

of these cases were discovered not because of the normal appeals process, but rather as a result of new scientific techniques, investigations by journalists, and the dedicated work of expert attorneys, not available to the typical death row inmate.”

In other words, there are more such cases out there, waiting to be discovered. The Innocence Project, founded in 1994 at Benjamin N. Cardozo School of Law by Prof. Barry Scheck, has won the release of nine men since 1994, based on DNA testing, and has determined a common pattern in each of them. Scheck gained national fame as a DNA expert in the O.J. Simpson defense, and also testified in the O’Dell case.

Each of the cases won by the Innocence Project had the following common features: The men were convicted based on identification by witnesses; they were too poor to afford private lawyers; and any forensic data that had been introduced at trial were flawed, or were inadequate to establish the person’s identity. Post-conviction DNA tests proved irrefutably that they were not guilty of the rape and/or murder for which they were convicted.

There are hundreds of people, among the 1.6 million men and women in America’s prisons and 3,300 on America’s death rows, who fit this description. As “Innocence and the Death Penalty” warns, “The current emphasis on faster executions, less resources for the defense, and an expansion in the number of death cases means that the execution of innocent people is inevitable. The increasing number of innocent defendants being found on death row is a clear sign that our process for sentencing people to death is fraught with fundamental errors—errors which cannot be remedied once an execution occurs.”

Interview: Richard Dieter

Court trends are ‘a dangerous problem’

Richard Dieter, executive director of the Death Penalty Information Center and author of “Innocence and the Death Penalty,” spoke with Marianna Wertz, on Aug. 6.

EIR: Do you have any comment about the importance of your report, particularly in light of the execution of Joseph O’Dell and the reprieve of Thomas Thompson?

Dieter: I think that both of these cases show a tendency in the courts to look at the procedure over substance, to ignore the merits of the case and to emphasize whether the steps in

the appeal have been followed, and that’s a dangerous problem. That means that people could be executed solely because they didn’t go through the right steps, procedures.

O’Dell was executed under a law that’s clearly unconstitutional today, but the Supreme Court said it’s not retroactive to him. In the Thompson case, the Supreme Court wants to look at, not the merits of whether Thompson was misrepresented, poorly represented, whether there were injustices in his case, but rather whether the Ninth Circuit followed the rules of procedure and the new laws. That puts the value of these human lives in second place.

EIR: Isn’t that really a “Catch 22” situation with Thompson, because if they did follow those rules, then he would have been executed.

Dieter: Perhaps. Somewhere earlier in the process, I think they should have flagged this case. But given that mistakes were made in the process, that’s not a reason to steamroll ahead with the execution.

EIR: I’d like to ask a question with respect to Supreme Court Justice Antonin Scalia. Lyndon LaRouche, who’s the founder of our publication, has identified Scalia’s doctrine as at the core of this problem, of looking not to the merits of the case, but to the question of procedure, and also majority rule as the basis for law. Have you noted that with Scalia?

Dieter: I don’t really feel like I’m an expert on enough of the different decisions of the court to point that out. Certainly, he has gone out of his way in some death penalty cases to speak in the harshest terms possible, favoring executions and criticizing those who have stood in the way, including defense attorneys. He makes serious challenges seem inconsequential with his remarks. This is just from a few death penalty cases that I’ve noticed. I don’t know how general that is on the court.

EIR: That was certainly true in the O’Dell case.

Dieter: Yes, just wanting to make sure—not even to consider the possibility that he’s innocent. But he’s done that before, criticizing the Texas Resource Center and their bringing these appeals. He goes out of his way to push to get these cases moved along and people executed.

EIR: Is there anything you’d like to say about the impact of the report?

Dieter: It has stirred some concern among the American public. I don’t think they want to see innocent people being executed. They may be willing to make the changes necessary in the system, so that this is less of a possibility, or to stop it altogether, use an alternative, like life without parole. That’s been supported in a number of polls that we’ve seen recently. So, there may be some changes in the offing, and the judges will have to step aside when the laws are changed. But, so far, that hasn’t happened.