

INNOCENCE PROJECT

**Rebecca Brown, Director of Policy, Innocence Project
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My name is Rebecca Brown and I am the Director of Policy at the Innocence Project. We work to prove the innocence of people behind bars who have been wrongfully convicted. We also work to forge win-win policy reforms that both prevent miscarriages of justice and help identify the guilty. It is precisely because of the dual nature of our work that I am here today: to provide a somewhat unique and hopefully helpful perspective.

First let me say that I'm so pleased to be in Ohio. We partner with the Ohio Innocence Project whose diligent work - since its inception - has led to the release of 33 wrongfully convicted Ohioans, who collectively served nearly 650 years behind bars.

Ohio stands among the top states for numbers of wrongful convictions. Indeed, an analysis of the first 2400 exonerations in the nation indicated that of the X counties in the U.S., Cuyahoga County is among the top-ten producers of exonerations.

Wrongful convictions have serious consequences, especially when the numbers are as staggering as we now know they are. Every time an innocent person is convicted, the person who really committed the crime escapes justice and may commit other crimes. That's why in addition to working on cases that help free innocent people, the Innocence Project works on reforms that go to the root causes of wrongful convictions – mistaken identification, false confessions, unreliable jailhouse informant testimony, unreliable or the misapplication of forensic science, official misconduct, and poor lawyering among them.

Nationally, since 1973, 185 people have served time on death row only to be later exonerated of all charges related to the wrongful convictions that put them there. Ohio ranks 6th among the states in this category, with 11 death row exonerations. Meanwhile Ohio has executed 56 individuals. This means that for every five executions, one person has been exonerated in this state.

These and other disturbing numbers indicate that the risk of convicting and executing an innocent person in and beyond Ohio is real. Indeed, every aspect of a case involves a human being. If just one person at any stage makes an error, jumps to a conclusion, or acts on a false assumption, an innocent person can be condemned to a guilty person's fate.

I know this from experience. My colleagues and I have reviewed hundreds of cases. In some, after we have pored over reams of court transcripts, scrutinized piles of police reports, dissected crime lab analyses, sifted through evidence and property logs, and studied scores of witness

statements, we have strongly suspected guilt, only later to discover we were wrong. No less often, someone who we strongly suspect is innocent turns out to be guilty. It's that hard.

In 2014, Ricky Jackson set the record for the longest-serving person to be exonerated in U.S. history. He spent 39 years in an Ohio prison for a crime he didn't commit. Jackson and co-defendants Wiley Bridgeman and Kwame Ajamu together served over 100 years in prison for the 1975 killing of a money-order collector at a Cleveland grocery store. The convictions were based on a lie by a then 12-year-old boy who later recanted his story. The Ohio Innocence Project's exhaustive investigation included finding and gaining the trust of witnesses as well as pursuing the release of critical public records. What if they hadn't succeeded? Would we ever have known the truth?

It might be tempting to say exonerations prove the system works. But the 11 men exonerated from death row in Ohio spent an average of over 20 years between conviction and exoneration, and combined, they served almost 216 years incarcerated after their wrongful convictions. And these cases are just the cases we know about. We simply don't know whether Ohio has executed an innocent person.

As I'm sure you know, DNA testing is perhaps our best tool for producing highly reliable - but certainly not infallible - evidence of guilt or innocence. What most people don't know, though, is that criminalists believe that DNA evidence exists in less than 10% of the most serious cases. For instance, DNA evidence is not what helped free Ricky Jackson, Wiley Bridgeman, and Kwame Ajamu.

Most homicide cases turn on eyewitness testimony, confessions, the credibility of witnesses, including incentivized witnesses, like jailhouse informants, or circumstantial evidence - not DNA testing. DNA testing is not a panacea that can prevent wrongful executions. It does not have the capacity to ensure either a fair or accurate application of the death penalty and its finality.

What DNA has done is help us to shed light on the extent of the tragedy of wrongful convictions across the nation. It has provided some very sobering data about the frequency of error in the entire criminal legal system. The nation's 375 DNA exonerations - 21 of which included persons who had spent time on death row - have also taught us that any number of factors - sometimes many functioning at once - can yield a wrongful conviction and that the appeals process does not provide the needed protections to detect them. Problems can arise from:

- Juries relying on incorrect, misleading or partial information;
- Public and private defenders providing ineffective assistance of counsel;
- Crime labs mishandling and contaminating evidence; falsifying results; misrepresenting forensic findings; or exaggerating results of testing;
- Witnesses misidentifying innocent people as the actual perpetrators;
- Innocent, often vulnerable, people confessing to crimes that they did not commit;
- Innocent people pleading to crimes they did not commit, particularly when they fear the administration of the death penalty; and
- Unreliable informants acting on the basis of real or perceived incentives.

These are the same reasons that Ohio's 11 death row exonerees and 22 others were wrongfully convicted. And again, those are just the ones that we have found. There are countless others in prison, currently facing execution, or who have already been executed who have been unable to access DNA testing, even when the evidence is there.

As awareness of the prevalence of wrongful convictions has grown, support for the death penalty has declined, nationally and here in Ohio. That is not surprising to me and probably isn't to you. The death penalty's irreversibility is something that can't be fixed by reforms. Yes, all necessary resources *must* be provided to ensure that every aspect of the system – investigation, defense, prosecution, trial, appeal, and post-conviction – is as fair and accurate as possible. And there are reforms to the criminal justice system that should be considered, such as regulating the use of jailhouse snitches. But even with the best and most extensive reforms, as DNA has proven, an individual's life can hinge on a sloppy report, an inadvertent cue, the work of an overburdened practitioner, or even malice. Just one imperfect element can topple a house of cards. In the end, there is only one reform that you could make that eliminates the unacceptable risk of wrongful execution. Without a means of executing, Ohio's death penalty system appears -- at the moment -- to be a symbolic exercise. The lessons of the past 40 years have come together in this hearing. They present an opportunity to abandon a policy that has failed to deliver for Ohioans and turn our attention and resources to policies and programs that honor Ohio's commitment to justice. I urge you to take it.