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Using DNA To Free the Innocent

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Article

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Using DNA to free the innocent

Susan Rutberg, Janice Brickley

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A year ago, 37-year-old Peter J. Rose walked out of Mule Creek State Prison in Ione (Amador County), straight into the arms of his children. He had served nearly 10 years of hard time for the 1994 rape of a 13-year-old girl before DNA testing proved his innocence. If not for the Northern California Innocence Project, he'd likely still be behind bars.

To date, there has been no official inquiry into the failures that led to his wrongful conviction, nor has anyone been held accountable. Sadly, that means it will take longer for Rose and his family to heal from this miscarriage of justice and the decade they lost.

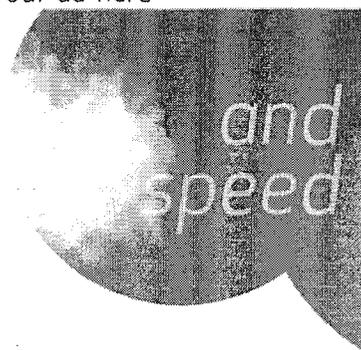
Which is precisely why California needs an "innocence commission."

From the get-go, Rose maintained his innocence, telling the judge, "I don't need a lawyer, I'm innocent." But the jury chose to believe the 13-year-old victim who identified Rose in court as her rapist.

What the jury didn't know was that before her three-hour interview with Lodi police, she had insisted she never saw her attacker's face. But according to court records, detectives goaded her into naming the rapist. They even insisted she take off her crucifix so she "wouldn't be lying in the presence of the Lord." After hours under pressure, the young girl said: "Maybe it could be Pete? My aunt thinks it was Pete. Is it Pete?" At that point, the detectives changed their tone. "You're doing good here," they said. And slowly but steadily, the young girl's hesitancy turned into certainty. The jury found Rose guilty, and when the judge sentenced him to 27 years in prison, Rose wept.

Law students enrolled in Golden Gate University's Northern California Innocence Project, who investigated Rose's claim of innocence, were initially told that all the evidence in the case had been destroyed, but they kept looking. Their persistence was rewarded: A small cutting from the rape victim's underwear turned up in a laboratory where it had been sitting since Rose's trial. The students filed a motion for DNA testing.

The results were clear: The DNA profile obtained from the cutting could not have come from Rose. On Oct. 29, 2004, San Joaquin Superior Court Judge Stephen Demetras ordered Rose's immediate release. Students and lawyers from the Innocence Project carried the judge's order to the prison and watched Rose walk to freedom.



Earlier this year, Rose was declared factually innocent, wiping the conviction from his record, and on Oct. 20, his request for compensation from the state, at \$100 for each day of post-conviction wrongful incarceration, was approved.

But Rose has yet to receive an apology or explanation. Not from the Lodi Police Department, whose internal investigation cleared itself of any wrongdoing. Not from the San Joaquin D.A.'s office which, as far as we know, has never questioned its handling of the case. Not from the victim, now 24, who upon learning of Rose's release recanted her testimony, saying she only named Rose because of police pressure. And not from his court-appointed attorney, who not only failed to inform the jury that blood tests should have excluded Rose as a suspect, but who also failed to bring up the coercive tactics police used with the rape victim.

Since 1989, 163 prisoners in the United States have been exonerated through post-conviction DNA testing, according to the New York Innocence Project (www.innocenceproject.org). In each case, the system failed, due to police or prosecutor misconduct, questionable identification procedures, coerced confessions, racism or ineffective counsel.

All this underscores the need for an innocence commission, a blue-ribbon panel of criminal justice professionals whose job it is to conduct post-mortems of wrongful convictions, such as Rose's, and make recommendations for change. If other catastrophes, such as hospital malpractice cases, terrorist attacks and airplane crashes, are subject to investigations that result in someone taking responsibility and instituting reforms, why not wrongful convictions? Ten years stolen from a man's life deserves no less.

Susan Rutberg is a professor of law and director of the Northern California Innocence Project at Golden Gate University. Janice Brickley is a former adjunct professor and supervising attorney at GGU's Innocence Project. They represented Peter J. Rose.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/11/06/EDGQIF5TFM1.DTL>

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