

**Zerkin:** Exactly.

**EIR:** How often does someone who's mentally ill or mentally retarded plead guilty to something he hasn't done; make a false confession?

**Zerkin:** First of all, I think people, whether mentally ill or, in Earl's case, mentally retarded, can falsely confess with some frequency, and not only because they're mentally retarded or mentally ill. With mentally retarded people, in particular, that is common, because of their coping mechanisms in their lives generally, which is very often to do what Earl did, which was to acquiesce to what people in positions of authority want. That's relatively common.

The fact is, that false confessions are given by people who do not suffer from mental retardation or mental illness, with surprising frequency. I have no numbers on how often that happens, but that is not that rare an occurrence. There are a host of reasons why people give false confessions, that have nothing to do with those factors.

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## Interview: Peter Neufeld

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*Peter Neufeld is the co-founding co-director of the Innocence Project at Cardozo Law School in New York City. The Innocence Project has been either involved directly or as of counsel in about one-fourth of the 74 post-conviction DNA exonerations to date. He was interviewed by Anita Gallagher on Oct. 10.*

**EIR:** What do you think of the coincidence, or what was behind, Judge Albert Bryan's ruling that every person has a right to a DNA test if it might prove innocence, and Virginia Gov. James Gilmore's decision not to release the results of the DNA test on Earl Washington?

**Neufeld:** I don't think there is any coincidence between the two results. We have been trying to get DNA testing on a number of post-conviction cases in Virginia for a long time without success. What happened in the *Harvey* case, is that after I had personally tried for about three years to get the Commonwealth Attorney to agree to testing, without success, we went into Federal court to try to get relief there. We couldn't go into state court in Virginia, because they have a 21-day rule which prevents anybody from going back into court 21 days after a conviction in the state court. And Judge Bryan considered the issues, and felt that there is a Constitutional due process right to get testing which might lead to somebody's exoneration, and obviously that's the preferred approach in the country, and we think he did the right thing.

Governor Gilmore is a different story. Governor Gilmore would not have agreed to do any additional testing; he literally

has gone kicking and screaming into the 21st Century. But the public sentiment has grown in the last couple of years; certainly an overwhelming majority of the country now believe that everyone should have the right to post-conviction DNA testing if they ask for it, and their position was simply untenable. So, Governor Gilmore had no choice but ultimately to allow the testing. Once he had the testing, he sat on the result for a couple of months before going public with it, and, frankly, the only reason he did that is that he was again being pressured by the court of public opinion.

**EIR:** Do you think that either of these rulings might have been influenced by the Innocence Protection Act, which is pending in the Senate?

**Neufeld:** Well, if the Innocence Protection Act is passed, there would be no reason to go to a Governor Gilmore any more. People will not be at the mercy of elected political figures; they will be able to seek redress in a court of law.

**EIR:** Yes, but do you think these decisions might have been an effort to allow people opposed to that, to say, "We don't need it . . ."

**Neufeld:** No, I don't think so.

**EIR:** You were the attorney for James Harvey?

**Neufeld:** Our office represented Mr. Harvey.

**EIR:** Judge Bryan is not noted for being a progressive ruling judge.

**Neufeld:** I'm not that familiar with him. But his decision here was certainly appropriate, and I think it was realistic. It was recognizing the realities of the time, being that we now have the scientific tool which can indicate quite effectively whether or not somebody was unjustly convicted in the first place, and we would be foolish not to avail ourselves of that tool. I think that is what he is saying, fundamentally.

**EIR:** Do you have any idea of the future of the Innocence Protection Act?

**Neufeld:** I do not. I would hope that it will be passed, but I think, given the fact that Congress is about to shut down for the elections, it looks like its success is very doubtful, at least this term, and I think it will probably have to come back in 2001.

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