



Benjamin N. Cardozo School of Law, Yeshiva University

## **Proven Innocent by DNA – and Having Solved the Crime from His Prison Cell – Roy Brown Is Set to Be Released Today**

Extraordinary case of 8<sup>th</sup> person in New York proven innocent in just 13 months shows need for state commission, Innocence Project says

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(CAYUGA COUNTY, NY; January 23, 2007) – Fifteen years to the day after he was convicted of a brutal murder that DNA tests prove he did not commit, Roy Brown is set to be released from prison after a hearing in state court today, the Innocence Project said. On January 23, 1992, Brown was convicted of a murder the previous year and sentenced to 25 years in prison, where he has remained ever since. DNA test results confirm that Brown is innocent – and that, instead, the murder was likely committed by a man who killed himself three years ago after Brown wrote to him to say he had uncovered evidence that he was the actual perpetrator.

“This is unlike any case we’ve ever seen. Roy Brown broke the case from his prison cell and confronted the actual perpetrator, who in turn killed himself. The true perpetrator’s courageous daughter then volunteered her own DNA sample, only to have the judge who oversaw Roy’s trial refuse to release him – saying that he had more confidence in the highly questionable practice of ‘bite-mark’ analysis than in the hard science of DNA. Only after the true perpetrator’s body was exhumed and subjected to DNA testing did prosecutors accept the truth,” said Peter Neufeld, Co-Director of the Innocence Project. “Today, exactly 15 years after he was convicted, the truth has finally set Roy Brown free.”

Brown was convicted of stabbing and strangling Sabina Kulakowski, who was assaulted, bitten in several places, and dragged several hundred feet from the farmhouse where she lived. Brown always maintained his innocence, and a decade after he was convicted he began using the state’s Freedom of Information Law to try to solve the crime. In 2003, Brown wrote to the Sheriff’s Department to request a copy of a “hidden” police statement that he thought a jailhouse informant had given at the time of his trial. No such statement was found, but (pursuant to the law) a clerk sent Brown a list of all other police statements in his case – a list that included 11 affidavits that Brown and his trial attorneys had never seen. Four of the newly discovered affidavits caused Brown to suspect that a man named Barry Bench, whose brother was the victim’s boyfriend for 17 years until shortly before the murder, was the actual perpetrator. With no money to hire an attorney, Brown represented himself in a motion to overturn his conviction based on the new evidence, but he lost. On December 24, 2003, he wrote a letter to Bench – confronting Bench with evidence of his guilt, and telling Bench that he was going to seek DNA testing that would prove Bench committed the crime. Five days after the letter was mailed, Bench committed suicide by lying down in the path of an oncoming Amtrak train.



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“Armed only with a notebook, stamps and a copy of the state’s Freedom of Information Law, Roy Brown identified the true perpetrator from a prison cell in Elmira, New York,” said Nina Morrison, staff attorney at the Innocence Project, which is affiliated with Benjamin N. Cardozo School of Law at Yeshiva University in New York.

In 2004, the Innocence Project took Brown’s case and sought DNA testing on several pieces of evidence. DNA tests on seven saliva stains on the victim’s shirt (several of which correspond with areas where she was bitten during the murder) all excluded Brown as the perpetrator – and all pointed to a single, then-unidentified male. The Innocence Project then worked with Bench’s daughter to obtain a DNA sample that could be compared to the profile from the victim’s shirt – and testing revealed that her father, Barry Bench, was the source of the saliva on the shirt.

At a hearing last month in state court in Cayuga County, the Innocence Project argued that Brown’s conviction should be vacated and he should be released from custody. The District Attorney opposed that motion, and Judge Peter Corning (who presided over Brown’s trial in 1991-1992) refused to vacate the conviction. Corning, who retired days after last month’s hearing, said he could not be certain of the paternity of Bench’s daughter, and that he felt the bite-mark analysis at the trial was persuasive. After the hearing, Bench’s body was exhumed for DNA testing, and court papers filed by the District Attorney today confirm that Bench was the source.

“The latest round of DNA results prove what we’ve known all along, and Roy Brown can finally go home. When unvalidated forensic science and palpably false testimony from a jailhouse snitch converge in a courtroom, justice is dead on arrival. It takes DNA to bring it back to life,” Neufeld said.

Noting that Brown is the eighth person in New York State proven innocent through DNA in just 13 months – and the fourth in eight months whose case involved police or prosecutorial misconduct – the Innocence Project said New York needs an Innocence Commission to examine wrongful convictions, learn what caused them and recommend steps the state can take to prevent them in the future. Similar commissions, comprised of experts from across the criminal justice community, have been formed in North Carolina, Pennsylvania, California and other states.

“How many more wrongful convictions will it take for New York to begin addressing the systemic problems that lead to such miscarriages of justice? It’s particularly troubling that several recent cases from all corners of New York State involve police or prosecutorial misconduct,” Neufeld said. Brown’s case raises key issues that a commission could address – including reliance on unvalidated scientific analysis, the use of jailhouse informants, and prosecutorial misconduct.

Bite-mark analysis (in this case, comparing Brown’s teeth to several bites on the victim) is among the most controversial and disputed areas of forensic science nationwide, since it is not



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subject to the scientific rigor that other disciplines are and is not regulated uniformly. In Brown's case, the bites on the victim appear to show a continuous line of upper teeth – and even though Brown was missing two upper teeth, an expert testified that his teeth “matched” the victim's wounds.

In addition to Neufeld and Morrison of the Innocence Project, Brown is represented on a *pro bono* basis by Katy Karlovitz and James McGraw of the McGraw Law Firm in Syracuse. Mr. McGraw represented Brown at his original trial, and, convinced of Brown's innocence, has continued to volunteer his firm's services to clear Brown's name. Alicia Ekland and Ryan Singer, Cardozo School of Law clinic students who worked on Brown's case at the Innocence Project, will also attend today's hearing.

According to the Innocence Project, 192 people in 32 states – including 21 in New York – have been exonerated through DNA testing. In more than one-third of the DNA exonerations nationwide, DNA also helped identify the true perpetrator.

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Supplemental Material:

- Motion to vacate conviction (originally filed last month and being joined today by the District Attorney):  
[http://www.innocenceproject.org/docs/121406\\_Roy\\_Brown\\_Motion.pdf](http://www.innocenceproject.org/docs/121406_Roy_Brown_Motion.pdf)
- Letter from Roy Brown to Barry Bench (and news report on Bench's subsequent suicide):  
[http://www.innocenceproject.org/docs/122403\\_Roy\\_Brown\\_Letter.pdf](http://www.innocenceproject.org/docs/122403_Roy_Brown_Letter.pdf)
- Background on flawed bite mark analysis:  
[http://www.innocenceproject.org/docs/Bite\\_Mark\\_Background.pdf](http://www.innocenceproject.org/docs/Bite_Mark_Background.pdf)
- Facts on DNA exonerations in New York State:  
[http://www.innocenceproject.org/docs/NY\\_DNA\\_Cases.pdf](http://www.innocenceproject.org/docs/NY_DNA_Cases.pdf)