Genetic Justice

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An interview with Professor Rothstein can be heard at www.nejm.org.

On December 21, 2004, Brandon Moon was released from prison in El Paso, Texas, after having served 16 years of a 75-year sentence for three counts of aggravated sexual assault. Moon, who was 43 years of age at the time of his release, had been convicted in 1988 on the testimony of the three victims, who had had only a fleeting or partial view of their assailant. In 2004, after undergoing DNA testing, Moon was excluded as the contributor of the DNA collected after all three rapes. As a result, Moon became the 154th person in the United States to be exonerated on the basis of DNA evidence that came to light after the person was convicted for a crime.[1]

The Innocence Project, founded in 1992 by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law in New York, pioneered the use of forensic DNA testing to provide scientific evidence of guilt or innocence after conviction. As described by Gill in another Perspective article in this issue of the *Journal* (pages 2669–2671), the technology has improved in the past decade, but the basic purpose of forensic DNA testing has not changed. The success of the Innocence Project led to the establishment of similar projects throughout the country, staffed by lawyers and law students working pro bono. Other persons and similar organizations not affiliated with the Innocence Project also use DNA evidence to free wrongfully convicted prisoners.

Cases such as Brandon Moon's elicit mixed emotions. One cannot help feeling sadness at the miscarriage of justice that resulted in the incarceration of an innocent man for 16 years while the perpetrator escaped justice. Furthermore, the passage of time makes the discovery and conviction of the perpetrator unlikely, given the cold trail of evidence and the statute of limitations. Nevertheless, one feels relief that at least some degree of justice has finally been achieved, admiration for the volunteer and public-interest lawyers who worked long hours — in some instances years — to free a wrongfully convicted client, and appreciation of the forensic DNA technology, which can provide compelling new evidence that may cast doubt on past convictions.

The phenomenon of postconviction exonerations based on DNA evidence must be put into perspective. At the end of 2003, more than 2 million people were incarcerated in the United States, and of those convicted, those exonerated during the past decade make up a tiny percentage of the total inmate population. Nonetheless, the exonerations raise three fundamental questions about the U.S. criminal justice system.

First, do these cases of wrongful conviction represent the tip of the iceberg, indicating the existence of deeper structural problems in the criminal justice system? As a study by Gross et al. revealed,[2] most of the exonerations that have occurred since 1989 involved faulty eyewitness testimony, as in the case of Brandon Moon, coerced or false confessions, or perjurious testimony by prison inmates. Other cases involved poor crime-scene processing or poor evaluation of evidence by forensic laboratory workers, ineffective defense counsel, or even police and prosecutorial misconduct. Studies of errors in these cases often indicate the presence of systemic problems in forensics, law enforcement, or the criminal courts.[3] For example, officials in several states ordered the review of hundreds of convictions after they determined that state and local crime laboratories might have made numerous errors in handling and testing evidence or, worse, might have deliberately falsified the results or interpretations of forensic testing.

Second, aside from those already exonerated, how many other innocent people have been convict-

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