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# WRONGFUL CONVICTIONS

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In the Criminal Justice System, a conviction of a suspect who committed a crime is always the goal. To the jury or the judge, the person sitting in the defendant's chair is somehow or someway automatically guilty of the crime they are charged with. But is that always the case? In a court room, you must prove beyond a reasonable doubt that the defendant is guilty and although evidence does prove majority of the time that the defendant did in fact commit the crime, at least 4.1% of those who were charged guilty were wrongfully convicted. So the big question is, how can we reduce it?

### **History of wrongful convictions:**

To begin the subject of wrongful convictions, how to reduce it, and everything in between, we must first look back at its history. The first ever wrongful conviction was in Manchester, Virginia, 1812. Stephen & Jesse Boorn were accused of the murder of their brother-in-law Russell Colvin. The brothers were accused of clubbing their brother-in-law to death. Russell disappeared after a violent argument began between himself and the brothers. Quickly after his disappearance, rumors circulated that the brothers may have in killed him. Seven years later, rumors became a reality to the brothers when they were arrested for the murder of Russell Colvin. The only evidence against the brothers were confession and people backing up the eyewitness stories. The brothers were found guilty and sentenced to death. Jesse had his sentenced reduced to life. Before Stephens timely death, Russel Colvin came back to Manchester, Virginia with a different named and showed he was alive and well. The defense attorneys pushed for a new trial and the sentences were overturned. The brothers were now free men. The continuing cycle of wrongful convictions

Beginning in 1913, Edward Bouchard caught the attention of Americans when he wrote an article about the scourge of wrongful convictions and how the Europeans corrected someone's wrong when they were convicted of a crime. In 1932, Bouchard wrote a book that stated sixty-five cases where innocent people were convicted of a crime they did not commit. His book, *Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice*, created quite a stir. He talked about the sources of error in wrongful convictions which included including erroneous eyewitness testimony, false confessions, faulty circumstantial evidence, and prosecutorial excesses. In the Boorne Brothers case, the guilty verdict of the brothers was the error of eyewitness testimony. In fact, decades later, these errors are still the main reasons for wrongful convictions.

In 1923, Judge Learned Hand said referred to wrongful convictions as an "unreal dream". He stated that the Criminal Justice system has always been "haunted by the ghost of the innocent man convicted." (Halsted, 1992; Huff, Rattner, Sagarin, & MacNamara, 1986) For centuries, Americans always believed in "guilty until proven innocent" and in the criminal justice system, in order for someone to be convicted they must prove that he/she is in fact guilty. The Sixth Amendment was put in effect for this exact reason. The amendment as proposed by Congress in 1789 reads as follows: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." It was meant to give the accused the chance to prove their innocence and have the same rights as anyone else, but yet the criminal justice system has failed time and time again.

## **Wrongful Convictions in the United States:**

The United States has the highest rate of incarceration in the world with 2.3 million people with some of our own citizens and people from all around the world. One of the biggest problems of incarceration is that there are too many people imprisoned and there is barely any room for the inmates in the jails or prisons. California has the highest rate of inmates in the United States. Although majority of the inmates deserve to be imprisoned and were charged of a guilty verdict beyond a reasonable doubt, the problems still stands that some inmates, male or female, are having their life taken away from them on a crime they did not commit. In a recent study, 10,000 people are wrongfully convicted of a crime each year. Some of these people are sentenced to life or death. Since 1973, 144 people on death row have been exonerated. As a percentage of all death sentences, that's just 1.6 percent. But if the innocence rate is 4.1 percent, then that means that more than twice the rate of exoneration, is what most people assumed but dreaded: An untold number of innocent people have been executed. There is a larger number of wrongful convictions that have not yet been recorded.

The hardest part to grasp about wrongful convictions is the death penalty. To understand this, we must first understand the death penalty. The death penalty was brought to the United States by the English. Each state has its own discretion of the death penalty. Thirty-one states carry the death penalty while nineteen states have abolished the death penalty. Texas has the highest rate of death penalty executions. In most states, Lethal Injection is main method of execution. The main prison of housing inmates awaiting their execution is San Quentin, which is located in San Francisco, California. Inmates wait for the day of execution. Since 1976, we have executed over 1,397 individuals in this country. As of January 2015, 150 individuals have been exonerated--that is, found to be innocent and set free. In other words, for every 10 people who have been executed since the death penalty was reinstated in 1976, one person has been set free.

An example of this is the David Keaton case. David Keaton, died at the age of 63. In Florida 1971 he was convicted of murdering an off duty deputy sheriff during a robbery. He was convicted and sentenced to death. A new trial was held due to newly discovered evidence. His case was exonerated because of misidentification and coerced confession. He was a free man as of 1973. (*Keaton v. State*, 273 So.2d 385 (1973)). The death penalty is a serious matter and the fact that only 1 out of 10 people who have been executed gets set free, is a serious call for help towards the criminal justice system.

## **Causes of Wrongful Convictions:**

Typically, to prove someone is guilty of a crime, there must be factual evidence to prove beyond a reasonable doubt that the person did in fact commit the crime. Although that is the case, several factors are related to miscarriages of the justice system. Most wrongful conviction cases have one or more factors that have been found to be the reasons of an exoneration.

### ***A. Eyewitness Identification***

The leading cause of wrongful convictions is mistaken eyewitness identification. It plays a role of 70% of overturned cases through DNA testing nationwide. At least 1 in 4 stranger misidentifications are

wrong. Eyewitness identification is considered the most powerful evidence against a suspect. The reasons the rate is so high for error is because (1) witnesses are subject to high stress or anxiety; (2) the human memory tends to reconstruct incidents because humans do not have the capability to record memories like a video recorder; (3) witnesses often focus on weapons, not the identity of the perpetrator; (4) suggestive eyewitness identification procedures used by police or prosecutorial agencies; and (5) cross-racial eyewitness identifications are known to be incredibly suspect.

Because of high stress or anxiety, witnesses tend to forget who committed the crime and it's hard for them to pin point out of a lineup or pictures who the suspect was. The human memory does not record all information like a video recorder; it drops most information out of short-term memory and stores the central, but not peripheral, elements of those events in long-term memory. This makes facial recall somewhat uncertain. Witness' also tend to focus more on a weapon instead on and identity when in a scary situation. These reasons also make the police, prosecutors, and the jury hard to believe the witness.

Flawed police procedures are also part of eyewitness misidentification. The police usually do either a show up or a lineup. The show up is where a police shows a witness one picture of a suspect and the lineup is where a suspect is standing side by side next to different people who look similar to the suspect and the witness must point to the person they think they saw. The problem is that with a show up is that it is not accurate. Most courts will not allow a show up as evidence unless the person payed attention, focused on the suspect, gave an accurate description, and viewed the show up immediately after the crime. Lineups are a problem also because it's hard to point out a suspect based on similarity instead of description. Lineups and show up are not a very accurate evidence for identification. Although an overall error rate for eyewitnesses is not well established, some experts place it at about 25%.

Another reason for a mistaken eyewitness is fear. Most witnesses are fearful of pin pointing a suspect because of the fear they someone will retaliate against them, especially gangs.

### ***B. Forensic Science Error or Misconduct***

Since the creation of DNA analysis, it has helped identify a guilty person or exonerate an innocent person. Some techniques of DNA testing are not very valuable to the courts and are not admissible. Though some techniques are admissible, like blood testing or hair follicles.

Most cases are over turned or exonerated because the evidence presented was either based on unreliable or unproven methods, expressed with exaggerated and misleading confidence, or fraudulence. An example of this is the James Klupperlberg case (PEOPLE v. KLUPPELBERG 628 N.E.2d 908 (1993)257 Ill. App.3d 516 195 Ill.Dec. 444). Klupperlberg was found guilty of murder and arson, and was sentenced to natural life in prison with concurrent terms of 14 years for 3 counts of arson. The evolution of arson science had shown that the burn patterns cited as evidence of arson by Burns did not reliably indicate that a fire was deliberately set. These "indicators" are now considered to have no valid scientific basis. He was released on May 30, 2012.

In some cases, expert evidence is based on comparison or what they know rather than scientific testing. If evidence goes unchallenged by the defense attorney by not having other experts evaluate it,

then it can raise the possibility of a wrongful conviction. Microscopic hair analysis and bite mark impressions on skin, have caused numerous wrongful convictions. On the other hand, falsification by a forensic expert can mislead the courts and the juries by exaggerating their knowledge or findings, reporting inconclusive reports as conclusive, and failing to report conflicting results. The most reliable methods can produce incorrect results if the forensic laboratories are substandard. As DNA testing becomes more sensitive, the risks of contamination rises unless the laboratories are in pristine condition. Testing in some inferior laboratories has even led to several people being wrongly convicted on the basis of erroneous DNA analysis.

### ***C. False Confessions***

The most confusing cause of wrongful convictions is false confessions because it involves self-indictment. No one really understand why someone will falsely confess to a crime they did not commit. An innocent defendant may make a false confession due to mental impairment, disability, or instability, intoxication or drug use, fear of violence, actual violence, threat of a long prison sentence, ignorance of the law, and misunderstanding. At least 25 percent of wrongful conviction cases overturned by DNA testing involved false confession.

The Juan Rivera case is a prime example of how much weight a false confession can carry. On August 17, 1992, an 11-year old girl named Holly Staker was raped and murdered while babysitting in Waukegan, Illinois. A tip from an informant eventually led authorities to 19-year old Juan Rivera, who had an IQ of 79 and was in custody on a burglary charge. He was questioned for four straight days and reached the point where he experienced a psychotic episode and started banging his head against the wall. Authorities eventually coerced him into signing a confession and he was sentenced to life in prison for the crime. In 1998, Rivera received a retrial because his first trial was littered with procedural errors. This time, the prosecution produced one of the kids Staker had babysat as an eyewitness. Even though he was only two years old at the time the murder took place, his testimony helped convict Rivera a second time. In 2005, DNA tests excluded Rivera as the perpetrator and he was granted a third trial. Remarkably, he was found guilty again because the prosecution claimed that Staker had consensual sex with someone else that night... even though she was only 11 years old! It was not until January 2012 that the charges against Rivera were finally dismissed and he was released from prison. (People of the State of Illinois v Juan A. Rivera 962 N.E 2d 53 (2011))

Sometimes when police began an interrogation, they have already led themselves to believe that the suspect is guilty rather than actually trying to solve the crime. This is where the Miranda rights fall in. Miranda rights were created after the Miranda v. Arizona case for the rights not say anything without a lawyer, or they do not want to speak, but also have the right to waive their rights. But despite the Miranda rights, people still waive their rights. Most people waive their rights because they know they have nothing to hide. The interrogation process itself can cause psychological pressure which can cause a suspect to confess to a crime they did not commit solely for the fact that they just want it to be

over with. They believe once they get in front of a judge they can plead their case and the judge will set them free. That is not the case. Once someone has confessed to crime, it is really hard for anyone to believe they did not commit the crime. cases of internalized false confessions occur, where the innocent suspect comes to doubt himself, after extensive and insistent police persuasion that includes false statements presented as fact, and admits that he “must have” committed the crime while in a blackout state. Even when such confessions are retracted, they play a strong role in convicting innocent suspects.

#### ***D. Inadequate Defense Counsel***

The United States Constitution guarantees a defendant a right to a defense counsel, but although they ask for one it does not guarantee a fair counsel. Some defense attorneys just do what they need to do to get the trial over and done with. Criminal defense attorneys are usually pricey and if a client does not have the money to pay them then they are usually given a court appointed counsel who is usually poorly paid. They are paid by the state rather than the client themselves so majority of them don't really care about the case or the client, it's more about just getting the job done and getting their money. They are also inexperienced and sometimes barely competent so as a result the clients get a very poorly represented which can cause a wrongful conviction.

On September 1, 1990, Thomas Peters and James Coleman were shot while shooting craps outside a liquor store on Chicago's west side at about 1:30 a.m. The men were taken to a hospital, where Peters died and Coleman was treated and released for a gunshot wound in the back. Day and a codefendant were arrested eight days later after Darrell Gurley, a nephew of Peters and witness to the crime, told police they were the shooters. Both were found guilty and sentenced to concurrent prison terms of 60 years for murder and 25 years for attempted murder. In 2001 the Illinois Appellate Court granted Day a new trial based on ineffective assistance of counsel. Day's trial court lawyer, Gay-Lloyd Lott, had failed to present numerous eyewitnesses and alibi witnesses who could have exonerated Day. Also, Lott had failed to effectively cross examine the surviving victim, Coleman, who had told prosecutors before the trial that Day was not involved. On May 8, 2002, the prosecution dropped all charges against Day. In September 2010, Judge Paul Biebel, Jr., presiding judge of the Criminal Division of the Circuit Court, granted Day a certificate of innocence.

A common ground for appealing a criminal conviction is to claim ineffective assistance of counsel, or that the defendant was not properly represented by his or her attorney. As a routine matter, these claims are not always successful; however, where serious and substantial lawyer incompetence has occurred to the point that the defendant did not receive a fair trial, appellate courts have overturned convictions on this basis. A criminal defendant who has been convicted under state law can appeal his or her conviction to the state appellate court, to a higher appellate court, such as a state supreme court, and, ultimately, to the U.S. Supreme Court. Any of these appellate review courts has the ability to review the conviction, including the performance of the defense attorney, and overturn the conviction if the defendant did not receive a fair trial for any reason, including ineffective assistance of counsel.

#### ***E. Prosecutorial Misconduct***

Prosecutorial misconduct is an illegal act or failure to act when a prosecutor breaks the law or a code of professional ethics in the course of a prosecution. Prosecutors are the main factor of the criminal justice system. They decide who will be prosecuted and on what charge or if that person should be let go because the prosecutor has nothing to hold them on. Convictions in cases where the conviction was overturned based on new DNA evidence, researchers found that prosecutorial misconduct was a factor in from 36% to 42% of the convictions. It is not known whether or not it leads to wrongful convictions, but it is common.

The prosecution role is to convict the defendant of being guilty because that is what the prosecutor believes so they do what they can and present the most evidence they can to convict them. They also have a duty to report exculpatory evidence to the defense attorney even if they know it will ruin the prosecution case. Failure to do so, is illegal and can cause a wrongful conviction. The only contradiction to this is that the defense attorney does not have to report exculpatory evidence to the prosecution.

In *Caldwell v. Mississippi*, 472 U.S. 320 (1985), Caldwell was convicted of murder and sentenced to death by a bifurcated proceeding. At the trial, the prosecutor's defense argument asked the jury not to be so hard on themselves on determining whether or not the defendant should die because even if he did get the death penalty the state of Mississippi would still review the case for correctness. Caldwell later appealed and the death penalty was vacated because the prosecution misstated the law when arguing to the jury.

#### ***F. Police Investigation***

The start of all cases and the criminal justice system itself starts with the police. Police make an arrest on a suspect who is in violation of the penal code. In order to arrest someone, they must have a reasonable doubt and do a thorough investigation to make an arrest. The investigation process can take hours, days, or weeks. At its best, police investigation is the patient, systematic, and dispassionate search for, discovery of, and evaluation of all relevant facts of a suspected crime. The goal is to establish whether a crime was committed and to identify and apprehend the perpetrator. They must also collect evidence, interview witness, and write a report on their knowledge so far on the case. They then give all the information gathered to the prosecutor.

Investigations, in my opinion would be the most crucial part to a case because this is the beginning and depending what evidence they gathered, all fingers can point to a certain person when the actual fact is that it is someone else. This part of the process is where all the other causes of wrongful conviction fall into place. Evidence must be reviewed and DNA is recovered from crime. Even a small mistake can have a case overturned.

Another problem is the nature of the police investigation report. This document is tremendously important, because in most cases there is limited or no investigation by the defense (in large part because of severely limited funds) and so the police case, found in the report, becomes the official facts in the case. The police report is relied on heavily by the prosecutor in deciding whether and what crimes to charge, by the magistrate in setting bail and ordering detention for psychological evaluation, and

even by defense attorneys who do not independently investigate their client's cases for plea bargaining and trial purposes. It is the basis on which an officer testifies at trial and can influence sentencing decisions.

Tunnel vision is "the product of a variety of cognitive distortions that can impede accuracy in what we perceive and in how we interpret what we perceive" (Findley and Scott, 2006, p. 307). When evidence point to a certain person, police tend to believe that is that person and really don't think that it in fact might be someone else. Their goal from then on out is convict the suspect on that crime and close the case. This can also go against minorities and people who already have a rap sheet. Once a suspect becomes the main focus of an investigation, and evidence is gathered to confirm that focus, in hindsight that decision will be regarded as inevitable and correct. Also, an eyewitness may only vaguely remember who they saw at the crime scene, but after an identification of a suspect is confirmed, they will later think they remembered him better than they actually did at the time. Finally, the longer and more frequently that the authorities reaffirm guilt, the more confident they become in their original story.

During a police investigation, there is sometimes police misconduct. Police believe a suspect committed that specific crime and do whatever it takes to get "the truth" out of someone so they can close the case. Police misconduct is the basis for appeals and overturned cases. Police misconduct can also include falsifying police reports, giving false testimony, improperly handling evidence, coercing witnesses, and police brutality. Although there are many honest and ethical law enforcement officials, there are many corrupt law enforcement officials.

### **How can we fix this problem?**

Now that we can understand and grasp our mind around why wrongful convictions happen, the question still remains, how can we or how do we fix this problem? As I stated earlier, 4.1% of those who are charged with a crime are wrongfully convicted. I guess we can go back to tunnel visioning. Instead of police jumping to a conclusion of who a suspect is, they must do their investigation thoroughly and make sure they have made no mistakes. That also goes along with police misconduct and DNA testing.

Media Advisory for the IACP made a report that included at least 30 recommendations for police to make sure they made rightful arrests, correct any wrongful arrests, use technology and forensic science to their advantage, and re-examine closed cases if new evidence becomes available. Between 1989 and 2012, about 1,135 people were exonerated in the U.S. thanks to the work of organizations such as The Innocence Project, which blames many of the wrongful convictions on "prosecutorial ineptness or misconduct."

The goal is for every aspect of a criminal trial to do its job correctly from the police to the experts to the eyewitnesses and to the defense counsel. Everyone must study a case very carefully and make sure that the suspect should be charged for that crime. Wrongful convictions need to be reduced immediately.

### **Conclusion:**



Inmates, both male and female, have been convicted of a crime they did not commit, some facing the death penalty. They sit there in their cells waiting for the day that someone reviews their case again or waiting for the day to be let out. It is not fair that poor work leads to someone's life being ruined by a poor criminal justice system.

**Footnotes:**

- Huff, C. R. (2002). Wrongful conviction and public policy: The American Society of Criminology 2001 Presidential address. *Criminology*, 40(1), 1-18.
- Huff, C. R., Rattner, A., Sagarin, E., & MacNamara, D. E. J. (1986). Guilty until proven innocent: Wrongful conviction and public policy. *Crime & Delinquency*, 32(4), 518-544. doi: 10.1177/0011128786032004007
- McFarland, Gerald M., *The Counterfeit Man/The True Story of the Boorn-Colvin Murder Case* by Gerald M. McFarland, University of Massachusetts Press, 1990. (As the title suggests, McFarland speculates that the man who claimed to be Colvin could have been an imposter - even though the man had returned to Manchester, had been examined in open court, and had engaged in conversation with a number of persons who had known him since birth. Aside from according undue weight to the imposter theory, however, this book is carefully researched and insightful.)
- *Wrongful Conviction and Public Policy* (Sage Publications, 1996). The book was written by C. Ronald Huff, director of the Criminal Justice Research Center and the School of Public Policy and Management at Ohio State University; Arye Rattner, professor of sociology at the University of Haifa, Israel; and the late Edward Sagarin, who was a professor of sociology at City College and City University of New York.
- (Keaton v. State, 273 So.2d 385 (1973)).
- (PEOPLE v. KLUPPELBERG 628 N.E.2d 908 (1993)257 Ill. App.3d 516 195 Ill.Dec. 444)
- the people of the state of illinois v juan a rivera 962 N.E 2d 53 (2011
- Bluhm Legal Clinic: Center on Wrongful Convictions: Lee A. Day Case
- Caldwell v. Mississippi, 472 U.S. 320 (1985)
- (Findley and Scott, 2006, p. 307).