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## **DNA Proves Scott Fappiano's Innocence 21 Years After He Was Wrongly Convicted of Rape in Brooklyn**

Fappiano is set to be released Friday morning; case highlights flawed eyewitness identification procedures and problems with retrieving critical evidence in New York City, just days before state legislative hearings on evidence issues

(BROOKLYN, NY; October 6, 2006) – DNA tests prove that Scott Fappiano did not commit a rape in Brooklyn for which he was convicted in 1985, the Innocence Project said today.

Fappiano was convicted based on significantly flawed eyewitness identification procedures, and his innocence was almost impossible to prove because New York City's troubled evidence preservation system lost items that could be subjected to DNA testing. Ultimately, the Innocence Project located evidence at a private DNA lab – which had merged with another private lab that had received two items of evidence from Fappiano's case in 1989 and kept it in storage. A wealth of other evidence that could have been tested years earlier was never located in the New York Police Department's storage facility, the Innocence Project said.

Friday morning, October 6, the Innocence Project will file a motion to vacate Fappiano's conviction and release him from custody. The District Attorney's Office has informed the Innocence Project it will consent to the motion at the hearing. Fappiano will appear in court with Nina Morrison, his Innocence Project attorney, at 11:30 a.m. Friday in front of Kings County Supreme Court Judge L. Priscilla Hall, 320 Jay Street, 19<sup>th</sup> Floor, in Brooklyn. The Innocence Project anticipates that Fappiano will be released at the conclusion of the hearing. Fappiano and Morrison will speak to the media following the hearing.

In 1983, an NYPD officer and his wife were asleep when a man broke into their home, restrained the man, and raped his wife. At trial, the only evidence against Fappiano was an eyewitness identification from the rape victim – an identification that was made in lineups that the Innocence Project said were deeply flawed and unreliable. (The victim's husband viewed the same lineup, but did not select Fappiano.) Fappiano was also five inches shorter than the 5'10" perpetrator described by the victim.

Despite blood-typing tests which excluded Fappiano as the source of what police initially believed was critical crime scene evidence left by the perpetrator (cigarettes and stained clothing), the prosecution twice took the case to trial. At his trial in 1984, the jury could not reach a verdict (voting 11-1 for acquittal), and he was retried in 1985, when the jury convicted him. He was sentenced to a term of 20-50 years in prison.

“Scott Fappiano's case is the starkest yet in a long line of New York cases where innocent people were convicted based on eyewitness misidentification. In case after case, we have proven that faulty eyewitness identification procedures in New York lead to wrongful convictions,”

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Morrison said. “Nobody can look at these cases and say there isn’t a serious problem – yet New York still hasn’t taken problems with eyewitness identification seriously and implemented reforms.”

The Innocence Project also said that the NYPD’s inability to locate evidence in Fappiano’s case demonstrates the urgent need to reform the city’s system of collecting, preserving, and retrieving such evidence. Earlier this summer, another Innocence Project client, Alan Newton, was exonerated a full 12 years after he initially requested DNA testing; in his case, the evidence was finally located in the NYPD Pearson Place Warehouse, in the exact location it was supposed to be all along. Next Tuesday (October 10), the New York State Assembly Committee on Codes is holding a public hearing in Manhattan on evidence preservation and retrieval problems. Innocence Project Co-Director Peter Neufeld will testify at the hearing, which Newton will also attend.

“Scott Fappiano could have been exonerated more than three years ago – when the Innocence Project began searching for the evidence in his case – if the NYPD had adequate policies and procedures for its evidence warehouse,” Morrison said. “New Yorkers have to wonder how many innocent people are sitting in prison because the NYPD can’t find evidence that could be subjected to DNA testing.”

Indeed, the DNA which established Fappiano’s innocence this week was only located because a portion of that material happened to have been preserved outside the NYPD’s custody. Last year, Orchid Cellmark, Inc. (a DNA laboratory based in Dallas, Texas), discovered two vials of DNA material containing spermatozoa from the perpetrator of the rape for which Fappiano had been convicted. The material had been submitted to a now-defunct DNA laboratory, Lifecodes, for attempted (but unsuccessful) DNA testing in the case in 1989, and, following a corporate acquisition of the former Lifecodes lab, Cellmark obtained and diligently catalogued dozens of boxes of Lifecodes’ old DNA materials. New DNA testing by the New York City Medical Examiner’s Office scientifically confirmed that the evidence came from this case and that Fappiano was not the rapist.

In New York City, the Innocence Project has six open cases and 17 closed cases where evidence in NYPD custody has still not been found after years of searching. At next Tuesday’s legislative hearing, the Innocence Project will share details about some of those cases and the organization’s efforts to work with NYPD leadership to resolve the systemic problems.

There have been 183 DNA exonerations nationwide. In 75% of these cases, eyewitness identification played a role in wrongful convictions, according to the Innocence Project, which is affiliated with Benjamin N. Cardozo School of Law at Yeshiva University.

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