

Can You Prove Your Innocence Without DNA?

Benjamin Spencer is serving a life sentence for a violent crime he insists he didn't commit. But he lacks biological evidence—and old-fashioned detective work may not be enough to clear his name.



Nathan Bajar

EARLIER THIS YEAR, I visited the New Jersey home of Jim McCloskey. We sat at his dining-room table, eating takeout Greek on paper plates. McCloskey is 75, stocky and bald, with wisps of white hair that tend to stand on end, as if he’s just walked across a carpet in wool socks. For more than three decades, he has worked to exonerate the wrongly convicted. The group he founded, Centurion Ministries, has succeeded in freeing 61 men, including five recently, during what was supposed to have been McCloskey’s retirement. I asked him which case from his long career haunts him the most. “Ben Spencer’s case,” he replied. “There’s probably not a day that goes by that I don’t at least think of Ben.”

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No Way Out, Part I

Benamine Spencer has spent most of his life in prison for a heinous crime he may not have committed. Does his guilt or innocence still matter to t...

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MEGAPHONE

McCloskey brought me down to his basement, where he stores his case files. Opening a banker’s box, he took out a file folder full of yellowed letters written in Benamine Spencer’s small, neat hand or typed on a prison-issue manual typewriter. The letters described what Spencer considers the shoddy police work and questionable testimony that led to his conviction—and a life sentence—for the 1987 robbery and assault of a Dallas man.

McCloskey honed his craft in the era before DNA analysis became common. Over the years, he has continued to rely on the tactics he developed in those early days: carefully reinvestigating crimes and building cases proving that authorities prosecuted the wrong person.

That may seem like an antiquated approach in an age of ever-improving DNA technology; some 350 men and women have now been freed thanks to its dispositive power. But McCloskey's approach may in fact be more urgent today than it was in the past.

Our conception of how many Americans have been wrongly imprisoned has changed drastically since the first DNA exoneration in the United States, in 1989. Again and again, DNA evidence has demonstrated beyond a doubt that people were convicted of crimes they didn't commit based on unreliable eyewitnesses, bad forensic science, and prosecutorial misconduct. But such evidence is not available in many cases that otherwise have the markers of potential exonerations—because convicts don't have the resources to track it down, because investigators failed to collect it from the crime scene, or because there was simply never any such evidence to collect in the first place. While non-DNA exonerations are on the rise—there were 152 in 2016—that number remains vanishingly small compared with the ranks of the wrongly imprisoned. Simon Cole, a criminology professor at UC Irvine and the director of the National Registry of Exonerations, estimates that thousands—possibly tens of thousands—of innocent men and women may have been convicted.

McCloskey believes that Benjamine Spencer is one of these convicts. Had investigators found sufficient biological evidence at the crime scene, Spencer might have hoped that it would eventually point to another suspect, and irrefutably establish his innocence. But no such evidence emerged, leaving Spencer to walk a narrow path to exoneration.

ON MARCH 22, 1987, Jeffrey Young drove to his office in a warehouse district of Dallas. He was 33 years old and the acting president of FWI, a clothing manufacturer and importer. It was Sunday evening. His wife and three children

Owere traveling for spring break, and Young needed to reach a company in Taiwan, where the workweek had already begun. At 8:21 p.m., security records show, Young opened the door to the building. Twenty-five minutes later, he called Troy Johnson, whose firm provided technology services to FWI, to request access to the computer system. Johnson told Young he was conducting maintenance, and the computer would be down for an hour or so. At 9:45, Johnson called Young's office, but there was no answer. He called back several times before finally concluding that Young had gone home.

No security cameras captured what unfolded after Young placed his call to Johnson, and there were no witnesses at the warehouse. Later, at trial, the State of Texas advanced a theory: Two men spotted Young's silver BMW 320i in the parking lot, pushed open the door to the building, and stormed into the office. They grabbed Young and emptied his pockets, taking the cash from his wallet and leaving the credit cards. They stripped him of his Seiko watch and wedding ring, and took a portable TV from the office. The perpetrators smashed Young's head with a blunt instrument, cracking his skull in five places. It would require an "extraordinary amount of force to cause [the skull] to shatter the way it has," the medical examiner testified. The perpetrators then crammed Young into the back seat or the trunk of his BMW and drove over the Trinity River into West Dallas, one of the poorest and most violent parts of the city.

Sometime after 10 p.m., Young was pushed or fell out of the car on Puget Street. The BMW crept slowly for two more blocks, eventually pulling into an alley. There, one man or two—witnesses differ—rushed from the car. Residents found the body and called for help. Young was still alive when the paramedics arrived, but he was pronounced dead at 3:05 a.m.

Detective Jesus Briseno arrived in West Dallas early Monday morning. He had been working homicide cases for two years, though rarely as the lead investigator, as he would be in the Young case. Canvassing the neighborhood, he had little initial luck finding cooperative witnesses. West Dallas in the 1980s was not a place where residents

were in the habit of helping the police; the predominantly black neighborhood viewed police with suspicion, if not hostility. In the hope of turning up leads, Young's parent company offered a \$10,000 reward for information leading to an arrest and indictment. Electronic Data Systems, the Plano company founded by Ross Perot, offered its own \$25,000 reward—Young's father had worked closely with Perot.

On Monday, 42-year-old Gladys Oliver told the police the same thing most of her neighbors had told them: She had seen nothing. The next day, however, she called Crime Stoppers, an organization that feeds anonymous tips to the police and also offers rewards for information that leads to an arrest. Crime Stoppers informed her that she would need to tell her story to the police to receive her reward. She called them the next day. From her bedroom window, she said, she had watched a young man jump out of the passenger seat of the BMW and dash away. She then saw another young man, short and squat, get out of the driver's side and walk toward the trunk. Both men were black; she knew them from the neighborhood. The stocky one, Robert Mitchell, lived around the corner, and would sometimes buy the barbecue sandwiches Oliver sold on Sunday nights. The other man was an acquaintance of her son's; he'd looked in on a dominoes game her son had hosted on her porch the day Jeffrey Young was attacked. His name was Benjamine Spencer.

SPENCER WAS 22 YEARS OLD, saddled by the weight of unwanted responsibilities and the disappointment of derailed dreams. He worked the night shift loading and unloading trucks. He'd had a few brushes with the law. He had twice spent several days in jail for driving with a suspended license, and had received six years of probation for joyriding in a car his friend had stolen. Newly married, he loved his wife, Debra, but lately they seemed to have more bad days than good ones. They were expecting a baby in two months. "I was trying to get myself together financially and mentally and physically," he told me recently. "It wasn't really the life I wanted."

On the Sunday of Jeffrey Young's murder, the couple argued during lunch at her parents' house, prompting Debra to go to bed early and Benjamine to roam the neighborhood. He drove a friend, Ramona Williams, to an evening church service and picked up a box of chicken. Sometime after 7 p.m., he dropped by Williams's house to see her sister, Christi, a high-school senior headed to college on a track scholarship. Spencer was quiet, polite, and handsome in a way that turned heads, a man who favored snakeskin boots and colorful Perry Ellis shirts. When he went to clubs, he would bring a second shirt—in case someone else was wearing the one he had on. He'd never had trouble attracting women, although he told me he'd never strayed as a married man before that night.

“I knew that they had made an awful mistake,” Spencer told me, “and believed that it was just a matter of time before they figured that out.”

Spencer claims that he spent the evening with Christi Williams, talking and fooling around a little at her house. At about 10 p.m., her teenage brothers came home, and she and Spencer drove in his wife's red Thunderbird to a nearby park, where he says they remained past midnight. The next day, he learned that the body of a white man had been dumped in his neighborhood.

That week unfolded as usual: Spencer drove his wife to work, then picked her up at 5 o'clock before leaving for his night shift unloading trucks. On Thursday afternoon, he took a nap until 2:30, when he was jolted awake by someone pounding on the door. He opened it to find police officers, and Detective Briseno, on his porch.

With Spencer's permission, the police searched the house. They did not find the portable TV, the Seiko watch, the wedding ring, or a murder weapon. The police nevertheless took him down to the station and booked him for the murder of Jeffrey Young. "I wasn't really scared at first," Spencer told me. "I knew that they had made an awful mistake when they arrested me, and believed that it was just a matter of time before they figured that out."

Spencer's mug shots. Police failed to recover the stolen items or a murder weapon in the robbery and assault of Jeffrey Young. Three eyewitnesses, however, said they saw Spencer emerge from Young's BMW in a West Dallas alley. (Dallas Police Department)

ENJAMINE SPENCER AND ROBERT MITCHELL were tried separately for murder. Spencer was appointed a lawyer named Frank Jackson, who had played professional football for the Kansas City Chiefs and the Miami Dolphins and was

Brespected as a savvy foe by prosecutors. Jackson told me the state had substantial evidence against his client. Three eyewitnesses put him in Jeffrey Young's BMW. At the suggestion of Gladys Oliver, investigators had interviewed Jimmie Cotton, a young man who also knew Spencer from the neighborhood. He described the same sequence of events as Oliver, and further offered that he'd seen Spencer jump over a fence separating the alley where the BMW was found from Oliver's yard and run down her driveway. He said he then saw Spencer get into a red Thunderbird. Another neighborhood witness, Charles Stewart, corroborated Cotton's account. "These are not eyewitnesses who were strangers—strangers who all of the sudden had to pick somebody out of a lineup," Faith Johnson, the current district attorney of Dallas County, told me. "They *knew* Spencer and Mitchell." Investigators had also turned up a jailhouse informant, who swore that Spencer told him he had killed Jeffrey Young.

The state had virtually no physical evidence, however. The police never recovered a murder weapon, or the stolen property. They had lifted 12 fingerprints and one partial palm print from Jeffrey Young's office and car; none matched Spencer's or Mitchell's prints. They towed the BMW to an impound lot without photographing its location in the alley and left it outside overnight before examining its exterior for prints. It rained that night. As for the alley itself, they first photographed it six months after the crime, when new structures and foliage had altered the scene.

Spencer's trial began on October 26, 1987. The particulars are lost: Inexplicably, the trial transcript has gone missing. The prosecution presented its eyewitnesses and the informant. The defense relied almost exclusively on Spencer's alibi witness, Christi Williams, who testified that she had spent the entire evening with Spencer. Four days after the trial began, the jury found Spencer guilty of murder and sentenced him to 35 years in prison.

Spencer was granted a reprieve, however. During jury deliberations, his attorneys discovered a document in the prosecutor's files indicating that Gladys Oliver had received a reward from Crime Stoppers for her role in identifying Spencer. Spencer's attorneys noted to the judge that the prosecution had failed to disclose the reward.

In fact, according to the motion filed by the defense, the prosecution repeatedly stated that it had received no information in exchange for a reward, and Oliver denied on the stand that she had received a reward. The judge granted Spencer a new trial. (The Crime Stoppers reward was \$580. There is no court record of either of the five-figure rewards being paid out, and I was unable to determine whether either sum was ever distributed.)

On the eve of the second trial, the state offered Spencer a deal: 20 years in prison, and parole eligibility in less than five years. “If it were me, I would have probably taken it and run with it,” Jackson told me. “Do my time and get out and get on with my life.” Jackson advised Spencer that if he risked another trial, prosecutors would ask for life, and they’d get it. “It’s hard to overcome a dead white guy who’s killed by two black men in a black area of Dallas where you dump his body out on the street,” Jackson said.

“I don’t care what they likely to get,” Spencer said. “I’m not going to plead guilty to something I didn’t do.”

SPENCER’S SECOND TRIAL was prosecuted by an assistant state’s attorney, Andy Beach, who had a winning smile and an easy rapport with juries. Like his predecessor, he was confident that Gladys Oliver would make a devastating witness, even after acknowledging her Crime Stoppers reward.

“She was one of the most effective, believable eyewitnesses that I ever proffered in a felony case,” Beach told me. Oliver entered the courtroom in a wheelchair, wearing a shawl around her shoulders. Sitting at eye level with the jury, she told her story with precise details and a no-nonsense demeanor. She stated that she had been awakened sometime after 10 o’clock by dogs barking next door. She looked out her bedroom window to see Benjamin Spencer—illuminated by a streetlight and her neighbor’s porch light—climb out of a car’s passenger seat. She then went to her front door, from which she saw Spencer walk down her driveway and greet her son. (Oliver stated that her son had been drinking all day. He was not called as a witness by either the prosecution or the defense.)

“She had a personality,” Beach said. “She had a wit. She wasn’t going to tolerate silly questions. Mr. Jackson was a very effective defense lawyer, a good cross-examiner, and he just didn’t get anywhere with her.”

Oliver made an impression on the jury. “I still remember her saying, ‘I peeps out my window ...,’” says William Alan Ledbetter, the jury foreman, who was then a 28-year-old auditor at the local electric company. “She sounded just so much like my grandmother, keeping an eye on the neighbors, and particularly the neighbors who my grandmother thought were up to no good.”

Ledbetter told me that the jury was not particularly bothered by the Crime Stoppers reward. They also believed the two young men who corroborated her testimony.

They gave less credence to Danny Edwards, the jailhouse informant who said Spencer had confessed to him. Edwards had landed in county jail after being arrested for burglary in mid-March. Ten days later, Spencer was placed in Edwards’s holding tank. The two men started talking and, Edwards claimed, Spencer confessed that he had killed “the white dude.” In court, Edwards recounted a lurid blow-by-blow of the attack on Young. He said Spencer had told him his only regret was that he didn’t finish the job at Young’s office. “He said, ‘I should have killed the bitch right then and there.’”

Edwards’s testimony was the only evidence connecting Spencer to the assault, not just the stolen car. It also frequently conflicted with the known facts and even the prosecution’s theory of the crime. He demonstrated for the jury how Spencer had grabbed the victim by the tie and choked him. But Young, in the office on a Sunday night, had been wearing jogging clothes and no tie. Edwards claimed that Spencer had been driving the victim’s BMW. The state’s witnesses said Spencer had been the passenger. Edwards said that Spencer hadn’t worried about fingerprints because he had scoured off his prints by rubbing his fingertips on the pavement. Spencer’s fingers were intact.

“Danny Edwards’s testimony probably hurt us more than it helped us,” Beach told me. But Edwards was also able to undermine Spencer’s only defense: the alibi witness. He told the jury that he had heard Spencer on the phone telling a woman that if she did not provide an alibi, Spencer would have her house burned down.

The jury convicted Spencer of aggravated robbery and sentenced him to life in prison. (A week later, at the conclusion of his first and only trial, Robert Mitchell was found guilty of aggravated robbery as well.) The night of the verdict, Spencer returned to his cell. He was stunned, wrestling with his faith in the justice system and in a just God. “To be honest, I really wanted to die,” he told me. “I thought about committing suicide while I was in the [cell]. But I was like, *If I kill myself, I can’t go to heaven*. And so that was the only hope I had. I didn’t want to go to hell.”

Benjamin Spencer at the H. H. Coffield Unit. Before trial, the state offered Spencer a deal: 20 years in prison, and parole eligibility in less than five years. He turned it down. He's now serving a life sentence. (Nathan Bajar)

IN 1979, JIM MCCLOSKEY entered the Princeton Theological Seminary at the age of 37. He had served as a naval officer in Vietnam, and enjoyed some success as a management consultant, but he despaired that he had been living a “superficial, self-centered life.” During his second year at the seminary, he volunteered to serve as a chaplain at Trenton State Prison, in New Jersey. There he met a former heroin addict who had been sentenced to life for murder. “All he wanted to talk about was his innocence,” McCloskey told me. “I had a tough time accepting that, because at that time I couldn’t imagine that police would lie. Or that prosecutors would hide evidence of innocence.” But as the seminarian read the trial transcripts, he came to believe that the wrong man was sitting in prison. “What are you going to do about it?” the prisoner asked. “You can’t just go back to your safe little dormitory room and pray for me. God works through human beings, and you’re the only human being I have.”

McCloskey deferred his seminary classes for a year and reinvestigated the case. He discovered that an eyewitness had lied and that the state knew its star witness—a jailhouse informant—had perjured himself on the stand. He recruited a lawyer to represent the inmate; relying on the evidence McCloskey had gathered, the lawyer persuaded a federal judge to exonerate his client.

McCloskey realized that his calling was not to the pulpit, but to the work of freeing the wrongly convicted. He launched Centurion Ministries out of his bedroom, naming it after the Roman centurion who stood at the foot of the cross in the Gospel of Luke. As Jesus was dying, he looked up and said: “Surely this one was innocent.”

Jim McCloskey, the founder of Centurion Ministries (Nathan Bajar)

Over the next few years, McCloskey relied on a few volunteers to investigate cases in relative obscurity. But in 1986, Centurion won freedom for Nate Walker, who had been convicted of rape and kidnapping. *The New York Times* covered the story, and *60 Minutes* followed up with a profile of McCloskey and his work. Centurion's office was inundated with letters from hundreds of prisoners across the country.

In January 1990, Centurion received a handwritten letter from Benjamine Spencer, now an inmate at the H. H. Coffield Unit, a maximum-security prison about two hours south of Dallas. By this time, the organization had developed a process. First, it requested a detailed autobiography. What had the inmate's childhood been like? Did he have a criminal record? (Centurion declines cases of people convicted of prior violent crimes.) How had he been using his time in prison? Next, Centurion staff assembled a written record—trial transcripts, legal briefs, police reports—with two questions in mind: Was this person innocent, and could that be proved?

In some ways, Texas was fertile ground for pursuing a long-shot exoneration.

Spencer's 14-page autobiography begins: "I was born on December 20, 1964. I am now twenty-five years of age and have spent the last three years, almost, locked up for something I didn't do."

Inside prison, his world moved glacially. He spent his days working as a barber and doing legal research in the library. (An appeal filed soon after he arrived in prison was denied.) Outside, the world sped by. Shortly after he was arrested, his wife, Debra, gave birth to a baby boy, Benjamin John—B.J. Debra was promoted at her telecommunications company and moved out of West Dallas. Whenever she could, she and B.J. drove down to the prison. The baby first glimpsed his father through a Plexiglas window. After a while, they were permitted contact visits. "I'd stand him on the table. They'd play and talk and carry on," Debra told me. They could barely hear each other over the clamor of other prisoners and their visitors. Eventually, Spencer urged his wife to file for divorce. "When she would come visit me, she would cry most of the way home. I mean, that wasn't a life for anybody," Spencer said.

"For a while I couldn't let go," Debra recalled. "But I knew I had to be strong and raise B.J., so after years passed, I decided maybe I need to go ahead and divorce." She kept the Spencer name.

Spencer corresponded with Centurion throughout the 1990s. "I wanted them to know everything I knew. And what I didn't know, I wanted them to try to find out." He sent them his trial record, annotated in his meticulous handwriting, pointing out errors and inconsistencies in the testimony. He identified people who could corroborate his alibi—people who were never called by the defense. He explored an alternative theory, that another man had committed the crime, and located two men who could back the theory up. From within the prison walls, Spencer drafted a blueprint for Centurion's investigation, should it accept his case.

There was no eureka moment. But over time, Spencer convinced the Centurion staff of his innocence and of the strength of his case. They saw in it the elements of previous Centurion successes: poor police work and

questionable testimony by eyewitnesses and a jailhouse informant. In 2000, McCloskey traveled to the Coffield Unit and spoke with Spencer for the first time. “I walked away thinking, *We can’t leave this man behind.*”

Photographs of the men freed by Centurion Ministries. The group has exonerated 61 prisoners, frequently without the benefit of DNA evidence. (Nathan Bajar)

IN 2004, SPENCER FILED A PETITION for a writ of habeas corpus, seeking to get his conviction overturned based on new evidence. McCloskey and his colleagues had tracked down new witnesses, heard recantations from old ones, and discovered fresh evidence they considered exculpatory. They had hired Cheryl Wattley, a former

federal prosecutor, to represent Spencer. As they continued to find new witnesses and poke holes in the original police investigation, they grew more confident. (Robert Mitchell, Spencer's alleged accomplice, had been released on parole in 2001, years before Spencer was eligible to petition for it. Mitchell died soon after, of a heart attack.)

In some ways, Texas was fertile ground for pursuing a long-shot exoneration. Despite its reputation for harsh justice, it is one of a handful of states that allow a convict to petition for a new trial based on a claim of actual innocence, even if the convict's constitutional rights were not violated during the original trial. The district attorney's office opposed Spencer's habeas petition. But in 2006, Centurion thought it caught a break: Dallas elected Craig Watkins, a reform-minded Democrat, to serve as district attorney. He established the Conviction Integrity Unit, a group of prosecutors within the office to reinvestigate claims of innocence. The unit quickly developed a national reputation for exonerating wrongly convicted prisoners, and would later become a leader in pursuing non-DNA cases.

McCloskey stores case files in the basement of his New Jersey home. He first met Benjamine Spencer in prison, in 2000. "I walked away thinking, *We can't leave this man behind.*"
(Nathan Bajar)

Early on, however, Watkins made a strategic decision. To earn the trust of the courts and the public, the unit would initially accept only cases involving DNA evidence. If DNA pointed to another perpetrator, or excluded the convict, this was as close to absolute truth as one could get. "It was safe," Watkins told me. "There was no question."

Watkins looked at Spencer's appeal and saw a case with no known DNA evidence. "I'm building credibility," Watkins told me. "I'm not going to take a chance on a person who's been convicted of murder and aggravated robbery—when somebody died? I'm not going to take a chance on that." Watkins proved no more amenable to helping Centurion than his predecessor had been. McCloskey told me that in the Texas system, in which district attorneys, trial judges, and appellate judges are all elected, no one wants to be seen as soft on crime. DNA is valuable for the political cover it provides.

Spencer's case languished. Then, in January 2007, Rick Magnis, a former public defender, began presiding over the 283rd District Court in Texas. Magnis was wary of the case at first. Because of the state's open-minded approach to hearing appeals from convicts, Texas judges receive many petitions claiming innocence. The successful ones generally turn on DNA evidence. Spencer's case was murkier. But as Magnis read deeper in the habeas petition, he grew more interested.

Nathan Bajar

The judge took the extraordinary step of closing his court for a week to review the evidence; later, he visited the neighborhood where Jeffrey Young's body had been dumped. When he completed his review, Magnis agreed to hold an evidentiary hearing—a proceeding to consider whether the evidence merited a new trial.

A West Dallas resident testified that she was certain that the perpetrator was not Benjamin Spencer.

The hearing began on July 24, 2007. On one side of the courtroom sat the appellate attorneys from the district attorney's office, with Jeffrey Young's family and friends filling the rows behind them. Cheryl Wattley set up on the other side, with Spencer's supporters behind her.

Wattley's case centered on three arguments: that it would have been impossible for the eyewitnesses to identify Spencer, given the conditions under which they claimed to have seen him; that the jailhouse informant had lied; and that the Dallas Police Department and the prosecutors had ignored a more plausible suspect.

The state's star witness, Gladys Oliver—now 62 years old—held her ground, insisting that she saw Spencer leave the BMW and walk down her driveway. But its other witness wobbled under Wattley's cross-examination. Jimmie Cotton said he never saw the face of the man who ran from the car and hopped Oliver's fence. (The third eyewitness, Charles Stewart, had been killed in the 1990s, reportedly in a drug deal gone wrong.) Under questioning from Judge Magnis, Danny Edwards, the jailhouse informant, now said Spencer had never confessed to him personally, but had told another prisoner of his guilt. Had that been Edwards's testimony at trial, it would have been inadmissible as hearsay. Wattley suggested that Edwards had been rewarded for his testimony: He had been facing 15 to 25 years in prison. That sentence was later reduced. He ultimately served 15 months.

Wattley called several witnesses who had not appeared at either trial—among them Sandra Brackens, a West Dallas resident who testified that the perpetrator had run directly in front of her, and she was certain he was not Benjamine Spencer. (Spencer's original defense team hadn't called her to testify, as she was a minor at the time, and they felt she was a reluctant and inconsistent witness.)

Paul Michel, a forensic visual scientist and an optometrist, described to the court the science of sight, explaining what would be required to positively identify someone at night. At 10 p.m. on March 25, 2003, he had visited the

alley where Young's car had been abandoned, doing his best to approximate the lighting conditions of the night of the crime. In the intervening years, the alley and its surroundings had changed—crucially, Gladys Oliver's house had been torn down. The failure of the Dallas police to document the scene in the alley also hampered his work. But based on measurements in a police diagram that had been made six months after the crime, Michel concluded that none of the witnesses could have identified the man leaving the BMW, even if he had been standing still and not running away. At most, they could have seen a silhouette.

Michel told the court that an observer would have to be no farther than 25 feet away to identify a person in those conditions. The state's expert wrote an affidavit that a witness could be 49 feet away and still make a reliable positive identification. Gladys Oliver had been 123 feet away; Jimmie Cotton, 93 feet away; and Charles Stewart, more than 200 feet away.

Wattley also presented an alternative scenario. A few hours before Jeffrey Young was killed, several men were hanging out at a neighborhood park in West Dallas. Michael Hubbard, then 22 and already an accomplished thief, told his friends he was going to "hit a lick"—that is, rob someone. According to two of his friends, Kelvin Johnson and Ferrell Scott, Hubbard later boasted of having gone to the warehouse district nearby and hit his lick, netting a watch, a portable TV, a wedding ring, and some cash. Police had never released the details about what was stolen from Young.

Centurion hired Cheryl Wattley, a former federal prosecutor, to represent Spencer. Before a Texas judge, she challenged the state's eyewitnesses, and argued that police and prosecutors had ignored a more plausible suspect. (Nathan Bajar)

The Hubbard theory had been briefly explored by both the prosecution and the defense at the time of Spencer's first trial. In April 1987, while in jail awaiting trial for aggravated robbery, Johnson gave an affidavit to Detective Briseno that implicated his friend and absolved Spencer and Mitchell. Briseno didn't believe him: Johnson never signed the affidavit, failed a polygraph, and admitted that he and Hubbard had had a falling out. Hubbard's prints didn't match any of the sets lifted from the warehouse or the BMW. Spencer's original defense lawyer, Frank Jackson, now says that he decided against putting Johnson on the stand because he considered him to be untrustworthy. At the evidentiary hearing in 2007, Johnson and Scott both insisted that Michael Hubbard had killed Jeffrey Young.

Years before the hearing, McCloskey had tracked down Hubbard and asked him whether he'd assaulted Young. Hubbard denied having anything to do with the assault. Now Wattley called him to the stand. Hubbard, who was then serving time for aggravated robbery, declined to testify, invoking his Fifth Amendment right to avoid self-incrimination.

Judge Magnis spent eight months weighing the evidence presented during the hearing before he issued his findings. Spencer's visual expert had conclusively established that it was "physically impossible" for the eyewitnesses to have identified the perpetrator, he wrote; therefore, the state's eyewitnesses could not be believed. He further found that Danny Edwards's jailhouse testimony was not credible. As to the alternative theory of the crime that Wattley had presented, Magnis said that Kelvin Johnson's statement implicating Michael Hubbard was

“more consistent with the actual facts of the murder and therefore more credible” than Edwards’s testimony. On March 28, 2008, Magnis declared that Benjamine Spencer deserved a new trial “on the grounds of actual innocence.”

Magnis wasn’t the only person in the courtroom who had been convinced by Wattley’s arguments. William Alan Ledbetter, the foreman of the jury that convicted Spencer and sentenced him to life in prison, had taken off work to attend the evidentiary hearing. On the first day, he’d sat behind the Young family. But as the proceedings continued, he said, “it was very clear that we had made a tragic mistake.” He felt implicated in what he came to view as a failure of the system. “There’s a bit of personal culpability that one takes on,” he told me. “I had a role in this. Our role as jurors was to sort through the evidence and reach a reasonable conclusion. And it’s clear that we worked with what we had. But we were very wrong.” By the end of the hearing, he had moved to the other side of the courtroom, sitting among Spencer’s supporters.

UNDER TEXAS LAW, Judge Magnis could not grant a new trial. He could only recommend that the Court of Criminal Appeals, the state’s highest criminal court, allow a new trial to proceed. But McCloskey was sanguine. “We thought we were on firm ground,” he said. “We didn’t see how the Court of Criminal Appeals could not defer to Judge Magnis’s findings of fact.” Spencer and his family thought it would be a matter of days, perhaps weeks, before they’d get word of a new trial or, better yet, before the district attorney’s office would change its position and support his exoneration, which might have allowed him to leave prison a free man. “I thought, *This is it. I’m going home,*” Spencer recalled.

He remained in the Dallas County jail where he’d been held during the evidentiary hearing, rather than returning to the maximum-security prison. His ex-wife and friends bought him new clothes: jeans, boots, and Perry Ellis shirts. But some two years passed without news. Spencer asked to transfer back to prison. At least the place was familiar, less noisy, better suited to permanent stays.

On April 20, 2011, the Court of Criminal Appeals denied Spencer a new trial. The court’s responsibility was not to retry the case but to look specifically at the evidence presented to Judge Magnis and determine whether it was “newly discovered”—that is, whether it offered information that had been unavailable to the trial court—and whether it could prove Spencer’s innocence. The eight elected judges—all Republicans, five of them former prosecutors—dismissed Spencer’s arguments in quick strokes. They gave “little weight” to Michel, the forensic visual scientist, who’d stated that the eyewitnesses could not have identified Spencer. Michel could not replicate the crime scene, they concluded, because too much had changed since 1987. His “assumptions” could not “overcome the testimony of witnesses who said they had enough light to see”—witnesses the defense had already challenged at trial. As for Danny Edwards, the judges still credited his original testimony. The evidence pointing toward another possible suspect, they wrote, was speculative at best.

“Basically, it’s just a theory,” Judge Larry Meyers, who wrote the majority opinion, told me. “It wasn’t conclusive by any means and probably wasn’t anywhere near as strong as the actual evidence of Mr. Spencer’s guilt.”

The power of DNA lies not only in its scientific certainty, but in its relative imperviousness to the rigors of time.

We were sitting in Meyers’s kitchen in Fort Worth, his three yellow Labrador retrievers snoring softly at our feet. Meyers had retired after failing to be reelected in 2016. To win the right to a new trial, Meyers said, Spencer needed to do more than cast doubt on the underlying police work or the eyewitness testimony. He had to *prove* that

he was innocent, to establish that “no rational jury would have convicted him in light of this new evidence.” Texas judges call this a “Herculean burden.”

There’s a reason, of course, why our criminal-justice system tends to favor the findings of trial courts. Jurors look into the eyes of witnesses and the defendant and judge their credibility; they view the physical evidence up close and with relative immediacy, compared with appellate judges, who see materials years after the commission of a crime. A jury may look at the events leading up to a crime through a glass darkly, but an appellate court looks through its own dark glass, one further distorted by time.

Still, I asked Meyers whether Texas has set the bar so high that it has trapped innocent people in prison with no available remedy. He said he’s sure of it. “There were some people I really thought were innocent and they didn’t get relief. I was so mad, but there was nothing I could do about it.”

“But you feel the court reached the right opinion here?,” I asked.

“I hope we reached the right opinion,” Meyers said, “and that Mr. Spencer has hopefully been rehabilitated.”

The alley where, according to eyewitness testimony, Spencer emerged from Jeffrey Young's stolen BMW. Police failed to properly secure the scene at the time, hindering later efforts to reconstruct the events of March 22, 1987. (Nathan Bajar)

NOTHING PREVENTED SPENCER from petitioning for another evidentiary hearing. But he would need evidence that had not been available during his trial, evidence that would have changed the outcome of that trial. New facts with exculpatory power are elusive. Cold-case investigators will tell you that time is the enemy of truth. Memories fade. Witnesses die. Evidence degrades or disappears—the fingerprints that the police lifted from Jeffrey Young's car, for instance, long ago went missing from the Dallas Police Department's

evidence room. This is another reason DNA evidence can be so crucial. Its power lies not only in its scientific certainty, but in its relative imperviousness to time's rigors.

And yet, time can expose truth as well. Relationships change, old loyalties dissolve. Conscience eats away at sleep. A person no longer has a reason to lie.

I saw this dynamic for myself when I undertook my own effort to investigate what happened on the night of March 22, 1987. At the suggestion of Wattley and McCloskey, I teamed up with Daryl Parker, a private investigator who had been a legal officer in the Marine Corps and later worked as a police officer and a criminal investigator. Parker, who wears his blond hair in a tight military cut and a 9-mm gun on his hip, has extensive experience tracking down people who don't necessarily want to be found.

We began with the most basic, and pivotal, question in Spencer's case: What could the witnesses have seen on that night 30 years ago? At 10 o'clock, when a silver BMW crept down Harston Street and pulled into an alley, the moon had not yet risen. One streetlight and one back-porch light shed some illumination on the car.

Gladys Oliver now suffers from dementia, and declined to speak with us. Charles Stewart is dead. Jimmie Cotton, however, invited us into the apartment he shares with his mother in West Dallas. Cotton, 6 foot 4 and rail thin, was 18 years old in 1987. He had been cooking a late Sunday dinner when, he testified, he looked out the kitchen window to see Spencer climb out of a BMW.

When I asked him whether he was certain he'd seen Spencer, he sounded a less confident note than he had at trial. "I'm not positive it was him," he said. With that, the interview became something closer to a confessional. It was dark that night, he said. The man was rushing away from him. He never actually saw his face. Cotton assumed that he was Spencer from the tall, lanky build. "The police was saying that Benjamine was under investigation for this murder," Cotton recalled. "I said, 'It looked like him. Maybe it was him.' And they went on from there."

How certain are you that the person you saw was Spencer?, I asked. “I’d say about 30 percent chance,” Cotton replied.

What about one of the seemingly most damning details in his testimony—the fact that he saw Spencer getting into a red Thunderbird soon after the BMW pulled into the alley? “It might have been earlier in the day,” Cotton now said. He thought it had still been light out.

It felt too easy: Was Cotton just saying what he presumed his guests—one of them possessed of a marine’s bearing and carrying a firearm—wanted to hear? I asked Cotton, twice, whether he felt pressed to recant. “Naw,” he said, “I feel bad about this. If he didn’t do it, he needs to be out.” He shook his head. “That’s a long time. Thirty years.”

Our next stop was the last known address of Danny Edwards, the jailhouse informant. Edwards had recently been released from prison, after serving time for the latest in a series of convictions that had made prison his home for half his life. He greeted us affably, gently setting down his puppy, a Labrador-pit bull, before shaking our hands.

Edwards remembered the Spencer case well. He said the police had called him into an interview room and showed him a document allegedly signed by Spencer, which he did not read. He said they told him that Spencer had accused him, Danny Edwards, of killing Jeffrey Young. No, Edwards replied: *Spencer* confessed to *me*. “He say I did it. I say he did it. The best liar wins.”

Benjamine Spencer's Centurion Ministries case file. "I always felt that the truth would prevail," Spencer says. (Nathan Bajar)

In fact, Edwards told us, Spencer had never admitted to killing Young. "He didn't even know the guy. He ain't even been over there." Nor had Spencer ever threatened the alibi witness, Christi Williams. "He ain't said nothing, threatened nobody." Accusing cell mates of a crime in exchange for a reduced sentence is simply how the game is played, he told us.

I wondered how Detective Jesus Briseno, now retired, would view these statements. On our third visit to his house, 50 miles north of Dallas, he grudgingly consented to talk. I pointed out that two of the four key witnesses against Spencer had recanted when we confronted them. “Why do you want to believe them now?,” Briseno asked. I noted that Jimmie Cotton and Danny Edwards had said the police pushed them to identify Spencer. “It’s lies,” he said. “We don’t give them information. We ask them information.”

Briseno also dismissed Christi Williams, the star athlete who was Spencer’s alibi. “She was young, and she was a girlfriend of Ben, so of course she might have tended to cover up for him,” he said. But when Parker and I met with her, she said she had no incentive to lie. “I’m in high school, headed to college. What do I look like, messing with a married man?” She stood by her testimony that Spencer had been with her all evening, and said her brother Israel would corroborate her version of events.

We met with Israel at his apartment in West Dallas. His mother hadn’t wanted him to testify at Spencer’s trial, as he was a minor at the time; his account could today be considered new evidence. He remembered the night clearly: noticing the Thunderbird outside his house when he returned from playing street football, seeing Spencer “courting” his sister at the time Jeffrey Young was being murdered. “That man was in the house,” he told us. “I saw him.”

The detectives had believed Danny Edwards, a career criminal, and dismissed witnesses like Christi and Israel Williams. Parker called it tunnel vision. “Investigators and police are so driven to catch the person that just did this heinous crime that when they find someone, they focus on them to the exclusion of all others,” he said. “And then they start making the evidence fit their theory, instead of making their theory fit the evidence.”

The investigative notes kept by Jesus Briseno and his fellow detectives detail an all-out sprint for four days, until the arrest of Spencer and Mitchell. The detectives continued to interview witnesses after the arrest, but it feels like a cooldown lap. This was the moment Michael Hubbard entered the frame.

Kelvin Johnson, who tried to finger Hubbard for the crime in 1987, went to prison that year for aggravated robbery. He was released in 1995. He has since embraced an evangelical faith and started a family; he works at Home Depot. When we tracked him down, in a middle-class suburb south of Dallas, he was still adamant that Hubbard, not Spencer, had killed Young. “These were his exact words,” Johnson told me: “‘The white man who they found dead over in West Dallas?’ I said, ‘Yep.’ He said, ‘I did that, man.’” Ferrell Scott is currently serving a life sentence in a federal prison in Allenwood, Pennsylvania, for conspiracy to distribute marijuana. He, too, maintains that Hubbard is the killer. I asked Scott, whom I reached by phone, why I should believe him. “I might be a convicted felon,” he said, “but I’m not a liar.”

Michael Hubbard was convicted of a different aggravated robbery in 1987. Two years after he was paroled in 1992, a string of violent robberies terrorized Dallas. The perpetrator would wait outside an isolated industrial park, usually at night. When a businessman left the office, he would bash his skull with a bat. In one case, the victim needed 170 stitches; he still suffers from mild seizures. In another case, surgeons had to remove part of the victim’s frontal lobe; a former executive, he could later only find work bagging groceries. When Kelvin Johnson read about that string of crimes, he thought to himself: *It’s Hubbard’s MO*. “He got away with it in 1987; he thought he would get away with it in ’94,” he told me. In February 1995, however, Hubbard was arrested in connection with one of the assaults. He was convicted on one count of aggravated robbery and is serving life in prison. He declined an interview.

I reached Karo Johnson, the lawyer who represented Hubbard in his last case. I asked him whether he was familiar with the Young case. “I’m not saying that Michael Hubbard was the person who did that murder,” he said. “But my opinion is that Michael Hubbard was the person who likely did that [murder]. He was the most dangerous person I ever represented.”

The H. H. Coffield Unit (Nathan Bajar)

BENJAMINE SPENCER LIKES TO rise early. He dresses quietly, trying not to disturb the 110 other prisoners who share a large dorm room at the H. H. Coffield Unit. Usually he skips breakfast. By 4 a.m. he has arrived at his job as a general clerk in the prison's Education Department, filing papers and running errands. "I work with some very nice people," he told me. Most of them have read about his case. "They're always asking me, 'When are they going to let you go?'" He calls his ex-wife every other week, as well as Jim McCloskey.

“This is not living. It’s existing,” Spencer told me through a Plexiglas window at Coffield. He speaks in a soft southern drawl. He looks professorial in his wire-rimmed glasses, his hair flecked with gray, a few lines etched in his forehead. He is tall and lanky and still handsome. But the man who once favored bright-colored shirts is now consigned to the prison’s white uniform. “This is as sharp as I get now,” Spencer said, laughing. “You know, some of these guys, they press their own clothes: They put water on them, put them under the mattress. I don’t even care. I’m just at a point where I’m still hopeful, but at the same time, it’s like I’m stuck in a system.”

Spencer has given up exercising every day. He’s given up attending Church of Christ services every week. He used to spend hours in the law library, trying to find a precedent that might win his release; he’s stopped going there, too.

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“I always felt that the truth would prevail,” he told me. Spencer insisted that it did prevail, if briefly, when Judge Magnis recommended that he receive a new trial. Magnis told me that he has come to see Spencer as a victim of a broken system. “What we have is another African American male who was in the wrong place at the wrong time, who got caught up in the criminal-justice system and is now in prison for something that anyone who was in the area could have done,” he said.

Spencer said many people believe in him, are pulling for him, are praying for him. “However, they’re not the people with the power to release me.”

He is now eligible for parole, and in theory, he could walk out of prison in February, when the Texas Board of Pardons and Paroles considers his case. But every year for the past six years, the board has rejected his petition.

Spencer has a near-perfect record, with just three infractions in three decades in prison. But more meaningful to the board might be the wishes of Jeffrey Young's family. The family has a right to object to Spencer's release, and each year, it does. I reached Young's two sons, who were 10 and 12 at the time of their father's murder, but they declined to participate in this story. They believe their father's killer is in prison.

The parole board does not explain its decisions, year after year issuing the same short statement: Parole denied, based on the violent nature of the crime. "Well, that's never going to change," said Jim McCloskey. "What happened to Jeffrey Young, as tragic and as brutal as it was, will never change. So I just hope and pray that someday the parole board will get tired of denying Ben, and will eventually let him go home."

In the course of my reporting on the Spencer case, I filed a public-information request with Dallas County's crime laboratory, the Southwestern Institute of Forensic Sciences. I had already seen firsthand how difficult it is to gather exculpatory evidence decades after a crime, and wanted to know whether the lab had preserved biological matter in the Spencer case. I was told that it had, and sure enough, buried in the medical examiner's documents, past the diagrams of the injuries to Jeffrey Young's body and skull, was a notation indicating that the lab had preserved fingernail clippings from Young's right hand. If Young and his assailant had struggled before he was fatally wounded, there is a chance that he scratched the killer and captured his DNA beneath his nails. If it is still present, it could conceivably point to another perpetrator—or, of course, to Benjamine Spencer. I shared the information with Cheryl Wattle, who told me she intends to have the clippings tested. I asked Faith Johnson, the Dallas County district attorney, whether she would agree to the testing. She said her office would not oppose it: "We don't want any innocent person to be in prison."

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