

overstock.com \$1 Shipping Today

Vlan Du Bernie' \$38.99 Shop More

Banana or Fern Leaf \$24.99 Shop More

Champagne Joseph \$31.99 Shop More

Reason: Now on Apple Newsstand! iPad, iPhone, iPod Touch.

reason.org | reason.com | reason.tv | donate |

Subscribe Mobile About Staff **Archives** Topics Poll Feeds Events Advertise Donate



REASON.TV VIDEO: Is Harrisburg's Nightmare America's Future? (2.16)

REASON.TV VIDEO: "Romney is an echo, not a choice when it comes to Obama" - Nick... (2.15)

REASON.TV VIDEO: Former MTV VJ Kennedy on Her Libertarian Evolution (2.15)

PRINT | EMAIL

Wrongful Convictions

How many innocent Americans are behind bars?

Radley Balko from the *July 2011* issue

When Paul House was finally released from prison in 2008, he was a specter of the man who had been sentenced to death more than 22 years earlier. When I visit his home in Crossville, Tennessee, in March, House's mother Joyce, who has cared for him since his release, points to a photo of House taken the day he was finally allowed to come home. In that photo and others from his last days in prison, House is all of 150 pounds, ashen and drawn, his fragile frame nearly consumed by his wheelchair. In most of the images he looks days away from death, although in one he wears the broad smile of a man finally escaping a long confinement.

overstock.com

Capiello 'Vintage Series I-IV' 4-piece Framed Art \$189.99 Shop More

When House's aunt called to congratulate him on his first day back, his mother handed him her cell phone so he could chat. He inspected the phone, gave her a frustrated look, and asked her to find him one that worked. That kind of Rip Van Winkle moment is common among people freed after a long stint in prison. Dennis Fritz, one of the two wrongly convicted men profiled in John Grisham's 2006 book *The Innocent Man*, talks about nearly calling the police upon seeing someone use an electronic key card the first time he found himself in a hotel after his release. He thought he'd witnessed a burglar use a credit card to jimmy open a door.

"Paul's first meal when he got home was chili verde," Joyce House says. "It's his favorite. And I had been waiting a long time to make it for him." And apparently quite a few meals after that. House, now 49, has put on 75 pounds since his release. More important, he has been getting proper treatment for his advanced-stage multiple sclerosis, treatment the Tennessee prison system hadn't given him.

The years of inadequate care have taken a toll. House can't walk, and he needs help with such basic tasks as bathing, feeding himself, and maneuvering around in his wheelchair. His once distinctively deep voice (which had allegedly been heard by a witness at the crime scene) is now wispy and high-pitched. He spends his time playing computer games and watching game shows.

In the hour or so that I visit with House, his mental facilities fade in and out. Communicating with him can be like trying to listen to a baseball game broadcast by a distant radio station. He will give a slurred but lucid answer to one question, then answer the next one with silence, or with the answer to a

Most Popular Stories

- Viewed Commented Emailed
- Warren Buffett: Baptist and Bootlegger (2.9)
 - President Santorum Would Talk "About the Dangers of Contraception." (2.15)
 - LAUSD Principal Focuses On Real Miramonte Criminals: The Children (2.14)
 - The Most Vile and Inhumane Immigration Story You Will Read This Week (2.15)
 - Who Knew?: European Carbon Market Is An Expensive Failure (2.15)

REASON-RUPE Public Opinion Survey

- Romney Most Electable Candidate, Yet Gingrich in Statistical Tie Among GOP Voters (1.31)
- Explaining Newt's Second Surge (1.26)
- George Washington Would Beat Out Romney as Richest President; John Kerry Would Have, Too (1.25)
- New Poll: Americans Aren't Ready for Another War (1.20)
- 2012 Election Match Up: Romney Wins, Paul Might (1.13)

previous question, or just with a random assortment of words. He frequently falls back on the resigned refrain, "Oh, well," delivered with a shrug. The gesture and phrasing are identical every time he uses them. It's what House says to kill the expectation that he will be able to deliver the words others in the room are waiting for. It's his signal to stop waiting for him and move on.

In 1986 House was convicted of murdering Carolyn Muncey in Union County, Tennessee, a rural part of the state that shoulders Appalachia. He was sentenced to death. His case is a textbook study in wrongful conviction. It includes mishandled evidence, prosecutorial misconduct, bad science, cops with tunnel vision, DNA testing, the near-execution of an innocent man, and an appellate court reluctant to reopen old cases even in the face of new evidence that strongly suggests the jury got it wrong.



House also embodies the tribulations and frustrations that the wrongly convicted encounter once they get out. According to the doctors treating him, his current condition is the direct result of the inadequate care he received in prison. If he is ever granted a formal exoneration—a process that can be as much political as it is judicial—he will be eligible for compensation for his years behind bars, but even then the money comes with vexing conditions and limitations.

Since 1989, DNA testing has freed 268 people who were convicted of crimes they did not commit. There are dozens of other cases, like House's, where DNA strongly suggests innocence but does not conclusively prove it. Convicting and imprisoning an innocent person is arguably the worst thing a government can do to one of its citizens, short of mistakenly executing him. (There's increasing evidence that this has happened too.) Just about everyone agrees that these are unfathomable

ADVERTISEMENTS



[Kindle Fire, Full Color 7" Multi-tou...](#)
Amazon Digital Ser...
Buy New \$199.00
[Buy from amazon.com](#)

[Privacy Information](#)



[Reason](#)
Reason
Buy New
[Buy from amazon.com](#)

[Privacy Information](#)

RIGHT SHIRTS DONE RIGHT



ALCOHOL TOBACCO FIREARMS
... & convenience store, government agent

THOESHIRTS.COM
Ads by Google

tragedies. What is far less clear, and still hotly debated, is what these cases say about the way we administer justice in America, what we owe the wrongly convicted, and how the officials who send innocent people to prison should be held accountable.

How Many Are Innocent?

According to the Innocence Project, an advocacy group that provides legal aid to the wrongly convicted, the average DNA exoneree served 13 years in prison before he or she was freed. Seventeen had been sentenced to death. Remarkably, 67 percent of the exonerated were convicted after 2000, the year that marked the onset of modern DNA testing. Each new exoneration adds more urgency to the question that has hovered over these cases since the first convict was cleared by DNA in 1989: How many more innocent people are waiting to be freed?

Given the soundness of DNA testing, we can be nearly certain that the 268 cleared so far didn't commit the crimes for which they were convicted. There are hundreds of other cases where no DNA evidence exists to definitively establish guilt or innocence, but a prisoner has been freed due to lack of evidence, recantation of eyewitness testimony, or police or prosecutorial misconduct. Those convictions were overturned because there was insufficient evidence to overcome reasonable doubt; it does not necessarily mean the defendant didn't commit the crime. It's unclear whether and how those cases should be factored into any attempt to estimate the number of innocent people in prison.

In a country where there are 15,000 to 20,000 homicides each year, 268 exonerations over two decades may seem like an acceptable margin of error. But reform advocates point out that DNA testing is conclusive only in a small percentage of criminal cases. Testing is helpful only in solving crimes where exchange of DNA is common and significant, mostly rape and murder. (And most murder exonerations have come about because the murder was preceded by a rape that produced testable DNA.) Even within this subset of cases, DNA evidence is not always preserved, nor is it always dispositive to the identity of the perpetrator.

Death penalty cases add urgency to this debate. In a 2007 study published in the *Journal of Criminal Law and Criminology*, the Seton Hall law professor Michael Risinger looked at cases of exoneration for capital murder-rapes between 1982 and 1989, compared them to the total number of murder-rape cases over that period for which DNA would be a factor, and estimated from that data that 3 percent to 5 percent of the people convicted of capital crimes probably are innocent. If Risinger is right, it's still unclear how to extrapolate figures for the larger prison population. Some criminologists argue that there is more pressure on prosecutors and jurors to convict someone, *anyone*, in high-profile murder cases. That would suggest a higher wrongful conviction rate in death penalty cases. But defendants also tend to have better representation in capital cases, and media interest can also mean more scrutiny for police and prosecutors. That could lead to fewer wrongful convictions.

In a study published in the *Journal of Criminal Law and Criminology* in 2005, a team led by University of Michigan law professor Samuel Gross looked at 328 exonerations of people who had been convicted of rape, murder, and other felonies between 1989 and 2003. They found that while those who have been condemned to die make up just 1 percent of the prison population, they account for 22 percent of the exonerated. But does that mean capital cases are more likely to bring a wrongful conviction? Or does it mean the attention and scrutiny that death penalty cases get after conviction—particularly as an execution date nears—make it more likely that wrongful convictions in capital cases will be discovered?

Many states have special public defender offices that take over death penalty cases after a defendant has exhausted his appeals. These offices tend to be well-staffed, with enough funding to hire their own investigators and forensic specialists. That sometimes stands in stark contrast to the public defender offices that handled the same cases at trial. Perversely, this means that in some jurisdictions, a defendant wrongly convicted of murder may be better off with a death sentence than with life in prison.

Even if we were to drop below the floor set in the Risinger study and assume that 2 percent of the 2008 prison population was innocent, that would still mean about 46,000 people have been convicted and incarcerated for crimes they didn't commit. But some skeptics say even that figure is way too high.

Joshua Marquis, the district attorney for Clatsop County, Oregon, is an outspoken critic of the Innocence Project and of academics like Risinger and Gross. He is skeptical of the belief that wrongful

RON PAUL
TALKING ACTION FIGURE

2012 COLLECTOR'S ITEM
LIMITED SUPPLY!



★ GET YOURS! ★

RONPAUL
ACTIONFIGURES.COM

RonPaulActionfigures.com
Ads by Google

convictions are common. “If I thought that 3 to 5 percent of people in prison right now were innocent, I’d quit my job,” Marquis says. “I’d become a public defender or something. Maybe an activist. Look, nobody but a fool would say that wrongful convictions don’t happen. As a prosecutor, my worst nightmare is not losing a case—I’ve lost cases; I’ll lose cases in the future. My worst nightmare is convicting an innocent person, and I tell my staff that. But the question here is whether wrongful convictions are epidemic or episodic. And I just don’t think it’s possible that the number could be anywhere near 3 to 5 percent.”

Marquis and Gross have been butting heads for several years. In a 2006 *New York Times* op-ed piece, Marquis took the 328 exonerations Gross and his colleagues found between 1989 and 2003, rounded it up to 340, then multiplied it by 10—a charitable act, he wrote, to “give the professor the benefit of the doubt.” He then divided that number by 15 million, the total number of felony convictions during the same period, and came up with what he said was an error rate of just 0.027 percent. His column was later quoted in a concurring opinion by U.S. Supreme Court Justice Antonin Scalia in the 2006 case *Kansas v. Marsh*, the same opinion where Scalia made the notorious claim that nothing in the U.S. Constitution prevents the government from executing an innocent person.

Gross responded with a 2008 article in the *Annual Review of Law and Social Science*, pointing out that his original number was by no means comprehensive. Those were merely the cases in which a judicial or political process had exonerated someone. The figure suggested only that wrongful convictions *happen*. “By [Marquis’] logic we could estimate the proportion of baseball players who’ve used steroids by dividing the number of major league players who’ve been caught by the total of all baseball players at all levels: major league, minor league, semipro, college and Little League,” Gross wrote, “and maybe throw in football and basketball players as well.”

Whatever the total number of innocent convicts, there is good reason to believe that the 268 cases in which DNA evidence has proven innocence don’t begin to scratch the surface. For one thing, the pace of these exonerations hasn’t slowed down: There were 22 in 2009, making it the second busiest name-clearing year to date. Furthermore, exonerations are expensive in both time and resources. Merely discovering a possible case and requesting testing often isn’t enough. With some commendable exceptions (see “Bad Boys,” page 58), prosecutors tend to fight requests for post-conviction DNA testing. (The U.S. Supreme Court held in 2009 that there is no constitutional right to such tests.) So for now, the pace of genetic exonerations appears to be limited primarily by the amount of money and staff that legal advocacy groups have to uncover these cases and argue them in court, the amount of evidence available for testing, and the willingness of courts to allow the process to happen, not by a lack of cases in need of further investigation.

It’s notable that one of the few places in America where a district attorney has specifically dedicated staff and resources to seeking out bad convictions—Dallas County, Texas—has produced more exonerations than all but a handful of states. That’s partly because Dallas County District Attorney Craig Watkins is more interested in reopening old cases than his counterparts elsewhere, and partly because of a historical quirk: Since the early 1980s the county has been sending biological crime scene evidence to a private crime lab for testing, and that lab has kept the evidence well preserved. Few states require such evidence be preserved once a defendant has exhausted his appeals, and in some jurisdictions the evidence is routinely destroyed at that point.

“I don’t think there was anything unique about the way Dallas was prosecuting crimes,” Watkins told me in 2008. “It’s unfortunate that other places didn’t preserve evidence too. We’re just in a unique position where I can look at a case, test DNA evidence from that period, and say without a doubt that a person is innocent....But that doesn’t mean other places don’t have the same problems Dallas had.”

If the rest of the country has an actual (but undetected) wrongful conviction rate as high as Dallas County’s, the number of innocents in prison for felony crimes could be in the tens of thousands.

The Trial and Conviction of Paul House

As with many wrongful convictions, the case against Paul House once seemed watertight. House was an outsider, having only recently moved to Union County when Carolyn Muncey was murdered in 1985, and he was an ex-con, having served five years in a Utah prison for sexual assault. He got into scuffles with locals, although he considered Muncey and her husband, Hubert, friends. When Muncey turned up dead, House was a natural suspect.

Get Reason E-mail Updates!

First Name

Last Name

Email

[Manage your Reason e-mail list subscriptions](#)

Site comments/questions:

[Mike Alissi](#)

Media Inquiries and Reprint Permissions:

[Chris Mitchell](#)
(310) 367-6109

Editorial & Production Offices:

3415 S. Sepulveda Blvd.
Suite 400
Los Angeles, CA 90034
(310) 391-2245

House has claimed he was innocent of the Utah charge. His mother, Joyce, says it was a he said/she said case in which her son pleaded guilty on the advice of his attorney. "He could have been paroled earlier if he had shown some remorse," she says. "But he said, 'I pled guilty the one time, because that's what the lawyer told me I should do. I'm not going to say again that I did something I didn't do.' He said he'd rather serve more time than admit to the rape again." Joyce House and Mike Pemberton, Paul House's attorney, are hesitant to go into much detail about the Utah case, and public records aren't available due to the plea bargain. But while what happened in Utah certainly makes House less sympathetic, it has no bearing on whether House is the man who killed Carolyn Muncey.

House also didn't do himself any favors during the Muncey investigation. In initial questioning, he lied to the police about where he was the night of the murder, saying he was with his girlfriend all night. But he later admitted he had gone for a walk at one point and had come back without his shoes and with scratches on his arms. He initially lied to police about the scratches too, saying they were inflicted by his girlfriend's cats. House later said he'd been accosted by some locals while on his walk, scuffled with them, then fled through a field, where he lost his shoes. (House would learn years later that his shoes were found by police before his trial. There was no blood or other biological evidence on them, potentially exculpatory information that was never turned over to House's lawyers.)

"I think it was a situation where you're on parole, you're an outsider, and this woman has just been killed near where you live," says Pemberton, House's attorney. "It wasn't smart of him to lie to the police. But it was understandable."

Carolyn Muncey's husband, who House's attorneys would later suspect was her killer, also lied about where he was when she was killed. He would additionally claim, falsely, that he had never physically abused her. Still, House was clearly the early suspect.

The strongest evidence against House was semen found on Muncey's clothing, which an FBI agent testified at trial "could have" belonged to House. DNA testing didn't exist in 1986, but the agent said House was a secretor, meaning he produced blood type secretions in other body fluids, including semen, and that the type secreted in semen found on Muncey's nightgown was a match to House's type A blood. About 80 percent of people are secretors, and about 36 percent of Americans have type A blood. The agent also said the semen found on Muncey's panties included secretions that *didn't* match House's blood type, but added, inaccurately, that House's secretion could have "degraded" into a match. Muncey's husband was never tested.

The other strong evidence against House was some blood stains on his jeans that matched Muncey's blood type, but not his own. Those stains on House's jeans did turn out to have been Muncey's blood; the question is how they got there.

House was never charged with rape; there were no physical indications that Muncey had been sexually assaulted. But the semen was used to put him at the crime scene, and the state used the possibility of rape as an aggravating circumstance in arguing that House should receive the death penalty.

House was convicted in February 1986. The morning after his conviction, just hours before the sentencing portion of his trial, House slashed his wrists with a disposable razor. He left behind a suicide note in which he professed his innocence. Jail officials rushed him to a hospital in Knoxville, where doctors saved his life and stitched up his wounds. He was then sent back to the courthouse, where a jury sentenced him to death.

It wasn't until more than a decade later, in 1999, that the case against House began to erode. New witnesses came forward with accusations against Hubert Muncey, Carolyn's husband. Several said he was an alcoholic who frequently beat her. At an ensuing evidentiary hearing, two other women said Hubert had drunkenly confessed to killing his wife several months after the murder. When one went to the police with the information the next day, she said at the hearing, the sheriff brushed her off. Another witness testified that Hubert Muncey had asked her to lie to back up his alibi.

But it was the forensic evidence presented at that 1999 hearing that really unraveled the state's case. When House's attorneys were finally able to get DNA testing for the semen found on Carolyn Muncey's clothes, it showed that the semen was a match to Muncey's husband, not House. The state responded that rape was never part of their case against House (though it is why he was initially a suspect, it was the only conceivable motive, and it was presented as evidence in the sentencing portion of his trial).

Besides, prosecutors argued, there was still the blood on House's jeans.

Except there were problems with that too. Cleland Blake, an assistant chief medical examiner for the state of Tennessee, testified that while the blood did belong to Muncey, its chemical composition indicated it was blood that had been taken *after* she had been autopsied. Worse still, three-quarters of a test tube of the blood taken during Muncey's autopsy went missing between the time of the autopsy and the time House's jeans arrived at the FBI crime lab for testing. The test tubes with Muncey's blood and House's jeans were transported in the same Styrofoam box. The blood on House's jeans, his attorneys argued, must have either been planted or spilled because of sloppy handling of the evidence.

It is extraordinarily difficult to win a new trial in a felony case, even in light of new evidence, and House's case was no exception. A federal circuit court judge denied his request for post-conviction relief, and the U.S. Court of Appeals for the 6th Circuit affirmed that decision. Somewhat surprisingly, the U.S. Supreme Court agreed to hear House's case, and in 2006 issued a rare, bitterly divided 5-to-3 ruling granting House a new trial.

The Supreme Court has occasionally thrown out death penalty convictions because of procedural errors or constitutional violations, but it's rare for the Court to methodically review the evidence in a capital case. Writing for the majority, Justice Anthony Kennedy did exactly that, finding in the end that "although the issue is close, we conclude that this is the rare case where—had the jury heard all the conflicting testimony—it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt."

It was a surprising and significant victory for House. But it would be another three years before he would be released from prison.

How Do Wrongful Convictions Happen?

The most significant consequence of the spate of DNA exonerations has been a much-needed reassessment of what we thought we knew about how justice is administered in America. Consider the chief causes of wrongful convictions:

Bad forensic evidence. DNA technology was developed by scientists, and it has been thoroughly peer-reviewed by other scientists. Most of the forensic science used in the courtroom, on the other hand, was either invented in police stations and crime labs or has been refined and revised there to fight crime and obtain convictions. Most forensic evidence isn't peer-reviewed, isn't subject to blind testing, and is susceptible to corrupting bias, both intentional and unintentional. The most careful analysts can fall victim to cognitive bias creeping into their work, particularly when their lab falls under the auspices of a law enforcement agency. Even fingerprint analysis isn't as sound as is commonly believed.

A congressionally commissioned 2009 report by the National Academy of Sciences found that many other forensic specialties that are often presented in court with the gloss of science—hair and carpet fiber analysis, blood spatter analysis, shoe print identification, and especially bite mark analysis—lack the standards, peer review, and testing procedures of genuinely scientific research and analysis. Some are not supported by any scientific literature at all. Moreover, the report found, even the forensic specialties with some scientific support are often portrayed in court in ways that play down error rates and cognitive bias.

According to an Innocence Project analysis of the first 225 DNA exonerations, flawed or fraudulent forensic evidence factored into about half of the faulty convictions.

Eyewitness testimony. Social scientists have known about the inherent weakness of eyewitness testimony for decades. Yet it continues to be the leading cause of wrongful convictions in America; it was a factor in 77 percent of those first 225 cases. Simple steps, such as making sure police who administer lineups have no knowledge of the case (since they can give subtle clues to witnesses, even unintentionally) and that witnesses are told that the actual perpetrator may not be among the photos included in a lineup, can go a long way toward improving accuracy. But such reforms also make it more difficult to win convictions, so many jurisdictions, under pressure from police and prosecutor groups, have been hesitant to embrace them.

False confessions. Difficult as it may be to comprehend, people do confess to crimes they didn't commit. It happened in about one-quarter of the first 225 DNA exonerations. Confessions are more

common among suspects who are minors or are mentally handicapped, but they can happen in other contexts as well, particularly after intense or abusive police interrogations.

In a candid 2008 op-ed piece for the *Los Angeles Times*, D.C. Police Detective Jim Trainum detailed how he unwittingly coaxed a false confession out of a 34-year-old woman he suspected of murder. She even revealed details about the crime that could only have been known to police investigators and the killer. But Trainum later discovered that the woman couldn't possibly have committed the crime. When he reviewed video of his interrogation, he realized that he had inadvertently provided the woman with those very specific details, which she then repeated back to him when she was ready to confess.

Trainum concluded that all police interrogations should be videotaped, a policy that would not just discourage abusive questioning but also provide an incontrovertible record of how a suspect's confession was obtained. Here too, however, there has been pushback from some police agencies, out of fear that jurors may be turned off even by legitimate forms of questioning.

Jailhouse informants. If you were to take every jailhouse informant at his word, you'd find that a remarkably high percentage of the people accused of felonies boast about their crimes to the complete strangers they meet in jail and prison cells. (See "The Guilt Market," page 24.) Informants are particularly valuable in federal drug cases, where helping a prosecutor obtain more convictions is often the only way to get time cut from a mandatory minimum sentence. That gives them a pretty good incentive to lie.

There is some disagreement over a prosecutor's duty to verify the testimony he solicits from jailhouse informants. In the 2006, Church Point, Louisiana, case of Ann Colomb, for example, Brett Grayson, an assistant U.S. attorney in Louisiana, put on a parade of jailhouse informants whose claims about buying drugs from Colomb and her sons were rather improbable, especially when the sum of their testimony was considered as a whole. According to defense attorneys I spoke with, when one attorney asked him if he actually believed what his informants were telling the jury, Grayson replied that it doesn't matter if he believes his witnesses; it only matters if the jury does. He expressed a similar sentiment in his closing argument.

After indicating that he isn't familiar with the Colomb case and isn't commenting on Grayson specifically, Josh Marquis says that sentiment is wrong. "A prosecutor absolutely has a duty to only put on evidence he believes is truthful," Marquis says. "And that includes the testimony you put on from informants."

In a 2005 study, the Center on Wrongful Convictions in Chicago found that false or misleading informant testimony was responsible for 38 wrongful convictions in death penalty cases.

The professional culture of the criminal justice system. In addition to the more specific causes of wrongful convictions listed above, there is a problem with the institutional culture among prosecutors, police officers, forensic analysts, and other officials. Misplaced incentives value high conviction rates more than a fair and equal administration of justice. (See "Culture of Misconduct," page 30.)

Prosecutors in particular enjoy absolute immunity from civil liability, even in cases where they manufacture evidence that leads to a wrongful conviction. The only time prosecutors can be sued is when they commit misconduct while acting as investigators—that is, while doing something police normally do. At that point they're subject to qualified immunity, which provides less protection than absolute immunity but still makes it difficult to recover damages.

Marquis says this isn't a problem. "Prosecutors are still subject to criminal liability," he says. "In fact, my predecessor here in Oregon was prosecuted for misconduct in criminal cases. State bars will also hold prosecutors accountable."

But criminal charges are few and far between, and prosecutors can make egregious mistakes that still don't rise to the level of criminal misconduct. Professional sanctions are also rare. A 2010 study by the Northern California Innocence Project found more than 700 examples between 1997 and 2009 in which a court had found misconduct on the part of a prosecutor in the state. Only six of those cases resulted in any disciplinary action by the state bar. A 2010 investigation of federal prosecutorial misconduct by *USA Today* produced similar results: Of 201 cases in which federal judges found that prosecutors had committed misconduct, just one resulted in discipline by a state bar association. Prosecutorial misconduct was a factor in about one-quarter of the first 225 DNA exonerations, but

none of the prosecutors in those cases faced any significant discipline from the courts or the bar.

There is also a common misconception that appeals courts serve as a check on criminal justice abuse. It is actually rare for an appeals court to review the evidence in a criminal case. Appeals courts make sure trials abide by the state and federal constitutions and by state or federal rules of criminal procedure, but they almost never second-guess the conclusions of juries.

In a 2008 article published in the *Columbia Law Review*, the University of Virginia law professor Brandon L. Garrett looked at the procedural history of the first 200 cases of DNA exoneration. Of those, just 18 convictions were reversed by appellate courts. Another 67 defendants had their appeals denied with no written ruling at all. In 63 cases, the appellate court opinion described the defendant as guilty, and in 12 cases it referred to the “overwhelming” evidence of guilt. Keep in mind these were all cases in which DNA testing later proved actual innocence. In the remaining cases, the appeals courts either found the defendant’s appeal without merit or found that the errors in the case were “harmless”—that is, there were problems with the case, but those problems were unlikely to have affected the jury’s verdict due to the other overwhelming evidence of guilt.

“We’ve seen a lot of exoneration cases where, for example, the defendant raised a claim of ineffective assistance of counsel,” says Peter Neufeld, co-founder of the Innocence Project of New York. “And in those cases, the appellate courts often found that the defense lawyer provided sub- standard representation. But they would then say that the poor lawyering didn’t prejudice the case because the evidence of guilt was so overwhelming. Well, these people were later proven innocent! If you have a test that is frequently producing erroneous results, there’s either something wrong with the test, or there’s something wrong with the way it’s being implemented.”

Life on the Outside

Paul House was diagnosed with multiple sclerosis in 2000, a year after the evidentiary hearing that would eventually lead to his release. But while House was convicted of Carolyn Muncey’s murder less than a year after it happened, it took a decade after his conviction was called into serious question for House to get back home to Crossville. During those 10 years, the state’s case continued to fall apart. So did House’s body.

After the U.S. Supreme Court overturned House’s conviction in 2006, Paul Phillips, the district attorney for Tennessee’s 8th Judicial District and the man who prosecuted House in 1986, pushed ahead with plans to retry him. In December 2007, after a series of delays, Harry S. Mattice Jr., a U.S. district court judge in Knoxville, finally ordered the state to try House within 180 days or set him free. Those 180 days then came and went without House being freed, thanks to an extension granted by the 6th Circuit.

In another hearing held in May 2008, Phillips argued that House—who by that point couldn’t walk or move his wheelchair without assistance—presented a flight risk. Later, Tennessee Associate Deputy Attorney General Jennifer Smith attempted to show that House presented a danger to the public because he was still capable of feeding himself with a fork, which apparently meant he was also capable of stabbing someone with one. House’s bail was set at \$500,000, later reduced to \$100,000. In July 2008, an anonymous donor paid the bail, allowing House to finally leave prison.

That same month, Phillips told the Associated Press that he would send two additional pieces of biological evidence off for DNA testing: a hair found at the crime scene, and blood found under Carolyn Muncey’s fingernails. House’s defense team had asked to conduct its own testing of any untested biological evidence for years, but had been told that either there was no such evidence or, if there was, the state didn’t know where it was. Phillips told the A.P. that if the new tests didn’t implicate House, he would drop the murder charge and allow House to go home. In February 2009 the results came back. They didn’t implicate House, and in fact pointed to a third, unidentified man. In May of that year, Phillips finally dropped the charge. But he still wouldn’t clear House’s name, telling Knoxville’s local TV station WATE, “There is very adequate proof that Mr. House was involved in this crime. We just don’t know the degree of culpability beyond a reasonable doubt.” (Phillips’ office did not respond to my requests for comment.)

By the time House was diagnosed with M.S. in 2000, his symptoms were already severe, although it took his mother, and not a prison doctor, to notice something was wrong. “I was visiting him, and I

brought along some microwave popcorn,” Joyce House recalls. “He asked me to heat it up, and I said, ‘No, you heat it up.’ When he got up, he had to prop himself up and drag along the wall to get to the microwave. He couldn’t even stand up straight.” According to Joyce House, her son’s doctors today say that the Tennessee prison system’s failure to diagnose House’s M.S. earlier—then treat it properly after it was diagnosed—may have taken years off his life. (M.S. is also exacerbated by stress.) The disease has also significantly diminished the quality of the life House has left.

Under Tennessee’s compensation law for the wrongly convicted, if House is formally exonerated—and that’s still a big *if*—he will be eligible for \$50,000 for each year he was in prison, up to \$1 million. But there’s a catch. The compensation is given in annual \$50,000 installments over 20 years. If House dies before then, the payments stop.

Most of the 27 states with compensation laws similarly pay the money off in installments. Last October, A.P. ran a story about Victor Burnette, a 57-year-old Virginia man who served eight years for a 1979 rape before he was exonerated by DNA testing in 2006. Burnette actually turned down the \$226,500 the state offered in compensation in 2010 because he was offended by the stipulation that it be paid out over 25 years. Even after the DNA test confirmed his innocence, it took another three years for Burnette to officially be pardoned, which finally made him eligible for the money. The installment plans make it unlikely that many exonerees—especially long-timers, who are arguably the most deserving—will ever see full compensation for their years in prison.

Only about half the people exonerated by DNA testing so far have been compensated at all. Most compensation laws require official findings of actual innocence, which eliminates just about any case that doesn’t involve DNA. Some states also exclude anyone who played some role in their own conviction, which would disqualify a defendant who falsely confessed, even if the confession was coerced or beaten out of them.

Paul House has yet another predicament ahead of him. Even if he does win an official exoneration, and even if he somehow lives long enough to receive all of his compensation, he’ll have to lose his health insurance to accept it. House’s medical care is currently covered by TennCare, Tennessee’s Medicare program. If he accepts compensation for his conviction, he will be ineligible. His \$50,000 per year in compensation for nearly a quarter century on death row will then be offset by a steep increase in what he’ll have to pay for his medical care.

These odd, sometimes absurd predicaments aren’t intentionally cruel. They just work out that way. Paul House’s attorney Mike Pemberton points out that the prosecutors in these cases aren’t necessarily evil, either. “Paul Phillips is an honorable man, and an outstanding trial attorney,” Pemberton says. “But on this case he was wrong.” Pemberton, who was once a prosecutor himself, says the job can lend itself to tunnel vision, especially once a prosecutor has won a conviction. It can be hard to let go. We have a system with misplaced incentives and very little accountability for state actors who make mistakes. That’s a system ripe for bad outcomes.

When I ask Paul House why he thinks it has taken so long to clear his name, he starts to answer, then stammers, looks away, and retreats again to *Oh well*, his cue to move on because he has no answer.

That may be an understandable response from a guy with advanced M.S. who just spent two decades on death row. But for too long our national response to the increasing evidence that our justice system is flawed has been the same sort of resignation. DNA has only begun to show us where some of those flaws lie. It will take a strong public will to see that policymakers address them.

Radley Balko (rbalko@reason.com) is a senior editor at **reason**.

Reason needs your support. [Please donate today!](#)



You like **Wrongful Convictions** · [Insights](#) · [Error](#)
Dee Henderson and 1,147 others like this. 1,147 people



Try Reason's award-winning print edition today! Your first issue is FREE if you are not completely satisfied.

[See all 79 comments](#) | [Leave a comment](#)

Recommended Reading

■ [Warren Buffett: Baptist and Bootlegger -](#)

From Around the Web

■ [The IRS' Worst Nightmare — How to Pay Zero](#)

[Reason Magazine](#) (Reason Magazine)

[Taxes](#) (Newsmax.com)

- [Why Buffy Kicked Ass - Reason Magazine](#) (Reason Magazine)
- [The War on Cameras - Reason Magazine](#) (Reason Magazine)
- [Database Nation - Reason Magazine](#) (Reason Magazine)
- [Restraining Orders - Reason Magazine](#) (Reason Magazine)
- [7 Signs You Have a Sleep Problem You DON'T Know About](#) (Caring.com)
- [Video: Forecast for the global economy in 2012](#) (Bank of America Merrill Lynch)
- [Could You Survive On Food Stamps?](#) (MyBankTracker.com)
- [Iran Warns U.S. of Retaliation](#) (The Fiscal Times)

[?]

MORE ARTICLES BY [RADLEY BALKO](#)

- [Bad Boys](#), *Radley Balko*, June 27, 2011
- [The Crime Rate Puzzle](#), *Radley Balko*, June 20, 2011
- [Fairly Legal](#), *Radley Balko*, June 1, 2011

RELATED ARTICLES ([CRIME](#), [CRIMINAL JUSTICE](#), [COURTS](#))

- [Making State Officials More Accountable in California](#), *Steven Greenhut*, February 10, 2012
- [New York's Illegal Pot Crackdown](#), *Jacob Sullum*, February 8, 2012
- [How GPS Tracking Threatens Privacy](#), *Jacob Sullum*, January 25, 2012
- [A Victory for Property Rights in California](#), *Steven Greenhut*, January 9, 2012
- ['Things Happened'](#), *Jacob Sullum*, December 28, 2011

LATEST ARTICLES ON REASON ONLINE

- [Thin Ice and The Secret World of Arrietty](#), *Kurt Loder*, February 16, 2012
- [Is Harrisburg's Nightmare America's Future?](#), February 16, 2012
- [Obama's Big Government Mandates](#), *Sheldon Richman*, February 16, 2012
- [Never Trust Government Numbers](#), *John Stossel*, February 16, 2012
- [Is Harrisburg's Nightmare America's Future?](#), *Jim Epstein*, February 16, 2012
- [Keynes vs. Hayek, Oversimplified](#), *Brian Doherty*, February 16, 2012
- [Food and Conscience](#), *Steve Chapman*, February 16, 2012

LATEST POSTS ON HIT & RUN

- [Ron Paul: His Opponents Don't Even Know They've Been Beaten](#), *Brian Doherty*, February 16, 2012
- [Relax, Liberal Metalheads. Dave Mustaine Did Not "Endorse" Rick Santorum](#), *Damon W. Root*, February 16, 2012
- [Kurt Loder on Thin Ice and The Secret World of Arrietty](#), February 16, 2012
- [Rick Santorum: Against Contraception, Against Online Gambling](#), *Nick Gillespie*, February 16, 2012
- [Occupy Wall Street Forms a PAC, CNN Cancels GOP Debate, Underwear Bomber Gets Life Sentence: P.M. Links](#), *Mike Riggs*, February 16, 2012
- [Mandatory Drugs Tests by Record Companies, Media Scoldings, and Other Helpful Suggestions By Bill O'Reilly and Dr. Drew](#), *Lucy Steigerwald*, February 16, 2012

[Home](#) | [About](#) | [Advertise](#) | [Privacy](#) | [Contact](#)

Copyright 2012, Reason Magazine