the man suffered from mental illness, but with only the barest of support for the premise: "a judge appointed an attorney with experience at handling mental health issues and ordered mental health records be released from the county about his mental competency, court records show." However, Calhoun apparently was never declared incompetent and it's impossible to know what was in those records.

Even more damning, there was not the slightest reference in the story

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even to the possibility that the person arrested might not be the killer until the cops issued another press release.

One is reminded of the Queen of Hearts in Alice's Adventures in Wonderland, who insisted on having the sentence pronounced first and the verdict after. Similarly, the press too often, as here, would have us issue convictions first, investigations after. It's an unhelpful dynamic.

That sort of convict-em-first coverage probably contributes as much to wrongful convictions in high-profile cases as errors by police and prosecutors. Many of Texas' DNA exonerees had perfectly good alibis that checked out but which police, prosecutors and ultimately juries ignored in the face of eyewitness evidence. In those cases, like this one, the media had assumed from the get-go that the arrested man was the real killer and widely touted his guilt, even though he'd only been accused and nothing had been proven.

But remarkably, in this case, when evidence was presented that confirmed Calhoun's alibi, he was released. Despite the eyewitness. Despite media having already pronounced his guilt in their coverage, and despite the cops having already claimed credit for getting their man. There are plenty of guys with alibis just as strong who had to wait decades for DNA evidence to clear their names. Maybe it says something about changing law-enforcement culture if eyewitness testimony is no longer considered an absolute gold standard but just another piece of evidence which may be confirmed or denied by others. The episode perhaps bespeaks a greater appreciation of the dangers of tunnel vision and confirmation bias than law enforcement has demonstrated in the past.

When the wrong person is accused of a heinous crime, it's a double tragedy. An innocent person is punished while a guilty one goes free. So getting it right earlier than later in the process is particularly important.

It's a small moment, just one case, but perhaps a cause for optimism. For once, cops and prosecutors passed the test. The press failed theirs.

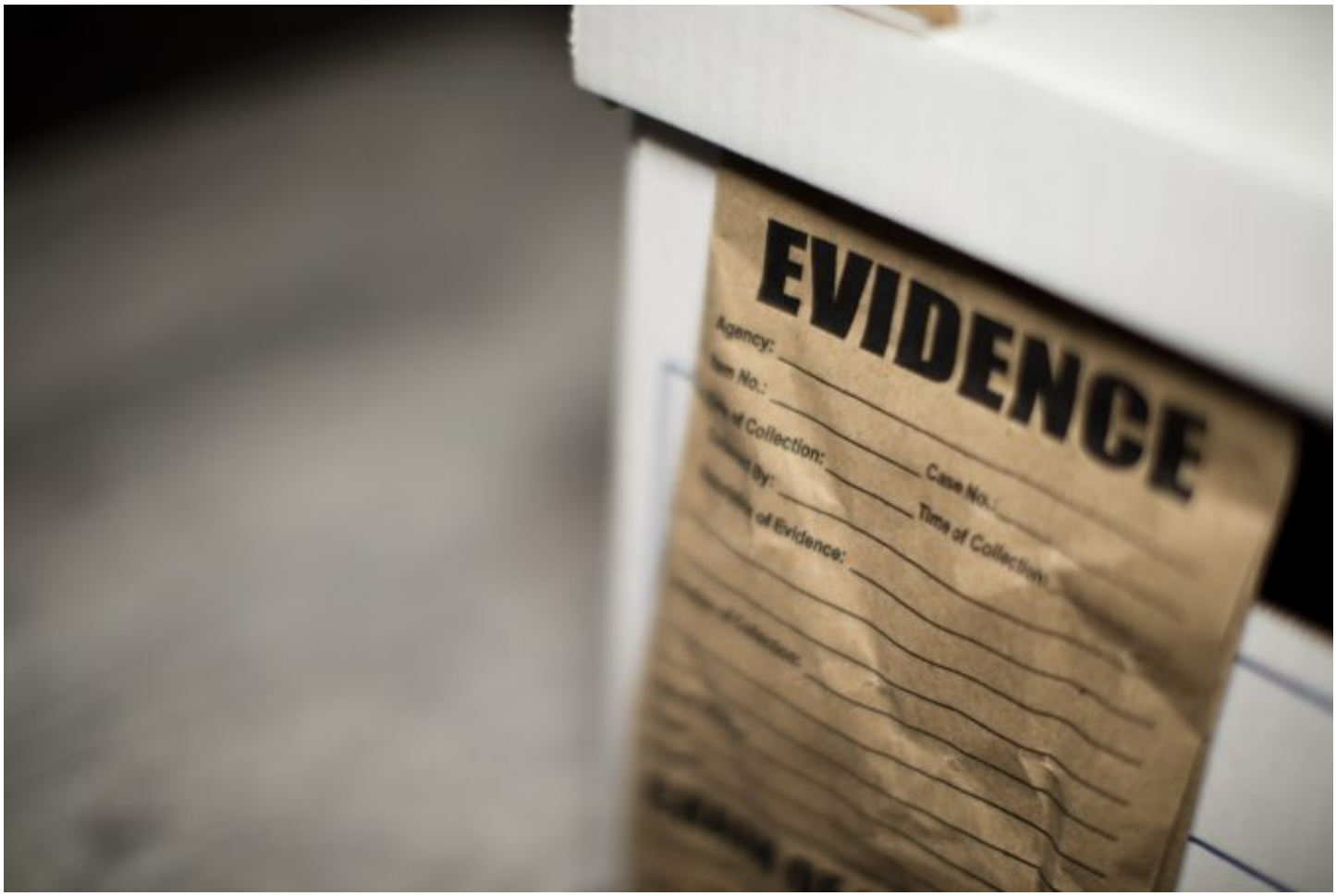
POSTED BY GRITSFORBREAKFAST AT 7:29 AM

LABELS: DISTRICT ATTORNEYS, HARRIS COUNTY, INNOCENCE

The Usual Suspect

STUNNING NEW EVIDENCE IN THE CASE OF KERRY MAX COOK CASTS SERIOUS DOUBT ON HIS 1978 MURDER CONVICTION–AND POINTS EMPHATICALLY AT ANOTHER MAN.

JUNE 3, 2016 | *by* **MICHAEL HALL** | **8 COMMENTS**



THINKSTOCK

On the morning of June 10, 1977, Linda Jo Edwards was found brutally murdere Tyler apartment. It was a horrifying scene. The 22-year-old, naked from the waist down, had been stabbed more than twenty times in her face, neck, chest, and pubic areas. Her mouth had been slit and parts of her body seemed to be missing—a piece of her lower lip, sections of her vaginal wall. It was one of the most heinous crimes in Smith County history.

There were no signs of forced entry, a signal to investigators that someone Edwards knew probably committed the crime. Her roommate, Paula Rudolph, told police that a man had been in Edwards' room late that night, and though she didn't get a good look at him, she assumed it was Edwards' boyfriend, 44-year-old James Mayfield. The man she glimpsed had medium-length silver hair and white shorts; Mayfield had medium-length silver hair and, being a tennis buff, was known to wear white shorts much of the time.

Mayfield, aware that he would be a suspect, came to the police station later that day to tell his story. Yes, the father of three had been having an affair with Edwards. He had been the head librarian at Texas Eastern University and had hired her. They'd been seeing each other for a year and a half, but he swore it had ended three weeks before. More important, he had an alibi for the previous evening: he said he had been home with his wife, Elfriede, and his daughter, Luella. The police questioned Luella, and cleared Mayfield.

By then they had embraced an entirely different idea of who would have committed such a brutal, twisted crime. Three days after the murder, a psychologist named Jerry Landrum, who had previously worked with the DA and lived in Edwards' apartment complex, looked at the crime scene photos and talked with officers about the murder. Then he offered them a psychological profile of the killer. It was a man, he said, between 18 and 30, probably gay or bisexual, maybe high on drugs, and

definitely introverted. He was, Landrum testified in front of a grand jury, “a sexually inadequate male with pathological hostility” who mutilated the body in specific places “in hatred and anguish.”

Kerry Max Cook on the night he was arrested.

Police began interviewing everyone at the apartment complex, and eventually a resident told officers about a young man who’d been staying with him who seemed to match the description. His name was Kerry Max Cook, and he had spent time behind bars for stealing cars; he’d also spent time at Rusk State Hospital, a facility for individuals with mental illness where he’d been evaluated as having an “inadequate personality (immaturity and impulsiveness).” Cook was young, long-haired, purposeless—and bisexual, considered by many in 1977 to be a sexual perversion. He’d also left town a few days after the murder. When his fingerprints matched those found on the outside of Edwards’ patio door, he was found and, in early August, arrested and charged with murder.

Thus began the first steps of what would become one of the most harrowing journeys through the criminal justice system in modern American history. Cook, who has always proclaimed his innocence, was tried three times for Edwards’ murder. In each trial, one of the main witnesses against him was Rudolph, who testified that she had seen him in Edwards’ room that night. Cook was convicted twice (the third trial

ended in a hung jury) and sentenced to death. Twice, his death sentences were overturned, with the Texas Court of Criminal Appeals pointing to egregious prosecutorial and police misconduct. In the twenty years Cook spent on death row, he tried to kill himself two times.

Cook was eventually freed on bond in 1997, pending an unprecedented fourth capital murder trial. But days before it would begin, prosecutors came to him with a plea bargain: plead "no contest" and walk free. He could maintain his innocence while the state could maintain its conviction. However, while he would be free, he would not be exonerated. Terrified of going back to death row, he took the deal.

In the aftermath, he became a criminal justice cause célèbre. He wrote *Chasing Justice,* a book about his experience. He was a subject of a popular play and movie called *The Exonerated*. Now, he gives speeches, pals around with anti-death penalty celebrities, and travels the world giving inspirational talks to teenagers. In Dublin he's a hero. In Tyler he's still a convicted killer.

But that could all change after Monday, June 6. In a Smith County courtroom, Cook's attorneys from the Innocence Project and the Innocence Project of Texas will present shocking new evidence that finally gives him a chance to, if not prove his innocence, at least show that someone else was a much more likely person to have killed Linda Jo Edwards. Someone with the means, motive, and opportunity to kill her. Someone who modern DNA tests prove left his semen on her panties. Someone who recently admitted having sex with Edwards on the day before she died. Someone who felt she had ruined his life. Someone who was seen in her room not long before she was murdered. Someone who we now know positively was not Kerry Max Cook.

Someone like James Mayfield.

Everyone who gets sent to the Texas death row has a story, and each convict's is unique in its own way. But no one has a story like Kerry Max Cook, which I wrote about in September 2015:

From 1978 to 1994, prosecutors took Cook to court three times, even though they

didn't have much evidence: fingerprints on a patio door, a jailhouse informant who said that Cook told him he killed her, the recollections of a gay man who said that on the night of the murder, he and Cook had had sex and watched a movie that involved a cat torture scene. Prosecutors came up with the bizarre but effective theory that Cook, whom they said was a latent homosexual, was aroused by the torture scene and then left the apartment and raped and killed Edwards, cutting off body parts, which he then stuffed in a stocking of hers that had gone missing.

But all of the evidence used against Cook proved to be problematic or downright fraudulent. It turned out that three different witnesses had testified to a grand jury that Cook told them he had met Edwards three days before the murder and had gone to her apartment, where they made out on the couch, which explained the fingerprints (prosecutors didn't tell the defense about the witnesses). The jailhouse snitch confessed that he lied because he had been offered a reduced sentence for his own murder conviction. The man who testified he'd had sex with Cook had previously told a grand jury there was no sex—and that Cook had ignored the movie in the first place. And the missing stocking that was supposed to be full of souvenir body parts was found in 1992 rolled up in a pants leg of Edwards' jeans by a juror who'd asked to look closely at the trial exhibits—fifteen years after the murder.

Cook's first conviction, in 1978, was overturned on a technicality. The second trial, in 1992, ended in a mistrial. The third trial, in 1994, led to a second guilty verdict and death sentence, but in 1996 the Court of Criminal Appeals overturned it too, thundering that "prosecutorial and police misconduct has tainted this entire matter from the outset." A concurring opinion said, "The state's misconduct in this case does not consist of an isolated incident or the doing of a police officer, but consists of the deliberate misconduct by members of the bar, representing the state, over a fourteen-year period—from the initial discovery proceedings in 1977, through the first trial in 1978, and continuing with the concealment of the misconduct until 1992."

It looked like Cook was finally on his way to exoneration, and he was released on bond in 1997. But Smith County wasn't finished and set about trying him for a record fourth time. As the February 1999 trial date approached, prosecutors made him an offer: plead guilty in exchange for 20 years (which he had already served), and the charges would be dropped. Cook refused. He was innocent, he said.

Then, on February 4, a DPS analyst, examining Edwards' underwear, found a previously unseen semen stain; the state moved to run modern DNA testing on the stain as well as a hair found on her buttock. According to reporter David Hanners of the *Dallas Morning News*, Assistant DA David Dobbs told him that the semen "could only have been left by the killer." On the morning of jury selection, the DA shocked Cook with a final offer: plead no-contest and the case would be dismissed. Such a plea had never been allowed in a Texas death penalty case before, but with it, Cook could maintain his innocence (even though he wouldn't be legally exonerated), while the state would keep its conviction. Cook's advisors—suspicious that prosecutors were panicking because they knew his DNA would not be found in the sample–urged him to go to trial. Cook, though, terrified of going before a Smith County jury again and returning to death row, took the plea.

He should have waited. The DNA results came back two months later, and, as Cook had always insisted, it wasn't him. In fact, the semen came from Mayfield.

Cook was ecstatic, but the Smith County DA's office now said that they just confirmed what everyone knew—Edwards and Mayfield had a sexual relationship. Though Dobbs had told Hanners the DNA was essentially the smoking gun, now he told another reporter, "It's irrelevant. Cook has been convicted of the murder." And indeed he had.

Cook tried to move on with his life—and had a terrible time of it. He was free but still had a murder conviction on his record. "I couldn't get a job, couldn't sign a lease," he said later. "We've had to move five times because people would find out about me. One woman threatened to put up posters in the neighborhood saying 'Convicted murderer lives here.'" He couldn't vote, own a gun, or run for office. In 2009 Cook befriended Marc McPeak, a civil lawyer who offered to help him. Three years later,

McPeak, working with Dallas lawyer and Innocence Project of Texas member Gary Udashen, filed for DNA testing on other crime scene evidence—including a bloody knife. The lawyers also moved to recuse the judge who would rule on the testing. That judge was Jack Skeen, who had prosecuted Cook twice. Judge John Ovard okayed the testing and the recusal, sending all further matters to be decided by fellow Smith County district judge Christi Kennedy.

Next Udashen contacted the Innocence Project, which has used DNA testing to exonerate more than 300 people nationwide. Fifteen items from the crime scene, including Edwards' stained bra, her jeans, cigarette butts, and blood on the knife, were sent to Cellmark Forensics lab near Dallas. They were tested over the next two and a half years; the final results came in March. The results corroborated the 1999 findings: None of Cook's DNA was found on anything at the crime scene. More elaborate DNA testing on the underwear, though, got an even stronger profile of Mayfield.

That DNA evidence, tested in 2014 (20 years after Cook's last trial and 15 after his no contest plea) has never been introduced into a court. And so, last year, Cook's lawyers filed a writ of habeas corpus, using it to claim Cook is innocent. They are also basing a claim on Texas's recently passed "junk science statute," which allows petitioners to use new forensic science to successfully attack a conviction. If a petitioner can show that, with the new scientific evidence, it's more likely than not that a jury wouldn't have convicted him, he can be awarded a new trial. It's obvious, Cook's lawyers said, that if the jury had seen that the semen belonged to Edwards' ex-boyfriend, Cook would have been found not guilty. The lawyers also allege that the prosecutors knew when they offered the no contest plea that Mayfield's DNA profile would be in the semen, not Cook's, either because Mayfield or his attorney told them or they had a preliminary report from the lab.

The state fought back against Cook's charges when it filed a response in November. Cook is not in prison, the state said, and so a district court in Smith County has no jurisdiction; besides, he's made a good life out of his status and has "pursued a career as an 'author,' 'lecturer,' 'lobbyist,' 'entertainer,' and an 'international celebrity.'" He also waited too long to file his writ—16 years—and a bunch of witnesses are dead or

missing. Plus, the state argued, Cook knowingly took that plea bargain in 1999, so he has to live with it; and he was on record saying he knew the results wouldn't point to him anyway.

As for the DNA evidence, the state asserted that it isn't new (the 2014 results were essentially the same as the results from 1999), and also that the evidence didn't tell us anything we didn't already know: Mayfield and Edwards had a sexual relationship. "It is impossible to determine scientifically when Mayfield's DNA was placed on the victim's underwear." In addition, the brief asserted that there was other evidence of Cook's guilt, and pointed to how Rudolph had pointed to Cook in court as the man she saw in Edwards' room that night.

Earlier this year, the dramatic case got even more drama. In January Udashen filed a motion for the Smith County DA's office to provide any exculpatory evidence it hadn't provided before; DA Matt Bingham, who was elected in 2004 and never worked on the Cook case, offered up the entire case file, 50 boxes. This spring, Udashen and his partner, Bruce Anton, drove to Tyler three times and made copies of files. They found several pieces of evidence they didn't know about—and one was explosive.

It was a police report filed in 1991 by Tyler PD detective Eric Liptak. Rudolph, Liptak wrote, told police she "thought" the man in the apartment was Mayfield. But Liptak went on: "Ms. Rudolph did later state that [t]he man she saw was Mr. Mayfield but that was after extensive questioning by Mr. Thompson, the lead prosecutor in the case." In other words, according to the report, the lead prosecutor knew that Rudolph originally identified Mayfield as the man in the apartment. But prosecutors never gave Liptak's report to the defense, as they are required to do. They never corrected Rudolph on the stand when she said she'd never identified Mayfield, nor did they correct her when she identified Cook at the trial as the man she saw in Edwards' room.

All roads led to Mayfield, Udashen and Anton thought, a man who had never been properly investigated back in 1977. Even in the early days of the investigation, when Mayfield's status as the boyfriend of the victim should have triggered a more intense

investigative response, police had steered away from him. Perhaps it was because Mayfield's lawyer, Buck Files, had refused their request for polygraphs of both Mayfield and his daughter—and then, just six days after the murder, cut off all further questioning of the Mayfields. As detective Eddie Clark later wrote in a police report, Files "didn't want anyone else talking to his clients." By then, police were looking for a "pathologically hostile" bisexual killer.

Udashen and Anton were certain Mayfield had lied about when he'd last had sex with Edwards—the DNA told them that—but also that Mayfield (or Files) had somehow indicated to prosecutors in 1999 that the semen was his. This spring, the two badgered Bingham, who had never talked to Mayfield, and the district attorney made the lawyers a highly unusual proposition: Let's all go see what he has to say. Udashen and Anton jumped at the chance. Bingham reached out to Files, Mayfield's attorney, about doing an interview. Bingham would offer immunity from prosecution for anything Mayfield said in the interview. He just had to tell what really happened back in 1977. Mayfield agreed.

The interview was held April 5 at Mayfield's home in Houston. Udashen and Bingham asked questions, and Mayfield, whose wife sat in on the interview, gave answers. He had told some of this before, back in 1977 and 1992: how he had promised Edwards he would divorce his wife—and even filed for divorce—and how he and the younger woman had even moved in together at the Embarcadero Apartments, on May 13, and how his daughter came to his office and made a scene, threatening to kill Edwards if her dad didn't end the affair. How after four days he realized he'd made a big mistake and returned home, wanting to reconcile with his wife. How upset Edwards had been when he broke it off. How the next day she had tried to commit suicide, taking sleeping pills, and how he had found her unconscious and taken her to the hospital. How afterward he asked Rudolph (who also worked for him at the library) to let Edwards stay at her apartment.

Mayfield said that everybody on campus knew about the suicide attempt, hospitalization, and scandalous affair, which led his boss to ask for his resignation. With his career in shambles, he was determined to save his marriage and even went to a counselor, who told him to stay away from Edwards.

But he couldn't. And then Mayfield revealed that he had indeed lied for 39 years about one of the biggest elements of the case. His admission was made casually, as if it were just one more memory from an indelible afternoon. "The day before she was murdered was my birthday, June the 8th," Mayfield said, "and I had gone to Linda's apartment and we had had sex and then she gave me a bunch of presents." (She gave him a tennis outfit, some shirts and socks, and a watercolor she had painted.) Cook's attorneys were delighted, knowing they were one step closer to corroborating what a prosecutor himself admitted in the past: the semen "could only have been left by the killer."

Mayfield also elaborated on what happened the next day, Edwards' last, how she had called him and seen him multiple times. First she phoned him in the morning and said she wanted to come over to his office and water his plants. Around noon he was sitting with some other faculty members when she approached and asked if they could go somewhere to talk; she suggested Dairy Queen. Mayfield didn't want to go but he did, and at the DQ she told him she wanted to move to a new apartment complex. So later, at 5, the two drove in two cars to go see one she had in mind. Afterward, Mayfield drove home, and between 6:30 and 7, Edwards showed up at his house, in front of his wife, and asked him to help with her car. "My car's not really running right," Mayfield remembered her saying. Within hours, she would be dead.

When Udashen was done with his questions, he felt he had laid out the strongest case yet that Mayfield had both opportunity and motive to kill Edwards: he was the last person seen with her, his DNA was found in her underwear, and he'd lost almost everything—job, career, home (the Mayfields had decided to move to Houston)—because of his affair.

Bingham (who declined to be interviewed) would have none of it, and when it was his turn, he asked Mayfield if he'd told previous prosecutors that the semen was his. "No," Mayfield replied. Bingham asked straight out if Mayfield had killed Edwards. Again the reply was, "No." They were friends, he said, and he was her only support. Bingham asked, "Is there anything about you having intercourse with her that day [June 8] that would have caused a problem with your wife, with you moving to Houston, or with the university that would have ever led you to harm her?" Mayfield

replied, “Good Lord, no.”

Jim McCloskey isn’t so sure about that. In fact, McCloskey, who helps run the New Jersey nonprofit Centurion Ministries, has been waiting for 26 years to hear Mayfield admit he had sex with Edwards on his birthday, and it makes him even more certain that Mayfield killed her. McCloskey took an interest in Cook’s case in 1990. He and his group had had been working to exonerate wrongly convicted inmates since 1983 (Centurion’s work had, in 1990, helped exonerate Clarence Brandley, an inmate on the Texas death row) and when Cook wrote McCloskey asking for help, McCloskey began investigating.

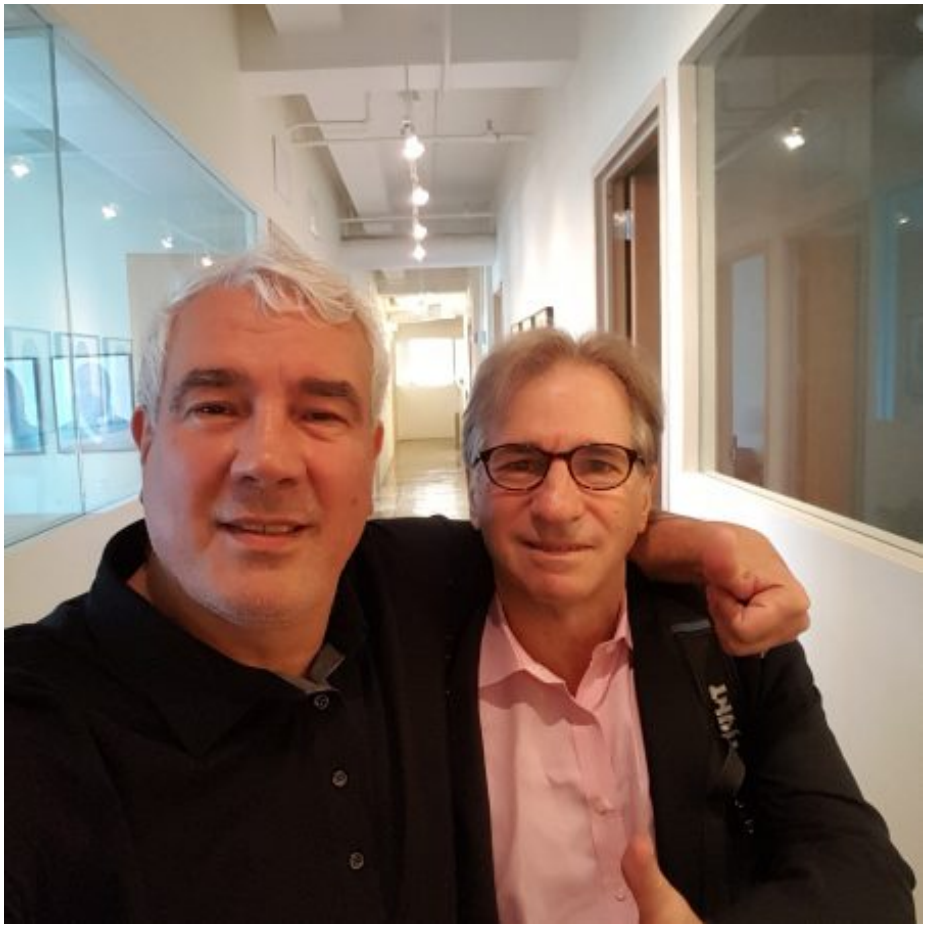
What he found amazed him. No one had ever seriously investigated Mayfield. McCloskey interviewed more than 50 of Mayfield’s friends, neighbors, relatives, and colleagues, and took affidavits from some of them. None, McCloskey wrote, had been interviewed one-on-one by Tyler police, a sign, he said, of just how shabby the investigation was. McCloskey put together a report, pointedly titled, *Why Centurion Ministries Believes James Mayfield Killed Linda Jo Edwards.* “Remarkably,” he wrote, “these people who knew Mayfield at different times and through different means of association, almost to a person believe that Mayfield not only had the capacity to kill, but could very well have killed Linda Jo Edwards.” Mayfield’s distinctive personality trait, McCloskey found, was a fiery temper, likened to “a volcano” by one witness and “an electrical capacitor” by another. Mayfield, one witness said, was a guy who would “shake with red hot and glassy rage.” McCloskey interviewed nine women who had worked with Mayfield and wrote, “Eight described Mayfield as a vindictive, abusive, evil, and sick personality whose mood swings were unpredictable and frequent.” One of the women said, “We at the library were afraid after the murder because we suspected Mayfield of killing Linda.”

As for Mayfield’s motive, McCloskey found plenty of evidence to back up his theory that Edwards was obsessed with Mayfield and possibly stalking him. His secretary said that Edwards “totally worshipped Mayfield until the very end. There was nothing that she would not do for him.” Another co-worker said that, during the period after Mayfield returned to his wife, Edwards said out loud two or three times, “I am going to get him back, no matter what.”

McCloskey also got an affidavit from Frederick Mears, a psychology professor at UT Tyler (formerly Texas Eastern), who said that he'd found a book in the library called *The Sexual Criminal: A Psychoanalytical Study,* which contained graphic photos of victims of sex crimes. Mears stated that Mayfield had ordered the book sometime in 1976 and another professor confirmed that Mears had complained to him about Mayfield doing so (Mayfield denied ordering it). The injuries in several of the photos, McCloskey said, mirrored the injuries Edwards suffered. He wondered if Mayfield had used it as a textbook for murder.

McCloskey didn't keep his research a secret—in fact, it was the backbone of Cook's defense in both his 1992 and 1994 trials, where his lawyers asserted that Mayfield was the actual killer. Today, in light of the recent interview and the police report confirming Mayfield's presence in Edwards' apartment, McCloskey is more certain than ever that Mayfield was the killer: "Linda Jo still loved Mayfield," he says. "She knew she could seduce him and bring him back through their sexual addiction. So she invites him to the apartment on June 8–his 44th birthday–and showers him with gifts and they have sex. The next day she visits him four times. In his mind she won't go away. His narcissism blames her for destroying everything he holds dear–family, career, his entire way of life, yet he knows he can't resist her if she is nearby. In the interview he concedes she might follow him to Houston. If she does, the turmoil and turbulence in his life will never end. So he snaps and ends it by destroying that which he believes destroyed him."

All of that is just a theory, of course. But it seems to be more coherent than the one offered by the state back in 1978, one that has been factually dismantled ever since, the one saying that Cook, after having gay sex on his couch, was so aroused watching a cat-torture scene in a Kris Kristofferson movie on the TV that he left and went to Edwards' apartment and butchered her in a state of frenzy.



Cook, with Barry Scheck of the Innocence Project.

It's exceedingly difficult to win on a habeas writ, especially in a death case. But Cook, helped by the powerful Innocence Project, seems to have his best shot at vindication—and maybe a finding of actual innocence. Partly this is because of the overwhelming new and uncovered evidence that Cook didn't kill Edwards—and that maybe Mayfield did. The judge doesn't have to find that Cook's lawyers proved Mayfield killed Edwards—all he has to do is find that, with the new evidence, no jury would have convicted Cook.

Another reason Cook stands a chance is that the judge in the case is not from Smith County or Tyler, a small town with a very tight legal community, many of the members of which have connections to this troubling case. Consider the county's four district court judges, one of whom is Jack Skeen, who prosecuted Cook in 1992 and 1994. Another judge is Carole Clark, who is married to the prosecutor in Cook's first trial, A.D. Clark III. The judge who was originally set to adjudicate Cook's habeas writ was Christi Kennedy, whose late husband Richard was an assistant DA under

Skeen. Cook's lawyers asked Kennedy to recuse herself and she did, in September.

The new judge, Jack Carter from Texarkana, retired in 2014 from the Sixth District Court of Appeals, which handled appeals from 19 different northeast Texas counties—but not Smith. After the hearing he will make recommendation to the CCA on whether to turn down the writ or grant it—and if so, whether to recommend Cook should get a new trial or be found innocent.

Cook, who lives in Toms River, New Jersey, with his wife and son, will be in attendance, as will several of the men who prosecuted him and investigated his case. Cook hasn't seen any of them since he was freed in 1997. Mayfield will be there too, with his wife and daughter. McCloskey will make the trip as well. They'll testify and tell their stories, which should take the better part of a week. If there's any justice in this world, the hearing will conclude on Friday, June 10, which is the 39th anniversary of the murder of Linda Jo Edwards.

Tags: CRIMINAL JUSTICE, KERRY MAX COOK

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Article from the Star Telegram:
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Our press release:

With Consent of the Tarrant County District Attorney, Texas Court Frees Man Who Served 19 Years of a Life Sentence for Murder

New Technology Shows That Innocence Project Client Was Not Source of Bloody Palm Print at Crime Scene, and Prosecutors Agree That Critical Information About Informant Witnesses Was Never Disclosed to Defense

(Fort Worth, Texas – May 17, 2016) With the consent of Tarrant County Criminal District Attorney Sharen Wilson, a Texas Judge today filed an order recommending that the 1998 murder conviction of John Earl Nolley be vacated. The judge then ordered that Nolley be released on bond and allowed to return to live with his family after serving 19 years in prison for a murder he has always maintained he did not commit.

In July 2016, six months after taking office, District Attorney Wilson established her office's first Conviction Integrity Unit ("CIU"). The CIU collaborated with the Innocence Project and Fort Worth attorney Reagan Wynn in reinvestigating the 1996 murder of Sharon McLane. The collaboration netted new evidence using new forensic technology revealing that Nolley was not the source of a bloody palm print found on a piece of paper recovered on the victim's body. The CIU also discovered and turned over numerous pieces of previously undisclosed evidence significantly discrediting the testimony of two informants (both of whom were facing criminal charges during the original murder investigation) who had claimed to have critical evidence supporting the state's case at trial. The case is the first conviction that the newly formed Conviction Integrity Unit has recommended be reversed.

"We are incredibly grateful to District Attorney Sharen Wilson and her conviction integrity unit, which was cooperative, thorough and committed to reinvestigating this case with fresh eyes," said Nina Morrison, a senior staff attorney with the Innocence Project, which is based in New York and affiliated with Cardozo School of Law. "No stone was left unturned in this investigation, and it is because of the Unit's commitment to seeking the truth that Mr. Nolley's conviction was reversed today."

McLane's body was found brutally stabbed to death in her home on Saturday, December 14, 1996. Her body was partially clothed, indicating that she had been the victim of an actual or attempted sexual assault. The murder occurred sometime after she finished her shift at the Advantage Rent-A-Car on Wednesday, December 11th. The evening of the 11th, Nolley, who was good friends with McLane and had recently hosted her at a Thanksgiving celebration with his fiancée Amy Degeer, visited McLane sometime shortly after 9 PM. They shared a few beers and smoked marijuana that Nolley, who sold marijuana to supplement his income at a pet supply company, brought with him. Nolley's fiancée, Degeer, reported that he returned home at approximately11:15 PM and there was nothing unusual about his clothing or demeanor when he arrived. At approximately 11 PM, McLane had a phone conversation with a man living in Salt Lake City who she was dating. He later described her as having been in "good" spirits.

The following day, a married couple who lived in the apartment complex, heard what they described at trial as "blood-curdling screams" of an adult female coming from the direction of McLane's apartment at slightly after 3 pm. Approximately 15 to 30 minutes later, the husband observed an unfamiliar tall white man wearing a black cowboy hat walking out of the breezeway adjacent to McLane's apartment. A neighbor and maintenance worker also saw a man fitting that description 15 to 20 feet from McLane's apartment. Nolley is African American and was working at this time. After she didn't show up for work on Saturday, December 14, a friend was dispatched to her apartment to look for her and her body was found as well as three bloody knives and piece of paper with a bloody palm print.

Although police were initially convinced that the assailant was likely the male in the cowboy hat who had been observed, Nolley became a suspect because he had called a friend's pager from McLane's phone and the friend had responded with message to the victim's answering machine. While not initially forthcoming about having seen the victim that evening, Nolley eventually gave a voluntarily statement acknowledging his visit with the victim and explaining that he had initially lied to police because he was afraid to admit that he had sold her marijuana.

Other than a beer bottle (which Nolley had already informed police about) that was found in the victim's trash containing a fingerprint matching Nolley, there was no physical evidence linking him to the crime. Nevertheless, he was charged and convicted of the crime based largely on the testimony of three informants. John O'Brien, who had a long criminal record, claimed that Nolley confessed to him while they were both in the jail law library. The alleged confession, however, didn't not match the crime. O'Brien claimed that the murder was committed in the course of a robbery, but there was no

evidence that any of McLane's property was stolen and police had immediately ruled out robbery as a motive. Two other witnesses, Jason Vandergriff, a former high school teammate of Nolley's, and Delinda Garza, Vandergriff's girlfriend, claimed that he made inclupatory statements and acted suspiciously regarding a pair of bloody shoes. On the stand, however, Vandergriff acknowledges that Nolley maintained his innocence of the crime, and police never recovered the bloody shoes that Vandergriff and Garza claimed Nolley took great pains to conceal at another person's apartment.

After his conviction, Nolley sought the help of the Innocence Project, which brought the case to the Tarrant County District Attorney's conviction integrity unity. With the support of the D.A.'s office, an expert using new digital technology that wasn't available at the time of the trial examined the bloody palm print on the paper found on the victim's body and concluded that it didn't come from Nolley. The print also didn't match to any of areas of McLane's palm or hand for which "clear and complete impressions were recorded at autopsy," indicating that she was also likely not the source. In his writ application filed last month, Nolley argued that this was powerful new scientific evidence that the crime was committed by someone else. After reviewing the new evidence, DA Wilson's office agreed that the new print evidence was so significant that it would likely have led the jury to find Nolley not guilty had it been available at his trial.

A review of the prosecutor's files also revealed critical new information that directly contradicted testimony given by O'Brien and Vandergriff. With respect to O'Brien, a jailhouse informant, the CIU located numerous documents contained in other files in the District Attorney's office revealing that O'Brien had been a State informant in numerous other cases, and lied to the jury when he claimed that he had never "snitched" on anyone but Nolley, nor had he even "offered to" do so. The CIU also discovered that Vandergriff gave starkly contradictory testimony before the grand jury about the inculpatory statement that Nolley allegedly made (telling the grand jury that Nolley had never indicated he had "cut" or stabbed anyone, while claiming he had admitted to doing so at trial).

The parties have also conducted DNA testing of multiple pieces of crime scene evidence using new technology. Because the DNA testing is ongoing, the court was not asked to rule on the DNA issues in the case until all the testing is completed.

"False informant testimony has contributed to nearly 15 percent of the 341 DNA exonerations, yet there are very few policies in place around the nation to make this deeply flawed evidence more reliable," said Barry Scheck, Co-Director of the Innocence Project. "As a leader in wrongful conviction reform, we look to Texas to put meaningful safeguards in place to prevent this evidence from causing further injustice."

The Tim Cole Innocence Commission is scheduled meet later this year to address the issue of jailhouse informant testimony and its role in causing wrongful convictions. The Innocence Project has urged the Commission to consider, among other things, how prosecutors' offices can develop systems to make sure that exculpatory information which effects the credibility of a jailhouse informant (called "impeachment" information) is shared among prosecutors in an office and is turned over to the defense in a timely fashion. In Nolley's case, the undisclosed information was not contained in the DA's trial file and the state has indicated that it does not believe that the prosecutors in the Nolley case knew about it at the time. Under Texas law, however, the state is obligated to turn over any such information known to any prosecutor or other state official.

In today's proceeding, Tarrant County District Judge Louis Sturns issued findings of fact and conclusions of law, and recommended that Nolley's convictions be overturned. Specifically, the court found that based on the new palm print evidence, Nolley is entitled to relief under a new statute enabling the wrongly convicted to challenge their convictions based on advances in science and technology. At the time of Nolley's trial, the print was not suitable for comparison. The court also found that the conviction should be reversed based on the failure of the prosecution to disclose exculpatory information regarding the informants. These findings will now go before the Texas Court of Criminal Appeals for review.

"Advances in science and technology are helping to make criminal prosecutions more accurate," said Reagan Wynn, who served as local counsel for Nolley. "Mr. Nolley's case affirms the Texas legislature's decision to recognize that these same advances can be meaningful in exposing injustice where that advanced technology wasn't previously available, by giving the wrongly convicted a way to get back into court and present that new evidence."

Nolley was surrounded by family members and local exonerees when he was released from custody for the first time in 19 years. His family members present included his sister, a nurse in Tarrant County; his two grown sons, who were toddlers when he went to prison; and two grandchildren.

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EDITORIALS

Video needed for police interrogations

Express-News Editorial Board | *March 28, 2016*

Photo: RODOLFO GONZALEZ /AP

Christopher Ochoa, hugs his mother, after he was ordered freed, in Austin in 2001. Faced with new DNA evidence turned up by a group of law students, the judge ordered the release of Ochoa who said police coerced him into confessing to 1988 murder. Interrogations should be recorded. less

If Texas lawmakers are serious about reducing the number of wrongful convictions, they need to move forward on a state law mandating the videotaping of police interrogations with suspects.

Some 20 states and the District of Columbia have such laws on the books. In Texas, failure by the Legislature to address the issue has left the state with a patchwork of local rules and regulations. This mishmash of policies affects the type of justice criminal suspects receive, and a uniform rule is needed to level the playing field.

False confessions are one of the leading causes of wrongful convictions, yet attempts to pass a bill requiring the videotaping of confessions have failed during last three legislative sessions.

Why would anyone fabricate a confession that would result in incarceration? Christopher Ochoa, who served 12 years for murder before being exonerated, presented a compelling case during the last meeting of the Timothy Cole Exoneration Review Commission in Austin.

Ochoa was 22 in 1988 when he and his roommate became suspects in the rape and murder of a Pizza Hut employee in Austin. Ochoa said that just to end the ordeal, he let himself be coerced by police interrogators into making a detailed confession using information they suggested to him. At one point during the multiple days of questioning, Ochoa said, an investigator kept rewinding and recording his statement until he correctly guessed the color of an item they wanted him to identify.

Later, he tried to tell his defense lawyers the confession was false, but they instead harassed his mother so she could get him to enter a plea. Ochoa agreed to plead guilty only after his mother suffered a medical setback due to the stress.

Ochoa was released from prison in 2001 after another man confessed to the crime. He is now a lawyer in Wisconsin and serves on the Wisconsin Innocence Advisory Board.

Today, about two-thirds of Texas law enforcement agencies record some of their interrogations. The debate should not be whether the state needs a law requiring that interrogations of suspects be recorded but on the types of crime it should cover.

Videos from dashboard cameras, body cameras and even personal mobile phones have proven to be key in many high-profile cases. They protect both the defendants and law enforcement officers.

Texas has one of the highest wrongful conviction rates in the country. Just in the three months between the Timothy Cole Exoneration Review Commission's meeting in December and the meeting this month, seven exonerations occurred in the state. Six were drug cases and one was a sexual assault.

The state is finally making some inroads on reviewing allegations of wrongful convictions because of prosecutorial conviction integrity units.

It's time to step up the efforts on the front end and reduce the opportunity for those wrongful convictions to happen in the first place.

LAW AND ORDER

Filmed interrogations benefit both innocent suspects and police

By Thomas P. Sullivan, April 14, 2016

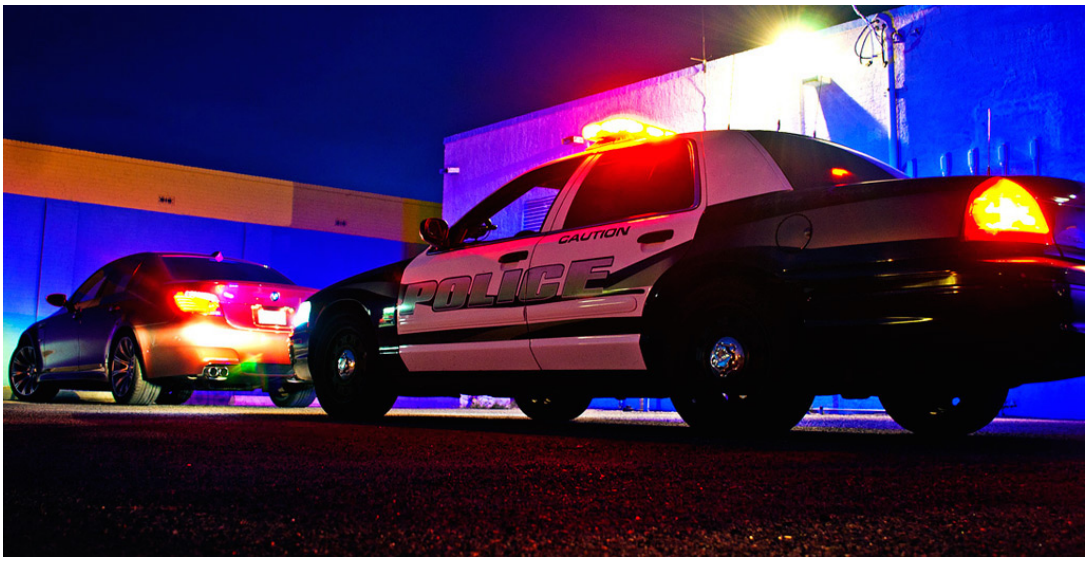

Photo by Otis Blank

The Timothy Cole Exoneration Review Commission is currently considering ways to address Texas' high rate of wrongful convictions. As a former United States attorney in Chicago and courtroom advocate for over 60 years, I've seen how evidence-based investigative practices help law enforcement, protect the innocent, and convict the guilty. Hundreds of police and sheriffs' agencies from across the country have found electronic recording of suspect interviews extremely beneficial to their work.

For these reasons, the Cole Commission should recommend a state law requiring audiovisual recording of criminal suspects being questioned in police facilities.

My interest in this issue began in 2000 when I served as co-chair of a Governor's Commission in Illinois that examined ways to improve the fairness, accuracy and justice of the state's capital punishment system. Nearly all the literature we reviewed had a common theme from the defense lawyers' perspective: Recording prevents police from using coercive tactics and misstating what suspects said and did. But what did police think about the practice?

To answer this question, my legal associates and I have spoken with and obtained answers to survey questionnaires from police and sheriffs in every state about their

experiences with electronic recording of custodial interrogations of suspects. We have found uniform enthusiastic support for the practice, including from more than 40 departments in Texas.

For example, a detective with the Travis County Sheriff's Office said recordings "have afforded me the opportunity to review the interviews and observe signs missed during the interviews." Smaller Texas agencies concur: An Alamo Heights officer said, "Prosecutors prefer video confessions. After review of video, we can improve our questioning." All other agencies that we spoke to in Texas, including the Houston Police Department, reported that the practice was beneficial.

Officers from other Texas agencies agreed that recording interrogations strengthened their cases, improved officer training and protected against defense challenges in court and that videotaping did not disrupt questioning or cause suspects to stop responding.

It is therefore not surprising that a recent poll conducted by the Cole Commission found that two-thirds of Texas law enforcement agencies are already recording custodial interrogations of suspects of various crimes. However, they are doing so without a uniform procedure, meaning it's done at the agencies' discretion about which instances warrant recording and when the tape can be started and stopped.

Accordingly, it is important to have a law with uniform application throughout the state requiring all Texas law enforcement agencies to follow the same practices and videotape custodial interviews of all persons suspected of the crimes designated in the statute. Considering the availability of low-priced digital recorders and the equipment already in place, the cost will be minimal, but the benefits great.

There are now mandatory recording laws in more than 20 states, which have saved vast amounts of taxpayer dollars by discouraging frivolous lawsuits alleging officer misconduct, reducing the need for costly pre-trial hearings on motions to suppress confessions and lowering the risk of large civil damages awards for wrongful convictions.

Truth and transparency prevent wrongful convictions and increase public confidence in the integrity and fairness of our criminal justice systems. The Cole Commission will take a major step in improving protections for both innocent suspects and the state's honorable law enforcement officers by recommending enactment of a law requiring that all custodial interrogations conducted in police facilities, relating to specified crimes, be memorialized on videotape.

Thomas P. Sullivan

Former United States Attorney

Panel mulls recording of police interrogations

Seeking to prevent wrongful convictions, commission eyes patchwork of regulations

By Bobby Cervantes | March 21, 2016 | Updated: March 22, 2016 12:09pm

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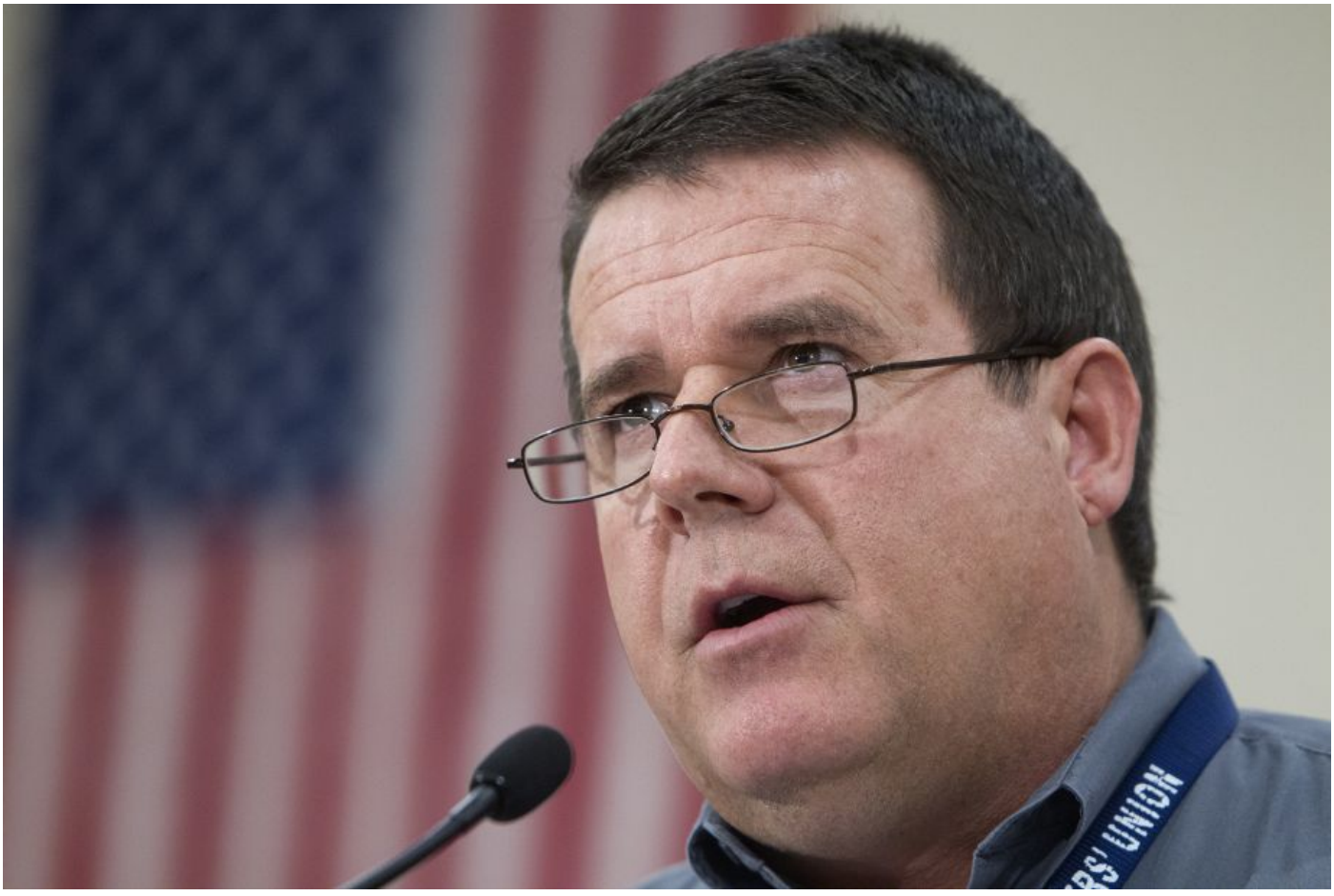

Photo: Cody Duty, Staff

Houston Police Officers' Union president Ray Hunt speaks during a news conference at the Houston Police Officers' Union on Tuesday.

AUSTIN – The effort to slash Texas' wrongful-conviction rate, which remains the highest in the nation, is leading to familiar territory for state lawmakers: a years-old fight over whether police interrogations should be recorded.

The topic – long at the center of several legislative battles between prosecutors, cops and defense lawyers – has emerged as a consensus issue for the Timothy Cole Exoneration Review Commission to address. Cole died in 1999 from an asthma attack in prison while serving a 25-year sentence for a wrongful conviction in Lubbock County and was exonerated posthumously through DNA testing a decade later.

The 11-member board of lawmakers and lawyers, which will meet for the third time Tuesday, has until December to make its recommendations. It is expected to focus on a host of proposals this year, including eyewitness identification and informant regulation, but the issue of recording custodial interrogations has bedeviled lawmakers since at least 2009.

Since then, various criminal justice reforms have won bipartisan approval, but the absence of a state law on recording police interviews has created a patchwork system in Texas in which police in some areas record some interrogations while others do not, leaving authorities with wide discretion about which parts of an interview to record or whether certain criminal investigations should prompt a recording at all.

Under Texas law, written statements from someone interrogated by police can be admitted as evidence, but there is no legal requirement to record such interviews.

Could also help police

Twenty-one states, including the District of Columbia, have a statue or a rule relating to electronic recording of in-custody interrogations, each with various guidelines on which offenses require such recordings, according to research by the state's Office of Court Administration.

"False confessions made to the police by innocent suspects are a leading cause of wrongful convictions," said Mike Ware, executive director of the Innocence Project of Texas, who is a nonvoting member of the commission. "We have provided testimony in favor of legislation mandating such recording in the past three legislative sessions."

Much of the panel's discussion has included ways a statewide measure would protect police and defendants alike. A video record would allow judges and juries to determine, beyond written statements, whether police used coercive techniques that are more likely to produce false confessions.

A recording also could help police departments challenge allegations of misconduct against its officers, some on the panel have argued. The arguments echo those considered by lawmakers last year when they approved $10 million in state grants aimed at helping police departments offset the cost of body cameras for their officers.

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That argument, however, has not convinced Ray Hunt, president of the Houston Police Officers' Union, who said no one on the commission has reached out to him or his organization.

While he is not opposed to recording parts of interrogations, such as defendants' confessions, Hunt said mandating that investigators record hours of interviews, some of which could stretch on for days in complex cases, would be detrimental to police work.

"I would not want a person reviewing all our interrogations and writing a how-to book to never get arrested," he said. "We're not talking about waterboarding, but simply techniques in interviewing."

What gets recorded?

Some interrogations, for example, happen at crime scenes or in a patrol car, in which case recording equipment would have to be outfitted nearly everywhere.

"To put that burden on the investigators for every bit of recording, you're not going to ever get crimes solved," Hunt said.

One proposal would mirror the legislature's work on a 2011 law regarding eyewitness identifications. That law requires police departments to have written, accessible policies about how they would conduct identification procedures, but does not require them to adopt specific procedures.

Defense lawyers and others who have worked on wrongful conviction cases have balked at the same idea applying to the recording issue.

"The law, as it exists, would not have prevented any of the wrongful convictions Texas has had, due to mistaken eyewitness identification, even if it had been in existence when those cases were originally investigated and tried," Ware said.

Amanda Marzullo, policy director for the Texas Defender Service, said the law enforcement community has lobbied legislators for years to resist mandating the

recordings and offered her own wish list to the committee.

"I would like it done with all felony investigations and not limit it major felonies," she said of the recordings. "I could count almost any question in my definition of an interrogation."

Bobby Cervantes

Austin Bureau
Reporter, Houston
Chronicle

GRITS FOR BREAKFAST

WELCOME TO TEXAS JUSTICE: YOU MIGHT BEAT THE RAP, BUT YOU WON'T BEAT THE RIDE.

TUESDAY, APRIL 12, 2016

State data solution makes most financial sense for agencies deploying bodycams

Sometimes, "big government" solutions make the most sense.

Taser International's body-camera data processing service, Evidence.com, may cost twice as much as the state plans to charge local agencies for the same service through the Department of Information Resources.

The El Paso Times (April 11) reported the most I've seen about Taser's cost structure for its body camera service. Here are the details of a contract the commissioners court in El Paso is considering:

> The company offers 397 tasers, 250 body cameras, and a five-year contract for data storage that will hold the body-camera videos, taser videos, the sheriff's in-car videos, and any interview camera videos that the department collects in criminal investigations, all for $1.7 million. The amount includes $331,000 a year for video storage.

So, $1,655,000 of the $1.7 million in Taser's proposed body camera contract would go for information services, not equipment. If the cost for data management is $331,000 per year for 250 cameras, that's comes out to about $1,324 per unit per year. (The county will delay approval of the contract so they consider it during their regular budgeting process over the summer.)

There is, however, a less expensive option. Dale Richardson of the state Department of Information Resources, told a legislative committee recently that his agency plans to leverage the state's two data centers to provide video storage services for bodycams and other law-enforcement video. They're creating a "vendor agnostic" platform which would allow sharing data across agencies. Local departments would have a device on

site where video footage from body cameras and dash cameras could be uploaded. DIR would store the video, back it up, and supply the necessary information management tools to make the data useful.

Richardson told the committee the program would be subscription-based and cost about $50 per bodycam per month, or $600 per year, so less than half the amount Taser has offered. Admittedly, the proposed El Paso contract also includes storage of additional video (which the DIR can also support), but the Taser-and-interrogation videos will take up de minimis space, and dashcam footage isn't nearly as voluminous as bodycams. Most of that cost is for the bodycam service.

What's more, because they're not a profit making entity, the more agencies which sign up with DIR for this service, the cheaper it could become thanks to economies of scale.

Bottom line, as Grits reported recently based on an analysis of the company's SEC documents, Taser treats bodycams as a loss leader, expecting to make its profits off of long-term data contracts like the one being considered in El Paso. But local agencies might be better served financially by only paying the company for equipment and using the Department of Information Resources' service to manage bodycam video.

To be sure, DIR's role as a repository won't answer every extant question about bodycam data. The agency needs polices to prevent video from being automatically shared with state fusion centers and to keep facial recognition tools from being used to generate large-scale databases about police interactions with the public beyond the video itself. Most people who cops talk to aren't criminals and their privacy should be respected. OTOH, those questions haven't been answered with respect to Taser either, although the company is gaining data storage contracts with many jurisdictions nationwide. It may be easier to regulate data sharing if all the sharing happens through a state agency and is subject to public oversight.

POSTED BY GRITSFORBREAKFAST AT 1:39 PM

LABELS: BODYCAMS, INFORMATION SYSTEMS, POLICE

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Latest Columns

Chris Roberts: How police body cameras could reduce court costs

By CHRIS ROBERTS

Published: 06 June 2016 04:17 PM
Updated: 07 June 2016 11:51 AM

Much of the resistance to outfitting police officers with body-worn cameras seems to have receded. There is a growing consensus among law enforcement, civil rights organizations and the public that the cameras will provide a net benefit for both officers and members of the public.

But there is another benefit that is being overlooked: the impact on the criminal courts.

Many criminal cases come down to a credibility contest between the police and the accused. Police officers often serve as the lone witness in charges such as shoplifting, assault on a police officer and resisting or evading arrest, and these cases unsurprisingly rise and fall with the testimony of the officer. An officer may also be the only person who identifies the suspect who ran from a stolen car. An officer might be the sole source of information that a defendant was seen in possession of illegal drugs or weapons. In my 11 years as a public defender, I saw these types of cases over and over. The less serious cases typically lack forensic corroboration, such as fingerprints or DNA evidence, and they go to trial far more often than one might think.

Some believe – either consciously or subconsciously – that an officer's account is definitive. If the police say something happened, it happened. Why would they lie? But others have little or no trouble believing that there are times when officers exaggerate testimony and even fabricate evidence. Cases that rely heavily on officer testimony go to trial in courthouses all over the

country, at significant financial cost.

And that's where body cameras come into play. If body cameras become standard across the nation, some of these cases will be dismissed or go uncharged when video fails to support the officer's account. Others will end with a quick guilty plea because the footage will constitute overwhelming evidence. Either way, taxpayers will be spared the substantial cost of going to trial.

Many of these cases require court-appointed defense counsel. Unless it is a jurisdiction with a public defender's office, these lawyers are paid more for the work that comes with a trial. In any jurisdiction, officers are paid – often at an overtime rate – when they serve as witnesses, and many of them tend to be present (and on the clock) throughout the trial. Court reporters must be paid to document every aspect of the proceedings. Although jurors aren't paid much, they too receive compensation for their service. Translators must be a part of any trial if anyone involved in the case is a less-than-fluent English speaker.

It's true that body cameras won't provide definitive evidence in every case, but if these cameras are used

more consistently, the parties will be better informed in a significant number of them. Recordings may well become so common that the mere failure of officers to record an incident will change the way jurors, and therefore prosecutors, assess cases.

The end result is that the additional evidence (or potential therefor) will cause these kinds of cases to settle at a far higher rate. Other cases would be resolved prior to trial due to suppression issues if footage shows that stops or searches were not justified.

The criminal justice system provides its own example of how recordings can change the landscape of litigation: Many jurisdictions require that interrogations be recorded. There is little debating what a defendant actually said in the context of a reported "confession" – all involved can hear every word. Defense attorneys have little or no ammunition to attack detectives who properly administer Miranda warnings and conduct their interrogations by the book, while prosecutors have little ability to defend the actions of officers who are captured on video behaving less scrupulously. As a result of the requirement, the statements by defendants in these recorded interrogations require less litigation.

The more widespread use of police body cameras will mean that useful footage will be generated and the system will benefit. In a substantial number of cases, video footage will resolve the age-old credibility contest, eliminating the need for a jury to do so.

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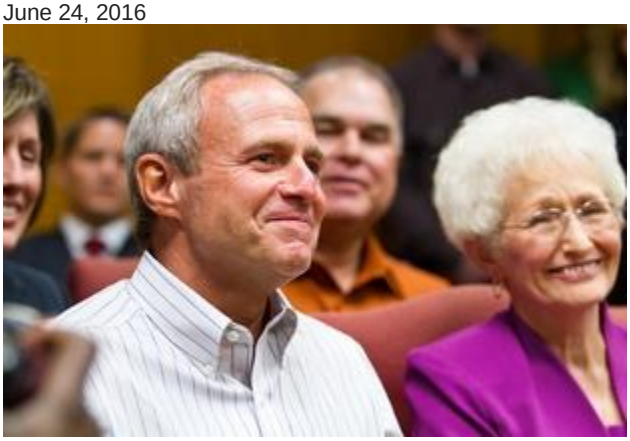
THE TEXAS TRIBUNE

Wrongful Convictions Have Cost Texans More Than $93 Million

- by **Johnathan Silver** and **Lindsay Carbonell**
- June 24, 2016



Enlarge Photo by Callie Richmond
Michael Morton sits beside his mother, Patricia Morton, during an emotional press conference after a judge today agreed to release him on personal bond after he spent nearly 25 years in prison for the murder of his wife. Recently tested DNA indicates another man committed the 1986 killing.

- **REFERENCE MATERIAL**

Exoneree Data from Comptroller's Office (PDF)

PDF (52.7 KB) download

Exoneree Data from Comptroller's Office

CSV (12.9 KB) download

Texas has paid 101 men and women who were wrongfully sent to prison $93.6 million over the past 25 years, according to data from the state comptroller's office. The tab stands to grow as those wrongfully imprisoned individuals age and more people join the list.

Generally, someone whose conviction is thrown out and is declared by a judge, prosecutor or appellate court to be "actually innocent" is eligible for a lump sum payment equal to $80,000 for each year they spent behind bars. In addition, they become eligible for monthly annuity payments for the rest of their lives, unless they are later convicted of a felony.

Texas' compensation program is among the most generous in the nation, though several states have no such laws or cap the total amount an exoneree can be paid, according to the Innocence Project.

The compensation program is based on the Tim Cole Act, legislation enacted in 2009 and named after a former Texas Tech University student wrongfully convicted of aggravated sexual assault in 1985. Before then, the state had a less generous payment structure.

To calculate monthly annuity payments, Social Security Administration actuaries estimate the life expectancy of exonerees, according to the comptroller's office. They receive a monthly payment based on the lump sum they received — plus 5 percent compounded interest — divided by time they're expected to live. Monthly payments stop if an exoneree is convicted of a felony or dies.

As of May 31, Texas had paid exonerees $69.1 million in lump sums and $24.5 million in monthly annuity payments since 1991. Rickey Dale Wyatt, who spent more than 30 years in prison for a Dallas County aggravated rape he did not commit, received the highest paid lump sum at $2.4 million.

Together, these former inmates spent 1,000 years behind bars for crimes they did not commit. More than half of the exonerees served six years or longer in prison. Sixty-eight exonerees were paid lump sums of less than $1 million, while the comptroller's office cut million-dollar or more checks in 33 cases.

High-profile exonerees such as Anthony Graves, who was convicted of capital murder and served 18 years, and Michael Morton, who served 24 years in prison for the murder of his wife, received $1.4 million and nearly $2 million, respectively. Graves had to sue the state for compensation, and Morton's story led to a change in law that mandates prosecutors keep records of and share evidence with defendants.

Several current and former Texas prisoners have fought to clear their names and could one day make the expensive and exclusive list of exonerees.

The Texas Court of Criminal Appeals in 2014 overturned Alfred Dewayne Brown's 2005 murder conviction after telephone records that could have supported his alibi were not shared with the defense. The Harris County district attorney pursued another trial but reviewed the evidence, "came up short" and dropped the case.

But Brown has not been granted compensation because he has not been declared "actually innocent" by a court or the prosecutor's office. His attorney is pressuring the comptroller's office to compensate Brown.

In early June, a Smith County court set aside Kerry Max Cook's conviction. He was accused in 1977 of raping, murdering and mutilating neighbor and acquaintance Linda Jo Edwards and spent 20 years on death row. His next fight is to be declared actually innocent. He points to DNA evidence that rules him out as the culprit.