

establishing the innocence of wrongfully convicted persons. If performed correctly, DNA testing becomes a commanding and impartial tool, able to accurately identify any perpetrator in crimes where there is relevant biological evidence. **However, DNA does not play a critical role in most criminal cases.** For example, while 113 people have been released from death row in the United States since 1973, **DNA played a substantial factor in establishing innocence in only 13 cases.** Thus, while access to testing biological material should be made available to death row inmates, more must be done to protect the innocent.

WHAT CAN BE DONE?

Cases of those exonerated have revealed disturbing flaws in our criminal justice system. Some claim that the eventual exoneration of innocent people proves that the system works. This belief is completely unwarranted.

Freeing the innocent has taken place more as a matter of luck and private initiative than the result of careful judicial scrutiny, prompting the conclusion that **innocent people are exonerated not because of the system but in spite of it.**

Justice in these cases is not being administered by our prosecutors, police, defense lawyers, or courts. Rather, it is being dispensed by law students, journalism students, and a few concerned lawyers, organizations, and citizens. This is unacceptable. We all bear a solemn responsibility to ensure that the criminal justice system works fairly.

NC'S MORATORIUM MOVEMENT

On April 30, 2003, the North Carolina Senate passed S972, a bill to halt executions in the state for two years while the state conducts a

thorough examination of its death penalty system. Several legislators speaking in favor of the bill said they supported the death penalty but were very concerned about issues of fairness and innocence. The long list of over 1100 groups and 21 local governments passing moratorium resolutions received deserved attention during the debate. In a letter calling for the bill's enactment into law, noteworthy North Carolinians, including former judges and corporate leaders, noted that "legitimate concerns about the fairness and accuracy of our system of capital punishment exist and must be addressed." The bill goes before the North Carolina House in the Spring of 2004.

WHAT YOU CAN DO

Your local North Carolina House representative needs to hear from you. Only through voicing your concerns about the fairness of the death in North Carolina can innocent lives be spared.

If you support a moratorium on executions in North Carolina for two years while the state conducts a thorough examination of its death penalty system, **now is the time to act.**

Contact your local representative and urge him or her to support H1199, the pending moratorium bill in the North Carolina House of Representatives.

To find out who represents you, check out: www.ncga.state.nc.us/GIS/Representation

There are moratorium groups taking action across North Carolina. For more information, please contact Ted Frazer, Director of the Charlotte Coalition For A Moratorium Now (704-532-6854) and visit <http://ccmn2.tripod.com>

Innocence and the Death Penalty:

Why We Need a Moratorium on Executions

"Perhaps the bleakest fact of all is that the death penalty is imposed not only in a freakish and discriminatory manner, but also in some cases upon defendants who are actually innocent."

— *United States Supreme Court Justice William J. Brennan Jr. (1994)*

The American criminal justice system fails sometimes. This is not a disputed fact. One price of these failures is the loss of life and livelihood for those unfortunate enough to be wrongfully convicted. Can we afford to make mistakes with the most final of punishments?

THE FACTS

The risk of wrongful executions in this country has become too high. The most comprehensive analysis of capital cases in the United States recently concluded that our death penalty system is “collapsing under the weight of its own mistakes.” Here are some hard facts about the death penalty as administered in the United States:

- **41%** (over two out five) death sentences reviewed on “direct appeal” by state appellate courts were thrown out because of “serious error,” *i.e.*, error that the reviewing court concluded had seriously undermined the reliability of the outcome or otherwise “harmed” the defendant;
- **40%** (two out of five) death sentences that survived state review were later overturned by a federal court due to serious error;
- nationally, from 1973-1995, the overall error rate in our capital punishment system was **68%**;
- the **reversal rate in North Carolina is 71% percent**, higher than the national average.

One price of having a broken death penalty system is the loss of life and livelihood for those unfortunate enough to be wrongfully convicted. **Between 1973 and February 18, 2004, over 113 people in 25 states have been released from death row with evidence of their innocence.**

The average number of years between being sentenced to death and exoneration is nine years. Moreover, a study has identified 23 instances in the twentieth century in which a person with an extraordinarily strong case of innocence was executed. Of course, human nature and the law of averages indicate that if over 112 individuals have been exonerated with evidence of their innocence, there must be others who have not been able to do so.

Because of lack of resources, opportunity, or time, these individuals remain on death row—and will possibly go to their deaths—innocent of the crimes for which they were charged.

North Carolina is not immune from sentencing to death innocent people.

Between 1973 and 2001, four people were released from North Carolina’s death row: Alfred Rivera (1999), Charles Munsey (1999), Timothy Hennis (1989) and Samuel Poole (1974) due to evidence of their innocence. In 2002 alone, North Carolina courts granted new trials to two death row inmates after their convictions were thrown into doubt.

In one case, death row inmate Alan Gell was granted a new trial after a Superior Court judge ruled that prosecutors with the state Attorney General’s Office withheld witness statements indicating that the murder occurred while Gell was in jail. Prosecutors also failed to reveal a tape recording of the state’s star witness saying she had “to make up a story” to tell police. Gell was recently retried for first-degree murder. On February 18, 2004, a jury needed only two and a half hours to acquit Gell of all charges.

In the second case, death row inmate Jerry Lee Hamilton, who was sentenced to death in 1997 for the murder of a Richmond County woman raped and stabbed to death, was granted a new trial because prosecutors and police withheld a document undermining the credibility of the state’s sole witness, Hamilton’s nephew, who had initially confessed to committing the murder alone.

Others who sit on North Carolina’s death row today may well be innocent and are pursuing their claims through the courts. *The Common Sense Foundation* has identified at least four other death row inmates who have legitimate and compelling claims of innocence.

Finding relief for an innocent person through the judicial system is an enormously challenging task made only more difficult in recent years. For example, in 1996, Congress passed legislation that dramatically curtailed inmates’ rights to have federal judges review their claims.

THE FACTORS

Nationwide studies of cases in which wrongfully convicted people have been exonerated lay bare the many ways in which the system fails to protect innocent people from winding up on death row.

For example, a study of the first 70 cases involving exoneration through DNA revealed that the most common factors leading to wrongful convictions in those cases included:

- *Mistaken identification (61 out of 70 cases)*
- *Serology inclusion (40 out of 70 cases)*
- *Police misconduct (38 out of 70 cases)*
- *Defective or fraudulent “junk” science (26 out of 70 cases)*
- *Bad lawyering (23 out of 70 cases)*
- *False witness testimony (17 out of 70 cases)*
- *Unreliable informant or “snitches” (16 out of 70 cases)*
- *False confessions (15 out of 70 cases)*

THE ROLE OF DNA EVIDENCE

Science can increasingly serve the defense of innocence. The use of forensic DNA testing has brought about many changes in the criminal justice system, and is currently the most powerful and publicly-recognized tool for