



Christopher Shun Scott

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During the assault, her attacker was startled and shot and killed Aguilar.

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Ultimately, she selected the photograph of Christopher Shun Scott, 27, as the man who sexually assaulted her and shot her husband.

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Both men were sentenced to life in prison.

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In 2008, the students persuaded the Dallas County District Attorney's Office to take another look at the case. By then, Hardy had been in prison since 1999, serving a 30-year prison term for a robbery that was committed after Aguilar was murdered and Escobedo was assaulted.

Interviewed in prison, Hardy confessed and passed a polygraph examination. Scott and Simmons also passed polygraph examinations that showed they were not involved in the crime.

On October 21, 2009, Simmons and Scott were released from prison and the charges were dismissed. Anderson was arrested and charged with murder and sexual assault. Hardy was also charged with murder and sexual assault.

On March 3, 2010, the Texas Court of Criminal Appeals declared both men innocent.

Simmons and Scott each received compensation of a lump sum of \$960,000

State: Texas

County: Dallas

Most Serious Crime: Murder

Additional Convictions:

Reported Crime Date: 1997

Convicted: 1997

Exonerated: 2009

Sentence: Life

Race: Black

Sex: Male

Age: 27

Contributing Factors: Mistaken Witness ID

Did DNA evidence contribute to the exoneration? No
:

plus \$80,000 a year for life.

– Maurice Possley

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The National Registry of Exonerations is a joint project of the University of the Michigan Law School and the Center on Wrongful Convictions at Northwestern University School of Law.

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Claude Simmons, Jr.

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<http://www.texasobserver.org/cover-story/freedom-fighters>

Freedom Fighters

Dallas has freed more innocent men from prison than any other county in the country. Now they're working together to change the system.

by [MICHAEL MAY](#)

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Published on: Wednesday, May 25, 2011



photos by Sarah Lim Some of the Dallas exonerees, from left to right: Claude A. Simmons Jr., Thomas McGowan, Christopher Scott, Johnnie Lindsey and Richard Miles.

ON MAY 12, JOHNNIE PINCHBACK BECAME THE 28TH DALLAS MAN TO BE FREED from prison after evidence proved police got the wrong guy.

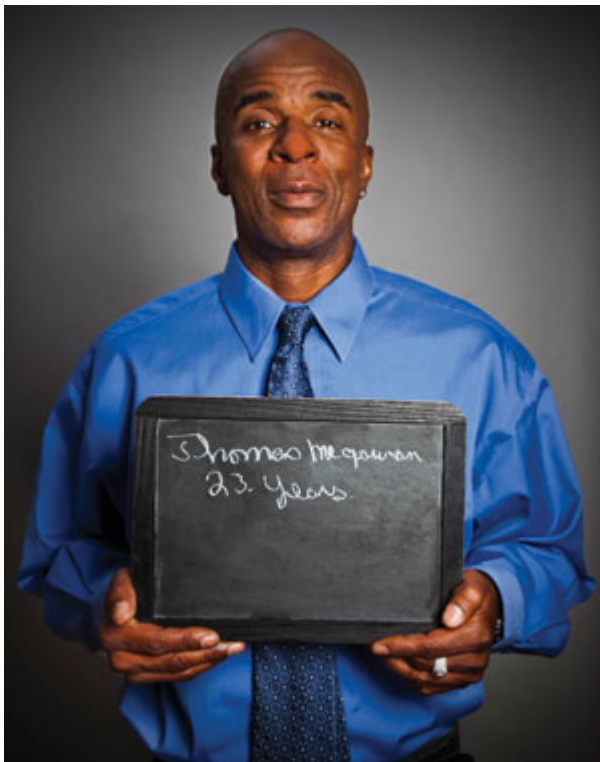
I spoke to him the day after he got out. He was so happy to be free he hadn't slept yet. "I'm on my way to my sister's house, to eat catfish," Pinchback said in a giddy tone, like

he couldn't believe he was doing something so normal. "I feel marvelous. Just being able to breathe. Just to hear the mockingbirds sing."

Pinchback spent 27 years behind bars for the rape of two teenage girls, who misidentified him in a police lineup. He was released after the Innocence Project of Texas took up his case and DNA evidence proved he wasn't the perpetrator. Pinchback likely wouldn't be free if it weren't for help from other Dallas exonerees released before him. They not only provide proof of how the system can go wrong, but also have organized into a potent grassroots force for freeing other innocent men.

Since 2008, fellow Dallas exoneree and innocence activist Charles Chatman has been lobbying for Pinchback's release. "When he got out, it felt almost as good as when I got out," says Chatman, who was also incarcerated for 27 years for rape because of mistaken identity.

Chatman and Pinchback were housed at the Coffield Unit southeast of Dallas and became best friends after Pinchback arrived in 1984. Pinchback says Chatman was "like my brother. We worked the fields together. We had each other's backs." Chatman doesn't remember ever talking about the most significant thing they had in common—they were both wrongly convicted. "It's just a normal thing in prison," he said. "If you are in for a hideous crime like rape, you don't talk about it. If other prisoners find out, you're subject to beatings and rape. You don't broadcast that."



Chatman often goes to greet other exonerees when they're set free. At the release of Thomas McGowan, pictured left, in 2008, a woman approached Chatman to ask if he

could help with her father's case. It was Johnnie Pinchback's daughter. "Knowing what kind of guy Johnnie was, I was interested," Chatman said. "But I didn't work to get him freed just because he was my best friend. I went down to the unit to talk to him. I told him if he had anything to do with the case—even if he was just the lookout—I couldn't help him. He looked me in the eye and told me he didn't have anything to do with it. After all those years I spent in prison, I have a pretty good idea when someone's lying. I just felt it in my body that Johnnie was telling the truth."

Chatman went to the Innocence Project of Texas, which had already received a letter from Pinchback. There were hundreds of other cases in line to be investigated. "I asked them to review the case, and they did," Chatman said. "They know me and know I wouldn't bring them the case of someone trying to trick the system. That was my role, but the Innocence Project deserves the full credit for getting him out."

The day Pinchback was released, Chatman and a dozen other Dallas-area exonerees were there to greet him. Chatman said he wanted to help Pinchback get new glasses, clothes and an ID. "Parolees have a reintegration program, but we don't have that," said Chatman. "Johnnie will get compensated. But in the meantime, he's staying with his mom, and he needs some help. But we have the exoneree group here; we're the only city that has that. We've been through it. We know what he needs. We'll help him pay the bills and make sure he doesn't eat up all his mom's food. That's what we do."

Pinchback says he won't soon forget the help. "When Charles visited me in prison, he told me, 'We're gonna take care of this,'" Pinchback said. "And he said, 'All I ask is that you help others out when you're released.' And that's what I'll be doing."



Three days after being released, Johnny Pinchback attends services at the Greater Peoples Missionary Baptist Church in Dallas. Friends and family surround him, including fellow exoneree Charles Chatman, bottom left.

THERE HAVE BEEN MORE prisoners freed in Dallas than in any other region in the country, and it's created a snowball effect. The freed men have created one of the most powerful grassroots criminal justice reform organizations in the state. These men are changing the way investigations are done in Texas.

The Texas Exoneree Project, as the Dallas group calls itself, began with a humble mission—the group provided a space for exonerees to help each other meet their needs. The Project has moved far beyond that. A few weeks before Pinchback is released, there's a full agenda at the monthly meeting, held in a bright conference room at the Holy Trinity Church in Dallas. At the table is the group's director, Texas A&M-Commerce social work professor Jaimie Page, and eight exonerees, a smaller group than usual because it's Easter weekend. Most of the exonerees are debonair in dress shirts and fedoras, as if to make up for the years of white jumpsuits. All of them are black and middle-aged. Between them, they've spent around 150 years in prison.

At today's meeting, the exonerees discuss going down to Austin for the fifth time this session to lobby the Legislature for bills reforming eyewitness procedures and getting health care for exonerees. "We have a lot more impact if they can put a face to the story," said exoneree Johnnie Lindsey. They plan to write a pamphlet to help other exonerees

through the transition, with topics that include technology, getting to know family again, uniting with other exonerees. They talk about innocence cases they are fighting for, including Johnnie Pinchback and two other men who are free but have not been officially declared innocent. This is a situation some exonerees find themselves in when the evidence remains murky or for other reasons, as in the case of Anthony Graves, who was released from jail without being declared “actually innocent.”

The group’s newest member is in this situation. Larry Sims has recently been freed after being jailed for 25 years for rape. His is an odd case where it looks like a crime might not actually have occurred at all. The state has released him after a DNA test showed that his cousin had sex with the alleged victim that night. (The cousin testified to that effect in the original trial, but the alleged victim denied it.) This fact convinced the judge that Sims had not received a fair trial, and he was released. Unlike the other Dallas exonerees, however, Sims was not found “actually innocent,” a designation that would allow him to receive compensation from the state. His case is now before the Texas Court of Criminal Appeals. If the court doesn’t rule him innocent, Sims is going to be starting life over at 60 years old, without a dime to his name.

“Is it against the law to get exonerated in Dallas County? They’re fighting so hard. They are wasting tax dollars,” Sims says, his voice shrouded in bitterness.

“You’re mad,” says Billy Smith. He also spent two decades in prison for a rape he didn’t commit. “You’re not going to beat them mad. You need to sit back and let your attorneys do their work.”

From there, the meeting evolves into a nuanced discussion about how to change the law so more exonerees are given “actual innocence.” The Dallas exonerees do their best to help each other, but they keep their eyes on the prize—changing the system.

THESE MEN HAVE BEEN FREED because Dallas now has a district attorney, Craig Watkins, who’s eager to open innocence cases, and because the Dallas County medical examiner had the foresight to store decades worth of forensic evidence that can be tested for DNA. Very few, if any, other counties in Texas have a system like Dallas’s, making it difficult, and often impossible, for them to locate older evidence. Another reason so many have been freed is a long legacy of flawed police policies, coupled with Texas-style, tough-on-crime prosecutions. Under District Attorney Henry Wade—who served from the ’40s to the ’80s and is the Wade in *Roe V. Wade*—the Dallas DA’s office built a reputation for going hard after convictions. Wade himself never lost a case as prosecutor, and his office had conviction rates of over 90 percent. “The mentality was win at all costs,” says John Stickle, a defense attorney who helped found the Dallas exoneree group. “The thinking was, ‘If he’s been arrested and indicted, then we’re going to convict him.’”

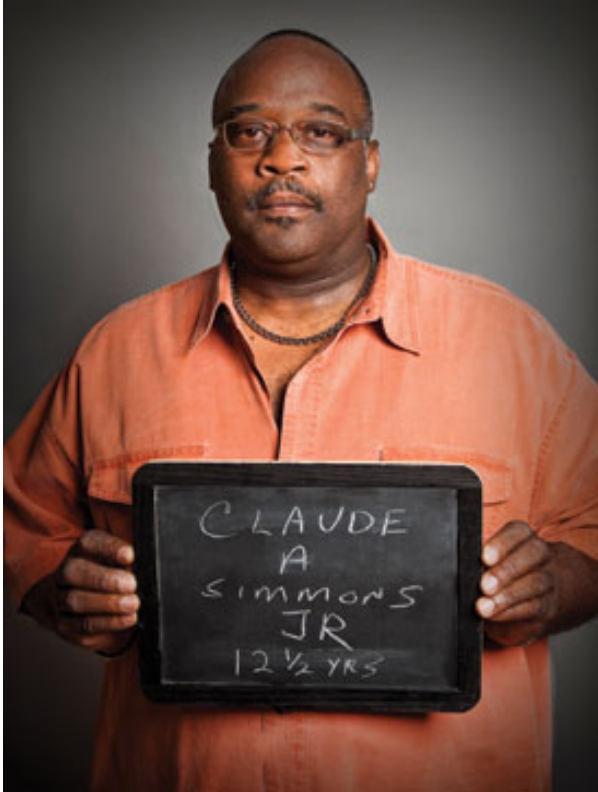
As Wade-era exoneree Johnnie Pinchback puts it: “If you didn’t cop out, you got big times. That’s the way it was.” Pinchback says he was offered a 15-year plea deal. When he refused to confess to a crime he didn’t commit, the judge came back with 99 years.

This philosophy persisted after Wade left office in 1987. The theme that runs through almost every exoneree’s case is a reliance on eyewitness identification at the expense of other evidence. Police and prosecutors know that if a witness identifies his or her assailant, that’s all they need to make a powerful impression on the jury.

But human memory is susceptible to manipulation. Add to that the fact that the witness identification methods formerly used by the Dallas Police Department—and still used in many places—[were deeply flawed](#). “Police lineups could be very suggestive,” says Dallas DA Watkins. “For instance, if the perpetrator was described as having a blue shirt on, then the police’s main suspect would be the only person in the lineup with a blue shirt.”

Police would show witnesses what’s known as a ‘six-pack’—six mug shots arranged on a page—and ask victims which one most resembled the perpetrator. It’s not surprising that victims would compare the photos and then pick the one that most resembled the attacker, even if they weren’t sure. Once a perpetrator is chosen, research shows that victims will insert the new face into their memories of the crime, becoming more sure of their choice over time.

Watkins has changed the way Dallas police gather eyewitness identifications. They now use a “double-blind” method in which the officer administering the lineups is not involved in the investigation and is not aware of the suspect’s identity. This prevents the kinds of suggestive remarks that have led to false identifications in the past. Witnesses are now shown photos one by one, to prevent picking the one who happens to most resemble the perpetrator. “It’s a work in progress,” said Watkins. “There might be a better system in five to 10 years. If we notice flaws, we have to be willing to make progress so the system works as it should.” Watkins and the Dallas exoneree group are backing legislation that would require that every county DA office in Texas implement a system for eyewitness identification.



Many false convictions are honest mistakes, but in some, the process is so flawed you have to wonder whether justice was ever the motive. Take the case of Christopher Scott and Claude Simmons, two members of the Texas Exoneree Project who were exonerated in 2009 after serving 12 years for capital murder. One night in 1997, Simmons wanted to get out of the house and invited Scott out to talk. On the way back home, Scott drove by the scene of a murder. A man named Alfonso Aguilar had been shot during a robbery in front of his wife, Celia Escobedo. The police followed Scott home, handcuffed him and took him to the police station—though he didn't match Escobedo's initial description. "They took me downtown and handcuffed me to a bench," he recalls. "And they brought [Escobedo] to me, and it sounded like the police said, 'This is the man who killed your husband?' I couldn't quite hear how she responded. I'm thinking, 'I know she didn't say what I thought she just said.' But I knew it was bad because she was crying hysterically."

listen to an excerpt from Christopher Scott's interview

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This was not proper eyewitness identification procedure—there wasn't even a lineup. Once the police had the identification sewn up, they stopped looking for other suspects, though they couldn't find any corroborating evidence to implicate Scott. There was no gunshot residue or blood on his clothes, his tire tracks or fingerprints were not at the scene of the crime, and none of the stolen items was in his possession. A week later, police picked up Simmons and indicted him as an accomplice.

Scott's court-appointed lawyer met with him once before the trial. "I couldn't have gotten a fair trial," Scott says. "Listen, I'm not a racist. But I had 12 white jurors, a white judge, a white prosecutor, a white lawyer. I was the only black person in the courtroom. When I walked in, I knew I was going to be found guilty. That's just how the stage was set."

When the judge asked Scott why he should spare his life, Scott said, "Because you don't want to execute an innocent man." Scott and Simmons were given life in prison.

Once Simmons and Scott were found guilty, the lack of evidence turned into a liability to their efforts to free themselves. Unlike the cases of other Dallas exonerees, there was no DNA evidence available to prove their innocence. "A prison lawyer told me I had a one-in-a-million chance of getting out," Scott said. "That's when I turned to God. All us exonerees talk a lot about God. Because when men have failed you, what else do you have? You have to believe in a higher power than the guys who did this to you."

Around 2005, a prisoner named Alonzo Hardy confessed in a letter that he and another man killed Aguilar. The state ignored his confession. In 2007, Scott and Simmons got a break. Dallas voters elected Watkins, the county's first African-American district attorney and the first one who hadn't come up through the ranks of the prosecutor's

office. Shortly after entering office, he created the Conviction Integrity Unit, whose sole job is to investigate wrongful convictions.

“I had trepidations about it when I was newly elected,” Watkins says. “But it was the obvious thing to do. And we’ve gained credibility with the community by doing this. We’ve proven we’re willing to look at the past. And it makes it easier for our young lawyers to present a case. The public knows that we’re not going to bring a case to trial unless we emphatically believe in their guilt. I’m trying to figure out why other DAs in Texas criticize it. We have to have policies to police ourselves. And because of our approach, our conviction rates are up.”

The Dallas Conviction Integrity Unit took up Scott and Simmons’ case and eventually brought Hardy in for a deposition and lie detector test. The lack of DNA evidence in the case made exoneration difficult—and it was a potential political liability for the DA. (Before the 2010 election, Watkins’ political opponents tried to spin the case to make it look like Watkins had let two killers loose. Watkins calls the smears the typical “Southern strategy.”) Despite the risk, the DA’s office took up the investigation, repeatedly interviewing the confessed killer about the crime to be sure he wasn’t making it up. Finally, in 2009, after 12 years in prison, Scott and Simmons were freed. They’ve inspired other prisoners who don’t have DNA evidence to prove their innocence. “They say, ‘We didn’t have any hope, but now you’ve paved the way,’” Scott says.

When Scott and Simons saw each other in the courtroom the day they were exonerated, it was the first time in 12 years. “I looked at him and said, ‘I’m staying away from you when I get out!’” Scott says. “But really, it’s a lot of love. We talk three or four times a week about what’s going on, the struggles we’re going through.” The Texas Exonerree Project got two more committed members.

THE TEXAS EXONEREE PROJECT began as a focus group convened by Page and Stickles in late 2008. “I looked at their cases,” Page says. “And it was so egregious how they’d been set up. I felt as a citizen, I needed to do something. We’re the ones who elect these prosecutors.”

When the group first got together, many of the exonerees had not received compensation yet from the state and were living hand to mouth or off loans from their attorneys. They started a list of things they would ask of legislators, like \$5,000 upon release for housing and transportation, and access to services like mental health care and job training. (In 2009, the group lobbied the Legislature for these services and helped pass a bill that increased their compensation, and gave them job training and money for college tuition, as well as some counseling and help accessing health care.)

For Christopher Scott, the hardest part of his transition was a simple thing most of us take for granted: getting a state ID. He didn’t have access to the documents he needed to get one. “For the first five or six months, I didn’t have a Texas ID,” he recalled. “You have

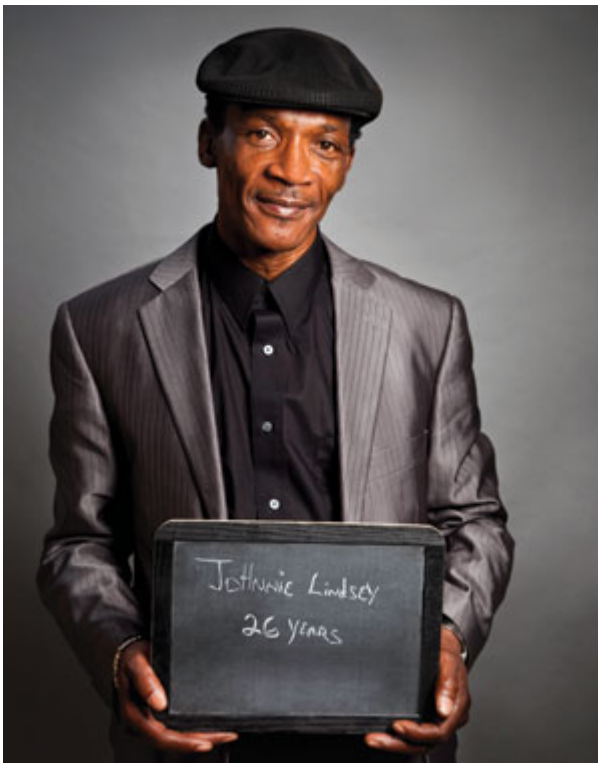
no means of saying you are who you say you are. It's like being a ghost." Scott got a support letter from Page and others, and finally got an ID.

The group gets together to discuss less-tangible things as well, things that only other exonerees understand. As happy as exonerees are to have their freedom back, most still suffer from a form of post-traumatic stress disorder. "I just think, 'I can't believe I got convicted for something I didn't do,'" says Keith Turner, an exoneree who suffers from PTSD after spending four years in prison. "And that's where it starts. It's something you won't ever forget. You just go to deal with it. So when I need someone to talk to, I can turn to the other guys here."

The transition comes with some unresolved emotions. Johnnie Lindsey was in prison for 26 years. He says after the first decade, no one from his family wrote or visited him, and that makes it hard to reconnect. "When I needed someone the most, they weren't there," he says. "The worst reply was, 'you must have done something or they wouldn't have locked you up.' But no one spent the time finding out what I had supposedly done. So you live with this, year in and year out. And these things are constantly going through your mind. When you get out, you're looking around, thinking, 'Who can I trust?' One way the group helps is that I know there are people I can call who share the same emotions, the loneliness and the hurt."

listen to an excerpt from Johnnie Lindsey's interview

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Lindsey echoes a familiar theme among the exonerees I spoke with. His family abandoned him when he was in prison, he says, and then showed up as soon as he got his compensation check, asking for a piece. Exonerees now get \$80,000 for every year they served behind bars, plus another \$80,000 per year paid out in an annuity. With exonerees like Lindsey, who have been in for decades, the compensation equals millions of dollars. Lindsey's mantra when family come asking is "Just Say No," something he's helped other exonerees do. "It's put some strain, where family is concerned," he says. "For a while, one family member stopped talking to me period. But I don't feel bad about saying no. All I owe them is love and respect. If they get upset with that—they went off for 26 years, they can go off for 26 years more."

The group also helps protect its members from shady businessmen, lawyers and investment advisers who want to con exonerees. "If someone tries to take advantage of one of us," says Scott, "then we'll call the others and tell them, if this individual or organization calls you, feed them with a long-handled spoon, because they mean you no good."

"And don't rush to get married," Scott continues. "That's the No. 1 rule. You lost so many years in prison, don't fall victim to the first woman you run across. And if you do get married, get a prenup. There's a lot of wolves out there."

Exonerees don't always agree on who the wolves are, which has caused some tensions. When the group first convened, several exonerees were represented by Kevin Glasheen, who was financially supporting several of the men. Glasheen started sending a lawyer to every meeting. He says he was worried about what other lawyers or investment advisers Page was bringing into the group, and what exonerees were discussing. "She could unwittingly create evidence that could be used against these clients by discussing their issues in a group," wrote Glasheen in an email.

The tension came to a head at a meeting when Glasheen's representative did not show up. Page had heard that Glasheen was insisting that compensation checks be sent to him, and he would take his fee before forwarding the money. That didn't smell right to Page. "I said that the compensation should be sent to you," she says. "And then you can pay his invoice. I told them they should control their own money. I also let them know they could get a second opinion from another lawyer."



That conversation got back to Glasheen. “He told an exoneree to tell me that if I didn’t call him, he was going to sue me on Monday,” says Page. “I said, ‘I won’t call him. I don’t work for him. They can do what they want to me. I’m ready.’” For his part, Glasheen wrote in response to the *Observer’s* questions that his fears were reasonable. “If Jaime Paige and another lawyer work together to induce our clients to break their contracts, then they could be liable for tortious interference with contract.”

Regardless of who was right, Page says the conflict divided the group. “The conflict was noticeable,” says Charles Chatman, who was represented by Glasheen. “I don’t understand why he threatened to sue her. Look, a lot of people think we are walking money signs. But I’ve never seen that in Ms. Page, and I’ve looked for it. I’ve got nothing but good things to say about her.”

Nevertheless, the conflict threatened the stability of the group. “It brought back a certain prison mentality,” Page says. “There were ramifications for the ones who told Glasheen what I said—others felt they were snitches. I didn’t feel that way. I felt they were exploited.” (Glasheen remains controversial. Two of the Dallas exonerees [recently sued him over fees](#) he charged for lobbying at the Capitol. Others have agreed to pay him.)

Page had to remind the group to come together over what they had in common. The group helped pass the 2009 compensation increase, but it did not apply to exonerees who had already settled with the state. That means that some in the group are millionaires, and others are living in small apartments with their family. One member, Wiley Fountain, has spent years living on the street and struggling with alcohol addiction. He needs regular attention from the others. “After the payouts, I saw a separation developing in the group,”

says Page. “For instance, the exonerees who got larger amounts bought houses, and then asked if we could start holding meetings in their homes. A couple of the exonerees who got less thought they wanted to show off. It wasn’t true—it was about making the meetings more social.”

Page says these issues have worked themselves out. “Now we keep focused on the battles we’re fighting,” she says. “We speak with a common voice, and everybody wins.”



Exoneree Richard Miles speaks to students at W.H. Atwell Middle School in Dallas about his case and the time he spent behind bars. He hopes to encourage students to stay in school and avoid prison.

ON MAY 10, A COUPLE OF DAYS before the deadline for the Texas House to pass bills, two exonerees are at the Capitol for a press conference and a final push for the legislation they’ve rallied behind. For Charles Chatman, this is his fifth time in Austin this year to lobby for legislation. One of the bills, sponsored by Sen. Rodney Ellis, a Houston Democrat, would require Texas law enforcement agencies to implement eyewitness identification policies based on proven best practices, like those in Dallas. “We are not trying to just get people out, but we also want to stop innocent people from going in,” Chatman says. “I want legislators to see and hear from us, because wrongful convictions are still happening today.”

Another bill sponsored by Ellis would require that DNA testing be done in all situations in which it could prove innocence. Ellis, who has worked with the exonerees on several bills, says having exonerees lobbying for these bills is essential. “It’s made a tremendous

difference,” says Ellis. “It puts a face on the problem and has sensitized my colleagues to the human suffering caused by wrongful convictions.”

Ellis has also sponsored a bill that would allow exonerees to buy health insurance from the Texas Department of Criminal Justice. Many exonerees enter prison as young men, but come out with prison diseases. Chatman says he can't get health insurance because of pre-existing conditions. “I went in young and healthy,” says Chatman, “and came out with high blood pressure and borderline diabetes.”

The exonerees' efforts paid off. All three of the bills they lobbied for passed both chambers of the legislature: the exoneree health care bill, the eyewitness identification policy bill and a bill that would require post-conviction DNA analysis in cases where there was physical evidence that hadn't already been properly tested. The three bills are now headed to Gov. Perry's desk for his signature.

Back in Dallas, the exonerees are coming up with a more hands-on approach to getting innocent men out of prison. Christopher Scott is organizing an effort to outfit exonerees with private investigator licenses so they can work innocence cases on their own. “I want to help guys that can't help themselves,” Scott says. “I couldn't help myself. I could only write to organizations, and they all turned me down. If you get someone to write and say, ‘I'm looking into your case.’ You don't know how that makes a man feel. It's like having a brand new beautiful baby.”

<http://www.dailytexanonline.com/university/2011/02/23/trio-discusses-faults-justice-system>

Trio discusses faults in justice system

PUBLISHED 23 FEB 2011 AT 12:00 AM BY [SHAMOYITA DASGUPTA](#)

The Texas criminal justice system's flaws lead to wrongful imprisonment and unfair prosecution, said a former attorney and two men exonerated from a capital murder conviction in a talk Tuesday.

The Actual Innocence Clinic at the UT School of Law worked with the William Wayne Justice Center for Public Interest Law to bring Dorothy Budd and exonerated prisoner Christopher Scott to speak about Budd's book, "Tested: How Twelve Wrongly Imprisoned Men Held Onto Hope."

Dallas District Attorney Craig Watkins investigated crimes in which prisoners claimed wrongful conviction, and his research spurred Budd, a former Dallas prosecutor, to write the book with her daughter, Peyton Budd.

"I wasn't expecting these cases with these incredible legal twists and turns," Budd said. "Even assuming that everybody is acting in good faith and trying to do the best they can, it's amazing that these cases went all the way through the legal system."

The talk focused on the capital murder charge that Scott and co-defendant Claude Simmons Jr. fought to overturn for 12 years.

In April 1997, Scott and Simmons were driving back to Simmons' house when they were followed by a police officer who responded to a call of a nearby murder.

Because they fit the police profile, the officer took Simmons and Scott into custody for a lineup, Scott said. He said when the widow of the murder victim came to the police station, the officer pointed to Scott and told her that he had murdered her husband, causing her to positively identify him as the perpetrator.

"At the time, I didn't even know what was going on," Scott said. "They wouldn't even tell me what I was there for."

Police arrested Scott and set a \$750,000 bail that night. Police arrested Simmons weeks later. Both were denied lie detector tests, and although all other incriminating tests came back negative, both were imprisoned for 12 years, Scott said.

"To me, they just wanted to close the case," Scott said.

During his sentence, the clinic and University of Texas at Arlington students approached Scott and Simmons about their cases.

After conducting thorough research, the group was able to conduct lie detector tests for both defendants. The exoneration process began once Scott and Simmons passed the tests. The men were released in October 2009. In 2009, the state exonerated 24 wrongfully convicted men.

The talk touched repeatedly on the inadequate justice system, which UT law student Sam McDowell said sometimes allows innocent men to serve lengthy prison terms.

“I think there are a ton of problems with the criminal system as it is,” McDowell said. “Texas has a terrible public defender system.”

Wrongfully Convicted Inmates Struggle With New Law

- by Erin Mulvaney
- 5/23/2010
- [1 Comment](#)

Christopher Scott and Claude Simmons [were released from prison](#) on Oct. 23, 2009, after serving 13 years for a murder they didn't commit.

But the euphoria of freedom quickly gave way to panic: How would they make their way as free men with little but jail time on their resumes? A state law designed to help exonerees readjust would help, but only after they untangled reels of red tape to get their due compensation, clear their criminal records and find employment, housing and identification.

"It felt so pitiful just being let out of prison and feeling like you have to fend for yourself," says Scott, who is 39. "You can only rely on your family members so much."

Simmons and Scott were two of the first exonerees to be eligible for the benefits of legislation that Gov. [Rick Perry](#) signed into law in 2009. The [Timothy Cole Act](#), named for a posthumously exonerated inmate, increased the financial compensation for Texas exonerees from \$50,000 to \$80,000 for each year they were wrongfully imprisoned. It also provides a monthly payment from that lump sum to act as a steady source of income and an initial payment of up to \$10,000 to help exonerees get established right after their release. The legislation "was a great step," says Michelle Moore, a public defender in the [Dallas County District Attorney's Office](#). "They just didn't give thought to how it would be handled."

Simmons and Scott couldn't agree more. The two men were convicted of capital murder in a 1997 shooting death linked to a Dallas-area home-invasion robbery after being misidentified as the assailants by an eyewitness: the victim's wife. The [University of Texas at Arlington Innocence Network](#) and the [Actual Innocence Clinic at the University of Texas at Austin](#) worked on the case for years and eventually built a case to help exonerate them.

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The trouble started soon after they got out. First, they struggled to collect the \$10,000 the Legislature had promised to help with their reintegration process. Then they were unable to collect non-monetary benefits like clothes, money and temporary housing, which are available to paroled prisoners but not to those who never

committed a crime in the first place. They finally received their compensation checks last week — six months after being freed.

“Exonerees aren’t given a dime when they leave prison. Many don’t have a place to lay their heads at night,” says University of Texas at Arlington Exoneree Project Director Jaimie Page, who helped get Scott and Simmons identification and other staples after their release. “If they have no family — and many do not — they are essentially homeless.”

The \$10,000 reintegration payment was meant to combat this issue, says Kelvin Bass, a spokesman for state Sen. [Royce West](#), D-Dallas, the lawmaker who added the reintegration language into the bill. Bass says West’s office has noticed some weaknesses with the Tim Cole law — namely, how that reintegration money gets paid.

The law calls for the creation of a new division within the [Texas Department of Criminal Justice](#) to provide help and benefits to exonerees, including the initial \$10,000 payment. But that division is not yet operational, Bass says. Meanwhile, while the measure says the comptroller’s office is in charge of dispensing the monthly compensation, it leaves the TDCJ responsible for paying the initial reintegration money.

The TDCJ acknowledges it is responsible. But agency spokesman Jason Clark says the \$10,000 is deducted from the total sum awarded to the exoneree as restitution — which is overseen by the comptroller. He says the money doesn’t start to flow until the inmate is formally exonerated, not just directly upon his or her release. And even when the initial money does flow, Clark says, it can only be used for living expenses, though the department also offers case-management services to link the wrongfully imprisoned with needed services.

“It’s a great idea, but there is nothing in place,” Bass says. “And even with being awarded the compensation, there is no structure. Just handing somebody money isn’t enough.”

Bass says the same lack of structure plagues elements of the bill designed to help exonerated prisoners get medical care and counseling, services they can count on in prison. The new law requires the TDCJ to help exonerees get both, he says, but the procedures and programs have yet to be established.

Few exonerees leave prison without physical or mental health problems, Moore says, and they don’t have easy access to medication or counseling when they’re released. Many become paranoid, and some aren’t ever able to recover. “It’s all the stuff we take for granted that they are terrified of,” she says. “Some guys won’t go out at night. Some won’t go outside the yard without somebody with them. They just don’t want to be locked up again.”

Scott is adjusting fairly well but says he feels nervous about the simplest tasks — even driving. It’s understandable: It was when he was pulled over for speeding more than 13 years ago that he was arrested and charged with a capital murder he didn’t

commit. He says he avoids getting behind the wheel at all costs. “You don’t know how it plays on my mind,” Scott says. “Anything could happen. They say lightening don’t strike twice, but I don’t want to take that chance.”

"It's like putting dues on your life"

When a court rules that a prisoner has been wrongfully convicted and orders him freed, that’s only the beginning of the bureaucratic nightmare — not the end. Clearing one’s name is a next to impossible task, as is proving one’s innocence to potential employers who run background checks.

In Texas, expunction removes information about a felony or misdemeanor arrest from the records in every court or investigative agency where documents or files may exist. Once the record is expunged, individuals can deny the arrest ever occurred, and any information related to it is permanently deleted from their records.

But the process of getting a criminal record expunged can take up to a year. An exoneree has to petition the district court, wait for hearings to be scheduled, get orders granted and then wait for all the agencies to delete the records. Former inmates wait two to three months to receive either a pardon or a writ of habeas corpus from the [Court of Criminal Appeals](#). Only then can they file for compensation, which can take an additional two to three months to receive.

What’s more, expunction is not automatic in exonerations, and it only removes criminal records from government agency files — not from private data-mining businesses. Inmates often must use their compensation money, when they can finally get their hands on it, to pay for lawyers to help them clear their records. Scott and Simmons still have capital murder and sexual assault charges on their criminal records, and Moore says it might be another three to four months before they are expunged.

In the next legislative session, West will re-file a bill that failed during the 2009 session requiring the district attorney who originally prosecuted the exoneree to represent that person for the expunction process — a surefire way to speed it up and to save the exoneree money.

In comparison to other states, Texas is fairly progressive on the wrongful conviction compensation scale. Roughly half of state governments pay exonerees for their trouble. And less than a third of all wrongfully convicted prisoners nationwide have received compensation, according to an Innocence Project study.

Still, Scott says no amount of money can compensate someone who has been wrongfully imprisoned. “It’s like putting dues on your life,” he says. “I was a good father. I was always home by 10 p.m. to see my kids and help them with their schoolwork. I would have been a married man by now. They took all that away from me.”

Scott, who has found housing in Carrollton and has begun to reconnect with his family, is taking advantage of another provision in the new law that allows for 120 hours of state tuition for education. He starts at Brookhaven Community College in the fall and says he wants to study law and try to fight for other people who were wrongfully convicted.

“There are a lot more people in prison that need help,” he says, “and I want to do everything I can to help them.”

<http://truthinjustice.org/simmons-scott.htm>



2 men wrongly convicted in 1997 Dallas murder exonerated

07:04 AM CDT on Thursday, October 22, 2009

By DIANE JENNINGS / The Dallas Morning News
djennings@dallasnews.com

Two men are expected to be released Friday after spending 12 years in prison for a murder they did not commit, the latest in a string of exonerations in Dallas County. Like most of the other wrongful convictions, these cases also hinged on faulty eyewitness identification.

Unlike most of the previous 20 Dallas County exonerations, however, these two were cleared without DNA evidence.

The most recent cases also are unusual because two student groups, the University of Texas at Arlington Innocence Network and the Actual Innocence Clinic at the University of Texas at Austin, championed the case for years before law enforcement officials re-examined the case.

"It feels wonderful," said Natalie Ellis, a criminal justice major at the University of Texas at Arlington who has worked on the case daily for more than a year. "I'd have to say out of all the days I've had in my life so far – this is tops."

Two other men in custody, who were also originally investigated, are now suspects in the killing. Authorities say one of them gave a detailed confession to the crime after the case was reopened.

Claude Alvin Simmons Jr., 54, and Christopher Shun Scott, 39, were each sentenced to life in prison for the April 7, 1997, shooting death of Alfonso Aguilar during a home-invasion robbery. Their convictions were based primarily on the eyewitness testimony of Aguilar's wife, Celia Escobedo, who was present in their Love Field area home when the killing occurred.

That identification was mistaken, said Mike Ware, head of the Dallas County District Attorney's Conviction Integrity Unit.

"Procedures were used that we would now consider faulty," he said, noting that when Escobedo went to the police department, "because of a series of mishaps she was taken past one of the individuals who ultimately was convicted in this case, who had been taken down for questioning."

When Escobedo saw the man sitting in a room in handcuffs, she identified him as one of her husband's assailants.

"That perhaps certainly got the investigation off on the wrong foot," Ware said.

Escobedo declined to comment Wednesday.

According to public records, Simmons and Scott had no previous history of violent crimes, only drug possession. Both men took the stand in their trials – which were held back to back in 1997 – and have always maintained their innocence.

When told their names were in the process of being cleared of murder charges Wednesday, the



Claude Simmons & Christopher Scott

two men "were extremely joyous," said John Stickels, founder of the Innocence Network at UT Arlington. Stickels, who visited them in the Dallas County jail, said both men "have families waiting for them."



Alonzo Hardy & Don Anderson

The two men who are now suspects in the crime are Don Michael Anderson, 40, who has been charged with capital murder, and Alonzo Hardy, 49, who has been identified as a "co-actor."

Hardy is currently in the Texas Department of Criminal Justice serving 30 years for an aggravated robbery conviction. He also has a history of drug charges. Anderson, who was picked up in the Houston area Tuesday night, has several drug charges on his record.

During the re-investigation of the case, Hardy gave an "extensive confession," according to the district attorney's office, detailing his and Anderson's roles in the offense. The confession also cleared Simmons and Scott from any role in the slaying.

Both men were investigated at the time of the crime, authorities said, and Anderson was even included in a photo lineup. But Escobedo did not pick him out. Anderson also reportedly confessed to a girlfriend, and Adam Seidel, Simmons' attorney, tried to introduce that information and other witnesses implicating Anderson at trial.

But the judge, Janice Warder, did not allow the testimony to be introduced. The jury came back with a guilty verdict in six minutes.

"Considering that all of the jury got to hear in this case was the eyewitness identifying Mr. Simmons during the trial, then the length of deliberation wasn't a shock," Seidel said. "But I will also say it was extremely frustrating to try the case when the three witnesses that my private investigator located were not allowed to testify."

Warder, who served on the bench for 14 years and is now the Cooke County district attorney, said she doesn't remember the case. Her decision to not allow the testimony was upheld on appeal.

In 1986, when Warder was a Dallas County assistant district attorney, she prosecuted a case in which she was later ruled to have withheld beneficial evidence to the defense in a rape-murder trial. A judge last year ruled that the defendant in that case – Clay Chabot – should get a new trial.

Speaking about the Simmons and Scott case, Warder said Wednesday that she was "extremely saddened" to hear that two men had been wrongfully convicted but glad that the system worked to "exonerate the innocent and identify the guilty parties so that they'll be brought to justice."

The road to clearing Simmons and Scott began more than three years ago when Simmons' family wrote letters to the student groups. Both organizations began investigating the cases, said Bill Allison, co-director of the Austin center. Working together, the two groups investigated the cases, and then contacted the district attorney's office, which asked Dallas police to reopen the investigation.

"There are lots of cases that have been brought to our attention as possible innocence claims," Ware said. "For many reasons, this one seemed to have more red flags and credibility."

Student investigator Ellis said she "was supposed to be looking for DNA but as I started reading this case, there was no DNA in it. But there was clearly something there. I just knew this case had something in it. There were too many things that make you go 'hmm.' "

Ellis is thrilled with the outcome. She has visited the two wrongfully convicted men daily since they were brought back to Dallas County prior to their expected release Friday.

Dallas County District Attorney Craig Watkins labeled Wednesday "a day of celebration for law enforcement and public safety." Of the 20 DNA exonerations in Dallas County, all but one was the result of faulty eyewitness testimony. A Dallas Morning News investigation last

year found discredited eyewitness identification procedures led to most of the wrongful convictions.

The Dallas Police Department has since changed the way it handles eyewitness identifications, implementing safeguards employed by few other cities, Chief David Kunkel said.

For instance, DPD no longer conducts "show up" identifications where witnesses are shown suspects in the field; and in January the department adopted a policy using the "sequential blind" method where someone who does not know which photo is the suspect's shows them to the witness one at a time.

"What we're doing in Dallas County should be a wake-up call to everybody in the criminal justice system," Kunkel said. "You're going to see county after county going through the same soul-searching."



Claude Simmons, Jr.

On the night of April 6, 1997, Alfonzo Aguilar and his wife, Celia Escobedo, spent the night at a relative's duplex in Dallas, Texas. Escobedo was awakened by a noise and was confronted by a man pointing a gun. Another man demanded money from Aguilar while the first man sexually assaulted Escobedo.

During the assault, her attacker was startled and shot and killed Aguilar.

The following day, when Escobedo was brought to the police station to view photographs, she walked past a room where Claude Simmons, 42, was being interrogated in handcuffs for an unrelated drug offense. She said she recognized him as one of the attackers.

Ultimately, she selected the photograph of Christopher Shun Scott, 27, as the man who sexually assaulted her and shot her husband.

In October 1997, Scott and Simmons were tried separately. The prosecution case against both men relied almost solely on Escobedo's identifications. Defense attorneys attempted to introduce evidence that two other men committed the crime and that one of them, Alonzo Hardy, had admitted to participating in it. The trial judge refused to allow the defense to present the evidence.

Scott was convicted on October 16 and Simmons was convicted on October 23, after the jury deliberated just six minutes.

Both men were sentenced to life in prison.

In 2005, a group of students at the University of Texas at Arlington Innocence Network took on the case and began re-investigating. Joined by students at the University of Texas at Austin Actual Innocence Clinic, they discovered that Hardy had told a girlfriend that he and Don Michael Anderson had committed the crime.

In 2008, the students persuaded the Dallas County District Attorney's Office to take another look at the case. By then, Hardy had been in prison since 1999, serving a 30-year prison term for a robbery that was committed after Aguilar was murdered and Escobedo was assaulted.

Interviewed in prison, Hardy confessed and passed a polygraph examination. Scott and Simmons also passed polygraph examinations that showed they were not involved in the crime.

On October 21, 2009, Simmons and Scott were released from prison and the charges were dismissed. Anderson was arrested and charged with murder and sexual assault. Hardy was also charged with murder and sexual assault.

On March 3, 2010, the Texas Court of Criminal Appeals declared both men innocent.

Simmons and Scott each received compensation of a lump sum of \$960,000

State: Texas

County: Dallas

Most Serious Crime: Murder

Additional Convictions:

Reported Crime Date: 1997

Convicted: 1997

Exonerated: 2009

Sentence: Life

Race: Black

Sex: Male

Age: 42

Contributing Factors: Mistaken Witness ID

Did DNA evidence contribute to the exoneration? No
:

plus \$80,000 a year for life.

– Maurice Possley

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