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THE TIP OF THE ICEBERG

Hooray for the exonerated! But what about everyone else?

By Julius (Jay) Wachtel. Randolph Arledge [left prison](#) in February 2013, finally a free man. He had been doing 99 years for allegedly stabbing a Texas woman to death. At the time of his conviction, in 1984, he and two criminal buds were in a Tennessee prison, doing time for armed robbery. They testified that Arledge admitted killing the woman. One, who later recanted, said that prosecutors promised them reduced sentences on the robbery for testifying.

Arledge was transferred to Texas in 1998 to start serving his time. Lawyers from the Innocence Project eventually stepped in. In 2011 advanced techniques [conclusively tied DNA from the murder](#) to a known violent criminal. Prosecutors endorsed Arledge's exoneration and police are currently seeking the new suspect.

It took twenty-nine years, but [George Allen is finally free](#). In December 2012 a Missouri appeals court exonerated him for a 1982 murder. A 56-year old schizophrenic, Allen first came to police attention through a mistake – officers brought him in for questioning thinking he was someone else – but once they got hold of him they wouldn't let go. Allen was coerced to confess, yet the evidence was so shaky that the first jury hung up. He was convicted on retrial, in part because of the confession, and in part because of shoddy blood work that mistakenly identified him as the donor. Jurors were never told that fingerprints found at the scene weren't his. Work by the Innocence Project [subsequently proved](#) that none of the abundant physical evidence was a match.

George Allen didn't get the death penalty because a juror had to be excused post-conviction, thus aborting the sentencing hearing. [Damon Thibodeaux](#) wasn't as lucky. In September 2012 the 38-year old inmate was released from Louisiana's death row after doing sixteen years for allegedly killing his teenage step-cousin.

Only thing is, he wasn't guilty. Yes, Thibodeaux confessed, but only after many hours of interrogation and a polygraph that he was falsely told he had flunked. His statement was riddled with inaccuracies and impossibilities, and his account of the killing had been supplied by investigators. Thibodeaux recanted, but to no avail. Jurors never

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discovered that a prosecution expert who examined him concluded that he was innocent and only confessed because he feared being otherwise sentenced to death (it happened anyway.) Jurors didn't know that DNA from a suspect was recovered, [but that it didn't match Thibodeaux](#). In time evidence of innocence was so strong that the new D.A. joined in calling for Thibodeaux's exoneration.

Arledge, Allen and Thibodeaux are three of [306 post-conviction DNA exonerations](#) since 1989. They are in a sense exceptionally lucky. Most criminal cases other than homicide lack biological evidence, and even when it is found and processed the chances of identifying the perpetrator are low ([in one study, 12 percent](#).) It's for such reasons that DNA exonerees likely represent only the tip of the iceberg. That leads us to make a few suggestions.

First, pity the poor defendant who is innocent but was arrested for a crime, such as robbery, burglary or felony theft, where police are less likely to look for biological evidence and submit it for analysis. To minimize wrongful convictions and help correct those that occur, it is critical that police seek out such evidence in all felony cases, and that there be adequate funding to process what they do find.

Many prosecutors vigorously resist defense requests for DNA testing, and their positions are often endorsed by the courts. (For a current, inexplicable example click [here](#).) Some take it a step further. Consider for example Texas Judge (and former D.A.) Ken Anderson, who [is himself being prosecuted](#) for willfully failing to disclose exculpatory evidence in a case that needlessly cost exoneree [Michael Morton](#) twenty-five years of his life. Strict laws are necessary to remind recalcitrant servants of the state to do their real job, which as they should well know is to achieve justice, not simply gain a conviction.

Without doubt, inherently fallible techniques such as witness statements, eyewitness identification and admissions and confessions dominate the investigative process. Good police work is thus essential. Taking shortcuts may seem appealing but can so corrode a cop's sense of craft that he feels free to declare, as one did in court, that [questioning suspects "is not my style."](#) Concerns that this former detective's interrogation practices [may have led to more than one wrongful conviction](#) are a powerful reminder that quality policing is and will remain the first line of defense from miscarriages of justice for the foreseeable future.