

THE BOSTON PHOENIX

After Innocence

The movie and the reality

By HARVEY SILVERGLATE | February 2, 2006

Last week, the vice-president of the National District Attorneys Association wrote a breathless op-ed in the *New York Times*. The recent television and Broadway programs about exonerations of the wrongly convicted, he complained, misled the public into thinking that “every year an alarming number of people in this country are wrongfully convicted.” In fact, wrote Clatsop County (Oregon) District Attorney Joshua Marquis, “only 14 Americans who were once on death row have been exonerated by DNA evidence alone. The hordes of Americans wrongfully convicted exist primarily on Planet Hollywood.”

If the recent Broadway hit *The Exonerated* (now traveling) and the new ABC television drama *In Justice* give Marquis cause for concern, then director Jessica Sanders’s 95-minute documentary *After Innocence* will surely draw his ire. In addition to chronicling the difficult transition exonorees face back into non-prison life, *After Innocence* demonstrates that wrongful convictions extend beyond the death-penalty cases that have captured the media’s and the public’s attention. The film reveals a few of the causes from which wrongful convictions stem, causes ranging from inadvertent but common errors in eyewitness identifications (especially by victims in interracial rape cases) to callousness by judges and prosecutors to knowing obstructions of justice by police and prosecutors more interested in closing cases than in punishing the truly guilty.

The movie paints a visceral and disturbing cinematic portrait of our criminal-justice system in action. Yet if anything, *After Innocence* understates the problem. Although the film spotlights the severe problems of eyewitness identifications, other structural deficiencies remain unexamined or understated. The Bill of Rights may provide for certain procedures for holding theoretically fair trials, but all of the procedural rules imaginable cannot ensure accurate verdicts in a system marked by rampant deficiencies and inequities.

The cases portrayed in the documentary are the tip of an ugly iceberg. Despite the recent proliferation of cases involving exoneration by DNA evidence, the overwhelming number of wrongful convictions remain hidden in the dark corners of our prison system because of an absence of scientific evidence. If eyewitness identifications have been proved notoriously unreliable where later-discovered DNA proves them in error, one shudders at the number of cases without scientifically verifiable evidence where such identifications were the sole basis for conviction.

Consider, too, the other techniques, barely (or not at all) touched upon in the movie, responsible for putting defendants into prison or even onto death row without any DNA to test: the testimony of rewarded or threatened snitches and jailhouse informants; “expert” evidence and other species of “junk science” provided by charlatans employed by state and federal law-enforcement labs; the suppression, by crooked or simply careless police and prosecutors, of evidence that, if known to the jury, would have ensured the acquittal of the defendant; incompetent defense lawyers; false confessions extracted through trickery or brutal physical harm or threat of harm; racial and ethnic prejudice ingrained in certain segments of the law-enforcement community; incompetent, naive, uninterested, or simply vicious trial judges. The list goes on. (Those with an interest in going beyond the movie should pick up a copy of *Actual Innocence: Five Days to Execution, and Other Dispatches from the Wrongly Convicted*, by Barry Scheck, Peter Neufeld, and Jim Dwyer, published by Doubleday in 2000. Scheck and Neufeld, founders of the Innocence Project at Cardozo Law School, appear extensively in the film.)

After Innocence is an accurate, sobering depiction of a thin slice of the criminal-justice system and its discontents. It must be seen. Yet it is not nearly the whole story.