

PANEL 2
Q & A WITH MARVIN ANDERSON, JUVENILE
EXONEREE

WHO IS MARVIN ANDERSON?¹

Marvin Anderson became the ninety-ninth person in the United States to be exonerated as a result of postconviction DNA testing. In December 1982, Marvin was convicted of forcible sodomy, robbery, rape, and abduction as an eighteen-year old, and he was sentenced to a total of 210 years imprisonment in Virginia.

The victim, a white woman, was beaten and raped by a black man. After she reported the incident to the police, Marvin became the sole suspect because Marvin was dating a “white girl” at the time, and he was the only known black male who lived with a white woman at the time. Anderson had no criminal record, so the police used a color identification card from Anderson’s employment photo identification card. The police showed the victim 6 black-and-white mug shots, along with Marvin’s color identification card, and asked her to identify her assailant from a lineup. She chose Marvin as her assailant.

Those in the Virginia community were aware that the most likely suspect to this type of brutal rape was another black man named John Otis Lincoln. Marvin’s attorney, who had represented Lincoln in former criminal proceedings, refused to investigate Lincoln and refused to interview witnesses who would have identified Lincoln as the assailant.

An all white jury convicted Marvin on all counts. Five years after Marvin was sent to prison, Lincoln confessed to the crime for which Marvin was convicted. However, the same judge that presided over Marvin’s original trial believed that Lincoln was lying and thus refused to vacate Marvin’s conviction.

The Innocence Project accepted Marvin’s case in 1994, and seven years later, the Director of the Virginia Division of Forensic Science informed the Innocence Project that sperm and semen samples recovered from the victim’s body had been located. Pursuant to Virginia law that had been adopted in 2001, the Innocence Project initiated the process of getting the evidence in Marvin’s case tested.

On December 6, 2001, Marvin was excluded as the perpetrator based on DNA evidence. On August 21, 2002, Virginia Governor Mark Warner granted Marvin a full pardon.

¹ The biographical information on Marvin Anderson came from *Marvin Anderson*, THE INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Marvin_Anderson.php.

Following a One-Hour Documentary entitled Marvin Anderson's Nightmare, there was a Question and Answer Session with Marvin, his mother Joan, and Marvin's attorney Vanessa Potkin:

MS. VANESSA POTKIN: I think we are starting with you Marvin.

MR. MARVIN ANDERSON: At 18, I was a young man with hair. Now I'm 47, about to turn 48, an older man, a wiser man, and a man that is considered a family man.

There are a lot of people I can thank for what happened to me. Mom is number two. The Man above is number one. But then I have to turn to Vanessa and of course Peter Neufeld, and the students at the Innocence Project who investigated my case. And no matter how long I may live, or whatever I may address to any audience, I always thank the students. Because that is where the work actually began. In the school.

So to you all, thank you. I wouldn't be here today if it wasn't for your desired passion and love for the law, and concern for the injustice that is going on in this country, and still exists today.

How do I begin to explain what happened? Of course the documentary only gives the pieces of it.

In 1982, an African American man dating a Caucasian was taboo. I mean if you did it, you did it behind closed doors, in the bushes or whatever. It wasn't liked. And the funny thing about that is, after I made parole and came home, one of my friends was kind of taking me around the neighborhood and showing me things. The first thing I see was this black guy walking on the street holding hands with a white girl, kissing. I'm like, what the hell is going on? I just spent 15 years in prison for some crap like that, and now it is all out in the open. So that woke me up.

But even today, I see the injustice that continues to go on. Even where I am living. Do I voice my opinion on it? Yes I do. This is a fight, and a lot of people still refuse to accept that it happens. I think the biggest argument I had when I went to Washington with Peter [Neufeld] one day, and there was this State Senator sitting up there saying, "Oh there's nothing wrong with our justice system, nothing needs to be fixed." Peter and I looked at each other and starting laughing.

I mean we are in front of the Capitol. We are trying to make new rules and laws and everything, and we're laughing. Then the guy goes, "What is so funny about this?" Peter said, "Let me introduce Marvin Anderson to you. This man just spent 20 years in prison for a crime he did not commit, and you say there's nothing wrong with our justice system?" He shut up.

However, even today, we are still fighting to make changes. We still have people that refuse to believe that what happened to me still exists. So do we stop the fight? No. Do we fight harder? Yes.

Eventually, everyone's eyes will open up and see that the injustice is there, and always has been, until everyone realizes that hey, we're only human, we make mistakes. So this is something that needs fixing. And that is the biggest problem in every State. That no one wants to admit to making a mistake. That is the biggest problem.

I was talking to Steve [Drizin] earlier, and I told him it's like, every morning, the prosecutor that prosecuted my case and I have a cup of coffee together. His reaction was like, huh? Yes.

MS. POTKIN: I'm shocked by that fact in and of itself.

MR. ANDERSON: Every morning before he goes into his office, we meet at this restaurant, and he'll come in and get a cup of coffee, I get in, go and get a pack of cigarettes and just stand outside smoking a cigarette. We're talking, you know, how's your day going? What's going on?

Thomas Haynesworth is a recent exoneree in Virginia. We were incarcerated together, and we were more or less like brothers. So, the prosecutor and I were talking one morning, and he said, "You know, I guess I'm a bad person." I said, "Why do you say that?" He said, "Well, I prosecuted you and I was the defense attorney for Thomas Haynesworth, so I am known for sending an innocent person to prison, and helping send an innocent man to prison." The fact that this is something that this man lives with already, especially when he sees me early in the morning.

MS. POTKIN: How does he internalize that?

MR. ANDERSON: Well I have seen changes in my county. You see some changes, but you still see the good old boy still working his magic in the background. As far as his relationship with me, I'm cool with it. It was part of a life that I cannot change. Mom has a different opinion about being cool with it.

My feeling towards my entire incarceration was this. If I remain angry throughout this whole deal, it's not going to do any good for me. If and when I ever got released, it wouldn't help me. And that was my thinking. I mentioned in the documentary about having that life switch turned on and off. But whenever mom came to visit, the life switch came on. As soon as she left it went off because she was living in an entire different world from what I was living in.

But as far as here today, I'm now 47 years old, about to turn 48. I have a 16-year-old daughter, oh my goodness, a soon to be 12-year-old son, and a nine-year-old son. I'm a single parent raising them. I love them to death; they are my life support, and they remind me everyday why I'm here.

Having dreams and things that you want to do as you're growing up, I can say I have accomplished all of them, except for one.

We all start out having hopes and dreams about what we want to be when we grow up. I got involved in the Fire Department at the age of 10. There were not a lot of places that kids my age could really hang out and stay out of trouble. There was one guy, who was a family man. He kind of took all the young guys under his

wing. Everybody basically started hanging out at the Fire Department, helping out, washing trucks. That is how I got involved with the Fire Department.

Right before I got convicted, I was in the process of going through the academy to become a professional fireman. But that didn't happen. But now, once I got exonerated, and my record expunged in a sense, I was able to apply. And at the age of 34, I was going through an academy that is built for teenagers, and I made them look bad. I really did. They used to call me old man and—you know, why are you doing this? But it was a dream of mine. Something that I said I wanted to do. I was going to complete it, and I did.

Today I am now a Chief of that same Fire Department that I joined at the age of 10, and I have young teenagers under me that know everything. I am the Chief, the father, the brother, the counselor, the best friend, and you have to try to separate each and every decision, and each and every person. That is the biggest challenge that I have at the station, until I come home.

I have a nine-year-old that wants to play video games, and if you don't play with him, he gets mad. I have a 16-year-old daughter that—

MS. POTKIN: She wants to be the boss.

MR. ANDERSON: She is the boss. Not wants to be. She is the boss but I love her to death. I'm trying to prepare myself for a young man. And then I have a 12-year-old who is my shadow. Everything I do or try to do, he wants to do it too. I started teaching him how to drive a vehicle when he was six years old. So when I set my keys down, I have to make sure they are still there. I also have my own trucking company. I've been doing that ever since I got released. I started my own business in 2004. I'm not the richest man in the world, I'm paying bills, but we are happy.

As for the Justice Department, Virginia laws are totally different from every other state because it's a Commonwealth State. A lot of people don't understand what is the difference between them. Virginia you kind of make your laws as you go. Still today, people don't believe that what happened to me is still happening. I find it hard that when I come to New York, that you have all these people walking around in your city, and they don't know about you all. I find that really hard to believe. But it's true.

It is a fight that will continue, maybe a little with me, continue to fight. I hope that you will continue to produce such good lawyers, and to know that whatever you may be—a prosecutor or a defense attorney—whatever law you decide to go into, go into it with faith and passion, knowing that whatever client you have, you're doing your best for that client. And not for a position in the office, not for the money, but doing it because whatever decision is made in that person's life, he has to live with it, and you have to live with it. Knowing that you gave it your best.

MS. POTKIN: Marvin, maybe you could talk a little bit about what it was like going to an adult prison as an 18-year-old. You were basically just a child at

the time. And wrongful convictions are devastating, but the focus of today is the toll that it takes on you, and what happens when we send children to prison for crimes they didn't commit. I think you are the only one on the program today who actually went through this experience.

MR. ANDERSON: Well, you automatically become a man. Day one. There's no mommy there to protect you anymore. And you have to not only adjust to your environment, but adjust to the sense that you don't get worse off than what you are going in.

I've seen guys come in the system and basically lose it. I've seen guys kill themselves. You go to bed one night sleeping next to him, and the next morning he's hanging from a bed sheet. There is a lot of stuff that I saw in prison that mom never knew about because I didn't want her to know about it. It would only give her more things to worry about.

At that age, no one cares about your age, no one cares about your race, no one cares that you're a human being. Whatever you say out of your mouth is a lie. Don't trust him, he's a criminal. He's here for a reason. He could not do it right in society. My opinion is that society doesn't do right every day. But that's only my opinion.

You have to not only adjust, but you have to keep yourself motivated. I chose to continue my education. I chose to take trades. Go to college. Whatever programs they had there that could help me better myself, I chose to do. I had my family support. A lot of people don't have that.

You see a lot of stuff that goes on in prison that you would not think would happen. I mean, the first time I told my mom, I said, the only difference between being in prison and being at home with you is that I can't hold you or touch you every day. She said, well, I don't agree with that. I said, what part you don't agree with? She said, well you don't have your girlfriend, you don't have this, you can't do this. I started laughing. She said, what are you talking about? If you want, you can get a woman in prison, if you want drugs, you can get drugs in prison, if you want alcohol, you can get alcohol in prison. So what part of being incarcerated is different from being in society, other than being with the people that you actually love?

But I chose to do what I had to do, or needed to do, to not only continue to fight for my innocence, but to better myself so that when the opportunity came for me to return to society, they had nothing to hold against me. Nothing.

During my 15 years incarcerated, I only had one write-up. One. And that was because I refused to back down from an officer who said I did something that I did not do. Still today, I have a problem with officers telling me that I did something that I know I didn't do. I will argue to the last breath. The officer accused me of stealing someone's jacket because it was lying in my cell gate. If I needed something, all I had to do is call home. And my family was there to provide for me. He wrote me up for all the language that was said, threatening him

and all of this. Basically, all I did was tell him, this is not my jacket. He refused to believe me, and I stood there and argued with him. But like I said, out of 15 years I only have one write-up. The rest was spending my time trying to do something to better myself.

Was I angry during my incarceration? Yes. Very angry. The first few years, I had so much anger built up in me that I didn't want to be around anyone. And that is normal. You just got sentenced to prison for 210 years, your mindset is you will never get out. If you do get out, you will be an old, grey-headed man. That was my mindset at 18.

In order to survive, at least for me, I concentrated on goals that I wanted to accomplish. Whether it was in there or for the day that I do return back to society. That is what kept me going. And I guess during that process I found God. For years my mom was telling me, you need to pray, you need to do this, you need to read your bible. I'm 18. It enters one ear and goes out the other. This is something that man did to me. Not God.

One night, I just got up beside my bed and prayed, "God, I know Mom had been telling me for years that I need to pray to you, I need to talk to you and I'm just tired. And I am actually turning myself and my life over to you. Do what you need to do." From that moment is when I felt a change. Not only in myself, but in the way I felt about the whole situation. Anger has no place in for me. As long as I'm angry about what happened to me, I cannot move forward to be a better person. I don't forget about it. I'll never forget about it, but in order for me to move forward, I just put it behind me.

Even today a lot of people are kind of intimidated about approaching me and wanting to ask me questions about it. You know, I talk to you all day along about what happened to me, about my lawyers that worked on my case, about everything. But do I feel angry about it? No.

Mom has a lot to say about that issue.

JOAN: You're done?

MR. ANDERSON: Yes.

JOAN: First of all, I'm still angry for the injustice. I would never drink a cup of coffee with that prosecutor. I would throw it in his face, even though he's apologized. Because this was something that did not have to happen. There was nothing to prove that Marvin did anything. Nothing. I mean it was just so simple. I could have been his attorney. Seriously I could have.

Everything that they presented was a lie. The young lady scratched the man who attacked her, and there was flesh in her fingernails. Marvin had no scratches. So how do you prosecute a person that doesn't have scratches? That's the number one thing.

It was hard for 15 years because I had other children. And I had to spend 85 percent of my time trying to get him free, which meant my oldest daughter had to

do things at home that I really needed to be there to do. I'm glad she was smart enough to do that.

It just upsets me about the justice system. It's evil. And for me, the judges that allow the prosecutors to bring lies to their courtroom, that's evil. And I think that they should be prosecuted.

Fifteen years of being in prison is a long, long time. And there is no amount of money in this world that you can get that would replace your 15 years. His brother was killed in a car accident, four years after he went to jail, and Marvin wasn't allowed to come to the funeral. There were things going on in the family that he wasn't involved in. I went there every holiday except for three. Every visiting day except for three, when I was sick, in 15 years. I carried food for other inmates.

My grand kids all went. The oldest one is 25 now, and that was his first stop when he was about a week old. And that's where he went every week, until Marvin came home. And it was just a terrible thing.

I shouldn't be angry, but listening to this documentary is the saddest thing. And I'm not a cry baby, but I will cry when I see that. I cried so much when it first happened. I would go to bed and cry. I'd wake in the morning and the pillow was soaking wet.

Finally, one day I said you got to stop crying and start fighting. And the best man for this job is a woman and that's me. And that's when I started kicking butt. I did a lot of investigating myself. You saw the Investigator from the case. He's a liar. He made comments to his wife, and he didn't know that his wife was working at the Federal Reserve Bank with this lady that we knew. His wife came there, and she said, [the investigator] "says that that composite sketch could be of anybody." He told me in person that everything points to Marvin, because he's the only black boy in town with a white girlfriend.

Things like that make you really angry. Even the lead Commonwealth attorney says, please don't put Marvin in a cell with John Lincoln, because the same day that they found him guilty, John Lincoln had been on trial, right, for assaulting another young lady. He said, well we know who committed the crime, but it's just left up to your attorney to prove it. Now what do you think about that? Is that sick or what?

In this case, they just wanted to get somebody. Sometimes I really don't believe in the system. It's sad and I have arguments with family members because I don't like police officers. I mean I can't help it. Because they lie. You know, tell the truth. I mean you can see the Innocence Project has 289 exonerees. So why do you think we have 289 exonerees? Somebody lied. Somebody didn't do their job. 99 percent of people that it happens to have families that have no money. But see, I fooled them, because I had resources. And this meant that this was not going to fly. And like I said, I wanted to live long enough to see him free. And I'm still getting up there, I'm 65 but it just angers me that it still happened. With all the DNA and

all the States that have the Innocence Project, it still happens every day. And you can just walk right out that door and it can happen to you.

MR. ANDERSON: I didn't ask any of you in this room after we just saw the document how much attention did you actually pay to the documentary? Could you describe me in that documentary?

The reason I bring that up is because a lot of the cases that the Innocence Project deals with, also involve eyewitness misidentification, tunnel vision, and corrupt police officers. When crime investigating at the scene, the victim said that her attacker was a light skin complexion man with no scars or blemishes on his face, straight white teeth, with short curly hair.

MS. POTKIN: What is so remarkable about Marvin, and I guess there are many things that are remarkable, but just even listening to him speak today and say that when he was in prison and his mom asked, what's the difference between being in prison or at home. He said, the only difference is being able to have contact with her, and not take such tremendous mental strength to get to a point where you can view life as that being the only difference. We know that obviously so many restrictions and indignities are bestowed upon you, that for you to mentally get to a place where you have risen above that and are rejecting that is just incredible.

For everyone who works in the Innocence Project throughout the country, it's just so remarkable to us. It's hard to imagine being able to endure wrongful conviction and especially going in at such a young age.

As Marvin and Joan point it out, there have been 289 DNA exonerations throughout the country, cases where we were able to go back and prove somebody's innocence through advances in science. But that is just a tip of the iceberg in terms of people who have been wrongfully convicted.

People heard this morning from Steve Drizin who's here from the Center for Wrongful Convictions in Illinois, which has been around forever, getting people out of prison on DNA grounds and also going back and proving people's innocence through non-DNA means. So, 289 is just the beginning, and there are many more people who have been proven innocent through other ways.

That is really the tip of the iceberg in terms of what is broken in our system. We have an incarceration craze in America, we have more than two million people behind bars, and while nobody knows exactly how many people are innocent, we can assume that number is at least in the 20,000s, if you take a very conservative estimate for any type of system error.

But what we know is, in all of these cases, or most of them, it's not usually just an innocent mistake. There are problems in our system that can be addressed, whether it's through reforming eyewitness identification procedures, or putting in protections during the interrogation process, such as videotaping interrogations or training officers so that they do not use coercive tactics during that process.

There's a lot that we can put in place and we have started throughout the country. But much more can be done to prevent wrongful convictions and make our system more accurate, and hopefully more fair in how we address sentencing. It was a brutal crime in Marvin's case. One could ask, is 210 years an appropriate sentence? There are a lot of problems in our system that are raised by this case.

But we definitely know that most of the cases are not just innocent mistakes. It's not just that the victim made a misidentification, she ultimately did in Marvin's case, but the police zeroed in on him, and in this case it was just pure old Virginia style racism, but it happens throughout the country in cases where the wrongfully accused is black, white, Latino, it's throughout because—you know, just because the mentality of police and prosecutors in some instances where tunnel vision takes over and they focus in like, oh yes, it has to be Marvin. Because the person mentioned that they dated a white woman and here he is, so that's it. And then they try to make the case against Marvin. And if exculpatory information comes in, if everything's pointing to Otis Lincoln, it's just filtered out. And that's just ignored.

I will say that Joan is quite a force, and it's no understatement to say the role that she played in Marvin's case. And Marvin's case is remarkable because a majority of the people who come through the Innocence Project do not have the support system that Marvin had.

We handled another case of a young man, at the time of his conviction, Michael Williams. He was 16 years old when he was wrongfully accused of a rape in Louisiana. There was never any discussion of whether he should be tried as a juvenile or tried as an adult. He was just put through the adult system, and on the basis of an eyewitness identification, convicted and sent to Angola Prison, at that time when it was one of the most brutal prisons in America, although I'm sure they're all pretty equally as bad.

At the time that he went to prison he had never dated a woman, he didn't go to his prom or even finish high school, and he never had a job. He was sent to Angola, spent 24 years there, before DNA testing proved his innocence, and walked out of prison at age 40.

Then he comes back to society with society viewing him as a 40-year-old man, but his socialization in society really stopped at 16. Because in Louisiana the maximum amount one can receive for a wrongful conviction is \$150,000, so in essence he was compensated \$6,000 per year for his wrongful conviction.

We see these injustices all the time. And the problem with Michael is that he just had no family support; his parents and grandmother died, and he didn't have anybody to visit him. When he started calling and writing to the Innocence Project, we were his only contact with the outside world. And that makes a huge difference. To be totally isolated from the world and without support, versus having somebody who is out there being your advocate, who's reaching out to Innocence Projects and reaching out to people in government. I mean Joan must have written one thousand letters and really beat down the door.

We have many cases at the Innocence Project where it looks like the evidence has gone, and we close out a case because we do DNA testing. That's all we can do. But, Joan wouldn't have that. She probably would have come to New York and insisted that we do it differently, and Marvin's case was just so compelling. It also just shows the randomness of the system. Because his case could have easily been closed, but for Mary Jane Burton, he would not be here. He might not be allowed to leave the State of Virginia, because though he was released, he was a registered sex offender on parole.

JOAN: But you know, even when Marvin was incarcerated, I had people who wrote character letters. It was so many of the guards down at Southampton where he was, and they told me, Ms. Anderson, you have to get him out of here. He sticks out like a sore thumb, so they wrote character letters to the governor.

MS. POTKIN: But isn't there a problem with the system where everybody recognizes that somebody is innocent and yet he's still in prison?

MR. ANDERSON: I'm convicted in a prison system with a sentence of 210 years for two counts of rape, sodomy, robbery, and abduction. There was this new warden that came and kind of took over. He found that I was there, and out of the blue, I went from working in the kitchen, around the officers, serving them food and all of that, because I did not like being placed in the Medical Department.

When I said being placed into the Medical Department, it was actually the doctor's office, nurses, and the dentist. With one guard, nine women, and only three men. I was included in those three men. You build a close knit, being around people and all of that. Well, I became close with the head nurse, but there was this one officer there, and he was going to try to do something to get me removed from there.

Every day I would get up at 5:30 in the morning, make my rounds, collect what I needed to collect and come back to the infirmary. All the officers that worked there knew my routine. I basically had access throughout the whole prison system. This one morning, I head down to the infirmary and I'm making my daily inspection of the building, and I see a piece of metal steel that has been sharpened, laying behind a cabinet with flowers on. I looked, I was undecided whether I should touch it, and undecided on whether I should get the officer.

So I go to the head nurse, and I said, "I need to see you for a moment." I then told her to come with me. She gets up from the desk, walks with me and I walked behind the cabinet and picked up this knife. They call it a shank knife or whatever. She looks at me, asks how I got that, and I said, "Beats me." She told me to hold on to it. "What do you mean hold on to it?" I asked.

I wrapped it up and just stuck it in my pocket. She called the Warden's office, he comes down and goes behind the closed door, and they start talking. The Warden comes out and walks out of the building. Then she calls me in the office, and asks if I still have the knife. I mean, where is it going? It's in my pocket. I'm down here locked up behind a gate. So it's not going anywhere.

She called the officer, and asked if he made his rounds that morning. He said yes. Then she called me in, and as I am walking in, she asks me to give her the knife. I didn't know what to do because the officer could basically give me more time in prison for having a manufactured weapon.

I pulled the knife from my pocket and set it on her desk. She looks at him and she asks, "How did that get in here?" He said, "I don't know what you're talking about. Did he bring it in here?" She said, "No. Actually he came to me and pointed it out to me."

From that moment, that officer was really out for me. Being incarcerated, you had to look out for people that are actually trying to keep you inside. You had to look out for other inmates that are trying to keep you there. Officers that are trying to keep you there. You are constantly facing forces who are trying to keep you inside prison.

MS. POTKIN: Well I think we'd love to open it up for questions and discussion with you all.

FEMALE VOICE: Have you had any contact with the girl who accused you of rape?

MR. ANDERSON: No, I haven't had contact with her. The day that I went back to court to be cleared of all of this, she was there, and they kept us separate. The new Commonwealth attorney at the time, Carey Porter, informed me that even to this day, she still believes that I did this to her.

So when Lincoln was brought back to court for his sentencing, I had to go to court back again to just testify that I was convicted and later exonerated for the crime he committed. She was there again, but she didn't apologize, and she didn't acknowledge me being there. She didn't acknowledge my presence at all.

And here's the funny thing about all of this. The day of my original trial, we all went outside to smoke cigarettes. She walked up to me and asked me if I had a match. I actually went in my pocket, got a lighter out, lit her cigarette for her, and she stood there smoking a cigarette with me, until we went back in the courtroom.

If someone that's supposed to have beaten you and raped you, would you want to be anywhere in their presence? She actually came up and got a light, and I lit her cigarette for her. As soon as she got on the stand, she didn't hesitate to say I did it.

I believe that she was coerced by the investigating officers as to what to say. I mean the photo spread itself was enough. If you're showing a person the same picture over and over again, and then within ten minutes of that time you see that same person in a lineup, he's going to stand out. And that's what happened.

JOAN: They actually showed it to her seven times. That's in the transcript. Each time they showed her a different photo spread, they put his color ID back in it.

FEMALE VOICE: What do your children know about your past?

MR. ANDERSON: My nine-year-old doesn't really understand what happened. But the two older ones, they know what happened. I talk to them about it, and the sixteen-year-old, she could probably tell you more about it than I could. Because of the world of technology and the Internet, she stays on it and a lot of times, she has said that one of her friends saw my picture or that they read something about me.

They are aware of what happened. As far as me talking to them about it, we don't really talk a lot about it, unless they bring it up. It's a different time for them. If they have questions, I will answer. But until then, I want them to live a normal, happy life.

FEMALE VOICE: Did Mary Jane Burton, the woman who saved your DNA swabs, ever contact you when you were released from prison?

MR. ANDERSON: Ms. Mary Jane Burton. Thank you Lord. She is no longer with us, as she had passed away a few years before they discovered my swab kit. I have been in contact with her nephew right after all this came out. He congratulated me about everything that was going on, but he admitted and acknowledged that his aunt was a very unique person. Her work was her passion. It was her life. She always looked towards the future. By her taking that little small sample and taking it to the back of my case file was her way of preserving the idea of a breakthrough.

MS. POTKIN: There have been three people who have been exonerated after Marvin, because Mary Jane Burton kept evidence in their case as well. People believe that she anticipated that there would be more advanced testing in the future, so she preserved a bit of her evidence.

We have jurisdictions, like Dallas County, where more people have been exonerated in the past few years than most states in the country. There is nothing particularly bad about Dallas that has led to these dozens of exonerations. It is just that Dallas saves evidence. This is not the story throughout the country. We have really hard times finding evidence, and as a result, we have claims of innocence that will never be determined.

MR. ANDERSON: Yes. As far as Virginia, I know that once you are convicted and sentenced, the evidence from your case is sent back to the court or the commonwealth attorney to be destroyed.

MS. POTKIN: The laws throughout the country are not uniform in terms of the duty to preserve evidence. There are a number of states that have laws that require preservation of evidence so long as the person's incarcerated. In New York, we have no preservation law, so there is nothing that would require a rape kit to be kept once the direct appeal has been exhausted.

MR. ANDERSON: In 1982 and even in 2012, people do not want to talk about a racial issue. In 1982, in Virginia, race was a lot stronger back then, so when you have eight women, four men, all white, all old in my jury, where the average age, was about fifty years old. The fact that I was a black man living with

a white woman was bad enough, but to have a young twenty-four-year-old Caucasian female being attacked by a black man, I was guilty before I went to trial. I made this comment in the documentary that, when she came in and identified me and went back out, I knew I was going to prison before the preliminary hearing. I knew then. Deep down in my heart I knew I was going to prison. No matter what was said or done. I was going to prison.

Even in 2012, the race issue in our justice system is still there. Today I date a Caucasian female. I was married to one when I was incarcerated. My parents and my grandparents raised us to believe that we treat all people as equals. When I was a little kid and Dr. King was killed, I remember seeing my mom and my grandparents crying. The way they raised me was that all people are equal. No matter what.

MR. DRIZIN: Did you think the decision of the parole board was at all a kind of a step in the direction of certain people starting to believe that you really were innocent, or was that just to present to the parole at that time?

JOAN: I used my powers like everybody else. I knew senators, and they knew people that worked at the parole board, and they presented it to them. For months I knew that there was a possibility that they were going to parole him, but I couldn't tell Marvin because it would be another let down. Every year you go up for parole and you think you're going to make it, and then you call home and say, mom, they turned me down. But I didn't want him to be disappointed. That's what I'm thinking to myself. So I never told him.

I really didn't even want to talk to him. I was scared that I was going to slip something out. Then he finally called home one day, and he was just so happy. Just so happy. Then he said they called him to the Counselor's Department and said there is a possibility that he might be paroled.

JOAN: Possibility does not mean a yes. You know what it means? A possibility means it may happen or it may not happen. So I kept my mouth shut. I mean I was excited and when I did get the call, I thought, oh my God, I just started shaking. Then he calls me, and I tell him that I already knew.

MR. ANDERSON: The funny thing about when I was being paroled was that I had just been denied a parole a few months prior to receiving the second letter. When the second letter came in, they called me down to the Counsel Department and my counselor at the time was a 24 year old North Carolina State graduate. And she's standing there, with a huge smile on her face. The whole infirmary where I worked, including the nurses, were standing there watching me. Even the Warden was standing behind me. And I'm standing there looking at her, saying, am I reading this piece of paper right? She just started crying, saying, yes, you've been granted parole. I fell into the sea. I didn't just sit back. I fell into the sea. And when I did that, I turned around and that's when I realized everybody else was standing there, and I just started crying.