

# The PROSECUTOR

## ‘Innocence Fraud’ Demands Prosecutor Vigilance



JOHN M.  
COLLINS JR.

BY JOHN M. COLLINS JR.

AFTER STUDYING OVERTURNED CONVICTIONS for about 10 years<sup>1</sup>, I think it's clear that exonerations can be the result of fraud or misconduct on the part of post-conviction activists and litigators.<sup>2</sup> How frequently it happens can only be speculated, but recent events in Illinois and North Carolina should serve as a warning that some self-proclaimed righters of wrong will resort to shady tactics to secure the freedom of previously convicted felons.

### ALSTORY SIMON — ILLINOIS

Anthony Porter was convicted and sentenced to death in 1983 for killing a young, recently engaged couple in a park on Chicago's south side.<sup>3</sup> Experts opined that Porter had an IQ of 51, which added to the perceived cruelty of his impending death some 16 years later.<sup>4</sup> It was then, however, that innocence activists from Northwestern University's Center on Wrongful Convictions sought to win Porter's freedom by descending upon a young man named Alstory Simon who suddenly and unexpectedly found himself

being accused of the murders and pressured to confess to the crimes.<sup>5</sup>

Simon was an unfortunate soul, a local wanderer from the area where the murders happened. He was known to use crack cocaine, a troubled past that made him easy prey for an ambitious professor, David Protess and a rogue investigator named Paul Ciolino. Ciolino reportedly deceived and manipulated Simon into believing that police had considerable evidence against him, and that his confession would likely spare him from the death penalty. That Ciolino threatened Simon with the possibility of death and promised him money through possible movie or book deals were the least of his professional transgressions.

According to news reports, Ciolino hired an actor to play a witness who, on video, accused Simon of committing the murders for which Anthony Porter was previously convicted and sentenced to die. Simon, to his dismay, was shown the video and believed that his accuser was an actual witness.<sup>6</sup>

Simon confessed. Porter was released from prison. The

<sup>1</sup> Collins J. and Jay Jarvis, "The Wrongful Conviction of Forensic Science," *Forensic Science Policy and Management — An International Journal* 1 (2009): 17-31

<sup>2</sup> Collins, J., "Innocence Fraud — Is it Prevalent," *Crime Lab Report — The Innocence Audit* (2015), last modified December 10, 2014, <http://crime-labreport.com/Resources/Documents/Innocence%20Fraud.pdf>

<sup>3</sup> Steve Mills et al, "Prosecutors free inmate in pivotal death penalty case," *Chicago Tribune*, October 20, 2014. <http://www.chicagotribune.com/news/ct-anthony-porter-murder-investigation-met-1031-2-20141030-story.html#page=1>

<sup>4</sup> "Another Near-miss on Death Row," *Chicago Tribune*, February 5, 1999,

Accessed May 19, 2015. [http://articles.chicagotribune.com/1999-02-05/news/9902050065\\_1\\_illinois-since-capital-punishment-death-penalty-anthony-porter](http://articles.chicagotribune.com/1999-02-05/news/9902050065_1_illinois-since-capital-punishment-death-penalty-anthony-porter)

<sup>5</sup> Eric Zorn, "Simon case says: never abandon skepticism," *Chicago Tribune*, October 30, 2014. <http://www.chicagotribune.com/news/opinion/zorn/chi-simon-case-says-never-abandon-skepticism-20141030-story.html>

<sup>6</sup> Michael Miner, "If He Didn't Do It, Why Did Alstory Simon Confess?," *Chicago Reader*, May 5, 2011 <http://www.chicagoreader.com/Bleader/archives/2011/05/05/if-he-didnt-do-it-why-did-alstory-simon-confess>. Note: this article was written prior to the confirmation of Mr. Ciolino's alleged misconduct

John M. Collins Jr. is the chief managing editor of *Crime Lab Report* and the principal instructor and consultant with *The Forensic Foundations Group* ([www.forensicfoundations.com](http://www.forensicfoundations.com)). He has studied and published on overturned convictions and their causes.

death penalty in Illinois was essentially abolished. Simon was formally convicted in 1999 and spent over 15 years in prison, but a determined investigative journalist named Bill Crawford pestered authorities to look seriously at Simon's conviction and the manner in which it was secured.<sup>7</sup> He was released from prison early this year when it became clear that Simon was a likely victim of innocence fraud. Simon filed a \$40 million suit in U.S. District Court for a conspiracy "to frame Simon for the double murder."<sup>8</sup>

David Protess, a prolific innocence activist who now serves as president for the Chicago Innocence Project<sup>9</sup>, has a troubled history of his own. Protess retired from Northwestern in 2011 after internal investigations alleged he misled witnesses and repeatedly gave false information to attorneys at the University.<sup>10</sup>

The nightmare that became Alstory Simon's confession and conviction is evidence of a serious threat posed by some post-conviction activists and litigators who believe that the ends justify the means. In examining past convictions, the passage of time, faded memories, and the bullying of witnesses and alternative suspects provide a foundation upon which a believable innocence narrative can be constructed. Furthermore, in all too many post-conviction investigations, persons of interest are vulnerable to being abused and manipulated into recanting testimony or confessing to crimes they didn't commit. Some struggle through daily life in unfortunate socioeconomic conditions with little money or education. Some are in prison for other crimes. Their personal circumstances create considerable limitations that prevent them from pushing back against activists whose zeal for producing exonerations sometimes borders on desperation.

According to the Innocence Project in Manhattan, "more than 1 out of 4 people wrongfully convicted but later exonerated by DNA evidence made a false confession or incriminating statement."<sup>11</sup> In my own career as a forensic science administrator, I've directly witnessed the effects of false confessions and the shock they bring to investigators. As the father of a disabled son, I can also appreciate how overwhelming our criminal justice system must feel to

individuals with mental disabilities, social impairments, sensory or behavioral disorders, and other personal hardships.

Yet to think that false confessions or coerced statements only happen in typical criminal litigation and are not a potential problem in post-conviction activism would be a grave mistake. Despite the often justified appearance they project as fighters of civil rights and defenders of the oppressed, overly aggressive innocence activists are a public threat and their methods must be subjected to scrutiny.

A study titled "The Innocence Audit," currently being conducted by *Crime Lab Report*, is revealing that the Alstory Simon case may not be an isolated instance of innocence fraud.<sup>12</sup>

## CRAIG TAYLOR — NORTH CAROLINA

The year was 2009. The place was Raleigh, North Carolina. A young man named Craig Taylor, serving time for a firearm offense, did his best to deflect the advances of a relentless but talented staff investigator representing the North Carolina Innocence Inquiry Commission (NCIIC).<sup>13</sup> Over four long interviews with transcripts totaling well over 100 pages, the investigator questioned and pestered Taylor about his possible involvement in the 1991 murder of Jaquetta Thomas, 26, a young lady from the streets of south Raleigh who was known to trade sex for drugs.<sup>14</sup>

Craig Taylor knew Jaquetta Thomas. He also knew the man who was convicted of her murder. Gregory Flynt Taylor (no relation to Craig), whose white Nissan Pathfinder was found stuck in mud near the body, was found guilty in 1993.<sup>15</sup> It didn't matter. Craig Taylor was now on the hot seat. And like Alstory Simon in Illinois, he was told, at least implicitly that he had something to do with Jaquetta Thomas' murder — and would be well advised to admit his guilt before the evidence against him mounted and made him to look like he was concealing the truth.

"I mean the death penalty cases you see aren't the ones where the person's coming forward and being straight out

<sup>7</sup> Jacob Siegel, February 22, 2015 (6:45 a.m.) "The Innocence Project May Have Framed a Man for a Crime He Didn't Commit," *Justice Frayed Blog — The Daily Beast*. <http://www.thedailybeast.com/articles/2015/02/22/the-innocence-project-on-trial-in-chicago.html>

<sup>8</sup> Frank Main, "Man sues Northwestern, other for \$40 million; says prof helped frame him for double murder," *Chicago Sun Times*, February, 17 2015. <http://chicago.suntimes.com/news-chicago/7/71/374503/man-sues-northwestern-others-40-million-says-prof-helped-frame-double-murder>

<sup>9</sup> David Protess, Chicago Innocence Project, accessed May 19, 2015 <http://www.chicagoinnocenceproject.org/staff.html>

<sup>10</sup> David Carr and John Schwartz, "A Watchdog Professor, Now Defending Himself," *New York Times*. June 17, 2011. <http://www.nytimes.com/2011/06/18/business/media/18protess.html>

<sup>11</sup> "False Confessions or Admissions," Innocence Project, Accessed May 18, 2015. <http://innocenceproject.org/causes-wrongful-conviction/false-con->

[fessions-or-admissions](#)

<sup>12</sup> "The Innocence Audit," *Crime Lab Report*, Accessed May 19, 2015. <http://www.crimelabreport.com/innocenceaudit>

<sup>13</sup> The North Carolina Innocence Inquiry Commission, Sharon Stellato, accessed on May 19, 2015 <http://www.innocencecommission-nc.gov/stellato.html>

<sup>14</sup> Brief for State v. Gregory Flynt Taylor. NC Innocence Inquiry Commission. 2006 <http://www.innocencecommission-nc.gov/Forms/pdf/Taylor/Redacted%20Taylor%20Brief.pdf>

<sup>15</sup> ABC 11 News Raleigh. Jan. 4, 2010. Prosecutor wants proof of innocence in Taylor case <http://abclocal.go.com/story?section=news/local&id=7200510>

20 years . . . later,” Craig was advised by his interrogator according to NCIIC transcripts. “You know the death penalty cases you see are the ones that someone continues to lie and there is evidence to prove that they did it and I am trying to help you in this, and I don’t want this to happen to you.”<sup>16</sup>

During his interviews, Craig Taylor was told that DNA evidence did not match the two men who were in prison for Jacquetta’s murder, suggesting proof of their innocence and therefore the reason for the interview. He was further told that if DNA evidence came back to match *him*, he would be conclusively linked to the crime, rendering his alleged uncooperativeness an aggravating factor against him.<sup>17</sup>

Taylor’s refusal to confess over the course of multiple interviews clearly frustrated his questioner. “The Commission has opened a formal investigation into this case and they will not go away,” she warned. “This isn’t something that I just come out here once and talk to you and you don’t ever hear from us again.”<sup>18</sup>

Craig Taylor eventually confessed, and it triggered what became the high-profile exoneration of Gregory Flynt Taylor who would also be awarded \$4.6 million in post-conviction relief by the state of North Carolina.<sup>19</sup> Craig’s confession combined with accusations that the state’s crime laboratory misreported blood tests — although these claims were highly exaggerated<sup>21</sup> — served<sup>20</sup> as the basis for Gregory’s release. Craig Taylor was never tried or convicted.

If a police officer had conducted the kind of interview that led to Craig Taylor’s confession, it is almost certain that innocence activists would have labeled it a travesty of justice. But in the post-conviction arena in which there is little or no public scrutiny, the game is played by a different set of rules.

## FIVE COERCION METHODS

Innocence fraud or misconduct can come in a variety of forms. It is perhaps more important, however, to identify what appears to be the most serious risks to alternative suspects and past witnesses when confronted by an investigator or attorney involved in post-conviction activism or pro-

ceedings. Based upon the many post-conviction case reviews in which I have been involved or have personally conducted, the following are the five coercion methods to which prosecutors (and judges) must pay closest attention:

### 1. Telling a witness or alternative suspect that an innocent person is in prison

When it is a foregone conclusion that innocent people are behind bars, it suggests that an investigation is underway to determine who was *really* responsible. If a local journalist is working with activists to construct the right narrative, this belief is easily validated through news reports. New witnesses or suspects will have good reason to believe that they are now persons of interest, making them vulnerable to coercion and forced deal-making.

### 2. Demanding cooperation to avoid harsh penalties or enjoy benefits

Both Alstory Simon and Craig Taylor were made to believe that their cooperation could be a mitigating factor in whether or not they would eventually be executed. Even if a direct guarantee of avoiding the death penalty is not offered, its mere discussion is sufficiently threatening to increase the subject’s vulnerability to coercion. In Alstory Simon’s case, for instance, a witness, in return for recanting her testimony leading to Anthony Porter’s original conviction, was reportedly promised that a nephew would be released from prison early.<sup>22</sup>

### 3. Mischaracterizing the nature of existing evidence

Although not discussed in this article, the Innocence Audit is looking carefully at the trial and execution of Cameron Todd Willingham in Texas. Although Willingham was put to death for killing his three children by lighting a fire that consumed their Corsicana small home in 1991, innocence activists and litigators have worked diligently to posthumously pardon Willingham as being the victim of an erroneous execution, brought on by invalid fire investigation methods. Activists have largely been successful in portraying Willingham’s conviction as being solely the result of arson evidence, which was, in fact, laden with problems by today’s standards of care. What is not mentioned in most news reports, however, is the overwhelming totality of evi-

<sup>16</sup> “Craig Taylor Interview 2 on May 19, 2009,” NC Innocence Inquiry Commission. Page 17–18

<sup>17</sup> “Craig Taylor Interview 2 on May 19, 2009,” NC Innocence Inquiry Commission. Page 20

<sup>18</sup> “Craig Taylor Interview 1 on May 14, 2009,” NC Innocence Inquiry Commission. Page 24

<sup>19</sup> Adam Owens, “SBI agrees to pay \$4.6M to exonerated Durham man,” *WRAL.com*, August 13, 2013 <http://www.wral.com/sbi-agrees-to-pay-4-6-million-to-exonerated-durham-man/12768303/>

<sup>20</sup> “Corrupt journalism is survived, but rarely defeated,” *Crime Lab Report*, April

5, 2011

<sup>21</sup> “NC man exonerated of murder sues ex-SBI staffers,” *WCNC.com*, June 29, 2011. <http://www.wcnc.com/story/news/local/regional/2014/06/26/10517156/>

<sup>22</sup> Chuck Ross, “Illinois Man Freed From Prison After Former Journalism Professor Used ‘Corrupt’ Means To Get His Confession,” *The Daily Caller*, November 10, 2014. <http://dailycaller.com/2014/11/10/illinois-man-freed-from-prison-after-former-journalism-professor-used-corrupt-means-to-get-his-confession/>

dence of Willingham's guilt as heard by the jury. Willingham was not convicted of arson. He was convicted of murder.<sup>23</sup>

#### 4. Using the press to fabricate a leading narrative

A common thread in many exonerations is the use of willing journalists to front-load a post-conviction investigation with the construction of a compelling innocence narrative. Indeed, this can also be a problem in typical criminal investigations where the press jumps to conclusions about a suspect's guilt. But in post-conviction litigation, the passage of time makes it far easier to sell the alternative story as being legitimate. The exonerations of both Anthony Porter and Gregory Flynt Taylor were heavily influenced by journalists who played a critical role in constructing their innocence narratives thereby giving justice authorities a sense of security that the decision to exonerate would not be criticized in the press later on.<sup>24</sup> Fear of public embarrassment is motivating to public officials, and this fear is generally assuaged when they believe that controversial actions will not be exposed as incompetence.

#### 5. Taking advantage of poverty, addiction and mental impairment.

Not surprisingly, poverty and drug use are constant themes in post-conviction cases, which can hinder the ability of defendants and witnesses to competently represent their own interests during the criminal process, either before or after an original conviction. To the extent that an

alternative suspect has a history of heavy drug use with a tendency toward violence and periods of "black-out," it may be remarkably easy to convince him that his own guilt is a distinct possibility. In the case of Craig Taylor, well before he confessed, his interrogator urged him to not "put your family, your mother, Jacquetta's children through all of this, just let it be done, let it be easy, come out looking like a redeemed person because I believe you are. I think it was a mistake, I have no idea, I could be totally wrong, you know, I think it was a mistake I think you got angry and did something that you regret."<sup>25</sup>

To reiterate, improper coercion is not unique to post-conviction litigation and can be problematic in any criminal proceeding. But in the drama of post-conviction activism and litigation, the rules are comparatively lax and fictional narratives are easier to construct due to faded memories and the element of surprise — no one expects to become a person of interest in a crime that was "closed" sometimes decades earlier. Also, the images of "freedom fighting" and standing up for the oppressed are generally appreciated in American culture, and journalists know it. But trickery and deceit are not, especially if duly convicted inmates are freed by sleight of hand.

Prosecutorial integrity is an important priority, but so it is for post-conviction litigation. Standards of practice and codes of conduct might go a long way to building trust and professionalism in the post-conviction enterprise.<sup>26</sup>

<sup>23</sup> David Grann, "Trial by Fire – Did Texas execute an innocent man?" *The New Yorker*, September 7, 2009. <http://www.newyorker.com/magazine/2009/09/07/trial-by-fire>

<sup>24</sup> Eric Zorn was a reporter at the *Chicago Tribune* who covered the Anthony Porter exoneration and constructed a strong innocence narrative on Porter's behalf. In North Carolina, a *News and Observer* reporter named Joe Neff was instrumental portraying the state's crime laboratory as being incompetent and therefore contributing to the supposed erroneous conviction of Gregory Flynt Taylor.

<sup>25</sup> "Craig Taylor Interview on June 2, 2009," NC Innocence Inquiry Commission. Page 29

<sup>26</sup> Collins, J., April 19, 2015 (8:59 a.m.) "Standards Needed for Post-Conviction Review of Forensic Evidence," *Keeping the Gate — A Science and Justice Blog*. <http://innocenceproject.org/causes-wrongful-conviction/false-confessions-or-admissions>

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