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Chicago Man Exonerated After 11 ½ Years In Prison

Many Reforms To Prevent Wrongful Convictions Countrywide Are Still Needed

is the 217th person exonerated through post-conviction DNA testing nationwide.

In July 2007, the Illinois Legislature passed a bill to create a commission that would study non-capital wrongful conviction cases and develop reforms to make the criminal justice system more fair and accurate. The commission is similar to one established in 2002 to address capital cases in Illinois. That commission was formed after several people were taken off of Illinois' death row because they were innocent or their convictions were questionable.

After meeting for two years, that commission issued 85 recommendations and the Illinois Legislature passed several reforms that were mostly geared toward capital cases. Given the high number of DNA exonerations in non-capital cases, the Illinois Legislature created the broader commission last year. The legislation requires the commission to issue a final report with recommendations by the end of this year – but members of the commission still have not been appointed and the legislature has not funded the commission.

'Since 2000, the nation has looked to Illinois as a leader on reforming its criminal justice system in the wake of exonerations. The state made important and historic progress toward making the system more fair and accurate in capital cases, but it has so far fallen short in other cases – which are the vast majority of convictions and wrongful convictions,' said Peter Neufeld, Co-Director of the Innocence Project, which is affiliated with Cardozo School of Law.

'The Illinois Legislature should fund this commission and members should be appointed immediately. If this commission were operating as it's supposed to, it could help prevent a substantial number of wrongful convictions and restore confidence in the state's criminal justice system. Eyewitness misidentification, which

was a factor in more than 75% of all wrongful convictions overturned by DNA testing nationwide, is among the most critical issues for the commission to address,' Neufeld said.

In Cage's case, the police detective who ran the investi-

gation of the rape also handled the eyewitness identification procedures. Research and experience have shown that "blind administration" of identification procedures (which means the officer administering the identification procedure does not know who the suspect is) sharply reduces the risk of misidentification. When Cage was arrested, Illinois did not require blind administration of identification procedures – and the state still doesn't require it, despite a growing consensus within the social science and law enforcement communities that this simple reform is highly effective.

'Dean Cage should never have been convicted of this crime and shouldn't have lost 14 years of his life to a wrongful arrest and conviction. Perhaps most chilling is the reality that people across Illinois are still being wrongfully convicted based on eyewitness misidentification that could be prevented if the state enacted simple, straightforward reforms that are proven to work,' said Alba Morales, Staff Attorney at the Innocence Project.

North Carolina, New Jersey and Wisconsin have already implemented statewide reforms – including blind administration of identification procedures – to improve the accuracy of eyewitness identification. Cage said today that he stands ready to help legislators understand the urgent need for reforms to prevent wrongful convictions. Now 41 years old, he plans to live with his mother in Chicago while he begins to rebuild his life. Under Illinois law, he is eligible to receive compensation from the state for his wrongful incarceration – but several people who have been exonerated in recent years still have not been compensated.

Under current law, people who have been exonerated must have a pardon from the governor in order to receive compensation. The Illinois Legislature is currently considering a bill that would allow wrongfully convicted people to receive compensation without a pardon from the governor; the bill would also slightly increase the amount of money people can receive and would provide some services (job training and education) from the state. Under the current law, Cage is eligible for a total of up to \$150,000 for the time he was wrongfully incarcerated."

The Innocence Project, along with co-

counsel from The Center on Wrongful Convictions at Northwestern University, represents Cage. The law firm of Weil, Gotshal & Manges provided pro bono assistance.

Seeking to seize upon the momentum generated by the exoneration, with the need for stark reforms, a press conference was held at which Innocence Project Co-Director Peter Neufeld said, "Illinois has been a national leader for several years in reforming the criminal justice system for capital cases. But the state has fallen short in implementing reforms that can prevent wrongful convictions in non-capital cases, which are the vast majority of convictions, and wrongful convictions, in the state.

Last summer, the Illinois Legislature created a commission to study non-capital wrongful convictions and develop reforms that can make the criminal justice system more fair and accurate. Nearly a year later, that commission has not been funded and no members have been appointed to it."

Neufeld and Cage, today, called on the Illinois Legislature to move quickly to get the commission started on its critical mission, noting that a similar commission in Illinois led to substantial reforms in capital cases. "If this commission were operating as it's supposed to, it could help prevent a substantial number of wrongful convictions and restore confidence in the state's criminal justice system," Neufeld said. "Perhaps most chilling is the reality that people across Illinois are still being wrongfully convicted based on eyewitness misidentification that could be prevented if the state enacted simple, straightforward reforms that are proven to work."

Heavily involved in that movement for reforms in Illinois was Democratic nominee for president, Barack Obama. While an Illinois Senator, he worked to pass a law that required police to tape interrogations and confessions. In the book *The Audacity Of Hope*, Obama said "In the Illinois Senate, I sponsored a bill to require videotaping of interrogations and confessions in capital cases [after the] governor had instituted a moratorium on all executions. In negotiating the bill, I talked about the common value that I believed everyone shared--that no innocent person should end up on death row, and that

On May 27, 2008, Dean Cage was released following 11½ years in prison for a rape that DNA proved he was innocent of. The Innocence Project issued the following press release:

"DNA tests prove that Dean Cage did not commit a 1994 Chicago rape for which he was wrongfully convicted, according to the Innocence Project, which represents him. Cage, who was convicted in 1996 and sentenced to 40 years in prison, was released from prison late last night.

In November 1994, a 15-year-old girl was raped on her way to school in Chicago. Cage was convicted based largely on the victim's eyewitness misidentification. The victim helped police prepare a composite sketch of her attacker, which was circulated in the neighborhood where the crime occurred. When police received a tip that a man resembling the sketch worked at a local meat market, they took the victim to the market and she identified Cage. Later, at the police station, the victim identified Cage based on the sound of his voice.

He was convicted in 1996. In late 2006, the Cook County State Attorney's office agreed to conduct DNA testing in the case and cooperated on the testing. DNA testing on the rape kit and clothing worn by the victim shows that Cage was not the perpetrator. Cage is the 29th person in Illinois who has been exonerated through DNA testing. Only Texas, with 31, has had more DNA exonerations.

Twenty-five of the DNA exonerations in Illinois were in Cook County – more than any other county in the nation (by comparison, 14 people have been fully exonerated through DNA testing in Dallas County, Texas). Cage

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no person guilty of a capital offense should go free. At the end of the process, the bill had the support of all the parties involved, and it passed unanimously.”

Chicago had become infamous for use of torture by police to help frame innocent people. Thirteen innocent men on Death Row were exonerated and released, some of them victims of these tortured confessions. Illinois desperately needed some action to restore confidence in the police. Obama's proposal was to require videotaping of interrogations of suspects in capital cases.

When Obama began, the idea of a bill was opposed by police, prosecutors, most of the senate and the governor. The governor was determined not to appear soft on crime, and had promised to veto any proposal for mandatory tapings. By the time Obama finished his work, the police and prosecutors embraced the bill, it passed in the Illinois Senate by a vote of 58-0. The governor took the unusual step of reversing himself to sign it, and Illinois became the first state to require such tapings.

Reporter Charles Peters, in the *Washington Post*, on Jan 4., 2008, described the process and obstacles that Obama underwent in order to bring the bill about: “Consider a bill into which Obama clearly put his heart and soul. The problem he wanted to address was that too many confessions, rather than being voluntary, were coerced, by beating the daylight out of the accused. Obama proposed requiring that interrogations and confessions be videotaped. This seemed likely to stop the beatings, but the bill itself aroused immediate opposition.

There were Republicans who were automatically tough on crime and Democrats who feared being thought soft on crime. There were death penalty abolitionists, some of whom worried that Obama's bill, by preventing the execution of innocents, would deprive them of their best argument. Vigorous opposition came from the police, too many of whom had become accustomed to using muscle to “solve” crimes. And the incoming governor, Rod Blagojevich, announced that he was against it.

Obama had his work cut out for him. He responded with an all-out campaign of cajoler. The police proved to be Obama's toughest opponent. Legislators tend to quail when cops say things like, “This means we won't be able to protect your children.” The police tried to limit the videotaping to confessions, but Obama, knowing that the beatings were most likely to occur during questioning, fought successfully to keep interrogations included in the required videotaping. By showing officers that he

shared many of their concerns, even going so far as to help pass other legislation they wanted, he was able to quiet the fears of many. Obama proved persuasive enough that the bill passed both houses of the legislature, the Senate by an incredible 35 to 0. Then he talked Blagojevich into signing the bill, making Illinois the first state to require such videotaping.

The moratorium Barrack refers to, of course, is that instituted by then-Gov. Ryan.

Former Illinois Governor Ryan, who was a pharmacist, was among the Illinois legislators who voted in 1977 to revive the death penalty, acknowledged in his speech the unlikelihood of his crusade. But when he found himself at the helm of a state that had conducted 12 executions and exonerated 13 death row inmates, one of whom came within 48 hours of the electric chair, Mr. Ryan called a moratorium on capital punishment and commuted the death sentences of all of the death row prisoners to life in prison. The accuracy rating of the verdicts of guilty were, in fact, as he pointed out, no better than the flip of a coin.

He acted just 48 hours before the end of his term and one day after he took the extraordinary step of pardoning four condemned men outright based upon actual innocence.

Explaining the moral imperative he felt which prompted him to take matters into his own hands in commuting all of the death sentences, and therefore temporarily halting the death penalty in his state, Gov. Ryan said, “The facts that I have seen in reviewing each and every one of these cases raised questions not only about the innocence of people on death row, but about the fairness of the death penalty system as a whole.”

Commentary

In recounting all of the above, I have a variety of thoughts that I would like to express. In regards to the Cage case, the fallibility of eyewitness identification again rears its ugly head. Misidentification has been the cause of wrongful convictions in 75% of the now 218 DNA demonstrated wrongful convictions. This problem exists across the country, including in NY, where it was the cause of 13 of the 23 DNA based exonerations. It is both sad and shocking to know that there are reforms which could improve the accuracy of identifications, and yet they are not being enacted.

There is no provision in law to address the immediate financial pressures that come at the exonerated person: housing, cost of living expenses, and mental health services, to say nothing at all if they wish to pursue an education, or have any health insurance.

I believe each person should be given

money immediately upon release to address these things, independent of any money that is awarded as a result of a lawsuit. To do less than that, as we currently do as a state and a society, is to throw a person into a strange world, following the traumatic event of being wrongfully imprisoned, knowing that they will have immediate financial hardships that they can't meet, while not letting it bother our conscience even a little bit; in effect saying “Oh Well”, and then going back to our daily lives without giving it a second thought.

The theme of initial law enforcement opposition to recording interrogations is common. In every jurisdiction throughout the country in which such a law has been passed, there has been opposition from police, and sometimes from prosecutors. Some of the objections have included the idea that somehow this would hinder them from doing their job in obtaining confessions and making arrests, and that skepticism that suspects would be willing to talk on the record. In every instance, however, after they start using it, both prosecutors and police embrace it and never want to go back.

The reason that they ultimately embrace videotaping is that it makes for better evidence. Suspects are not able to claim that they did not confess, and police are protected against false allegations of coercion. It has also led to more guilty pleas, because when defense attorney's can see that a confession is clearly voluntary, they advise the client that a jury will realize that as well, and that they will likely be found guilty. In addition, it is a safeguard against false confessions, in that it would record abusive, intimidating, and in some cases illegal tactics employed by police who are hell-bent on getting a confession. That record would be helpful in demonstrating to juries and judges just how it came to be an innocent person falsely confessed.

I believe that New York, and every other state should pass a law requiring videotaping of interrogations. That at least would begin to address the issue of false confessions. I would like to remind everybody that false confessions have caused 25% of the nation's now 219 DNA demonstrated wrongful convictions, and in 10 of New York's 23 DNA demonstrated wrongful convictions.

On a moral level, I wish to salute Gov. Ryan for doing the right thing. His words are powerful, and will, I believe, live on for decades, as a type of watershed moment in the world of wrongful convictions and the death penalty. The significance of such a high ranking politician, as he was when he was Governor, undertaking the actions that he did, and illuminating his reasoning for all

of the world to see, cannot be overstated.

It served far more than saving the lives and freedom of the four wrongfully convicted men, and the death row prisoners, some of whom themselves may have been innocent, or been unfairly sentenced to death; it raised world awareness on an unparalleled level, including that of other elected officials across the country, and helped move the needle on public opinion. We can only hope that Governors in other states where there is a death penalty might emulate his actions.

There are too many elected officials who do not care about the immorality of refusing to take action against wrongful convictions by introducing, fighting for, and voting for reforms to protect the innocent, instead voting them down, often while simultaneously voting for the death penalty. I guess they don't care if wrongful convictions continue to occur, or if innocent people get executed.

I think it is important to let our readers know that Westchester Senators Vincent Libell and Jeffrey Klein routinely vote for the death penalty while voting down measures to prevent wrongful convictions. I encourage concerned readers to both call their respective offices, flood them with emails, and encourage all of their friends and family to do the same, thus expressing the unacceptability of their positions.

The relationship between voter demand for change, coupled with the prospect of voting politicians out of office, and the way politicians vote, is obvious and stark. So long as politicians think that the status quo is fine, they will continue not voting for or supporting change to prevent wrongful convictions.

I again encourage my readers and supporters to sign the petition on my website, www.JeffreyDeskovicSpeaks.org which lists the reforms needed to prevent wrongful convictions, and to encourage others to do so as well. I will bring the petition with me during future lobbying visits to Albany.

In a future issue of *The Guardian*, I intend to write an article providing details on each Westchester politician, and their position on wrongful conviction reforms. I will reference how they have voted in the past, as well as, most importantly, what their current position is, because I think that voters should have that information on hand as they vote. ■