

CR 22-670

IN THE SUPREME COURT OF ARKANSAS

DAMIEN WAYNE ECHOLS

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

On Appeal from the Circuit Court of Crittenden County, Arkansas
[Circuit Court No. 18CR-93-516]
Hon. Tonya Alexander, *Circuit Judge*

BRIEF OF EXONEREES AS AMICI CURIAE IN SUPPORT OF APPELLANT

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INTEREST OF AMICI CURIAE¹

Amici includes a group of wrongfully convicted individuals who spent years (for most, decades) in prison for crimes they did not commit. (Exhibit 1 Attached – listing of all *amici*). They submit this brief in support of Damien Echols’ appeal to the Supreme Court of Arkansas out of concern that, left uncorrected, the decision below would undermine the fundamental right to prove one’s innocence and as such suffer the consequences left. Additionally, exonerees suffer beyond anyone’s imagination and this Court should not ignore the voices of those who have been similarly situated to that of Damien Echols.

Amici understands all too well the importance of such safeguards. In 1990, *amicus* Counsel Martin Tankleff was wrongfully convicted of murder in New York state court. When he was only seventeen years old, Tankleff was convicted based on a coerced confession written by a detective after hours of interrogation and sentenced to fifty years to life in prison. Tankleff spent nearly two decades behind bars before he was exculpated by newly discovered evidence. Now a free man, he is an attorney, the Peter P. Mullen Distinguished Visiting Professor of Government

¹ Pursuant to Rule 4-6(c) Amicus states that no counsel for a party authored this brief in whole or in part, made a monetary contribution intended to fund the preparation or submission of this brief, or otherwise collaborated in its preparation or submission, except that Appellant’s counsel provided information regarding filing deadlines and the record and docket on appeal. Other than Amicus, its members, and its counsel, no individual or entity made any monetary contribution to this brief, and no individual or entity, except for Dr. Marc Howard, Dr. Amanda Lewis and Derrick Hamilton collaborated in the preparation of this brief.

at Georgetown University, and an Adjunct Professor of Law at Georgetown Law Center. Tankleff is joined by 68 other wrongfully convicted men and women, a full list of whom is included as an appendix to this brief. Together, they have spent over 1220 years in prison for crimes they did not commit.

The exonerees are joined by Dr. Amanda Lewis, a research associate at Georgetown University whose thesis was, *Beyond the Bars – Exploring the Lives of Exonerees and Their Loved Ones as They Cope with Miscarriages of Justice* (Dissertation, University of Florida, 2022, Attached as Exhibit 2) and Dr. Marc Howard, the Director of PJI.

The exonerees are also joined by Jennifer Thompson, an advocate for both crime victims and wrongfully convicted individuals. In 1984, Thompson was raped at knifepoint by a man who broke into her apartment while she slept. Thompson later mistakenly identified *amicus* Ronald Cotton as the perpetrator, and Cotton spent eleven years in prison. After Cotton was exonerated and released, he and Thompson became friends and even co-authored a book that is the basis for an upcoming major motion picture.² In 2015, Thompson and Cotton received the U.S.

² See Jennifer Thompson & Ronald Cotton, *et al.*, *Picking Cotton: Our Memoir of Injustice and Redemption* (2019), <https://www.pickingcottonbook.com>.

Department of Justice's Special Courage Award, in recognition of their advocacy on behalf of all those affected by wrongful convictions.³

Derrick Hamilton, a man who was himself wrongfully convicted, is now the Deputy Director of the Perlmutter Center for Legal Justice.

ARGUMENT

Appellant Damien Echols' liberty and right to obtain DNA testing is imperative, but liberty does not cure the stigma of conviction or give crime victims and their families a substitute for truth. Those who are wrongfully convicted and exonerated suffer great difficulties after release. The group of amici have each walked different paths, however, none of them have walked out of prison without some form of trauma or suffering.

³ See *Justice Department Honors 12 Individuals and Teams for Advancing Rights and Services for Crime Victims*, U.S. Department of Justice (Apr. 21, 2015), <https://www.justice.gov/opa/pr/justice-department-honors-12-individuals-and-teams-advancing-rights-and-services-crime>. Cotton and Thompson's tribute video from the awards ceremony is available at: *2015 National Crime Victims' Service Awards Tribute Video*, Office for Victims of Crime (Apr. 28, 2015), <https://www.youtube.com/watch?v=ubuXSiv0wtw>.

Wrongful convictions have long plagued the criminal justice system.⁴ The National Registry of Exonerations estimates that, in just the past three decades, at least 3319 men and women have been wrongfully convicted of crimes they did not commit.⁵ Last year alone, 239 wrongful convictions were discovered.⁶

While justice was eventually done for those who have been exonerated, the process was long and hard-fought. Since 1989, wrongfully convicted men and women have spent over 29,500 in prison before being able to establish their innocence.⁷

Once released, the horrors of wrongful conviction do not end, with exonerees facing issues such as financial instability, housing, transportation, health services, a criminal record, stigmatization, and more (Thompson, Molina, & Levett, 2011) . In

⁴ Though efforts to track wrongful convictions and exonerations have increased in recent years, this is not a new problem. See Jerome Frank & Barbara Frank, *Not Guilty* (1957) (recounting stories of wrongful convictions dating back to 1918). The National Registry of Exonerations recently undertook efforts to identify exonerations prior to 1989, compiling a database of 369 such cases from 1820 through 1988. See *Exonerations in the United States Before 1989*, National Registry of Exonerations (Mar. 14, 2018), <https://www.law.umich.edu/special/exoneration/Documents/ExonerationsBefore1989.pdf>. Those cases include the famous “Scottsboro Boys,” see *Powell v. State of Ala.*, 287 U.S. 45 (1932), as well as Clarence Gideon, of *Gideon v. Wainwright*, 372 U.S. 335 (1963). *Exonerations in the United States Before 1989* at 2.

⁵ See, <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (Last visited 5-28-2023)

⁶ See <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&SortField=Exonerated&SortDir=Asc&FilterField1=Exonerated&FilterValue1=8%5F2022> . (Last visited 5-28-2023)

⁷ See <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (Last visited 5-28-2023)

order to help exonerees adjust and reintegrate back into society, it is necessary that they be supported. That is because these wrongfully convicted individuals lost years, often decades, of their lives to incarceration.⁸ Children, spouses, and families were left behind. Jobs and educational opportunities were sacrificed. Family stability and positive social connections disappeared. And, while exonerees eventually regained their freedom, their efforts to reestablish meaningful and productive lives after many years in prison have often proved challenging.⁹

The experiences of *amici* illustrate these difficulties. *Amicus* Leslie Vass's wrongful conviction remained on his record for twelve years following his exoneration and release, making it difficult for him to find a job. Absent employment, he lacked health insurance to pay for the therapy he desperately needed

⁸ The case of Anthony Ray Hinton is illustrative. Hinton was convicted of murder in 1986. He immediately challenged his conviction, but he was not set free until April 3, 2015, after spending almost three decades on Alabama's death row. In 2014, this Court ruled unanimously that Hinton's right to a fair trial had been violated, noting that as early as 2002, at a post conviction hearing, Hinton presented testimony that discredited the state's theory of guilt. *Hinton v. Alabama*, 571 U.S. 263, 270 (2014) ("All three experts examined the physical evidence He testified [at the 2002 hearing] that they could not conclude that any of the six bullets had been fired from the Hinton revolver. The State did not submit rebuttal evidence during the post conviction hearing."). Yet it still took another *thirteen years* before he was freed.

⁹ See, e.g., *Making Up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation* at 3, The Innocence Project (Dec. 2, 2009), https://www.innocenceproject.org/wp-content/uploads/2016/06/innocence_project_compensation_report-6.pdf (citing research showing that many wrongfully convicted individuals "suffer from post-traumatic stress disorder, institutionalization and depression," experience significant health problems, and have difficulties securing employment and reintegrating to society).

to treat depression and post-traumatic stress disorder stemming from his conviction and incarceration.

Amicus Shabaka Shakur lost something he can never get back—a chance to say goodbye to his mother, who passed away while he was still incarcerated and never got to see her son clear his name. By the time Shakur returned home, his father was suffering from dementia and could not even recognize him.

Amicus Christopher Tapp never had the chance to say goodbye to his father, who passed away while he was incarcerated. To pay for Tapp’s legal defense, his mother was forced to remortgage his childhood home.

Defendants are not the only ones harmed by wrongful convictions. Crime victims and their families experience tremendous pain, fear, and confusion when this wrong is revealed and they learn the true perpetrator remains at large. Gone is the peace and finality that a proper conviction may provide.¹⁰ Renewed legal proceedings may lead to re-victimization and re-traumatization.¹¹ In a recent study,

¹⁰ See *Study of Victim Experiences* at 43; see also *Resources for Crime Victims and Families*, Healing Justice Project (2019), <https://healingjusticeproject.org/crime-victims-and-families> (“Post-conviction exonerations cause immense pain and confusion to the victims and survivors of the original crime and to their families. The legal proceedings in these cases reopen deep wounds and can lead to re-victimization and re-traumatization.”).

¹¹ See, e.g., *Exonerees and Original Victims of Wrongful Conviction: Listening Session to Inform Programs and Research* at 20, National Institute of Justice (Feb. 22–24, 2016), <https://www.ncjrs.gov/pdffiles1/nij/249931.pdf>.

“more than half of [victims] described the impact of the wrongful conviction as being comparable to—or worse than—that of their original victimization.”¹² With wrongful convictions, “a victim’s sense of safety and closure disappears . . . as they realize that the real perpetrator may still be free.”¹³

At a systemic level, wrongful convictions erode society’s trust in the criminal justice system to bring fair and final resolution in criminal matters. In addition to the obvious dissolution of trust on the part of wrongfully convicted individuals, a study found that “[v]ictims may direct their anger and outrage towards the criminal justice system as they lose their preconceived notions of truth and justice,”¹⁴ which in turn sows distrust of the courts and the criminal process.

Freedom Doesn’t End an Exoneree’s Suffering

Following their release, exonerees and wrongfully convicted persons face a number of obstacles and difficulties. Specifically, they face discrimination and stigma from their communities, employers, and sometimes even their families. They face barriers to employment, re-entry services, housing, and even things as simple as obtaining a driver's license, birth certificate, and social security card. Things that

¹²Seri Irazola *et al.*, *Addressing the Impact of Wrongful Convictions on Crime Victims*, National Institute of Justice (Oct. 1, 2014), <https://nij.ojp.gov/topics/articles/addressing-impact-wrongful-convictions-crime-victims>.

¹³ See *Study of Victim Experiences* at 12.

¹⁴ *Id.*

are essential to beginning a life after a wrongful conviction often require significant energy, dedication, and time.

In addition to all of those obstacles, wrongfully convicted persons additionally face serious mental health issues both while incarcerated and post-release. One of the most common and lasting issues exonerees experience is PTSD - this leads to lasting mental health issues that extend beyond just the individual exoneree to their entire families and loved ones.

In this brief, we will provide an overview of the challenges faced by exonerees, and their loved ones, following their release from incarceration. We will summarize existing external research in addition to including information from one of the contributors to this brief, Dr. Amanda Lewis, who conducted a large-scale qualitative research project attached as Exhibit 2 entitled, *Beyond Bars – Exploring The Lives of Exonerees and Their Loves Ones as They Cope with Miscarriages of Justice* (Dissertation, University of Florida 2022).

Released But Not Fully Exonerated

There is a special category of people who bear additional problems when they are released but not fully exonerated. Many people, such as Derrick Hamilton¹⁵,

¹⁵ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4601> (Last visited 5-28-2023)

Sundhe Moses (exonerated while on parole)¹⁶, Shabaka Shakur (released after a hearing)¹⁷, David Ranta¹⁸, Alvena Jennette¹⁹, Jon Adrian Velazquez²⁰, Johnny Hincapie (released after a hearing)²¹ Vincent Ellerbe²² (exonerated while on parole), Gerard Domond²³ (exonerated while on parole) and many others have either been fully exonerated **after** release or are still fighting for their full exoneration. These people suffer the additional stigma of having a criminal conviction lodged against them until their full exoneration.

¹⁶ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5282> (Last visited 5-28-2023)

¹⁷ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4701> (Last visited 5-28-2023)

¹⁸ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4127> (Last visited 5-28-2023)

¹⁹ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4426> (Last visited 5-28-2023)

²⁰ Jon Adrian Velazquez was granted clemency by Governor Cuomo and is still fighting for his exoneration. He recently met with President Biden to discuss how the criminal justice system is failing. (See, <https://justiceineducation.columbia.edu/biden-discusses-criminal-legal-reform-with-jj-velasquez/> (Last visited 5-28-2023)

²¹ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5094> (Last visited 5-28-2023)

²² See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6351> (Last visited 5-28-2023)

²³ See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5859> (Last visited 5-28-2023)

For John Huffington, the stigma of being a convicted murderer after he took an Alford plea, was devastating:

“...the Alford plea still has lingering effects, you know, there’s a conviction on my record... you know? When I went to get an apartment, I gotta pass a background check.”

On November 9, 2017, fearing going back into prison, John accepted an Alford plea. The plea allowed him to maintain his innocence and he was given time served and freed. From that point forward, John never stopped fighting for his exoneration. On January 13, 2023, Gov. Hogan granted John a full pardon, which acknowledged that his convictions were unjust, and he was innocent. John fought for almost 42 years for his exoneration.

Stigmatization and Labeling

Being formerly incarcerated, regardless of the status of one’s guilt, often leads to stigmatization from peers, potential employers, romantic interests, and the community at large. Some exonerees may experience different levels of stigmatization and labeling depending on the original crime, the amount of community support, and the types of media coverage. Kristine Bunch was wrongfully convicted of arson which killed her own son. Below, she explains how stigma has followed her since her release:

Despite being exonerated, the stigma of being a baby killer remains. It is hard to know who you can trust and it is hard to fit in with your peers and community members. I always feel like I do not fit in because I had

a different journey. The things they know about technology, planning for the future and becoming financially independent were learned as things changed. I was playing catch up and trying to learn everything all at once. For the most part when people reach out to me, I always wonder what their motive is. Prison teaches you that nothing is free and someone offering a helping hand should not be trusted. Bottom line is I will have to explain my circumstances for the rest of my life and the label placed on me by society will always be there.

Stigmatization does not necessarily stop with the exoneree; rather, it extends to secondary exonerees as well, sometimes resulting in isolation, negativity, and judgment from the community (Westervelt & Cook, 2012). Studies with rightfully incarcerated individuals suggest that the social stigmatization that exists for incarcerated individuals may extend to the whole family (Peters & Corrado, 2013). 34 Condry (2010) used the term “family blaming” to describe what happens when the families of offenders become targets of societal disapproval. This blame ultimately leads to stigmatization of the relatives of an offender. Based on this research, it is a logical prediction that social stigmatization might also be felt by secondary exonerees as a result of their loved one’s incarceration. Jenkins (2013, p. 122) found that “most families, including their children, shared that they had been labeled, stereotyped and discriminated against because of their family’s experience of wrongful conviction.”

Lewis (2022) found this to be true; ten of the sixteen secondary exonerees she interviewed reported feeling stigmatized or labeled by their communities at large.

Three of the four exoneree mothers included in Lewis' study described situations in which the stigma of their child's situation led them to make significant life changes. For example, Darleen Long (*Amicus* Kimberly Long's mother) quit her job due to the discomfort of the stigmatization and labeling she was experiencing in the workplace. Roger, her husband and Kimberly's father, stated, "My wife had to retire a little bit early. She couldn't take it. Everybody looks at you different, you know?" Even though Darleen could have used the additional funds to help assist Kimberly, the judgment was too much for her to take such that she retired early; Roger threw himself into work in order to raise funds and focus on something besides the horrific injustice his family was experiencing. Rodney Lincoln mentioned "[his] mother was threatened so bad that she had to move from where she lived." Though Rodney did not expand on this statement much more and his mother has now passed, it is hard to imagine what she must have gone through to feel so threatened that she no longer felt safe in her own home. These quotes demonstrate the impact of negative stigmatization and discrimination from community members and co-workers. In these cases, mothers made decisions about their lives they otherwise would not have made. They left jobs or communities they had lived in for decades because of the stigmatization they experienced. Again, their life course was disrupted – their trajectories forever altered – all because of the initial wrongful conviction.

In their book, *Life After Death Row*, Westervelt and Cook (2012) explored some of the ways secondary exonerees experienced stigma, following the release of eighteen exonerees from death row. One of the exonerees, Greg Wilhoit, discussed how difficult the entire ordeal was on his parents:

[My parents], they lost their identity pretty much. Everywhere they went they were like the mother or the father of an individual so vile and so reprehensible that not only had he forfeited his right to live in society, he'd forfeited his right to live altogether. Try living with that. My parents, you know, they did it for nine years (p. 83).

Stigma can be particularly pervasive and harmful to secondary exonerees, as demonstrated in the above quote. Stigma often leads to neighbors, friends, and other family members distancing themselves from the family. In some cases, the stigma, bullying, and other pressures experienced by families may force children to change schools, adults to quit jobs, and the complete family to relocate (Jenkins, 2013; Jeudy, 2019).

The Age Stagnation

All exonerees interviewed in Lewis' study (n=19) explained that they had difficulties adjusting to the outside world following their release from prison and experienced what Lewis termed "age stagnation." Being placed in a total institution for a lengthy period of time had serious impacts on how exonerees developed psychologically, emotionally, and socially, as well as the way they conceptualized their own age and identity. By age, we do not mean their physical appearance;

rather, it is their emotional and psychological aging that seems to be stunted. For most, it was not until they were released that they were able to pick up their lives where they left off. However, even though they felt like their younger selves and behaved like someone who was the age they were at the time they were initially incarcerated, they did not look it. This resulted in a mismatch between the exonerees' physical appearance and the way they felt and behaved. To explain this phenomenon, Lewis created the term "age stagnation" or "incarceration-induced age stagnation." Stagnation is defined as "the state of not moving or flowing, or lack of activity, growth, or development" (Lexico, n.d., p 1.). Although Lewis refers to this concept as age stagnation, it should be noted that it is more of a lack of development and experience that causes the exonerees to have a distorted view of their own age and identity.

James Gibson who went to prison at age 23 and was released at age 52 summarized how this loss of time and attempts to readjust to a completely new and different society impacted him mentally by stating, "I'm really traumatized, and I feel like I'm in a time war." Upon his release, James dealt with a great deal of shock and confusion. Adjusting to the world that had moved on without him proved to be challenging, especially in terms of adapting to new technology and socializing with those around him.

Romeo Fernandez (pseudonym) described how difficult it had been to transition into an average adult following his release from prison:

So, when I came out here, I started seeing after a while— at first, I didn't see it, it took me a while, and then after a while I started seeing how really of a convict I was. And I started comparing myself as the 16-year-old kid that didn't know shit to this convict, and I was like “holy fuck.” And now I'm trying to put this adult into the picture as well, and it gets confusing.

Romeo's prison experience was particularly brutal. Not only was he initially incarcerated as a 16-year-old child, but the prison environment where he served most of his sentence was dangerous and filled with violence. Romeo described how he went into prison fully expecting to die there. After being wrongfully convicted, he had no will to live and was put into dangerous and violent situations on a daily basis. He had to live day-to-day as a “tough guy” to ensure fellow inmates and guards did not sense weakness in him. This general disposition separated him from his loved ones on the outside and the experiences of his peers.

Towards the end of Romeo's sentence, he began to find the will to live and developed a relationship with his current wife, Stephanie. Despite altering his trajectory to become more like those on the outside, Romeo had trouble shaking the convict persona when he was first released. He reported feeling that he was in his twenties, as it has only been a few years since he came home from prison. He has begun settling into his role as a husband and father. However, a great deal of strife

resulted when he attempted to live again as that 16-year-old kid once he was released.

Similarly, Jeffrey Deskovic reflected on what he would have likely done had he not been wrongfully convicted and the types of important events and developmental periods he missed as a result of his incarceration:

From 1998 to 2006... I would have finished education at a more traditional age. Perhaps I would have been well established in a career. And maybe I would have been married and had a family. I mean, I think that I don't want to do that anymore. But maybe it would have been a different life in that way, and I could have gone to the prom and graduated high school, and you know? Yeah, births, deaths, weddings, holidays, that kind of stuff; everything that I missed. I mean, there's certainly still the psychological aftereffects of the experience, which I still have some of the other aftereffects, which I'm dealing with. So, I feel like it's altered my life in that way. And it's caused me to have to try to— I mean I'm still trying to figure out the social part of my life that was in place before. So, I kind of feel like the train got knocked off the tracks in a way.”

Jeffrey explained how his wrongful conviction derailed his social development, because he was only 16 years old, when he was initially arrested and still a minor when he was tried as an adult and sentenced to prison for rape and murder. He also mentioned that at this point he did not want to start a family and become a father.

He was not the only exoneree that discussed the possibility of parenthood in the past tense, as Jason Strong and Christopher Ochoa also explained that they felt

it was too late for them to get married or have children. The concept of giving up on romance will be discussed in more detail in the romantic partners section.

In their examination of inmates during incarceration, Zamble and Proporino (1990) summarized that “what happens during imprisonment [is like] a ‘behavioral deep freeze’ in which a person’s set of outside world behaviors are stored until release” (p. 62). As a result, former prisoners may face a number of difficulties when readjusting to the outside world following their release. The world as they knew it is now gone, and they are thrown back into it without any real guidance on how to behave or connect with others. Lewis’ results support and extend these previous findings. Exonerees in the current 258 study described their incarceration as like “being frozen in time.” Furthermore, the exoneree participants in the current study struggled to adjust to the outside world upon their release, specifically when it came to relating to peers or potential romantic partners. Their time in prison made it more difficult for them to socialize with the average person on the outside.

Mental Health & PTSD

Research consistently finds that exonerees experience mental health problems, including depression, PTSD, and anxiety (Grounds, 2004; Mallik-Kane & Visher, 2008; Bronson & Berzofsky, 2017; Bloch et al., 2020; Wildeman, Costelloe, & Schehr, 2011; Scott, 2010). Studies tend to suggest that these problems arise during incarceration, but they often persist after the person’s release, which

might lead to future substance use and more long term psychological problems (Petersilia 2003, James & Glaze, 2006; Chandler & Fletcher, 2009; Chamberlain, et.al., 2019), and diminished long-term psychological health (Gonzalez & Connell, 2014; Wilper, et al., 2009).

In one well-known study, Grounds (2004) conducted in-depth psychiatric assessments of 18 wrongfully convicted men, following their release from prison, to more closely examine the psychological consequences these miscarriages of justice may have. Findings suggest that exonerees endure significant psychological trauma, with 14 of the 18 men meeting diagnostic criteria for “enduring personality change following [a] catastrophic experience” (p. 165). Twelve of the men met criteria for posttraumatic stress disorder (PTSD), and most reported additional mood and anxiety disorders (Grounds, 2004). The severity of psychological consequences for exonerees was compared to that of war veterans, indicating problems with psychological and social adjustment.

Every exoneree (n=19) in Lewis’ study described having symptoms of PTSD. One exoneree stated, “And I still have PTSD because... I know I still have my moments, because you still have these moments, where you lapse and it's like everything, I'm telling you right now go out the window and it's like fucking this, fucking that, fucking this, and this motherfucker or this or whatever situation you know, whatever it is. So, you always have that. But in time it gets easier to deal with

you have less and less as you go on, but... I don't think that we're going to escape this. I think we're gonna deal with this forever, but it does get easier.” The sad reality described in this quotation suggests that being wrongfully convicted and incarcerated leaves lasting wounds that they will likely never completely recover from.

Amicus Anthony DiPippo stated:

I mean [the experience] changes you lots of ways mentally. You know, you get that you have to deal with things that you wouldn't normally deal with and it's similar to war. Sometimes worst case, the war, because war, although as traumatizing as it is, it's usually... a tour, two tours, or you're there for three years.

Amicus Kristine Bunch stated:

How can we as a society sit back and say, “oh we're doing all that we can”? Are we? We're not. Every single exoneree I have talked to, 100% of them, they all have PTSD. We should be treated just like refugees you scooped us out from our home, you put us in another land back in our shit was gone. Treat us the same way, give us those services and those protections.

Kristine's thinking is in line with recommendations from Wildeman and colleagues (2011) who explained that financial resources were necessary to address the mental health needs of exonerees, suggesting that these resources should be part of the post-release compensation package. Kristine went onto describe the predicament she found herself in post-release:

I had no money for doctor visits to check on my health or for counseling to deal with all that I was going through. When I finally got a job with good insurance, I was diagnosed with PTSD and 10 years later, I am still in

counseling because of it. I still have nightmares and panic attacks. They are easing with time but I never know what will trigger them.

The doctor bills piled up because insurance doesn't cover everything and I needed to be checked for everything. The prison does not do routine health exams so I had to get them all done. Some leftover physical ailments are my teeth (it will cost as much as a brand new car to replace and fix my teeth) and arthritis in all of my joints (that will get worse as I get older) from the years on concrete and steel.

A wrongful conviction takes away things that people do not often think about. It took away my fertile years - I can never have another child. Adoption and fostering are out because after googling me no one would want me to be part of a child's life. I certainly can't work with children or volunteer because that label is always there. It is as if I have to reprove my innocence every day of my life.

Many exonerees, if not all, have difficulty obtaining proper medical care after their release for a number of reasons. They have no source of income. They have no job and a severe lack of prospects. Oftentimes, they rely on state sponsored medical care which is not equipped to handle people who have been in prison for decades. In some cases, they are denied reentry support services provided to “rightfully convicted” individuals because their criminal record has been expunged.

Delay in Receiving Compensation

Currently, only 33 out of the 50 states have compensation statutes for the wrongfully convicted. For those who are eligible for compensation, they often wait months or years before the money is in their possession (Chunias & Aufgang, 2008). Out of the 33 states that have compensation statutes, only three offer meaningful

post-release services for exonerees. The majority of compensation statutes focus on monetary compensation while more exonerees would benefit from comprehensive compensation that includes some form of psychological healthcare. Once released, the time period directly following a prisoner's release is the most critical in dictating whether they will recidivate or successfully adjust back to society. This rings true for exonerees as well. However, unlike many rightfully convicted prisoners and parolees, exonerees are provided with zero assistance upon release.

Reintegration Programs & Post-Release Systems

Many exonerees do not fit the criteria for reintegration programs and post-release systems that are currently put in place for parolees, meaning they do not receive any transitional services. Even if an exoneree were to try and utilize a reintegration program, they would not benefit since these programs are designed on the premise that the individual committed a crime and was convicted for that crime. Further, some exonerees do not know until as little as hours before that they are getting released. This means that even if pre-release programs were available to exonerees, they would not be able to properly utilize such programs due to the unexpected volatile nature of their release.

Obtaining Licenses (i.e. Professional Licenses & Drivers)

For many exonerees, something as simple as obtaining a driver's license is a challenge. For example, in New York State, the Department of Motor Vehicles

required six forms of identification for the exoneree to obtain a learner's permit. For an individual who has been behind bars for years, sometimes decades, it can take months to track down all the required materials. Furthermore, to get one form of identification, it is generally required that you have another (i.e., birth certificate, social security card). For those whose criminal cases have not been cleared up, obtaining a professional license is also a challenge as for some licenses you cannot legally obtain with a criminal conviction on your record.²⁴ For undersigned counsel, obtaining his law license, he was forced to go through more of a review process than other applicants.

Swiftness of Release, Housing Discrimination & Financial Insecurity

Oftentimes, exonerees are released from prison in a manner that is so abrupt that it not only compounds the trauma which they endured while incarcerated, but is followed by the drastic and sudden change of rejoining society – a society that has evolved significantly since they originally became entangled in the criminal legal system. Though exonerees may experience elation and joy upon walking out of the prison gate or courtroom door, it does not take long for them to be confronted with the challenges that release brings. Often exonerees “may be left to survive with only

²⁴ https://justiceandopportunity.org/wp-content/uploads/2020/05/License-Guides_Final.pdf

the clothes on their back and what little money they have in their prison accounts” upon their release (Jackson, et. al., 2023).

Kristine Bunch discusses what happened when she was released:

I was released on August 22, 2012 and my charges were not dismissed until December 18, 2012. During that time, I had to depend on the generosity of others. I was released with my prison uniform and white tennis shoes. I had no identification, clothing, hygiene items, money or even a place to live. My brother took me back to the prison after my release to get a photo I.D. so I could prove who I was. He gave me a place to live, clothing and transported me where I needed to go because I was preparing for a retrial. Additionally, I had a 16 year old son that I had to take care of. My brother took us both in. I had to re-establish myself as my son's parent and meet with his teachers and counselors.

In the time directly following release, it is imperative for an exoneree to receive consistent support but the United States as a whole is ill-equipped to provide this necessary support. Along with already enduring the travesty of a severe miscarriage of, exonerees are subjected to stigmatization upon their release. Despite being innocent, the “guilty prisoner” label and negative reputation attached to this label remains. This makes it increasingly difficult for exonerees to shed their past and reintegrate back into society (Clow & Leach, 2015).

This stigmatization does not just impact the mental health of exonerees, but it additionally affects their trajectory and ability to build a new life. This is particularly true when it comes to housing and financial security. “Housing is a constant struggle

for people with criminal records”²⁵ and those without criminal records, like exonerees, have no rental or credit history to qualify for housing. Most exonerees are not able to obtain credit cards because of a lack of credit history due to years of imprisonment. All of this insecurity means that exonerees are often dependent on their loved ones to support and house them until they are able to acquire a job and housing on their own. This puts an extreme and additional burden on the exoneree themselves as well as their loved ones (a.k.a. secondary exonerees).

Oftentimes, exonerees are released from prison in a manner that is so abrupt that it not only compounds the trauma which they endured while incarcerated but is followed by the drastic and sudden change of rejoining society – a society that has evolved significantly since they originally became entangled in the criminal legal system. Though exonerees may experience elation and joy upon walking out of the prison gate or courtroom door, it does not take long for them to be confronted with the challenges that release brings. Often exonerees “may be left to survive with only the clothes on their back and what little money they have in their prison accounts” upon their release (Jackson, et. al., 2023).

In the time directly following release, it is imperative for an exoneree to receive consistent support, but the United States is ill-equipped to provide this

²⁵ (Jackson, et. al., *The Victimology of a Wrongful Conviction – Innocent Inmates and Indirect Victims*, pg. 127, Rutledge 2023)

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This stigmatization does not just impact exonerees mental health, but it additionally affects their trajectory and ability to build a new life. This is particularly true when it comes to housing and financial security. “Housing is a constant struggle for people with criminal records,”²⁶ and those without criminal records, like exonerees, have no rental or credit history to qualify for housing. Most exonerees are not able to obtain credit cards because of a lack of credit history due to years of imprisonment. All of this insecurity means that exonerees are often dependent on their loved ones to support and house them until they are able to acquire a job and housing on their own. This puts an extreme and additional burden on the exoneree themselves as well as their loved ones (a.k.a. secondary exonerees).

CONCLUSION

The suffering of an innocent man should not rest on whether he has to make the choice to remain in prison to obtain a DNA test or obtain his freedom and be

²⁶ (Jackson, et. al., *The Victimology of a Wrongful Conviction – Innocent Inmates and Indirect Victims*, pg. 127, Rutledge 2023)

denied a test that could fully exonerate him. Exonerees suffer enough upon release – Damien Echols should not be exposed to any further suffering by being denied a DNA test that could finally exonerate him.

For these reasons, and those set out in the briefs of Appellant and other amici, Amicus respectfully requests that this Court vacate the decision below and remand Appellant’s petition for plenary consideration.

AFFIRMED UNDER THE PENALTY OF PERJURY AND
RESPECTFULLY SUBMITTED this 15th day of June 2023.

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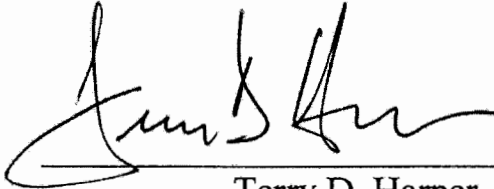
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²⁸ Not an attorney but assisted in the research for this brief.

CERTIFICATE OF SERVICE

I, Terry D. Harper, certify that on June 16th, 2023, a true and accurate copy of the foregoing Brief of Amicus Curiae Exonerees and Those Seeking Exoneration was served on the other parties and the circuit court, pursuant to Administrative Order 21 Section 7, by notice of electronic filing generated by this Court's electronic filing system.



Terry D. Harper

CERTIFICATE OF COMPLIANCE

I, Terry D. Harper, local counsel for Proposed Amicus Curiae Exonerees, hereby that the foregoing Amicus Curiae Brief of the Center on Wrongful Convictions:

(1) complies with Administrative Order No. 19's requirements concerning Confidential information as the brief contains no Confidential information as defined and described in Sections III(A)(11) and VII(B) of Administrative Order No. 19;

(2) complies with Administrative Order No. 21, Section 9, because the brief contains no hyperlinks to external papers or websites; and

(3) complies with the word-count limitations identified in Rules 4-2(d) and 4-6(g), because, according to the word-processing system used to create the brief, it contains 5,537 words excluding the cover, the table of contents and authorities, the certificate of service, and this certification, and 7,046 words total.

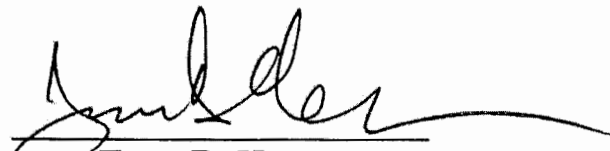

Terry D. Harper

EXHIBIT 1

**APPENDIX: LIST OF WRONGFULLY
CONVICTED *AMICI CURIAE***

1. In 1995, Roberto Almodovar was wrongfully convicted of murder in Illinois state court. He spent more than 22 years in prison, before being released in 2017.
2. In 2010 Eric Anderson was wrongfully convicted of robbery in Michigan state court. He spent more than nine years in prison, before being released in 2019.
3. In 1997, Jonathan Bar was wrongfully convicted of murder in Illinois state court. He spent more than fourteen years in prison before being released in 2011.
4. In 1992, Fernando Bermudez was wrongfully convicted of murder in New York state court. He spent eighteen years in prison, before being released in 2009.
5. In 1997, Kenneth Bond was wrongfully convicted of first-degree assault, assault, and handgun violations in Maryland state court. He spent nearly 28 years in prison, before being released in 2023.¹
6. In 1996, Ted Bradford was wrongfully convicted of sexual assault in Washington state court. He spent more than 14 years in prison, before being released in 2010.
7. In 2007, Adam Braseel was wrongfully convicted of murder in Tennessee. He spent nine years in prison, before being released in 2016.
8. In 1970, Barney Brown was wrongfully convicted of rape and robbery in Florida state Court. He spent 38 years in prison, before being released in 2008.
9. In 1996, Kristine Bunch was wrongfully convicted of murder in Indiana state court. She spent more than seventeen years in prison, before being released in 2012.
10. In 2000, Philip Scott Cannon was wrongfully convicted of Murder in Oregon state court. He spent more than nine years in prison, before being released in 2009.
11. In 1999 Michael Clancy was wrongfully convicted of Murder in New York State court. He spent more than twenty years in prison, before being released in 2009.
12. In 2014, Emily Cohen was wrongfully convicted of theft in Colorado state Court. She spent more two years in prison, before being released in 2016.²

¹ Kenneth Bond was released under a sentence modification for juveniles, however, he case is still pending before the CIU and his fight for full exoneration continues.

² See, *People v. Cohen*, 440 P.3d 1256 (2019)

13. In 1985, Ronald Cotton was wrongfully convicted of sexual assault in North Carolina state court. He spent eleven years in prison, before being released in 1995.
14. In 1990, Jeffrey Deskovic was wrongfully convicted of murder in New York state court. He spent sixteen years in prison, before being released in 2006.
15. In 1987, Doug DiLosa was wrongfully convicted of murder in Louisiana State court. He spent more than sixteen years in prison, before being released in 2003.
16. In 1984, Luis Diaz was wrongfully convicted of sexual assault in California state court. He spent nine years in prison, before being released in 1993.
17. In 1997, Anthony DiPippo was wrongfully convicted of murder in New York state court. He spent twenty years in prison, before being released in 2016.
18. In 1992, Valentino Dixon was wrongfully convicted of murder in New York state court. He spent twenty-seven years in prison, before being released in 2018.
19. In 1989 Gerard Domond was wrongfully convicted of murder in New York State court. He spent more than twenty-seven years in prison before being released in 2016.
20. In 1985, Robert DuBoise was wrongfully convicted of murder in Florida state court. He spent thirty-five years in prison, before being released in 2020.
21. In 1980, Cornelius Dupree was wrongfully convicted of robbery in Texas state Court. He spent over 30 years in prison, before being released in 2011.
22. In 1996, Audrey Edmunds was wrongfully convicted of murder in Wisconsin state court. She spent twelve years in prison, before being released in 2008.
23. In 1996, Vincent Ellerbe was wrongfully convicted of murder in New York State court. He spent more than twenty-five years in prison, before being released in 2022.³
24. In 1988 Anthony Faison was wrongfully convicted of murder in New York State court. He spent more than thirteen years in prison, before being released in 2001.⁴

³ Ellerbe was wrongfully convicted along with James Irons and Thomas Malik. (See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6351> – last visited on 5-29-2023)

⁴ Faison was wrongfully convicted along with Charles Shepherd. (See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3210> – last visited 5-29-2023)

25. In 2002, Brian Ferguson was wrongfully convicted of murder in West Virginia state court. He spent eleven years in prison, before being released in 2013.
26. In 1991, Dean Gillispie was wrongfully convicted of sexual assault in Ohio state court. He spent twenty years in prison, before being released in 2011.
27. In 1980, Kevin Green was wrongfully convicted of murder in California state court. He spent sixteen years in prison, before being released in 1996.
28. In 1985 Cyris Greene was wrongfully convicted of murder in New York state court. He spent more than 20 years in prison, before being released in 2006.
29. In 1992, Derrick Hamilton was wrongfully convicted of murder in New York state court. He spent more than twenty years in prison, before being released in 2011.
30. In 2003, Kevin Harrington was wrongfully convicted of murder in Michigan state court. He spent more than 17 years in prison, before being released in 2020.
31. In 2002, Termain Hicks was wrongfully convicted of sexual assault in Philadelphia state court. He spent more than 18 years in prison, before being released in 2020.
32. In 1991, Johnny Hincapie was wrongfully convicted of murder in New York state court. He spent twenty-four years in prison, before being released in 2015.
33. In 1990 Jimmie Gardner was wrongfully convicted of sexual assault in West Virginia state court. He spent more than twenty-six years in prison, before being released in 2016.
34. In 2009, Noura Grace Jackson was wrongfully convicted of murder in Tennessee state court. She spent eleven years in prison, before being released in 2016.
35. In 1997, Lorenzo Johnson was wrongfully convicted of murder in Pennsylvania state court. He spent twenty-two years in prison, before being released in 2017.⁵
36. In 1996, Robert Jones was wrongfully convicted of murder, rape, kidnapping and several armed robberies in Louisiana state court. He spent more than 23 years in prison before being released in 2015.
37. In 1986, Gloria Killian was wrongfully convicted of murder in California state court. She spent over seventeen years in prison, before being released in 2002.⁶

⁵ Lorenzo Johnson is still fighting for a full exoneration.

⁶ Gloria passed away in 2023. In a prior amicus she authorized the undersigned counsel to use her name in any future exoneree amicus briefs.

38. In 1997 Willie Knighten was wrongfully convicted of murder in Ohio state court. He spent over 25 years in prison, before being released in 2022.
39. In 2009, Amanda Knox was wrongfully convicted of murder in Italy. She spent almost four years in prison, before being released in 2011.
40. In 1990, Virginia “Ginny” Lefever was wrongfully convicted of murder in Ohio state court. She spent more than 21 years in prison, before being released in 2011.
41. In 1995, Scott Lewis was wrongfully convicted of murder in Connecticut state court. He spent nearly twenty years in prison, before being released in 2014.
42. In 2005, Kimberly Long was wrongfully convicted of murder in California state court. She spent more than eleven years in prison, before being released in 2016.
43. In 1982, Eddie Lowery was wrongfully convicted of sexual assault in Kansas state court. He spent ten years in prison, before being released in 1991.
44. In 1996, Thomas Malik was wrongfully convicted of murder in New York State court. He spent more than twenty-five years in prison, before being released in 2022.⁷
45. In 1986, David McCallum, was wrongfully convicted of murder in New York State court. He spent 29 years in prison, before being released in 2014.
46. In 1998, Susan Mellen was wrongfully convicted of murder in California state court. She spent seventeen years in prison, before being released in 2014.
47. In 1982, Jerry Miller was wrongfully convicted of sexual assault in Illinois state court. He spent twenty-five years in prison before being released in 2007.
48. In 1992, Beverly Monroe was wrongfully convicted of Murder in Virginia state court. She spent eleven years in prison, before being released in 2003.
49. In 1987, Michael Morton was wrongfully convicted of murder in Texas state court. He spent twenty-four years in prison, before being released in 2011.
50. In 1988, Brandon Moon was wrongfully convicted of three counts of aggravated sexual assault in Texas state court. He spent seventeen years in prison, before being released in 2005.
51. In 1997 Sundhe Moses was wrongfully convicted of murder in New York State court. He spent more than 16 years in prison, before being released in 2013.

⁷ Malik was wrongfully convicted along with Vincent Ellerbe and James Irons (See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6350> – last visited 5-29-2023)

52. In 1995 Michelle Murphy was wrongfully convicted of murder in Oklahoma state court. She spent more than nineteen years in prison, before being released in 2014.
53. In 2005, Kenneth Nixon was wrongfully convicted of Two counts of Felony Murder, Four counts of Attempted Murder and one count of Arson in Wayne County Circuit Court in Detroit, Michigan. He spent nearly 16 years in prison before being released in 2021.
54. In 1995, Michael L. Piaskowski was wrongfully convicted of murder in Wisconsin state court. He spent nearly six years in prison, before being released in 2001.
55. Jenny Reach (formerly Jennifer Wilcox) was wrongfully convicted of child sex abuse in Ohio state court. She spent over 12 years in prison, before being released in 1997
56. In 1996, John Restivo was wrongfully convicted of Murder in New York State Court. He spent almost 19 years in prison, before being released in 2005.⁸
57. In 1996, Rodney Roberts was wrongfully convicted of kidnapping. He spent eighteen years in, before being released in 2014.
58. In 1998, Arthur Carmona was wrongfully convicted of robbery in California state court. He spent over two years in prison before being released in 2000.⁹
59. In 1998, Matt Sopron was wrongfully convicted of murder in Illinois state court. He spent more than 20 years in prison before being released in 2018.¹⁰
60. In 1989, Shabaka Shakur, formerly Louis Holmes, was wrongfully convicted of murder in New York state court. He spent nearly twenty-eight years in prison, before being released in 2015.
61. In 1988 Charles Shepherd was wrongfully convicted of murder in New York State court. He spent more than thirteen years in prison, before being released in 2001.¹¹

⁸ Restivo was wrongfully convicted along with Dennis Halstead and John Kogut. (See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3573> – last visited 5-29-2023)

⁹ Arthur's mother, Ronnie Sandoval asked to have her son's name added to this list.

¹⁰ Sopron was convicted with other co-defendants, were also exonerated (See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5474>)

¹¹ Shepard was wrongfully convicted along with Anthony Faison. (See,

62. In 1990, Sabrina Butler Smith was convicted of murder in Mississippi state court. She spent more than six years on death row, before being released in 1995.
63. In 2000, Jason Strong was wrongfully convicted of murder in Illinois state court. He spent fifteen years in prison, before being released in 2015.
64. In 2000, Adnan Syed was wrongfully convicted of murder in Maryland state court. He spent more than twenty-three years in prison, before being released in 2022.¹²
65. In 1990, Martin Tankleff was wrongfully convicted of murder in New York state court. He spent seventeen years in prison, before being released in 2007.
66. In 1998, Christopher Tapp was wrongfully convicted of murder in Idaho state court. He spent twenty years in prison, before being released in 2017.
67. In 1975, Leslie Vass was wrongfully convicted of robbery in Maryland state court. He spent ten years in prison, before being released in 1984.
68. In 1998, Anna Vasquez was wrongfully convicted of child sex abuse in Texas state court. She spent more than 18 years in prison, before being released in 2016.¹³
69. In 1982, Michael VonAllmen was wrongfully convicted of sexual assault in Kentucky state court. He spent nearly twelve years in prison, before being released in 1994.

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3630> – last visited 5-29-2023)

¹² Adnan Syed's conviction has been reinstated based on a technicality, however, he remains free and is considered an exoneree within the innocence community.

¹³ Vasquez was wrongfully convicted along with Elizabeth Ramirez, Kristie Mayhugh and Cassandra Rivera. (See, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5051> – last visited 5-29-2023)