

## Blacks are Still Majority of the Wrongfully Convicted

Written by Freddie Allen

Wednesday, 15 May 2013 00:00

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When a Baltimore grocery store employee fingered 26-year-old Michael Austin for the murder of a security guard in the spring of 1974, Austin didn't even match the police sketch. The wanted suspect was less than 6 feet tall and Austin was the size of a small forward in the NBA. The only other evidence linking him to the crime was a business card with the name of an alleged accomplice, a man who was never found.

The store owner, who was positive Austin wasn't the shooter, was never called to testify during the original trial and Austin's defense attorney never called a single witness to back up Austin's alibi that he was at work across town when the crimes were committed. A year later, Austin was convicted of first-degree murder and robbery and sentenced to life in prison on the eyewitness account of the grocery store employee, a college student, according to the prosecution, and a drug addict and high school dropout.

Austin spent half of his life behind bars for a crime that he didn't commit, only gaining freedom through a New Jersey-based lawyers' group that works to free the wrongfully convicted. The grocery store employee died of an overdose in 1997, but not before he told family members that he lied about what he saw during the murder and sent an innocent man to prison. In December 2001, Austin was granted his freedom. Three years later, Austin won a \$4 million settlement from the state of Maryland.

Michael Austin's story was chronicled in The National Registry of Exonerations, a collaborative effort between the University of Michigan law school at Ann Arbor and the Center on Wrongful Convictions at the School of Law at Northwestern University in Chicago. An updated registry features stories of the wrongfully convicted who were recently released.

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According to the report, Blacks account for nearly half (47 percent) of all known exonerees in 1989, and Whites made up nearly 39 percent of all known exonerees. When the updated exoneration report was released in April, 57 percent of the known cases that occurred in 2012 involved Blacks.

Samuel Gross, a law professor at the University of Michigan at Ann Arbor and the editor of The National Registry of Exonerations said the 10 percent increase for Blacks was striking, but it's too early to draw any firm conclusions. Gross said that he continues to learn about new cases that occurred in 2012. In last year's report released in June 2012, the registry found that 50 percent of the all known exonerees were Black.

"It's striking and if it stands up and it repeats in another year or two it will be an important trend," said Gross.

According to the registry report, 52 percent of the wrongful conviction cases involved perjury or false accusation, 43 percent involved official misconduct and 41 percent involved mistaken eyewitness identification.

The majority (57 percent) of all known exonerations were in homicide cases and 47 percent of those cases involved Black defendants and 37 percent involved Whites. Blacks accounted for 63 percent and Whites 18 percent of those wrongfully convicted of committed robberies.

"Homicide and robbery, sadly to say, are crimes that African Americans are heavily overrepresented in the prison population," said Gross.

The report found that "African Americans constitute 25% of prisoners incarcerated for rape, but 62% of those exonerated for such crimes."

Faulty eyewitness identification continues to drive the high rate of Blacks involved in adult sexual assault exoneration cases. Gross said that this is likely because of problems associated with cross-racial identification.

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“White people don’t have the type of experience living with and distinguishing members of other races as minorities do,” said Gross. “There is also a long terrible history of racial discrimination in the prosecution of African Americans for rape when they are accused of raping White women and that may be a factor here, too.”

According to the National Registry of Exonerations, a majority of the cases (52 percent) involve witnesses making false accusations or committing perjury. Forty-one percent of the cases involve faulty eyewitness identification.

“As a group, the defendants had spent nearly 11,000 years in prison for crimes for which they should not have been convicted – an average of more than 10 years each,” stated a report by The National Registry of Exonerations released in April.

These are often the most productive years of a person’s life and the reason why many criminal justice advocates say that seeking compensation for wrongful convictions is the only chance that exonerees have in regaining a foothold in a world that is often much different than how they left it.

“Unfortunately, many of our clients have been in jail for decades and often these were the best years of their life; the years where you can go to school and get an education, years where you can build a career and learn how to do a job,” said Paul Cates, communications director for the Innocence Project. “When they get out after 15 or 20 or 25 years, it’s very difficult to enter the job market without an education and without any marginal skills.”

Cates said that, when the government confines someone for those lengths of time, they definitely deserve to be compensated. Cates added: “It’s particularly true when you consider that they have no way of making a living once they’ve been released.”

Despite the proliferation of crime shows depicting the use of DNA in solving murders and proving innocence or guilt of a suspect, DNA testing is becoming less of a factor in wrongful conviction cases, because it is often initiated before cases go to trial.

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“DNA evidence can be very persuasive to courts and to judges and to prosecutors, because it’s a very definitive proof of innocence,” said Cates. “But in all these other cases where this evidence is not available, it’s really hard to prove when someone has been wrongfully convicted and the court system doesn’t make that easy.”

That could be changing. According to the registry report, for the first time, law enforcement officials cooperated in the majority of the known cases that freed the wrongfully convicted in 2012.

Revisions to state policies involving post-conviction DNA testing, greater oversight of convictions in prosecutorial offices, and the evolution of law enforcement practices could have contributed to the increase, according to the study.

“It’s pretty clear that we make mistakes as you would expect from any human system and we should acknowledge that and that’s becoming more widely understood and accepted,” said Gross. “The more realistic we are in understanding that we do make mistakes, the better we’ll be at identifying them and preventing them.”