

Posted 12/23/17

## ACCIDENTALLY ON PURPOSE

### ***A remarkable registry challenges conventional wisdom about the causes of wrongful conviction***

By Julius (Jay) Wachtel. "[Your Lying Eyes](#)," one of this blog's very first posts, related the stories of three victims of crime. Each was done in not by a crook but by the State. Lousy policing and indifferent prosecution in North Carolina, Rhode Island and California had led to the mistaken arrest and wrongful conviction of [Ronald Cotton](#), an innocent man who wound up doing eleven years for rapes he did not commit, and [Scott Hornoff](#) and [David Allen Jones](#), who were exonerated after serving six and nine years respectively for murder.

One could argue that their endings were more-or-less happy. After all, both Hornoff (a police detective) and Jones had been on track to do life. It's harder to rejoice about the outcome for many other exonerees. For example, consider [Craig Coley](#), whose [November 2017 pardon](#) by California Governor Jerry Brown took *thirty-nine years* to come to pass. And it's well-nigh impossible to celebrate the ultimate redemption of Cameron Todd Willingham, whom Texas executed in 2004 for setting a house fire [that experts now agree was accidental](#).

Miscarriages of justice are definitely not going away. According to [the National Registry of Exonerations](#), which tracks such things back to 1989, there have been 681 exonerations during the past five years, including eight-eight in 2013, 135 in 2014, 165 in 2015, 169 in 2016 and 124 so far in 2017. Exonerations are coded as to one or more of six causes: mistaken witness ID, false confession, perjury or false accusation (someone other than the defendant lied), false or misleading forensic evidence, official misconduct (govt. officer significantly abused their authority), and inadequate legal defense.

Except for Willingham, whose official rehabilitation seems unlikely (can you expect Texas to apologize for a wrongful *execution*?) each of the others mentioned above appears in the Registry's pages. They attribute the conviction of [Cotton](#) to mistaken witness ID; of [Jones](#) to a false confession; and of [Coley](#) to misleading biological evidence. But ex-cop [Hornoff](#)'s case is one of three in 2003, when eighty-one exonerations were recorded, for which no cause is reported. (There have been sixty-nine such cases since 2013, about ten percent of the total.)

Apparently there are causal factors that the registry doesn't measure. To help fill the gap we offer our favorite: confirmation bias. In "[Guilty Until Proven Innocent](#)" we

defined it as the tendency to “interpret events in a way that affirms one’s predilections and beliefs.” When making decisions fallible humans are always shoving aside niggling inconsistencies and seizing on solutions that reflect their biases, predilections and beliefs. Naturally, in policing the consequences of taking shortcuts can be disastrous. [Here’s an extract from our earlier account](#) about Hornoff:

On August 12, 1989, Warwick, Rhode Island police discovered the body of Vicki Cushman, a single 29-year old woman in her ransacked apartment. She had been choked and her skull was crushed. On a table detectives found an unmailed letter she wrote begging her lover to come back. It was addressed to Scott Hornoff, a married Warwick cop. Hornoff was interviewed. He at first denied the affair, then an hour later admitted it. Detectives believed him and for three years looked elsewhere. Then the Attorney General, worried that Warwick PD was shielding its own, ordered State investigators to take over. They immediately pounced on Hornoff. Their springboard? Nothing was taken; the killing was clearly a case of rage. Only one person in Warwick had a known motive: Hornoff, who didn’t want his wife to find out about the affair. And he had initially lied. Case closed!

Although several witnesses placed Hornoff elsewhere at the time of the killing, his lie apparently doomed him with jurors. He’d still be locked up except that the killer had a conscience. Incredible as it may seem, the real perpetrator eventually turned himself in and confessed.

Wait a minute. Didn’t forensics promise a future free of wrongful conviction? As it turns out, physical evidence is often lacking, and even when it’s present it may not be collected or properly handled. Cotton, Jones and Coley would have never been convicted had officials realized that the materials they gathered actually carried the perpetrators’ DNA. On the other hand, inexpert application of forensic techniques can make things worse – *much* worse as the Willingham imbroglio illustrates. Indeed, according to the Registry, thirty-six of the 124 wrongful convictions recorded in 2007 (a full twenty-nine percent) are partly or wholly attributable to forensic goofs. It’s not just subjective techniques such as handwriting examination and dog-scent evidence that can cause problems. Sophisticated methods including ballistics, serology and even DNA have also been blamed for “identifying” the wrong person. We recently discussed [a move by the Department of Justice](#) to prevent such blunders by regularizing the work of Federal forensic scientists (click [here](#) and [here](#)). Unfortunately, it seems that politics may have doomed this effort. (For an authoritative assessment of the state of the forensic art check out the National Research Council’s landmark 2009 report, “[Strengthening Forensic Science in the United States: A Path Forward](#).”).

What can be done to combat miscarriages of justice? We must recognize that some cops, lab employees and prosecutors are careless, take dangerous shortcuts and habitually seize on convenient solutions. And that agencies have fostered such tendencies by emphasizing and rewarding numerical productivity. “What counts” must not simply be “what’s counted.” As our blog [has repeatedly warned](#), one cannot champion crude measures such as number of arrests and expect that employees will exercise good judgment in the field – or the lab.

Still, we’ve always assumed that mistakes which underlie wrongful convictions are usually errors in judgment. But according to the Registry, more than half the blunders this year cross the line into something more. So far in 2017, official misconduct – meaning, *on purpose* – figures as a cause or contributor for seventy-nine of 124 wrongful convictions. That’s a full sixty-four percent. (Perjury/false accusation trailed just behind with seventy-seven exonerations. Inadequate legal defense was a factor in forty-nine, false or misleading forensic evidence in thirty-six, mistaken witness identification in thirty-two and false confessions in twenty-six.)

For a stunning example of how far policing can fall look up this year’s alphabetically first victim of official misconduct: [Roberto Almodovar](#), whose wrongful conviction is attributed to witness coercion by Chicago detective Reynaldo Guevara. According to the Registry, and to [a recent, eye-popping article](#) in the *Chicago Sun-Times*, this was only the latest in a long string of episodes of alleged “bullying” by Guevara. So far his handiwork has resulted in *seven* exonerations and, in 2009, a stunning \$20 million civil award to one of the victims. (By the way, Guevara recently took the Fifth, and by that we don’t mean booze.)

Sad to say, this isn’t the first time that a Chicago detective has come under fire for such things. In 2010 [the Feds convicted](#) one-time Chicago police commander Jon Burge “for falsely denying in an earlier civil suit that in the 1980s he and his officers extracted confessions through beatings, electric shocks and suffocation.”

And it’s not just the cops. Check out [“People do Forensics”](#) and [“Better Late Than Never”](#):

The Justice Department and FBI have formally acknowledged that nearly every examiner in an elite FBI forensic unit gave flawed testimony in almost all trials in which they offered evidence against criminal defendants over more than a two-decade period before 2000....The cases include those of 32 defendants sentenced to death. Of those, 14 have been executed or died in prison, the groups said under an agreement with the government to release results after the review of the first 200 convictions.

Well, there's no need to bully readers: our point's been made. Many miscarriages of justice aren't "accidents": they're the product of willful misconduct. Yet regardless of the justification for using shortcuts – whether it's to assure that offenders are punished, or something more self-serving such as pleasing superiors and gaining recognition – taking the low road is simply wrong. As a quick glance through the Registry reveals, in criminal justice it's also apparently quite common. And until *that* is openly acknowledged, innocents will suffer while the guilty remain free to continue their predations.