

My name is Mark Godsey and I'm the Co-Founder and Director of the Ohio Innocence Project based at the University of Cincinnati's College Law. Our goal as an organization is simple: we want to free every innocent person in Ohio who has been convicted of a crime they didn't commit.

Since our inception, our work has led to the release of 33 wrongfully convicted Ohioans, who collectively served nearly 650 years behind bars. That makes us one of the top-performing members among the international Innocence Network.

Every time an innocent person is convicted, the person who really committed the crime escapes justice and may commit other crimes. So in addition to working on cases that help free innocent people, the Ohio Innocence Project works on reforms that go to the root causes of wrongful convictions – mistaken identification, false confessions, unreliable forensic science, law enforcement misconduct, and poor lawyering.

Our policy agenda promotes win-win reforms that both protect the innocent and also help identify the guilty. It is precisely because of the dual nature of our work – both the efforts to exonerate the innocent and the constructive efforts to strengthen the capacity of the criminal justice system to make more accurate guilt and innocence determinations – that I may be able to provide a somewhat unique and hopefully helpful perspective today.

First, let me just share that the risk of convicting and executing an innocent person is real and staggering. My colleagues and I have reviewed hundreds of cases. In some, after I 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, I have strongly suspected some men's guilt, only later to discover I was wrong. No less often, someone I strongly suspect is innocent turns out to be guilty.

Indeed, because every person throughout the entire course of a case is human, if just one of us 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.

Nationally, since 1973, 185 people have been exonerated of all charges related to the wrongful convictions that had put them on death row. This means that for every eight executions in this country, there has been one person exonerated.

Ohio ranks 6th in the nation for most exonerations, sparing 11 men from being executed for crimes they did not commit. These men spent an average of over 20 years between conviction and exoneration, and combined, they served almost 216 years incarcerated after their wrongful convictions.

There are over 3,000 counties in the entire United States, and only one of them has more death penalty wrongful convictions than Cuyahoga County.

Ohio has executed 56 individuals. This means that for every five executions, one person has been exonerated in the state. And these cases are the ones we know about. With statistics like that, it would be easy to infer that the state of Ohio has executed an innocent person.

Ricky Jackson spent 39 years in prison for a crime he didn't commit, which gives him a tragic distinction: in 2014, he set the record for the longest-serving person to be exonerated in U.S. history. All told, 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. OIP's exhaustive investigation included finding and gaining the trust of witnesses as well as pursuing the release of critical public records.

As I'm sure you know, biological evidence susceptible to 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 in the most serious crimes, criminalists believe that DNA evidence exists in less than 10% of 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, 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 has done is help us to shed light on the existence of wrongful convictions across the nation. It has provided some very sobering data about the frequency of error in the entire criminal justice system.

For instance, in 1996 the National Institute of Justice did a survey that looked in detail at criminal cases where DNA had excluded a suspect. The FBI reported that, 1 in every 4 cases in which they were able to use DNA testing, it excluded a suspect that had been arrested or indicted based on non-DNA evidence. And that is a conservative figure because, if multiple suspects in a case are excluded, the FBI counts it as just one "primary" suspect being excluded. Other surveys similarly show that private laboratories, as well as state and local laboratories, report similar, or even higher, exclusion rates.

And in 2001, the national Innocence Project asked officials in Virginia to search the state's archives for a former lab analyst's old notebooks, because one of its clients had been exonerated based on DNA testing on vaginal swabs the analyst had remarkably stapled into her notebook. Officials discovered notebooks with biological evidence from over 330 old cases, most of them collected before DNA testing was available. Then, two *more* people were exonerated after DNA testing on samples from the notebooks. Recognizing that this evidence could shed light on the propriety of the convictions in those cases, then-Virginia Governor Warner agreed to test all of them, saying it was the only moral thing to do. He started out with a small random sample, and of the first 29 of these randomly selected cases, there were two

more exonerations, including one case in which the person who actually committed the crime was identified.

The nation's 375 DNA exonerations have 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. The public benefit of DNA exonerations, however, lies in their opportunity to understand how the criminal justice system – from eyewitness to police to prosecutor to judge to jury to appellate courts to the Supreme Court – can find a person guilty beyond a reasonable doubt when the accused is simply innocent.

Of those 375 cases, DNA has exonerated 28 death row inmates throughout the country. In those 28 cases, people were wrongfully convicted because of false confessions, mistaken witness identification, perjury or false accusation, false or misleading forensic evidence, inadequate legal defense, and misconduct by police, prosecutors, or other government officials.

These are the same reasons that Ohio's 11 death row exonerees and 22 others were wrongfully convicted. And those are just the ones that we have found.

Each of these cases is instructive because they reveal not only how easily mistakes can happen, but also how many miscarriages of justice cannot be proven in the absence of a definitive test like DNA. Indeed, as I said earlier, only a narrow percentage of criminal cases involve biological evidence that can be subjected to DNA testing, and in many instances, that evidence has been contaminated, degraded, lost or destroyed when a case is revisited years later in the post-conviction context. And 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.

I recognize that reasonable people can disagree about whether the death penalty is a morally appropriate punishment for the most heinous of crimes committed by people who are considered the "worst of the worst." But I also assume that reasonable people -- all of us -- agree that since the death penalty is an irreversible punishment, 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 a result as possible.

As the nation's wrongful convictions have revealed, errors can occur at every turn, and it is only DNA testing – when properly performed – that can topple a house of cards built upon just one imperfect element. Since DNA exists in relatively so few cases, an individual's life can hinge on a sloppy report, an inadvertent cue, or the work of an overburdened practitioner. And even though its reach is limited with respect to its ability to shed light on every case, DNA has helped us to expose a range of systemic problems.

- Juries relying on incorrect, misleading or partial information;
- Public and private defenders providing ineffective assistance of counsel;

- Crime lab mishandling and contamination of evidence; the falsification of results; the misrepresentation of forensic findings on the stand; and the provision of statistical exaggerations about the results of testing;
- Witnesses misidentifying innocent people as the actual perpetrators;
- Innocent 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.

If steps are taken to address those problems, that will also help to reduce wrongful convictions. But note that I say “reduce” wrongful convictions – because when human beings are involved, you can never completely eliminate them. Can we state with certainty that Ohio’s criminal justice system, as currently operated, will always uncover actual innocence in capital cases? Given the range of potential error, even an excellent judicial case review process simply cannot fairly be expected to identify every miscarriage of justice without fail.

It is precisely these error-prone areas that require and deserve attention, as well as the dedication of resources. Rather than focusing limited resources on the administration of the death penalty, we should shift our attention and resources to the prevention of wrongful conviction and the implementation of policies that will help us to solve more crimes and prevent violence in the first place. In doing so, we will meet the dual goal of making our streets safer and enhancing public confidence in the criminal justice system.

Without a means of executing, Ohio’s death penalty system appears -- at the moment -- to be a symbolic exercise. And yet the risk of executing an innocent person still exists. We have to ask ourselves: how much risk is acceptable when a life is at stake and an execution cannot be reversed, particularly when other aspects of the criminal justice system deserving our attention remain unaddressed? How many innocent lives are worth sacrificing to preserve this broken policy?