

CRAVEN COUNTY

SUPERIOR COURT DIVISION  
95 CRS 10229-30, 95 CRS 1352

STATE OF NORTH CAROLINA )

v. )

MELVIN LEE WHITE, )

Defendant )

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I. NONWHITE DEFENDANTS, ESPECIALLY THOSE ACCUSED OF CRIMES

[REDACTED]

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STATEMENT OF INTEREST

collective decades in prison before evidence revealed they were wrongly convicted, and a person who became an advocate for criminal justice reform after she learned the man she accused of

was exonerated by DNA evidence. All of these individuals were convicted in the state of California.

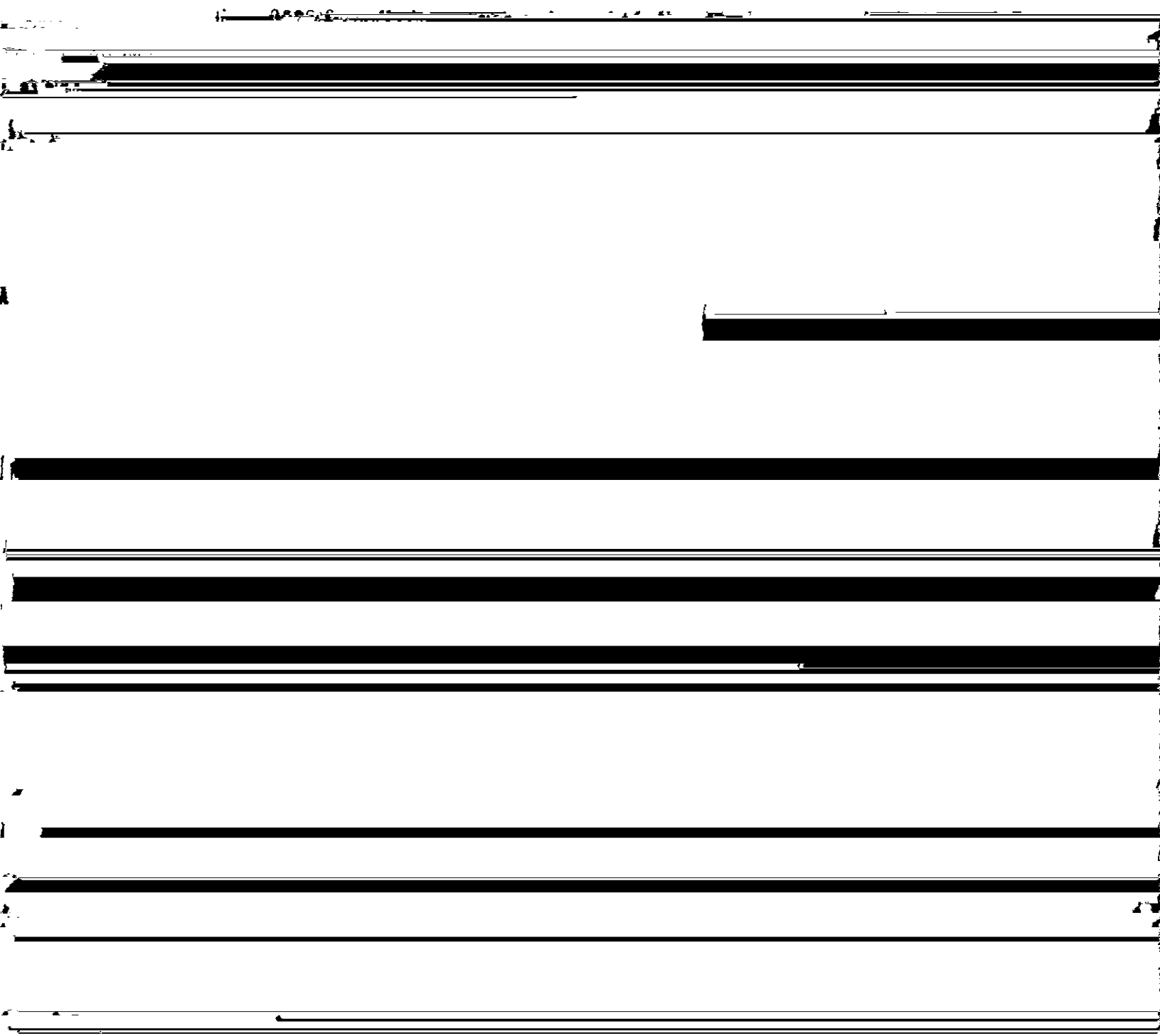
Thurgood Marshall Award for his work representing Mr. Hunt. He also served on the North Carolina Chief Justice's Criminal Justice Study Commission, formerly called the North Carolina Chief Justice's Commission on Actual Innocence.

Ronald Cotton is a black man from North Carolina who spent over ten years in prison for the rape of a white woman named Jennifer...

evidence in 1995. Mr. Cotton has spoken about his experience at a number of schools and

Carolina Chief Justice's Criminal Justice Study Commission, formerly called the North Carolina Chief Justice's Commission on Actual Innocence.

Peter J. Neufeld is the Co-Founder and Co-Director of the Innocence Project at the Benjamin N. Cardozo School of Law in New York City. The Innocence Project is a national litigation and public policy organization whose mission it is to assist prisoners who could be proven innocent through DNA testing. As of 2009, the Innocence Project assisted in the







In this case, the Innocence Network and the Innocence Project seek to present a broad

perspective on the issues presented in the hope that the risk of future wrongful convictions will

be minimized.

Levon "Bo" Jones was sentenced to death in Duplin County in 1993. Jones was convicted of the 1987 robbery and murder of a white bootlegger. Like Chapman's jury, Jones?

included only one African-American. In 2006, Jones was awarded a new trial. Shortly thereafter the State's main witness recanted her testimony, saying she was "certain that Bo Jones did not have anything to do with" the murder and that "much of what [she] testified to was simply not true." The witness admitted to lying, being coached on what to say, and collecting thousands of

*erroneous capital convictions*, 29 Crim. Just. Rev. 76, 78 (2004). Indeed, “[i]t is not really an oversimplification to insist that racial bias and convicting the innocent are the twin evils paramount in our current death penalty system, as they have been for generations.” Hugo Bedau, *Racism, Wrongful Convictions, & the Death Penalty*, 76 Tenn. L. Rev. 615, 623 (2009).

**A. North Carolina’s Rate of Wrongful Conviction is Racially Disproportionate Relative to Both Race of Defendants and Race of Victims.**

Since 1973, there have been seven death row exonerations in North Carolina – the seventh-highest of any state.<sup>5</sup> Of the seven exonerees, five (71%) are black; six (86%) are nonwhite.<sup>6</sup> By no reasonable measure are these numbers racially proportionate. In contrast to

the rate of wrongful conviction, the population of North Carolina is approximately 21% black and 28% nonwhite.<sup>7</sup> The state’s prison population is 57% black and 61% nonwhite.<sup>8</sup> Among homicide offenders whose race is known, approximately 59% are black and 61% are nonwhite.<sup>9</sup>

<sup>5</sup> Innocence and the Death Penalty | Death Penalty Information Center, <http://www.deathpenaltyinfo.org/innocence-and-death-penalty#inn-st>. The seven exonerees are Samuel Poole (1974), Christopher Spicer (1975), Alfred Rivera (1999), Alan Gell (2004), Jonathon Hoffman (2007), Glen Chapman (2008), and Levon “Bo” Jones (2008).

<sup>6</sup> Innocence: List of Those Freed From Death Row | Death Penalty Information Center

Even on the state's death row, 55% of prisoners are black and 62% are nonwhite.<sup>10</sup> While nonwhites are consistently overrepresented in the state's criminal justice system, no other numbers come close to their overrepresentation among wrongful capital convictions.<sup>11</sup>

Perhaps even more striking than the overrepresentation of nonwhites among wrongful capital convictions is the overrepresentation of whites among their alleged victims. One-hundred percent of North Carolina's death row exonerees were originally convicted of crimes against white victims.<sup>12</sup> Overall, however, whites make up only about 40% of the state's homicide victims in any given year.<sup>13</sup> Murders committed by nonwhites against white victims are particularly uncommon – they account for less than 10% of the nation's total homicides, and yet make up six of North Carolina's seven (86%) death row exonerations.<sup>14</sup>

that state. Harmon, *Race for Your Life, supra*, at 80 (citing JAMES S. LIEBMAN ET AL., A BROKEN SYSTEM. PART II: WHY THERE IS SO MUCH ERROR IN CAPITAL CASES AND WHAT CAN BE DONE

conviction, followed by "other" race/ethnic groups, followed by blacks. Parker, *Race, supra*, at

<sup>52</sup> In Southern death penalty states, however, the trend is \_\_\_\_\_

death penalty cases \_\_\_\_\_

cases which actually result in exoneration, they represent only a fraction of the problem: “[I]t is likely that the proportion of blacks and minorities among the wrongly convicted is even higher, especially since whites and those with relatively more money, knowledge, power, and connections are more likely than others to be able to marshal the resources necessary for eventual vindication.” Parker, *Bias and Conviction, supra*, at 127-28. The hurdles faced by wrongfully convicted blacks are reflected in the fact that they spend, on average, far longer on death row than their white counterparts. Over the past ten years, the average length of time



statistically related to race, such as the likelihood that a nonwhite defendant will be tried and convicted on weaker evidence than a white defendant, further thwart a reliable conviction. On appeal and post-conviction, it may be less likely for an innocent nonwhite defendant to obtain the

resources necessary for eventual vindication. And, in the end, even if the defendant is finally granted relief, it will likely come after he has spent many more years on Death Row – and after the State has spent many more years expending resources on wrongful prosecution and

incarceration – than if the defendant had been white.

**II. RACIALLY DISPROPORTIONATE WRONGFUL  
CONVICTION RATES ARE CAUSED BY THE  
CONSCIOUS AND SUBCONSCIOUS BIASES THAT  
PLAGUE EVERY STAGE OF CRIMINAL PROCEEDINGS**

The main explanations behind racial disparity in wrongful convictions include overt racism (intentional or otherwise); stereotyping; the frequency of cross-racial misidentification; and the fact that blacks, relative to whites, tend to be “easy targets” for the law enforcement and criminal justice systems. Parker, *Bias and Conviction*, *supra*, at 121-22.

**A. Racially Disproportionate Wrongful Conviction Rates are the Product of Racially Biased Cultural Beliefs and Stereotyping.**

comprise less than one percent of the overall African-American population, the cultural

17, at 1094 n.23. In turn, people who associate blacks with crime tend to support harsher

punishment for criminals. *Id.* When a defendant is black, the Court is more likely to

“Indeed, the offender’s race leads to an increased likelihood of intentional crimes, especially”

a unique risk of being accused, tried, convicted, and sentenced to death without the levels of scrutiny and presumed innocence they are due. Parker, *Bias and Conviction, supra*, at 121.

~~Significant "white witnesses expect to see black defendants" 1 1~~

accords with prejudicial beliefs of black criminality, resulting errors may go largely unquestioned. Sheri Lynn Johnson, *Cross-Racial Identification Errors in Criminal Cases*, 69 CORNELL L. REV. 934, 950 (1984).

~~The same discriminatory expectations that affect witnesses and law enforcement officers~~

conviction. See Garrett, *Judging Innocence, supra*, at 92 (“many capital convictions of the innocent were predicated on prosecutorial misconduct.”)

Over time, the more disproportionately that blacks are policed, the more disproportionately they end up in the criminal justice system, and the more disproportionately whites associate their race with criminality and punishment. C. D. C. 11 1. D. 1. 1.

Eyewitness misidentification is the most scientifically studied and supported way in

which race affects miscarriages of justice. See Andrew Taslitz, *Wrongly Accused: Is Race a Factor in Convicting the Innocent?* 4 OHIO ST. J. CRIM. L. 121, 124 (2006). It is well-

documented that...  
contexts, and the effect is especially exaggerated when the witness is white. *Id.* at 124, 125; Johnson, *Cross-Racial Identification*, *supra*, at 948. As a result, white witnesses who testify in

to commit prematurely and over-confidently to early theories of a case and blinding themselves

to flawed or inconsistent evidence. *Tadita, Whipple, & Ladd, J. Crim. L. & Crim. 1310-11.*

Susan Bandes, *Loyalty to One's Own Convictions: The Prosecutor and Tunnel Vision*, 49 *HOW.*

*L.J.* 475, 479 (2006). Tunnel vision leads to failure to pursue alternative theories of the crime,

and the risks are especially great when a suspect is black and thus already has racial stereotypes

racial bias in convictions of the innocent.” Parker, *Bias and Conviction, supra*, at 126. One way in which systemic disadvantage directly heightens nonwhites’ risk of wrongful conviction is by making them uniquely susceptible to the State’s use of informants, or “snitches.”

Perjury, especially in the form of deliberate false accusation, is a leading cause of

wrongful homicide convictions. Gross, *Exonerations, supra*, at 543-44; see also Garrett, *Undoing Innocence supra* at 93 (describing informant testimony as a category of evidence



1145. In this way, the use of snitches becomes a racial focusing mechanism. See Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645, 673 (2004). Ultimately, this results in blacks bearing a disproportionate share of the burden of

snitches' unreliability.

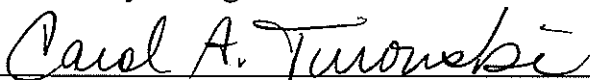
North Carolina capital exonerations reflect these patterns. For example, Bo Jones and

Jonathan Hoffman both black were both wrongly convicted based on false snitch testimony

North Carolina cases also illustrate that black defendants have been the targets of law

hearing.

Respectfully Submitted  
this 27<sup>th</sup> day of August 2010



Professor Carol A. Turowski  
Co-Director, Innocence & Justice Clinic

APPENDIX

A. North Carolina Statistics by Race of the Defendant

Number of Death Row Exonerees	Percentage of Population that is	Percentage of Death Row that is Nonwhite	Percentage of Exonerees who are
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the enclosed Brief of Amici Curiae for the Warden

Convicted as *Amici Curiae* in Support of Defendant Melvin Lee White has been served upon:

L. Michael Dodd

Scott Thomas