

HEB

325

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 325
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to post-conviction DNA testing. RDU Institutional Facilities
and amending Rule 35.1, Alaska Rules of Criminal Procedure." Component Institution Director's Office
 Sponsor Representative Ledoux
 Requester (H) Judicial Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The legislation provides for court-ordered post-conviction DNA testing upon application by an incarcerated offender. As the cost of DNA sampling and analysis shall be borne by the petitioner, the fiscal impact to the Department of Corrections should be negligible. The department does not anticipate a significant fiscal impact due to the passage of the legislation.

Prepared by: Sharleen Griffin, Director
 Division: Administrative Services
 Approved by: Portia C.K. Parker, Deputy Commissioner
 Agency: Department of Corrections

Phone (907) 465-3339
 Date/Time 3/27/06 12:41 PM
 Date 3/27/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB325-LAW-CJL-3-28-2006
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to post-conviction DNA testing; RDU CRIMINAL
and amending Rule 35.1, Alaska Rules of Criminal Procedure." Component Criminal Justice Litigation
 Sponsor Representative LeDoux
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary.)

This Bill adds a new article allowing an incarcerated person to apply to the court for post-conviction DNA testing.

The Department of Law does not anticipate many instances of post-conviction DNA testing to occur, and as a result no fiscal impact is anticipated from passage of this legislation.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/28/06 1:11 PM
 Approved by: Kathryn Daughhete for David Marquez, Attorney General Date 3/28/2006
 Agency Department of Law

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Representative Gabrielle LeDoux

SPONSOR STATEMENT FOR HB 325

An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure.

DNA testing is a new technology that has enabled criminal justice systems worldwide to prove the guilt or innocence of many people who claim they were mistakenly convicted. This Act would enable Alaska criminal law to keep up with new technology, joining 40 other states in providing a statutory right to DNA testing where meaningful claims of innocence have been made by those convicted. In cases where the DNA would be probative of guilt or innocence, this Act will enable Alaska to quell any lingering doubts where such claims of innocence have been made. Providing access to such testing so will serve victims, police, prosecutors, the public, and public faith in our criminal justice system.

This Act would help enable Alaska to receive funds under the Congressional Justice for All Act of 2004 (H.R. 5107), which, under the leadership of Senator Frist, Speaker Hastert and President Bush, provides financial incentives for states to allow post-conviction DNA testing, and provides funds for qualifying states to pay for such tests.

Specifically, this act establishes a procedure for application for DNA test and the appointment of counsel. A person who has been convicted of a crime may petition the court for testing. If the court determines that the facts warrant testing, the court will appoint a public defender if the petitioner is indigent and that agency will pay for the testing. Law enforcement agencies will retain any collected biological evidence pertaining to the offense.

In this way, a person has an opportunity for testing in order to prove actual innocence. The court will determine whether the case merits this extra step so not every person who requests such testing will automatically receive it. In some states this is only done in death sentence situations, but only 14 of the nation's 175 DNA exonerations involved innocent people facing execution. The other 161 innocent people were simply being forced to endure large parts of their lives behind bars for crimes they did not commit. It therefore makes more sense to simply expand this right to all deserving people. This legislation can help free an innocent person and let law enforcement and the public know that a guilty and dangerous person is still at large.

LEGAL SERVICES

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MEMORANDUM

February 27, 2006

SUBJECT: HB 325 - Sectional Summary (Work Order No. 24-LS1222\A)

TO: Representative Gabrielle LeDoux

FROM: Gerald P. Luckhaupt
Legislative Counsel 

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Creates a new procedure in statute for convicted persons to request DNA testing of biological evidence from the conviction and sentence the person is serving.

Section 2. Provides notice that a portion of sec. 1 has the effect of amending Rule 35.1, A.R.Cr.P.

GPL:med
06-169.med

INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

ACCESS TO POST-CONVICTION DNA EVIDENCE

Despite its ability to prove innocence, some courts will not consider newly discovered DNA evidence after trial.

- The traditional appeals process is often insufficient for proving a wrongful conviction. It is not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in his case.
- Sometimes it comes to light that DNA evidence available at the time of the defendant's trial was never tested.
- Often the methods of DNA testing used at the time of the trial were not exact and yielded unreliable results. Today's more sophisticated technology provides irrefutable results.
- The only way a person can access the DNA evidence associated with his criminal case, absent a protracted legal battle, is through post-conviction DNA testing access statutes.

Do all states have post-conviction DNA access statutes?

States Without Statutes Allowing for Access to DNA Evidence:

At present, the following ten states do not have any DNA access statutes incorporated into their state laws: Alabama, Alaska, Massachusetts, Mississippi, Ohio, Oklahoma, South Carolina, South Dakota, Vermont, & Wyoming.

***** Although forty states have post-conviction DNA testing access statutes, many of these testing laws are limited in scope and substance*****

What are the common shortcomings of existing DNA access laws?

- Some laws present insurmountable hurdles to the individual seeking access, putting the burden on the defense to effectively solve the crime and prove that the DNA evidence promises to implicate another individual.
- Certain laws do not permit access to DNA when the defendant originally pled guilty.
- Many laws fail to include adequate safeguards for the preservation of DNA evidence.
- Several laws do not allow individuals to appeal denied petitions for testing.
- A number of states fail to require full, fair and prompt proceedings once a DNA testing petition has been filed, allowing the potentially innocent to languish interminably in prison.

What key elements should be included in a good DNA access law?

Most states have post-conviction DNA testing access statutes. For those that do not, or for those state statutes with deadlines for individuals seeking access, a federal law, the Justice For All Act (JFAA) of 2004 (H.R. 5107), provides financial incentives for states to allow permanent post-conviction DNA testing access to qualified defendants.

The Innocence Project recommends the following elements be contained in new statutes or existing statutes in need of amending:

- Include a reasonable standard to establish proof of innocence at the stage where an individual is petitioning for post-conviction DNA testing;
- Allow access to post-conviction DNA testing wherever it can establish innocence, including cases where the defendant pled guilty;
- Exclude "sunset provisions," or absolute deadlines, for when access to post-conviction DNA evidence will expire;
- Require state officials to account for evidence in their custody;
- Require state officials to preserve biological evidence properly and for a reasonable period of time;
- Disallow procedural hurdles that stymie DNA testing petitions and proceedings that govern other forms of post-conviction relief;
- Allow convicted persons to appeal from orders denying DNA testing;
- Require a full, fair and prompt response to DNA testing petitions, including the avoidance of debate around whether currently available DNA technology was available at the time of the trial;
- Avoid unfunded mandates by providing funding to DNA testing statutes; and
- Provide flexibility in where, and how, DNA testing is conducted.

Case in Point: Pennsylvania Man Originally Denied Access to DNA

In May of 1987, Bruce Godschalk was convicted of rape and burglary in Pennsylvania. The conviction was based primarily on eyewitness identification and a confession later proven to be false. Forensics techniques available at the time of the trial and used to test the semen from the crimes could not exclude Mr. Godschalk as the perpetrator. Following his conviction, Mr. Godschalk petitioned for access to DNA testing and was denied. After contacting the Innocence Project in 1995, which sought testing on his behalf, the District Attorney refused to allow access to the DNA evidence. It was not until November of 2000 that a Federal District Court granted access to the DNA testing. Delays in setting a testing protocol and delivering the evidence, in addition to some legal hurdles, deferred testing of the evidence until January of 2002. Mr. Godschalk was eventually excluded as the donor of the semen in the crimes and released from prison. Mr. Godschalk had spent seven of his fifteen years of incarceration fighting for access to DNA evidence. As a result of Mr. Godschalk's case, Pennsylvania introduced and later passed a law creating access to DNA evidence.

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Anchorage Daily News

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Case tests Alaska's post-conviction DNA policies**LEGAL BATTLE: An inmate's claim of innocence has led to lawsuits against the state.**By TATABOLINE BRANT
Anchorage Daily News*(Published: August 21, 2005)*

For 12 years, William Osborne has been sitting in a prison cell for a crime he says he didn't commit.

Osborne, 32, has maintained since his arrest in 1993 that he was not involved in the brutal rape and beating of an Anchorage prostitute that year near Earthquake Park. He says that the state convicted the wrong man and that he can prove it, if they would just let him retest hair and semen found at the crime scene using DNA technology more advanced than what was available at the time.

But the state says no. It insists that even if the DNA came back as someone else's, the results still would not prove Osborne innocent. He was identified by the victim, prosecutors say, and fingered by co-defendant Dexter Jackson, who also went to prison. So what's the point?

The state's refusal to allow the testing has provoked the first legal battle in Alaska over post-conviction DNA testing -- an issue most states have already wrestled with and made laws about. The New York-based Innocence Project, whose intervention on DNA issues has helped free more than 80 wrongly convicted people across the country, has sued the state on Osborne's behalf.

"We want the state of Alaska to get with the rest of the country in allowing post-conviction DNA testing," said Colin Starger, staff attorney for the Innocence Project.

Prosecutors leaned heavily on the biological evidence to sway jurors during Osborne's 1993 trial, his lawyers say. Eyewitness identification is notoriously unreliable and the co-defendant may have had his own reasons for lying, they say. Retesting the hair and semen -- at Osborne's expense -- could help determine if what he's saying is true: that it wasn't him.

If it turns out the hair and semen belong to someone else, Osborne wouldn't automatically be freed, the lawyers said. It might just mean a new trial, where the state could convict him again without using it.

Two separate civil suits -- one in federal court and one in state court -- are now working their way through the system, demanding that the state hand over the evidence for testing. The federal suit, filed by the Innocence Project, went before three judges of the 9th U.S. Circuit Court of Appeals last month.

It was not the state's best day.

The short presentation at the Federal Building in downtown Anchorage started with local attorney Bob Bundy, a former state and federal prosecutor, arguing on behalf of Osborne and the Innocence Project.

The judges had been briefed on the background of the case. Press accounts and court records stemming from the 1993 attack laid it out this way:

DENIAL FROM THE START

The victim, a prostitute and drug addict, told authorities she was trolling for customers near Chilkoot Charlie's on March 22 of that year when two men in a red Nissan picked her up and agreed to pay her \$100 to have sex with them.

The men refused to take the woman to her usual transaction site in Spenard, instead driving her to a cul-de-sac at Earthquake Park. From the witness stand at Osborne's trial, she said the pair refused to pay for sex, raped her, beat her with a club, grazed her with a shot, buried her in the snow and left her for dead.

Jackson and Osborne were charged. A Swiss Army knife taken from the victim was found on Jackson, who initially denied any involvement but then claimed he and Osborne had consensual sex with the woman. From the get-go, Osborne denied any part in the attack, but he and Jackson were tried together so Jackson's version undercut Osborne's denial with jurors. The victim said a blue condom was used and police tested one found at the scene.

The results, using an early type of testing, matched the DNA to 16 percent of the African American population, a group that included Osborne.

Osborne asked his attorney to do more advanced testing, but she refused, strategizing that the first results actually helped him ---- they showed the semen could have come from any number of people. Further testing might narrow it to Osborne, she reasoned. Clients often lie to their lawyers.

It is unclear how much weight jurors put on the biological evidence, but in the end they convicted both men. Osborne is "currently incarcerated serving a 26-year sentence for horrendous crimes -- kidnapping, sex assault and assault," Bundy told the 9th Circuit judges last month. "Mr. Osborne has steadfastly maintained from the beginning that he is innocent of these crimes."

There are now tests, Bundy said, that could identify the source of the DNA "virtually to elimination of everybody else on the planet."

For at least four years, state prosecutors have flatly refused to allow this test, court records show.

Although the legal issue before the appeals court was essentially whether Osborne can file in federal court without first exhausting his options in state court, the judges quickly zeroed in on the real question: Why is the state refusing to allow the test?

"There's nothing preventing you from simply giving him this evidence," Judge William Fletcher said to assistant attorney general Nancy Simel. "Why don't you do it?"

"Well, there's a number of reasons for it," Simel responded, "but we're not here to argue the merits of that today."

"Well, but I asked you a question," Fletcher said, more firmly.

Simel stonewalled. The judges seemed puzzled. The courtroom spectators, mostly other lawyers, shuffled in their seats and eyed each other during the unusual and tense exchange.

"It's a really simple question," Fletcher pressed. "And as a practical matter, we have this evidence

sitting there that may or may not clear this man ..."

"Correct."

"And you have it in your custody and you're refusing to hand it over -- how come?"

"Because we don't think that Mr. Osborne satisfies the requirements for handing over evidence in this case. ... It has to do with complicated issues of fact and --"

"You know it's a simple question, and I don't think the answer has to be that complicated," Fletcher said. "... I don't get it yet."

"Well, be that as it may, that has not been litigated yet," Simel said. "And I am not willing or able in the sense of answering the question in the context of this case."

The argument continued, and at one point, Simel even told the judge, who was in mid-sentence, to hold on a second.

The exchange continued:

JUDGE: "... Pretty straightforward -- hand it over."

SIMEL: "I understand."

JUDGE: "And you don't want to do it."

SIMEL: "That is correct."

JUDGE: "And you're really not willing to tell me why. But, I guess you'll tell somebody sometime."

SIMEL: "Not in this instance. Not at this time, is the answer."

THE OTHER EVIDENCE

Dean Guaneli, Alaska's chief assistant attorney general in the criminal division, said in an interview after the oral argument that the state stands firm in its belief that the biological evidence in Osborne's case should not be retested. "We think the conviction was valid. ... We're confident in it. We feel there is no need to go back and revisit the case."

The victim identified Osborne as a perpetrator, he said. And so did Jackson. "This is why we are fighting this case."

If the DNA results -- broad as they were -- had been the only evidence in the case, Guaneli said, "it's hard to imagine the jury would have convicted."

And then there is the idea of finality. "There's a strong interest in saying a case is over," he said, "that the laws and Constitution were applied, and applied fairly and we need to move on. I think that needs to be carefully considered. We don't want innocent people convicted, but we don't think that this guy fits into that category."

Starger of the Innocence Project disagreed: "DNA can only help advance the cause of truth here," he said. "It doesn't hurt the cause of finality to have the test done."

Randall Cavanaugh, Osborne's attorney in the state suit, said the victim's identification of Osborne was uncertain from the beginning.

The woman, he said, was upset and stressed out at the time of the assault, Cavanaugh said. She had a crack pipe on her; she had bad eyesight and wasn't wearing her glasses or contacts; she initially lied to police about what happened; she had a head injury; it was dark out except for a dome light in the vehicle; and the initial description the woman gave police of the second man didn't quite fit Osborne, Cavanaugh said: It was 9 years off in age, 3 inches off in height, up to 45 pounds off in weight and said he didn't have facial hair when witnesses testified he had a mustache.

Also worrisome, he said, the victim did not seem certain when she picked Osborne from a photo lineup. She said that he was "most familiar, along with others," Cavanaugh said, and "most likely to have been the passenger."

"We think she was very wrong with her identification."

Guaneli noted that the jury had time to size up the victim's credibility during her testimony. "This wasn't a situation where she was just there for a few seconds," he said of the attack. "This was a long, drawn-out affair."

Osborne's attorneys can argue that victims are always under stress and therefore prone to mistakes, Guaneli said, "but what do they say about the other guy?"

Cavanaugh said Jackson could have had a lot of motives for lying; maybe he was covering up for someone. Efforts to interview Jackson about it have been unsuccessful, Cavanaugh said.

The bottom line is, the state used the blue condom and the crude DNA results to damn Osborne to the jury, Cavanaugh said, so they ought to let him re-test now.

"I think they're just afraid of the results."

OTHER STATES HAVE LAWS

The federal government and about 40 states have laws covering post-conviction DNA testing, said Starger, the Innocence Project lawyer. Alaska does not.

That may be because the issue doesn't come up here very often, Guaneli said. Alaska has no death penalty or record of miscarriages of justice, he said, two things likely to raise the issue.

The Attorney General's Office has no written opinion or guidelines on how to handle requests for post-conviction DNA testing, Guaneli said. Certainly prosecutors would consider re-testing biological evidence "if we believed that testing would be meaningful in determining someone's innocence," he said.

Until the testing is done, Starger said, no one knows "whether or not the results will support his efforts to get a new trial."

According to the Innocence Project, a significant number of post-conviction DNA tests requested by defendants end up further implicating them.

Why they demand DNA tests when they know they committed the crime "would be the subject for a great psychological study," an Innocence Project attorney told the Los Angeles Times in 2003.

"Maybe after 15 years of telling everyone you're innocent, you start to believe yourself."

As for the broader question of whether Alaska needs a law to spell out when post-conviction DNA testing should be allowed, Guaneli said he is not familiar with what other states do, but that he has reservations.

"We don't want to find ourselves in a situation where we have to preserve all this evidence and do all this retesting when it's not going to serve any purpose" he said. "We worry that it's a never-ending process. There are already ways defendants can string things along for years."

He added later: "If there was a state law to do so in a case like (Osborne's), we would object to that."

Osborne's lawyers say the "process" is not more important than the possibility that an innocent man is spending his youth in prison for a crime he didn't commit. If the state is so confident of Osborne's guilt, Bundy said, then the DNA test will prove they are right.

"Why would anybody be afraid of the truth?" he said.

Osborne's lawsuit against the state is already paving the way for other Alaskans seeking post-conviction DNA testing. In a recent decision in the case, the Alaska Court of Appeals gave the Superior Court guidelines for determining when post-conviction DNA testing should be allowed -- a precedent that attorneys can point to in the future.

The judge in Osborne's case has not yet ruled on whether he meets the criteria.

Daily News reporter Tataboline Brant can be reached at tbrant@adn.com or 257-4321.

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Viewpoints

Criminal DNA Database Expansion Working In Alaska

by Rep. Tom Anderson

March 06, 2006
Monday PM

DNA testing, usually done through a simple mouth swab, is the fingerprinting of the 21st century. Through DNA analysis of blood, hair, fingernails, or skin left at crime scenes, investigators are able to connect perpetrators with their past crimes, or to exonerate those who are falsely accused. Three years ago, the State Legislature passed legislation to broadening Alaska's DNA collection laws. HB 49 required all persons, including adjudicated juveniles, convicted of felonies, crimes against a person, sexual misdemeanors, those who are required to register as sex offenders, and those currently incarcerated or on parole for these crimes will have their DNA entered into the statewide database. This change was followed in 2005 by HB 124, which gave the Department of Public Safety the tools to collect DNA, by reasonable force, when necessary, further increasing the samples submitted into the database.

The advantages of a forensic DNA database are undeniable. Assuming a database with a critical mass of data and a laboratory system capable of rapid crime scene sample analysis, the Combined DNA Index System (CODIS) has the potential to be one of law enforcement's most powerful tools. Importantly, the database is most significant when no suspect exists or when a case is likely to go unsolved because of a lack of other evidence. The expanded database allows police to eliminate innocent parties or people having legitimate access to a crime scene.

Alaska's successes continue to mount, with the aid of federal funding from the National Institute of Justice, the number of DNA profiles from convicted offenders now in the database has more than tripled. The total funding for Alaska under NIJ's Convicted Offender Backlog Reduction Program is \$280,175.00. The total number of samples processed under this program

will be 8,500, and it is hoped Alaska will receive additional federal funds for this purpose under President Bush's National DNA Initiative.

Currently, Alaska's DNA database contains over 10,000 convicted offender DNA profiles. The expansion helps to increase the intelligence value of the database, thus making it a more powerful tool for solving crimes. This has had a tremendous impact on the number of cases being solved through the use of our DNA database. Last year alone, DNA profiles obtained from more than 90 different crime scenes around the state were matched back to known Alaskan convicted offenders. More than a third of these crimes involved sexual assault.

On a per capita basis, Alaska now has one of the most successful DNA databases in the nation and according to recent FBI statistics, has aided more investigations than 19 other states. One of Alaska's CODIS hits from last July involved matching an Alaskan convicted offender to a crime scene profile entered by the Oregon State Police from an attempted murder. The qualifying conviction for the Alaskan offender was a misdemeanor assault. This hit would not have happened if our database law had not been expanded to cover all crimes against a person.

I have made DNA database expansion my number one priority as a State Legislator. I am pleased to see these fruits coming to bear for the benefit of my constituents, fellow Alaskans and most importantly for the betterment of our children's future. As the State's database continues to grow, we can expect more cases to be solved through the use of DNA, making Alaska and Alaskans safer.


About: Rep. Tom Anderson (R) is a member of the 24th Alaska State Legislature representing District 19 - Anchorage.

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Why do innocent people confess to crimes they did not commit?

By Saul M. Kassir, and Gisli H. Gudjonsson

In 1989 a female jogger was beaten senseless, raped and left for dead in New York City's Central Park. Her skull had multiple fractures, her eye socket was crushed, and she lost three quarters of her blood. She survived, but she cannot remember anything about the incident. Within 48 hours of the attack, solely on the basis of confessions obtained by police, five African- and Hispanic-American boys, 14 to 16 years old, were arrested. The crime scene had shown a horrific act but carried no physical traces at all of the defendants. Yet it was easy to under-

stand why detectives, under the glare of a national media spotlight, aggressively interrogated the teenagers, at least some of whom were "wilding" in the park that night.

Four of the confessions were videotaped and later presented at trial. The tapes were compelling, with each of the defendants describing in vivid—though, in many ways, erroneous—detail how the jogger was attacked and what role he had played. One boy reenacted the way he pulled off her running pants. Another said he felt pressured by the others to participate in his "first rape";



he expressed remorse and promised that it would not happen again. After their arrest, the youths recanted these confessions, because they had believed that making a confession would have enabled them to go home. Regardless of the denials, the tapes collectively persuaded police, prosecutors, two trial juries, a city and a nation; the teenagers were convicted and sentenced to prison.

Thirteen years later Matias Reyes, who was in jail for three rapes and a murder committed after the jogger attack, stepped forward of his own initiative. He volunteered that he was the Central Park assailant and that he had acted alone. The Manhattan district attorney's office questioned Reyes and discovered that he had accurate, privileged and independently corroborated

crime? A scan of the scientific literature reveals how a complex set of psychological factors comes into play. First, techniques commonly used by investigators during interviews make them prone to see deceit in suspects, a perception that tends to bias the outcome of the questioning. When the accused waive their constitutional rights to silence and to counsel during questioning by the police, they may also unwittingly lose procedural safeguards and put themselves at greater risk of making a false confession. Other contributors include a given person's tendencies toward compliance or suggestibility in the face of two common interrogation tactics—the presentation of false incriminating evidence and the impression that giving a confession might bring leniency. In

(A disturbing number of cases have involved defendants who were convicted based only on false confessions.)

rated knowledge of the crime and crime scene. DNA testing further revealed that the semen samples recovered from the victim—which had conclusively excluded the boys as donors—belonged to Reyes. (Prosecutors had argued at trial that just because police did not capture *all* the alleged perpetrators did not mean they did not get *some* of them.) In December 2002 the five teenagers' convictions were vacated.

Despite its notoriety, the case illustrates a phenomenon that is not new or unique. The pages of legal history reveal many tragic miscarriages of justice involving innocent men and women who were prosecuted, wrongfully convicted, and sentenced to prison or to death. Opinions differ on prevalence rates, but it is clear that a disturbing number of cases have involved defendants who were convicted based only on false confessions that, at least in retrospect, could not have been true. Indeed, as in the case of the Central Park incident, disputed false confessions have convicted some people notwithstanding physical evidence to the contrary. As a result of technological advances in forensic DNA typing—which enables the review of past cases in which blood, hair, semen, skin, saliva or other biological material has been preserved—many new, high-profile wrongful convictions have surfaced in recent years, up to 157 in the U.S. alone at the time of this writing. Typically 20 to 25 percent of DNA exonerations had false confessions in evidence.

Why would an innocent person confess to a

short, sometimes people confess because it seems like the only way out of a terrible situation.

More troubling, confession evidence is inherently prejudicial, influencing juries even when they are shown evidence of coercion and even when there is no corroboration. Ultimately, we believe, society should discuss the urgent need to reform practices that contribute to false confessions and to require mandatory videotaping of all interviews and interrogations.

Discerning the Truth

A 2004 conference on police interviewing attended by the two of us illustrates the problem of bias during questioning. Joseph Buckley—president of John E. Reid and Associates (which has trained tens of thousands of law-enforcement professionals) and co-author of the manual *Criminal Interrogation and Confessions* (Aspen Publishers, 2001)—presented the influential Reid technique of interviewing and interrogation. Afterward, an audience member asked if the persuasive methods did not at times cause innocent people to confess. Buckley replied that they did not interrogate innocent people.

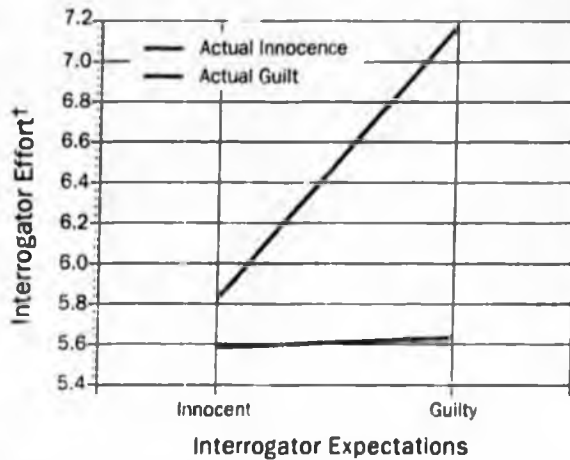
To understand the basis of this remark, it is important to know that the highly confrontational, accusatory process of interrogation is preceded by an information-gathering interview intended to determine whether the suspect is guilty or innocent. Sometimes this initial judgment is reasonably based on witnesses, informants or other ex-

COURTESY OF EVERETT COLLECTION (preceding pages)

True or False?

	Naive Students	Trained Students	Police Investigators
Total accuracy	56%	46%	50%
Confidence*	5.91	6.55	7.05

*Self-reported on a 10-point scale.



*Observer's ratings on a 10-point scale.



Training makes people more confident about their ability to distinguish truth from lies; however, it does not increase their accuracy (table). In the laboratory, interrogators tried hardest to extract a confession when they presumed guilt but the suspect was actually innocent (graph).

trinsic evidence. At other times, however, such judgments may be based on nothing more than a hunch, a clinical impression that investigators form during a preinterrogation interview.

The risk of error at this stage is clear, as in the 1986 Florida case involving Tom Sawyer, whom investigators accused of sexual assault and murder and interrogated for 16 hours, extracting a confession. His statement was later suppressed by the judge, and the charges were dropped. Sawyer had become a prime suspect because his face flushed and he appeared embarrassed during an initial interview, a reaction interpreted as a sign of deception. Investigators did not know that Sawyer was a recovering alcoholic with a social anxiety disorder that caused him to sweat profusely and blush in evaluative social situations. Many of the characteristics associated with acting "guilty" are also signs of a person under high stress.

Separating truths from lies is tricky. In fact, most experiments have shown that people perform at no better than chance levels and that training programs produce, at best, small and inconsistent improvements compared with naive control groups. In general, professional lie catchers, such as police detectives, psychiatrists, customs inspectors and polygraph examiners, exhibit accuracy rates in the 45 to 60 percent range, with a mean of 54 percent.

Even with those statistics, trained investigators believe they are more accurate in determining

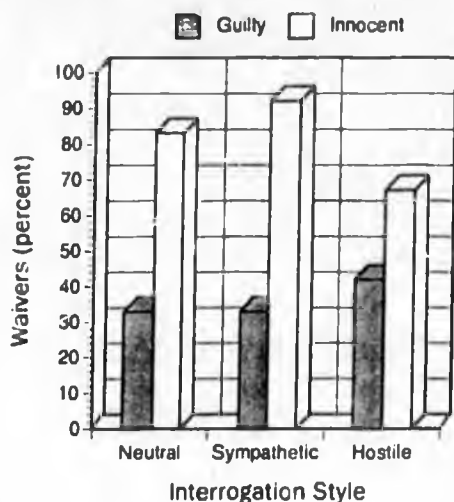
guilt or innocence. In 2002 Christian Meissner of Florida International University and one of us (Kassin) conducted a meta-analysis to examine their performance. Across studies, investigators and educated participants, relative to naive controls, exhibited a proclivity to judge targets as deceptive—and to do so with confidence [see table above]. Expressing a particularly cynical but telling point of view, one detective is quoted as saying in a 1996 article by Richard A. Leo of the University of California at Irvine, "You can tell if a suspect is lying by whether he is moving his lips."

Protections Averted

With suspects judged deceptive from their interview behavior, the police shift into a highly confrontational process of interrogation. There is, however, an important procedural safeguard in place to protect the accused. In the landmark *Miranda v. Arizona* in 1966, the U.S. Supreme Court ruled that police must inform all suspects of their constitutional rights to silence ("You have the right to remain silent; anything you say can and will be held against you in a court of law") and to counsel ("You are entitled to consult with an attorney; if you cannot afford an attorney, one will be appointed for you"). Only if suspects waive these rights "voluntarily, knowingly and intelligently" as determined in law by consideration of "a totality of the circumstances" can the statements they produce be admitted into evidence.

SOURCES: KASSIN & FONG, 1999; MEISSNER & KASSIN, 2002 (table); SOURCE: KASSIN, GOLDSTEIN & SAVITSKY, 2003 (graph); TM AND COPYRIGHT © 20TH CENTURY FOX FILM CORP. ALL RIGHTS RESERVED. COURTESY OF EVERETT COLLECTION (photograph)

Waiving Rights



Innocents are especially at risk for waiving rights to counsel and silence that were established by the U.S. Supreme Court in *Miranda*, believing they have nothing to hide (left). Yet longer exposure to questioning leaves them at greater risk for a false confession.

Miranda may not yield the protective effect for which it was designed for two reasons. First, a number of suspects—because of their youth, level of intelligence, lack of education or mental health status—do not have the capacity to understand and apply the rights they are given. Second, police use methods of presentation that elicit waivers. After observing live and videotaped police interrogations, Leo found that roughly four out of five suspects waive their rights and submit to questioning. He also observed that individuals who have no prior felony record are more likely to waive their rights than are those with a history of criminal justice “experience.” In a 2004 study by one of us (Kassin) and Rebecca Norwick of Harvard University, subjects guilty or innocent of a mock crime (stealing \$100) were confronted by a neutral, sympathetic, or hostile “Detective McCarthy” who asked if they would waive their rights and talk. Only 36 percent of guilty subjects agreed, but 81 percent of innocents waived these rights, saying later they had nothing to hide or fear [see chart above].

Interrogation Tactics

In the past, American police routinely practiced “third degree” methods of custodial interrogation—inflicting physical or mental pain and suffering to extract confessions and other types of information from crime suspects. Such tactics have mostly faded into the annals of criminal justice history, but modern police interrogations remain powerful enough to elicit confessions. At the most general level, it is clear that the two-step approach employed by Reid-trained investigators

and others—in which an interview generates a judgment of truth or deception, which in turn determines whether or not to proceed to interrogation—is inherently biased.

For innocents who are initially misjudged, one would hope that interrogators would remain open-minded and reevaluate their beliefs over the course of questioning. A warehouse of psychology research suggests, however, that once people form a belief, they selectively seek, collect and interpret new data in ways that verify their opinion. This distorting cognitive confirmation bias makes such personal convictions resistant to change, even in the face of contradictory evidence. It also contributes to the errors committed by forensic examiners whose judgments of handwriting samples, bite marks, tire marks, ballistics, fingerprints and other “scientific” observations are often corrupted by a priori expectations, a problem uncovered in many DNA exoneration cases.

In one instance in 2002, Bruce Godschalk was exonerated of two rape convictions after 15 years in prison when laboratories for both the state and the defendant found from his DNA that he was not the rapist. Yet the district attorney whose office had convicted Godschalk—even though Godschalk disavowed his initial confession—argued that the DNA tests were flawed and refused at first to release him from prison. When the district attorney was asked what foundation he had for his decision, he asserted, “I have no scientific basis. I know because I trust my detective and his tape-recorded confession. Therefore, the results must be flawed until someone proves to me otherwise.”

SOURCE: KASSIN & NORWICK, 2004 (GRAPH); TM AND COPYRIGHT © 20TH CENTURY FOX FILM CORP. ALL RIGHTS RESERVED. COURTESY OF EVERETT COLLECTION (PHOTOGRAPH)

The presumption of guilt also influences the way police conduct interrogations, perhaps leading them to adopt an aggressive and confrontational questioning style. Demonstrating that interrogators can condition the behavior of suspects through an automatic process of social mimicry, Lucy Akehurst and Aldert Vrij of the University of Portsmouth in England found in 1999 that increased gestures and physical activity among police officers triggered movement among interviewees—fidgeting behavior that is then seen by others as suspicious.

It is important to scrutinize the specific practices of social influence that get people to confess. Proponents of the Reid technique advise interro-

the figure is closer to 60 percent. In Japan, where few restraints are placed on police interrogations and where social norms favor confession as a response to the shame brought by transgression, more than 90 percent of suspects confess.

In so-called self-report studies, researchers ask why people confessed. In 1991 one of us (Gudjonsson) and Hannes Petursson of University Hospital in Reykjavik, Iceland, published the first work in this area carried out on Icelandic prison inmates, which was replicated in Northern Ireland and in a larger Icelandic prison population with an extended version of a 54-item self-report instrument, the Gudjonsson Confession Questionnaire.

Although most suspects confess for a combi-

(*Miranda* may not yield the protective effect for which it was designed.)

gators to conduct the questioning in a small, barely furnished, soundproof room. The purpose is to isolate the suspect, increasing his or her anxiety and desire to escape. To further heighten discomfort, the interrogator may seat the suspect in a hard, armless, straight-backed chair; keep light switches, thermostats and other control devices out of reach; and encroach on the suspect's personal space over the course of interrogation.

Against this physical backdrop, the Reid operational nine-step process begins when an interrogator confronts the suspect with unwavering assertions of guilt (1); develops "themes" that psychologically justify or excuse the crime (2); interrupts all efforts at denial and defense (3); overcomes the suspect's factual, moral and emotional objections (4); ensures that the passive suspect does not withdraw (5); shows sympathy and understanding and urges the suspect to cooperate (6); offers a face-saving alternative construal of the alleged guilty act (7); gets the suspect to recount the details of his or her crime (8); and converts the latter statement into a full written or oral confession (9). Conceptually, this system is designed to get suspects to incriminate themselves by increasing the anxiety associated with denial, plunging the suspect into a state of despair and then minimizing the perceived consequences of confession.

Rates of confession vary in different countries, indicating the underlying role that institutional and cultural influences play. For example, suspects detained for questioning in the U.S. confess at a rate around 42 percent, whereas in England

nation of reasons, the most critical is their belief about the strength of the evidence against them. That is why the tactic of presenting false evidence—as when police lie to suspects about an eyewitness that does not exist; fingerprints, hair or blood that has not been found; or lie detector tests they did not really fail—can lead innocent people to confess. In a 1996 laboratory experiment that illustrates the point, Kassin and Katherine L. Kiechel of Williams College falsely accused college students of crashing a desktop computer by hitting a key that they were told was off-limits. When a fellow student who was present said she had witnessed the students hit the forbidden key, the number induced to sign a confession increased by 45 percent. Also increased were the numbers who internalized a belief in their own guilt and fabricated false memories to support that belief.

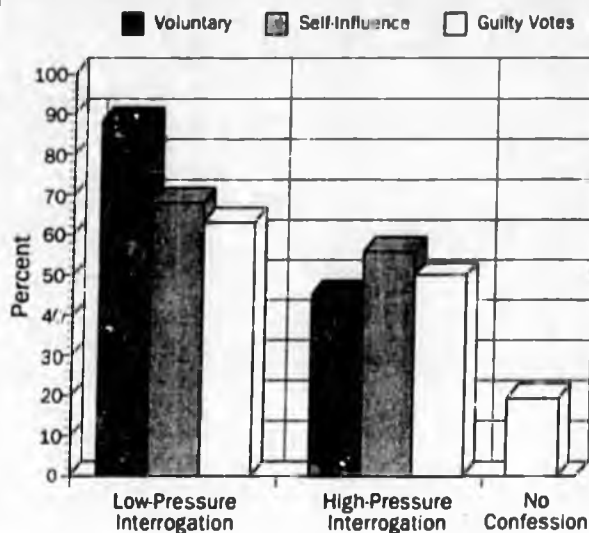
False Confessions

In 2004 Steven A. Drizin of Northwestern University School of Law and Leo analyzed 125 cases of proved false confessions in the U.S. from

(The Authors)

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Confessions and the Jury



The existence of a confession—true or false—predisposes juries toward reaching a guilty verdict. Mock jurors were asked whether they judged the confession to be voluntary, whether it influenced their verdict, and whether they voted for conviction.

between 1971 and 2002, the largest sample ever studied. Approximately two thirds were exonerated before the trial, and the rest came after conviction. Ninety-three percent of the false confessors were men. Overall, 81 percent occurred in murder cases, followed by rape (8 percent) and arson (3 percent). The most common bases for exoneration were that the real perpetrator was identified (74 percent) and that new scientific evidence was discovered (46 percent). The sample was disproportionately represented by persons who were young (63 percent were younger than 25; 32 percent were under 18), mentally retarded (22 percent) and diagnosed with mental illness (10 percent). Astonishingly, 30 percent of the cases contained more than one false confession to the same crime, as in the Central Park jogger case, typically indicating that one false confession was used to get others.

Recognizing that people confess in different ways and for different reasons, psychologists categorize false confessions into three groups:

Voluntary false confessions. When aviator Charles Lindbergh's baby was kidnapped in 1932, some 200 people stepped forward to confess. In the 1980s Henry Lee Lucas falsely admitted to hundreds of unsolved murders, making him the most prolific serial confessor in history. People might voluntarily give a false confession for reasons including a pathological desire for notoriety; a conscious or unconscious need to expiate feelings of guilt over prior transgressions; an inability to distinguish fact from fantasy; and a desire to aid and protect the real criminal.

Compliant false confessions. In these cases, the suspect confesses to achieve some end: to escape an aversive situation, to avoid an explicit or implied threat, or to gain a promised or implied reward. In *Brown v. Mississippi* in 1936, for example, three black tenant farmers admitted to murder after they were whipped with a steel-studded leather belt. And in the Central Park jogger case, each boy said he had confessed despite innocence because he was stressed and expected to go home if he cooperated.

Internalized false confessions. During interrogation, some suspects—particularly those who are young, tired, confused, suggestible and exposed to false information—come to believe that they committed the crime in question, even though they did not. In a classic case, 18-year-old Peter Reilly of Falls Village, Conn., returned home one night to find that his mother had been murdered. Reilly immediately called the police but was suspected of matricide. After gaining Reilly's trust, the police told him that he failed a lie detector test (which was not true), and which indicated that he was guilty even though he had no conscious memory of the event.

After hours of interrogation, the audiotape reveals that Reilly underwent a chilling transformation from denial to confusion, self-doubt, conversion ("Well, it really looks like I did it") and finally a full confession ("I remember slashing once at my mother's throat with a straight razor I used for model airplanes.... I also remember jumping on my mother's legs"). Two years later independent evidence revealed that Reilly

SOURCE: KASSIN & SUKEL, 1997 (GRAPH); COURTESY OF EVERETT COLLECTION (PHOTOGRAPH)

could not have possibly committed the murder.

Trial jurors, like others in the criminal justice system who precede them, can be overly influenced by confessions. Archival analyses of actual cases containing confessions later proved false tell a disturbing tale. In these cases, the jury conviction rates ranged from 73 percent (as found by Richard Ofshe of the University of California at Berkeley and Leo in 1998) to 81 percent (as found by Drizin and Leo in 2004)—about the same as cases in which the defendants had made true confessions.

colleagues found that such covert assurances can contribute to false confessions.

The Need for Reforms

To assess any given confession accurately, police, judges, lawyers and juries should have access to a videotaped record of the interrogation that produced it. In Great Britain, PACE mandated that all sessions be taped. In the U.S., four states—Minnesota, Alaska, Illinois and Maine—have mandatory videotaping, although the practice is

(Trial jurors, like others in the criminal justice system, can be overly influenced by confessions.)

In light of such findings, the time is ripe for law-enforcement professionals, policymakers and the courts to reevaluate current methods of interrogation. Although more research is needed, certain practices clearly pose a risk to the innocent. One such factor concerns time in custody and interrogation. The 2004 study by Drizin and Leo found that in proved false confession cases, the interrogations lasted for an average of 16.3 hours. In the Central Park case, the five boys were in custody for 14 to 30 hours by the time they confessed. Following the Police and Criminal Evidence Act of 1986 (PACE) guidelines implemented in England and Wales, policy discussions should begin with a proposal for the imposition of time limits for detention and interrogation or at least flexible guidelines, as well as periodic breaks for rest and meals.

A second problem concerns the tactic of lying to suspects about the evidence. Research shows that people capitulate when they believe that the authorities have strong evidence against them. The practice of confronting suspects with real evidence, or even their own inconsistent statements, should increase the reliability of the confessions ultimately elicited. When police misrepresent the evidence, however, innocent suspects come to feel as trapped as the perpetrators—which increases the risk of false confession.

A third matter revolves around the use of minimization, as when police suggest to a suspect that the conduct in question was provoked, an accident or otherwise morally justified. Such tactics lead people to infer leniency in sentencing on confession, as if explicit promises had been made. In a study that is now in press, Melissa Russano of Roger Williams University and her

often found elsewhere on a voluntary basis. Videotaping deters interrogators from using the most aggressive, psychologically coercive methods. It also will block frivolous defense claims of coercion where none existed. And it provides an objective and accurate record of all that transpired, avoiding disputes about how the confession came about.

A 1993 National Institute of Justice study revealed that many U.S. police departments already have videotaped interrogations—and the vast majority found the practice useful. More recently, in 2004, Thomas P. Sullivan of the law firm Jenner & Block interviewed officials from 238 police and sheriff's departments in 38 states who made such recordings voluntarily and found that they enthusiastically favored the practice, which increases accountability, provides an instant replay of the suspect's statement that reveals information initially overlooked and reduces the amount of time spent in court defending their interrogation conduct. As a counter to the most common criticisms, those interviewed found that videotaping is not costly and does not inhibit suspects from talking to police.

Such reforms are sorely needed. Only then can society trust the process of interrogation and the confessions that it produces—and help to promote justice for all.

(Further Reading)

- ◆ **The Psychology of Interrogations and Confessions: A Handbook.** Gisli Gudjonsson. John Wiley & Sons, 2003.
- ◆ **The Psychology of Confessions: A Review of the Literature and Issues.** Saul M. Kassin and Gisli H. Gudjonsson in *Psychological Science in the Public Interest*, Vol. 5, No. 2; November 2004. More information is available at www.psychologicalscience.org/journals/
- ◆ More on wrongful convictions is available at the Innocence Project Web site: www.InnocenceProject.org