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**Constructing Guilt, Obstructing Truth:
How the Spectacle of Wrongful Conviction Reveals and Magnifies Fundamental Flaws in
the Criminal Justice System**

Senior Project Submitted to
The Division of Social Studies
of Bard College

by
Fiona Hession

Annandale-on-Hudson, New York
May 2020

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Abstract

The spectacle in American media and entertainment of wrongful conviction exceptionalizes the phenomenon, but wrongful conviction should operate as a lens through which to understand the criminal justice system more fundamentally. Upon analysis, it becomes clear that wrongful conviction cases highlight core issues in the very fabric of the criminal justice system, which create an environment conducive to error, coercion, and outright misconduct. Among such issues are: (1) the adversarial system and the nature of the careers and roles of criminal justice agents (for example, a prosecutor's job is to convince a jury that a defendant is guilty, regardless of the truth), (2) incentives built into the structure of the system which are geared towards producing guilty verdicts through the use of coercive methods, and (3) the opacity of the system's functionings and the way that criminal justice agents carry out their jobs which promotes a lack of accountability.

Introduction

On the morning of April 20, 1989, twenty-eight year old Trisha Meili was discovered unconscious in Manhattan's Central Park, having been brutally attacked the previous night while out jogging through the park.¹ She was left with injuries so severe that she fell into a coma, from which she eventually recovered with no memory of the incident.

On the same night that Meili had been attacked, a group of approximately thirty young Black and Latino boys had been hanging out in a separate area of the park.² Some were reported to have been heckling passersby.

Five of the boys—Raymond Santana and Kevin Richardson, both fourteen at the time, Yusef Salaam and Antron McCray, both fifteen, and Korey Wise, sixteen—were targeted as prime suspects in the attack. What ensued has been described as a media frenzy, shaping public opinion about the boys and creating widespread demand for their conviction, even their death.³ Media attention made the boys out to be monsters; violent Black men who had viciously attacked an innocent white woman, though in reality, they were children.

Behind the scenes of the media frenzy, the boys, all minors save for Wise, underwent unsupervised interrogations, some spanning more than twenty hours.⁴ All five eventually

¹ Norris, R. J.; Redlich, A. D. (2013). Seeking justice, compromising truth criminal admissions and the prisoner's dilemma. *Albany Law Review*, 77(3),1005. All information about the Central Park Five case in the next few paragraphs comes from this article, unless otherwise cited.

² Tharps, Lori L. (2014). The Case for Black with a Capital B. *The New York Times*. Though this thesis does not center on race, I include this because the Central Park Five case in particular was so wrapped up in racial tensions and portrayals of Black men in media as violent criminals. This article sums up the argument that while black with a lower case b refers merely to a color, Black with a capital B should be used to refer to African Americans as a group of people from the African diaspora. So, I capitalize it out of respect and because the Central Park Five boys were targeted hugely in part because they are Black males.

³ Norris, R. J.; Redlich, A. D. (2013). Seeking justice, compromising truth criminal admissions and the prisoner's dilemma. *Albany Law Review*, 77(3),1005.

⁴ Norris, R. J.; Redlich, A. D. (2013). Seeking justice, compromising truth criminal admissions and the prisoner's dilemma. *Albany Law Review*, 77(3),1006.

confessed to partaking in the attack, and despite extreme inconsistencies in their confessions compared to each other's and to the concrete facts of the crime—as well as a complete lack of concrete evidence implicating them and there being DNA evidence discovered which in fact did not match a single one of theirs—all were convicted.

The boys served several years in prison—ranging from five to fifteen years in each—until 2002, when a man named Matias Reyes, incarcerated for a violent sex crime committed years later, confessed to attacking Meili in Central Park. Reyes was confirmed as the perpetrator through DNA testing, after which the Central Park Five, as these boys had become known, were eventually exonerated.⁵

In the years since their exoneration, a lot has been revealed about what went wrong during the investigation against the boys, throughout the course of their interrogations and their highly publicized trials. NYPD detectives questioned the boys, all minors save for Wise who was considered legally an adult at sixteen, for hours at a time, much of that time without their parents present. Detectives manipulated the boys individually, claiming to each that one or more of the others had implicated him in order to persuade each to start talking, “playing the juvenile suspects against one another, a tactic that would prove to be quite effective,” in prompting them to implicate themselves and each other.⁶

During trial, DNA evidence which conclusively did not match any of the boys' DNA was explained away with the assertion that there must have been a sixth attacker whom had simply not been caught.⁷ Hairs found on two of the boys' clothing were asserted by the prosecution to be

⁵ *Ibid.*

⁶ Norris, R. J.; Redlich, A. D. (2013). Seeking justice, compromising truth criminal admissions and the prisoner's dilemma. *Albany Law Review*, 77(3),1007.

⁷ Gerschman, Bennett. (2019). Central Park Five Prosecutor 'Misconduct' (That *When They See Us* Didn't Really Cover). Law & Crime: A Dan Abrams Production.

a direct match for Meily's hair, despite the fact that the consensus of the forensic science community at the time was that hair analysis is one of the weakest types of forensic evidence, and that describing hair as 'matching' is inaccurate and therefore discouraged.⁸ The confessions and the ways in which the prosecution framed the evidence in court together had the consequence of resulting in their convictions.

The Central Park Five case "stands as an infamous stain on the fabric of American criminal justice, displaying the fragility and vulnerability of the system to error."⁹ It is one of the most widely known wrongful conviction cases, largely due to the fact that it was so highly publicized in the first place. It is one of too many in which, whether through deliberate misconduct, accidental coercion, or mistakes on the part of police and prosecution, or some combination of these factors, individuals have been targeted, manipulated, lied to and lied about, and subsequently found guilty of a crime which they did not commit.

There is no "systematic data" on" on wrongful conviction in the United States, and no "credible methodology has been developed to estimate the true extent of wrongful conviction."¹⁰ It is not possible to know precisely how many people have been wrongfully convicted because it is not always discovered and proven when a conviction is false. Exoneration—the undoing of a conviction based on new evidence that absolves the suspect that was detained— is an uncovering process, often requiring that someone besides the convicted, and someone who has the legal and financial resources, look into the case to search for evidence on which to base a need to reopen the case. Furthermore, DNA evidence is not always present in a case. Whether there was no

⁸ Ibid.

⁹ Huff, C. Ronald. *Wrongful Convictions in the United States*. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 60). Temple University Press.

¹⁰ Ibid.

DNA left at the original crime scene, whether a crime scene was not properly processed and DNA not properly collected by investigators, or whether DNA evidence from these cases has been preserved at all in the years following these convictions.

All of that said, a valuable resource for available statistics on exoneration is the Innocence Project, a nonprofit organization which works to exonerate wrongfully convicted individuals through DNA testing, and to reform the criminal justice system to prevent future wrongful convictions.¹¹ The Innocence Project receives thousands of letters annually from incarcerated people claiming that they have been wrongfully convicted. The organization can only take about 1 percent of all of the cases that are given to them, however.¹² According to their website, the Innocence Project has won and documented 365 exonerations in the United States since 1989 through DNA evidence, and so from their work, 365 people are now proven to have been convicted of something that they did not do. The Innocence Project has also collected important statistics from among these exonerations and their cases. Of all of these 365 cases, 70 percent involved eyewitness misidentification, 42 percent involved cross-racial misidentification, 28 percent involved false confessions.¹³

Wrongful convictions have been documented here and there periodically, but not necessarily understood or acknowledged as a phenomenon until recent decades. Scholar Ronald Huff writes in his piece, “Wrongful Conviction: International Perspectives on Miscarriages of Justice,” that “beginning in the 1990s, and continuing today, a decided shift has occurred in

¹¹ The Innocence Project. DNA Exonerations in the United States. Retrieved from <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>. Information from this page will hitherto be cited as The Innocence Project, as I only am using information from this page on their website.

¹² Garbus, Liz, Alex Gibney, and Roger Ross Williams. (2020). *The Innocence Files*. [Documentary Motion Picture Series]

¹³ The Innocence Project.

scholarly research, as well as in media attention and public opinion,” on wrongful conviction. Huff continues, “the increasing awareness of this issue among citizens and policymakers has been closely linked to the highly publicized postconviction DNA exonerations of individuals who served long prison sentences and the increasing abolition of or moratoria on the use of the death penalty in the United States.”¹⁴

The idea that the criminal justice system at least somewhat regularly convicts innocent people is therefore relatively new in widespread societal consciousness, because exoneration based on DNA evidence was not possible until the late 1980’s, which introduced critical advancements in DNA technology. This and the incredible media attention surrounding cases like the Central Park Five case, both at trial and years later at the time of exoneration post DNA testing, has had a clear impact on this shift.

This increased societal awareness of the false conviction phenomenon has contributed to a broader understanding not only that our criminal justice system does not work as well as it should, but that in fact it has often been entirely wrong about whom it convicts. It has ruined people’s lives by incarcerating them for sometimes decades before they were exonerated, and given that it is estimated that 4 percent of people on death row are innocent and some exonerations have been of individuals who were on death row, it can be assumed that innocent people have been put to death in the past.¹⁵¹⁶

¹⁴ Huff, C. Ronald. Wrongful Convictions in the United States. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 59-70). Temple University Press.

¹⁵ Pilkington, Ed. (2014). US death row study: 4% of defendants sentenced to die are innocent. *The Guardian*.

¹⁶ As far as I can find in my research, there do not seem to be any confirmed cases in which an executed individual has been posthumously proven to be innocent, and there does not seem to be much information on this in general, which is interesting. I suppose it is more pressing to prove the innocence of those currently on death row, but it seems a bit odd that there is no data at all (as far as I could find) on this.

Stemming from and contributing to this growth in awareness surrounding wrongful conviction is an element of media and spectacle surrounding the phenomenon. Media capitalizes on human interest and emotional outrage at the prospect of the conviction, incarceration, and sometimes execution of the innocent—generating reactivity from the public that seeks retribution for the mishandling of justice.

Documentaries, biographical films, articles, and books alike document individual cases of wrongful conviction, usually highlighting and exposing the shortcomings or misconduct of those who worked these cases. I assert that such material can have the consequence of dramatizing and exceptionalizing wrongful conviction, and reducing the source of the phenomenon in the eyes of the public to the shoddy work of those involved in these cases, such as individual rogue police officers or corrupt prosecutors, by painting such actors as villains who alone are responsible for the wrongful convictions in their cases. Consuming such media and rallying against corrupt or incompetent individuals hardly scratches the surface of this problem, however.

In this thesis, because wrongful conviction stories are typically spread through media and entertainment, I construct wrongful conviction in a context of spectacle and spectatorship as relating to media and entertainment drawing attention to the issue, and assert how spectacle dramatizes and exceptionalizes criminal justice and punishment phenomena including wrongful conviction. I then offer a brief synopsis of the structural causes of the wrongful conviction problem as identified by existing literature, and give case examples in order to demonstrate how mistakes and misconduct have occurred in real scenarios. I then explain ideological underpinnings at play in wrongful conviction which, I suggest, are fundamental problems in the structure of the system itself.

In particular, I identify three issues in criminal justice structure which are in the background and partially at cause for wrongful conviction: the adversarial system—its very nature and the function of the roles of agents operating within it—, incentive and coercion, and opacity—of the system’s inner workings and of how people are conducting their work within this system. I assert that wrongful conviction cases highlight how these three issues feed into one another: how the function of careers in criminal justice are constructed in ways which create guilty verdicts, how incentives and coercion impact criminal justice agents and defendants alike, and how opacity and lack of accountability allow misconduct and mistakes to occur in the first place. Furthermore, all of these problems call into question whether our system is structured to obtain justice, and the truth, at all.

Wrongful convictions are not exceptional, their causes are deeply embedded in the structure of our system, and because they effectively catch our attention in media, they have the potential to, upon further inquiry, reveal intensely flawed technical and ideological structures and underpinnings of the criminal justice system as a whole. That wrongful convictions have been produced so regularly should raise essential questions about the very structure and nature of the system producing them, and that wrongful conviction is spectacularized can simultaneously obscure and reveal that fact.

Chapter 1:

Spectacle and Spectatorship, Dramatization and Exceptionalization, Media and Entertainment

Past and Present of the Spectacle of Punishment

Before delving into wrongful conviction specifically, it is worthwhile to discuss spectacle and spectatorship more generally in relation to media consumption and criminal justice.

There has always been a strong element of spectacle and drama in punishment and criminal justice. The public punishments and executions of the Early Modern Period were deeply theatrical, as though putting on a play or a show for the audience that would often physically gather to view such punishments.¹⁷

Though the modes of punishment have changed and developed drastically—with the historic decline in public displays and torture and the shift to imprisonment—punishment has its roots in drama and spectacle which exist to this day in the form of media and in television—in tabloids, courtroom dramas, crime shows, documentaries, and so on. There have always been spectators to crime and punishment. While spectators no longer congregate in village squares to watch a hanging at the scaffold like they once did, they do take part in spectatorship in more modern ways.

¹⁷ Spierenburg, Pieter. (1995). *The Body and the State: Early Modern Europe*. In Morris & Rothman Eds. *The Oxford History of the Prison*. Oxford University Press.

Cultural and Societal Implications of Spectatorship

Spectatorship, particularly viewing and consuming media and entertainment material surrounding punishment, plays an essential role in thinking about criminal justice and punishment practices, and cultural and societal understandings of our system. In Michelle Brown's book, *The Culture of Punishment: Prison, Society, and Spectacle*, Brown describes the complexities of the relationship between spectator and punishment, and the nature of the spectator's distant and removed involvement in criminal justice:

In contexts where individuals only know incarceration at a distance, the dynamics of penal participation are slippery and can quickly devolve into complex, often voyeuristic frameworks which privilege various kinds of punitive, individualistic judgement. Citizens may participate vicariously in mediated worlds where pain is inflicted across television, films, recreation, and news. They may be disturbed by these images. They may find such engagement titillating. In any case, they are enthralled in a manner that is not easily conducive to analysis or self-reflection. Thus, a shadow world of moral judgement and penal logic exists beyond prison walls as a constant and perpetually growing cultural resource for people to make sense of punishment. Few other institutions encounter such a radical and momentous divide between their physical realities and cultural imagining.¹⁸

While I am not talking about prisons specifically in this thesis, and instead more so criminal justice practices outside of and leading up to conviction and imprisonment, Brown's points are relevant and significant to this thesis. Criminal justice and punishment, in the news and in entertainment material, are compelling to people as spectators, whether it disturbs or excites them, and material on these subjects is often made expressly for the entertainment or consumption of spectators who get to view and interact with criminal justice in some distant, vicarious, voyeuristic capacity. While it was once the norm for spectators to engage directly in

¹⁸ Brown, M. (2009). Introduction: Notes on Becoming a Penal Spectator. In *The Culture of Punishment: Prison, Society, and Spectacle* (pp. 1-20). NYU Press.

punishment by attending public hangings or even by participating in such practices as stoning, spectators of today participate in punishment minimally through jury duty, but more regularly through consumption of news and entertainment. Entertainment allows people to separate themselves from the world they are viewing on a screen, to imagine themselves totally unaffected by criminal justice—luxuriating in their freedom to sit on a couch while watching television shows about criminals being caught and paying some debt to society, and villainizing and imagining themselves above such people.

The quality of dramatization for the entertainment and excitement of spectators creates an often very skewed societal view of what criminal justice, and crime, look like, often overshadowing some of the more mundane, day to day happenings in punishment, and forming a view that is seeped in drama and extremities. Furthermore, entertainment and media portrayals play a large role in how people pay attention to and talk about criminal justice, as well as what receives attention and what does not. For example, since high profile, violent crimes are considered more extreme, more interesting and entertaining, they typically garner more attention than low level crime and everyday criminal justice happenings. As such, violent crime is typically overrepresented in media, and on television, “the rate of portrayal of crime and violence on television programs is roughly ten times greater than its real world incidence.”¹⁹

Expanding upon Brown’s distinction between the cultural imagining and physical realities of criminal justice, it seems as though there are two distinct worlds of criminal justice: the highly spectacularized, documented, and written-about world of murders, bank robberies, and other violent crimes, and the day-to-day operations of policing and punishment.

¹⁹ Shrum, L. (1998). Effects of television portrayals of crime and violence on viewers' perceptions of reality: psychological process perspective. *Legal Studies Forum*, 22(Issues 1, 2, & 3), 258.

Wrongful Conviction as a Spectacle, Blaming Individuals

Per my research, I orient wrongful conviction and exoneration, when discovered and publicized, in the world of the spectacular. This is partly because those who have been exonerated have largely been those convicted of violent, high profile crimes, like rape and murder, meanwhile there is not much data surrounding or thought given to wrongful conviction for serious but less serious offenses such as armed robbery or aggravated assault, or for much lesser offenses such as theft and drug possession.²⁰ Since viewers and consumers of media already pay attention to violent and high profile crimes, and such crimes usually garner severe and life altering punishments, exoneration stories are often spectacles.

Locke E. Bowman writes in his piece, “Lemonade out of Lemons: Can Wrongful Convictions Lead to Criminal Justice Reform,” that there is “high drama and human interest in the exoneration of an innocent person...the image of an innocent person walking through the prison gates still has great salience for the media and the public.” Bowman continues that, as a result, wrongful conviction “is now the stuff of movies, novels, and best selling non-fiction accounts”²¹

Some of these stories, as depicted in films, novels, etc., have gained major traction and attention. An example of this phenomenon is the documentary series *Making a Murderer*, which centers around Steven Avery, who served eighteen years in prison for a rape until DNA evidence exonerated him, only for him to be accused of, tried and convicted for murder in the midst of him suing the police department that mishandled his original case.²² Though he is still incarcerated,

²⁰ Berger, M. (2018). Wrongful Convictions Reported for 6 Percent of Crimes. Penn Today, University of Pennsylvania.

²¹ BOWMAN, L. (2008). LEMONADE OUT OF LEMONS: CAN WRONGFUL CONVICTIONS LEAD TO CRIMINAL JUSTICE REFORM? *The Journal of Criminal Law and Criminology (1973-)*, 98(4), 1503.

²² Schwedel, Heather. (2016). What’s Really Going on in Making a Murderer? A Comprehensive Breakdown. Slate Group LLC.

the series “has generated feverish interest and speculation,”²³ probably in part due to its being a streamable Netflix documentary series and therefore available to an enormous audience.

Another Netflix series surrounding wrongful conviction that has done well in public consumption is *When They See Us*, a reenactment series about the Central Park Five. The series was very popular, and following its release, viewers rallied in anger against the individuals responsible for their convictions: Linda Fairstein, head of the sex crimes unit of the District Attorney’s Office and overseer of the prosecution during the Central Park Five case, and Elizabeth Lederer, the lead prosecutor in the case. Fairstein, who in recent years had become a best selling mystery novelist, was dropped by her publisher due to widespread backlash against her following the release of the show, and has faced rampant criticism on social media.²⁴ Meanwhile, the lead prosecutor on the case, Elizabeth Lederer, was pressured to resign from her teaching position at Columbia Law School following the release of the series, largely due to demands from students at Columbia Law.²⁵

Series like *When They See Us* and other types of media centering on wrongful conviction cases are really effective at garnering attention, thoroughly analyzing evidence and inconsistencies in these cases, and using entertainment platforms to tell the stories of the wrongfully convicted. On the other hand, media and entertainment about wrongful conviction stories exist in the same space that regular crime and punishment oriented media exists, with the roles of spectatorship and spectacle ever-present.

²³ *Ibid.*

²⁴ Jacobs, Julia. (2019). Elizabeth Lederer, Prosecutor of Central Park Five, Resigns from Columbia Law. *New York Times*.

²⁵ *Ibid.*

Just as spectators may watch the retelling of an investigation and relish in a suspect's conviction on a screen from the safety of their couch, villainizing and separating ourselves from such individuals, it is tempting for us as spectators to rally around a dirty cop or prosecutor, an alternative version of a villain in a story. I suggest that this is exactly what has happened in the explosive backlash that occurred regarding Fairstein and Lederer in response to *When They See Us*. But focusing on the faulty actions of individual criminal justice agents, internet mobbing against them and “canceling” them, oversimplifies the issue.²⁶

For one thing, I suggest that the focus on and punishment of such agents—through social and public condemnation—mirrors, in a small way, the wrongful conviction phenomenon. While “canceling” such agents may entail pressuring their employer to fire them or punishing them in some other way, even if the accusations against them are inaccurate or taken out of context, wrongful conviction entails targeting individuals and convicting them even though the accusations against them are untrue.

While of course, Linda Fairstein's being publicly condemned and losing a book deal is nowhere near as life altering as the years in prison spent by the Central Park Five, the parallel is interesting to note. The way in which agents like Fairstein are punished exists in the same paradigm of spectacle and spectatorship that regular crime and punishment does, with people voyeuristically engaging in some manner of vengeful justice, enthralled by and intent on

²⁶ Romano, Aja. (2019). What is Cancel Culture? Why We Keep Fighting About Canceling People. Vox Magazine. I use the term “canceling” because cancel culture is a phenomenon of its own which is both popular and highly contentious at this time, and because this is essentially what happened to Lederer and Fairstein. Canceling in itself is a spectacle, as it typically happens to public figures as a result of “public backlash, often fueled by politically progressive social media,” and comprises of calls “to effectively end their career or revoke their cultural cachet, whether through boycotts of their work or disciplinary action from an employer.” I am of the opinion that while canceling can be useful in exposing the unsavory actions of certain individuals and making a statement, it can also serve as a catalyst for mob mentality and be used to punish people socially, even if the accusations against them are untrue or taken out of context.

retribution. What this should hint at is that rallying against, firing, and “canceling” these individuals does not actually solve a problem, because these individuals are not the extent of the problem.

Because it is a fact that wrongful convictions have actually been produced on an almost regular basis, it cannot simply be that these cases are the fault of individual actors alone, and yet spectators consuming material on wrongful conviction are often left with that impression and focus on these actors, rather than thinking about the system more fundamentally.

I do not dispute that individuals in the criminal justice system are at least partially responsible for unjust outcomes in their cases, nor do I dispute that some criminal justice agents are corrupt and intentionally abusing their position to manipulate and convict people. It is a mistake, however, to get too caught up as spectators in cycles of blame and scapegoating.

It is far more fruitful, and seems more pressing, to investigate the structure in which these individuals are operating. For one thing, “procedural structures can far more easily and permanently be amended than can the morality of individuals.”²⁷ In other words, it is not possible to control or monitor the internal values, morality, and intentions of individual actors who have power in the criminal justice system. We cannot force actors to truly care about justice and truth.

Additionally, the fact that media and spectators tend to focus on one dirty cop or ruthless prosecutor in wrongful conviction cases is, in and of itself, revealing. It begs the deeper question: why have such individuals been able to do what they did, and why has it taken something so dramatic as a television series to uncover and expose their actions?

²⁷ *Ibid.*

I suggest that it is precisely the structure of the system that allows individuals to manipulate and coerce suspects, to carry out misconduct, to cover up contradictory evidence, and so on. It seems that making a spectacle, and garnering media attention, is the sole avenue to draw attention to such happenings, yet the spectacle and mob behavior surrounding attacking and cancelling the agents involved is an enormous distraction, bound up with typical patterns of spectatorship, villainizing, and blame. Focusing on them deflects attention from the problems of the system which allow and encourage them to act as they do and, more often than not, get away with it, as well as the less intentional, inadvertent, structural contributors to this problem.

Chapter 2: Causes and Cases of Wrongful Conviction

General Factors Linked to Wrongful Conviction

In the United States, research has identified several principal factors as being consistently linked to wrongful conviction. These factors include: eyewitness error, “overzealous” law enforcement and prosecutors engaging in misconduct (including withholding evidence, false or coerced confessions and suggestive interrogations, perjury, misleading lineups, the inappropriate use of informants or “snitches”), the ineffective assistance of counsel, community pressure for a conviction, and forensic science related “errors, incompetence, and fraud.”²⁸²⁹

There is normally more than one factor at cause in a wrongful conviction case, and there are “interaction effects among these factors.”³⁰ For example, “police and prosecutorial overzealousness might be combined with perjury, withholding of evidence, and the inappropriate use of jailhouse informants, all occurring in a case in which the defendant has inadequate assistance of counsel and is therefore unable to discover these errors.”³¹

Some of these causes can be at least partially a matter of resulting from unreliable and outdated methods of investigation, and out of mistakes and or inaccuracy. For example, eyewitness testimony is proven to be very unreliable due to the malleability and inaccuracy of

²⁸ Wrongful Convictions in the United States. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 61). Temple University Press.

²⁹ Although coerced confessions, misleading lineups, and use of jailhouse “snitches” may be technically categorized here as misconduct, agents engaging in these activities do not necessarily know that they are corrupting the investigation and do not necessarily have bad intentions, often they think they are doing good investigative work. As I will discuss later, there are pressures and motivations by nature of their jobs to construct guilt which inform their behavior.

³⁰ *Ibid.*

³¹ *Ibid.*

memory.³² Interrogations, use of informants, and forensic evidence all have the capacity to produce accidental errors leading to conviction as well, even when investigators have the best of intentions and are doing their job technically correctly or believe they are doing good work.

Though many wrongful conviction cases are caused in part by errors or unreliable methods of investigation, misconduct is a highly prominent factor. Of DNA exonerations reported by Scheck et al. of the Innocence Project, “63 percent involved police or prosecutorial misconduct, which is a staggering statistic.”³³ Types of misconduct from this research include:

“Courtroom misconduct (includes making inappropriate or inflammatory comments in the presence of the jury; introducing or attempting to introduce inadmissible, inappropriate, or inflammatory evidence; mischaracterizing the evidence or the facts of the case to the court or jury; committing violations pertaining to jury selection; or making improper closing arguments,” “mishandling of physical evidence (includes hiding, destroying, or tampering with evidence, case files, or court records),” “failing to disclose exculpatory evidence,” “threatening, badgering, or tampering with witnesses,” and “using false or misleading evidence.”³⁴

The fact that the percentage of misconduct in these cases is so high, and that there are such clear patterns of specific types of misconduct in documented wrongful conviction cases, should raise alarm bells. This means that specific forms of misconduct are carried out regularly in these cases, enough to form observable patterns. This should prompt questions surrounding what is causing this behavior, and why it is so clearly rampant.

³² Arkowitz, Hal and Scott O. Lilienfeld. (2010). Why Science Tells Us Not to Rely on Eyewitness Accounts. *Scientific American*.

³³ *Ibid.*

³⁴ Huff, C. Ronald. Wrongful Convictions in the United States. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 62). Temple University Press.

Biases and Pressure

During the course of investigation, there are many ways investigators can become convinced that they have the right person while pursuing a suspect even when they do not. Investigators intent on an innocent individual do not necessarily have unsavory intentions, but they may have preconceived notions or implicit/explicit biases which inform their belief that a certain individual is guilty.

In his book *Blind Injustice: A Former Prosecutor Exposes the Psychology and Politics of Wrongful Convictions*, Mark Godsey identifies the prevalence of confirmation bias—the seeking and interpretation of evidence as confirmation of existing beliefs, theories, and expectations—in wrongful conviction cases and in criminal justice generally. As an example of this, he says, “detectives tend to believe witnesses who tell them stories that confirm their own beliefs about a case,” while “witnesses who give contradictory information are seen as lying or mistaken and are often pushed to the wayside.”³⁵ Because of this, detectives’ preconceived beliefs can corrupt the way that they conduct their investigation even if they are not aware of it.

Additionally, police and detectives often face external, societal pressure to solve high profile and violent cases, especially rape and murder cases, quickly. Perhaps they believe they are discovering the truth, but ultimately, “organizational pressures to move on to the next case (time and caseload pressures) and to press for a conviction (public and political pressures)” can hijack an investigation and take precedence over finding the truth.³⁶

³⁵ Godsey, M. (2017). Blind Bias. In *Blind Injustice: A Former Prosecutor Exposes the Psychology and Politics of Wrongful Convictions* (pp. 93). Oakland, California: University of California Press.

³⁶ Huff, C. Ronald. Wrongful Convictions in the United States. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 65). Temple University Press.

As scholars Norris and Redlich suggest in “Seeking Justice, Compromising Truth,” it is not likely “that the detectives who interrogated the Central Park Five believed they were doing anything wrong,” for example. Norris and Redlich continue, “given the complex social and political situation in which the heinous crime occurred, it is far more likely that the officers felt enormous pressure to solve the case quickly, and truly believed they had the guilty parties in their grasp.”³⁷ A combination of factors put enormous pressure on the investigators in this case and informed their actions: the incredibly violent nature of the crime, the status of the victim as an upper class white woman, and the portrayal of the boys in the media as “savage ‘wolfpacks’ of black and brown youth whose predatory ‘wilding’ presaged the coming moral panic over juvenile ‘super-predators.’”³⁸

The combination of external pressures and personal preconceived notions and biases may lead investigators to develop a presumption of guilt when pursuing a suspect, which is typically referred to as tunnel vision.³⁹ In some cases, even if there is not sufficient evidence or any evidence at all, “police will formulate a theory of the crime and use their intuition, or sixth sense, to focus on a particular subject.”⁴⁰ This presumption of guilt can lead police to use manipulative and coercive methods to prove what they believe or in some cases to commit misconduct, like falsifying evidence, to support their story and their belief.

This can be seen clearly in two modes of investigation on which I will focus here: police handling of eyewitness testimony, as well as in interrogation leading to false confession.

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³⁸ Green, D. A. (2017). Savage Portrayals: Race, Media, and the Central Park Jogger Story. *Contemporary Sociology*, 46(1), 44.

³⁹ Norris, R. J.; Redlich, A. D. (2013). Seeking justice, compromising truth criminal admissions and the prisoner's dilemma. *Albany Law Review*, 77(3), 1011.

⁴⁰ *Ibid.*

Suggestive tactics are often used by police both in questioning eyewitnesses and in interrogation of suspects, tactics which are manipulative and coercive.

Coercion in Eyewitness Testimony and Interrogation

Eyewitness testimony is already very unreliable because memory is malleable and not representative of the truth, and it becomes even more unreliable when considering that “lineup administrators may influence witnesses not only as to whether to pick, but also as to whom to pick,” which can be “deliberate but may also be inadvertent and quite subtle.”⁴¹ This phenomenon is referred to as “suspect-specific bias.”⁴²

Not only does the administrator encourage the witness to pick someone out of the lineup—which technically they do not have to do since it is always possible that the true perpetrator is not in the lineup—but the administrator actually sways them toward picking a specific suspect (whether or not they realize they are doing so), which, given the malleability of memory, can be very easy to do.⁴³ This act of coercion can be done with subtle statements, such as “I noticed you paused on number 3,” which can influence the witness into believing they recognize the person, or perhaps into suggesting vaguely to the administrator that it could be that person.⁴⁴ In situations like this, it is ridiculously easy for an investigator with tunnel vision who believes he or she is right about a suspect to convince an eyewitness that that suspect is the person they saw, even if that is not, in fact, the case.

⁴¹ Clark, E. Steven and Ryan D Godfrey. (2009). Eyewitness identification evidence and innocence risk. *Psychonomic Bulletin Review*. 16(1), 35.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

In suspect interrogation, too, coercive and suggestive methods are often used which can lead to false confessions by persuading or pressuring suspects to confess to a crime which they did not commit. False confession is not nearly as common a factor in wrongful conviction as eyewitness misidentification, as it is only associated with 28 percent of wrongful conviction cases as compared to 70 percent based on the Innocence Project's data, yet it has been an incredibly damning and powerful factor when present. In fact, there are several cases in which exculpatory DNA evidence was ignored because of the presence of a confession.⁴⁵ This is because confessions are often considered open and shut case-closers, and because of "the pervasive myth that people do not confess to crimes they did not commit."⁴⁶ In reality, the process of obtaining confessions can be far more complicated than most people, and jurors, believe.

Research has shown that false confessions can be incredibly detailed and more than just a simple "I did it," and have been found to occur due to police, intentionally or not, contaminating the interrogation.⁴⁷ This is done by essentially feeding intimate details about the crime to the suspect over the course of the interrogation, which the suspect, if tired, frightened, or psychologically worn enough after sometimes hours upon hours of nonstop questioning, sometimes after threats, might eventually and gradually parrot back to them. Interrogators can then use these details of the crime, referred to as "insider information," to claim that the confessor is guilty.⁴⁸

⁴⁵ Garrett, B. (2010). The Substance of False Confessions. *Stanford Law Review*, 62(4), 1051-1118

⁴⁶ Kassin, S. (2008). False Confessions: Causes, Consequences, and Implications for Reform. *Current Directions in Psychological Science*, 17(4), 249.

⁴⁷ Garrett, B. (2010). The Substance of False Confessions. *Stanford Law Review*, 62(4), 1051-1118.

⁴⁸ *Ibid.*

This was the case in the interrogation of Kim Crafton, who confessed to killing a man over the course of 17 hours of non-stop questioning.⁴⁹ The entire interrogation was audio taped, and when Jim Trainum, one of the detectives who had interrogated her, listened to the tape, he realized as he listened that he had inadvertently led her to a false confession by slowly feeding her intimate details of the murder as he questioned her. Crafton gradually began to parrot these details back to him as the hours wore on.

For example, at one point, she was shown a receipt for Chinese food which had been purchased with the victim's credit card after his murder. Later on in the interrogation, Crafton (falsely) admitted to eating one of the dishes on the receipt that had previously been shown to her, only after being pressed repeatedly to give an answer when they asked her what she had eaten. Her identification of a meal on the receipt was taken by Trainum as "insider information," yet he had literally handed her that detail beforehand.

Trainum also realized in listening to the recording that he had entirely ignored exculpatory details, the most pressing of which was the fact that Crafton claimed that she was seven months pregnant at the time of the murder, which, if verified, would have excluded her as the suspect. This is because the woman captured in ATM camera footage using the victim's credit card had clearly not been pregnant.⁵⁰

While Trainum did not have malicious or dishonest intentions and believed he had the right suspect, he developed tunnel vision and fell subject to confirmation bias. He gradually coerced this woman into returning details which had been given to her prior, and considered

⁴⁹ Sommer, Will. (2014). District Sued Over *This American Life* Revelations of False Confession. Washington City Paper.

⁵⁰ *This American Life: Confessions*.

those details evidence of her guilt while ignoring exculpatory information altogether. He was able to realize his mistake only in hindsight by listening to the recording of him at work.

Highlighting Misconduct

There are plenty of cases in which false confessions and inaccurate eyewitness testimony have been accidentally coerced by interrogators who did not realize they were contaminating the confessions or manipulating the memory of witnesses. Agents like Jim Trainum are most likely motivated by the belief that they have the right suspect and are determined to prove it, and probably believe they are doing good detective work. On the other hand, there are many cases in which deliberate, outrageous misconduct in handling eyewitnesses, obtaining confessions, and in other areas, occurs.

This is so in the case of Chester Hollman, who was wrongfully convicted of a hit and run murder in which several eyewitnesses were present in 1991.⁵¹ 24 year old Tae Jung Ho was walking with his friend Junko Nihei when two men approached them, pushed Ho to the ground, robbed him and shot him at close range, leaving Nihei unharmed when they fled the scene. Due to a coincidence in his vehicle being similar to that which was identified as the getaway car, as well as having a few letters in common with the alleged license plate number, Chester, who had been driving around with a friend of his, Deirdre Jones, was targeted for the crime, despite countless things that cast doubt on his guilt.

Police pulled the pair over and brought them to the scene, where Nihei and other eyewitnesses remained. Not a single one of them could identify Chester as being involved,

⁵¹ All of the following details of Chester's story are drawn directly from the Innocence Files Documentary, in which Chester describes his experience, and in which post-conviction detectives recount the details of the case.

including Nihei who had been right there when the murder occurred, and other witnesses outright asserted that they did not believe it was Chester whom they had seen.

There were significant details which should have cast doubt for police on Chester's guilt. Nihei stated a concrete detail that the assailant was wearing red shorts, while Chester was wearing green sweatpants, and additionally, while eyewitnesses said they saw a total of four people in the getaway car, there were only two in Chester's car. Furthermore, when Chester was pulled over, his car was driving toward the scene, rather than away from it like a getaway car would be expected to be. Law enforcement ignored all of these details and inconsistencies and arrested him.

Chester alleges that he was taken into a room and handcuffed to a chair before Detective Piree walked into the room and, without warning, punched him square in the mouth, saying "You want to kill people in my city?" When Chester asked for his phone call, he was repeatedly told that all of the lines were busy and never was allowed to make that call.

Misconduct occurred without Chester's knowledge as well: Piree threatened and coerced two people into making witness statements against Chester. One of these people was Andrew Dawkins, who was approached by detectives who came prepared with his rap sheet, and allegedly said to him that if he did not want to go to jail for various warrants and open cases which Dawkins had relating to drugs and car theft, that he would "cooperate." He was given Chester's name and instructed to state that he had seen Chester running away from the scene, which Dawkins did out of fear for himself.

The second person, whose testimony was used as a key point in implicating him, Deirde Jones, was in the car with Chester at the time of the crime and his arrest. In questioning, she at

some point stated that Chester was the person who had held down and robbed the victim while someone else shot him. Deirdre later recanted, however, saying that behind the scenes, she was threatened to be charged with murder as a co-conspirator if she did not state that Chester was guilty, and told that she would not be charged if she cooperated. She says her statement was “forced, inaccurate, and given under duress.”⁵²

On top of all of this, during interrogation, Detective Piree allegedly committed an extreme, pronounced act of perjury by fabricating a part of Chester’s statement that he claims he never actually made. The interrogation was recorded by writing the questions and answers verbatim, which was done by Detective Piree as he interrogated Chester. Chester insisted that he was innocent and that Deirdre Jones was lying. When Detective Piree presented Chester with the transcript of the interrogation to sign, he covered the top of the page with his hand. Later, it would come out in court that a sentence was written at the top of the page, allegedly spoken by Chester during interrogation, which said: “I told that dumb bitch to keep her mouth shut. Shit.”

This fabricated sentence was then used in court to suggest that Chester was essentially admitting guilt by admitting that he had told Deirdre not to talk. In court, the District Attorney in his case, Roger King, said the following regarding the forged statement:

‘I told [her] to keep her mouth shut.’ What do you think that means ladies and gentlemen? Were those the words of a man who got his hands caught in the cookie jar? Are those the words of a man who finally realized that his pants were about to fall and the game was up? I would submit to you, that it is.

⁵² Garbus, Liz, Alex Gibney, and Roger Ross Williams. (2020). *The Innocence Files*. [Documentary Motion Picture Series].

King, in speaking to the jury, painted a picture of Chester using narrative language to explain a fictional scenario as though it were a clear fact. He constructed a simple sentence—which, in and of itself, had been fabricated—as obvious guilt. In *The Innocence Files*, Chester says of King, “He knew what he was doing was wrong, but his job is to convict.”⁵³

I go into such detail on Chester’s case partially to demonstrate what media and documentaries like the *Innocence Files* do, but primarily because a specific example of exactly how events unfolded in a case leading to a wrongful conviction is useful to understand how this actually happens, and is more effective at describing these situations than mere statistics.

In a way, it does not matter much if Detective Piree firmly believed that Chester was guilty, because Chester’s case highlights how easy it is to create seemingly concrete evidence such as false eyewitness testimony out of thin air, and how investigators can be tempted to falsify evidence to strengthen their case if no one is monitoring them, paying attention to how they are doing their job, or holding them accountable for their actions.

⁵³ *Ibid.*

Chapter 3:

Adversary, Coercion, Opacity: An Honest Pursuit of the Truth?

The Pursuit of Truth

Wrongful convictions, as outcomes in criminal justice proceedings which are inconsistent with the truth of a crime, make it very clear not only that the criminal justice system does not always succeed at discovering the truth, but that there are actually a lot of concrete things about the system that actively and inherently impede pursuit of the truth. Some of these things may include displays of punishment and retribution, organizational pressures for efficiency and to solve cases quickly, societal and public pressure, and devotion to procedure and process.

For example, in some wrongful conviction cases, “the convicted defendant sought reversals of their verdicts on the grounds that they were factually innocent (and in some cases, had new evidence that could potentially exonerate them), only to learn that since they claimed no procedural violations, their chances for success were remote at best.”⁵⁴ This fact highlights the way in which our system prioritizes procedure over truth, though this is ironic, since procedural violations and misconduct are able to occur in the first place and are normally discovered after the fact, if at all.

I draw upon existing literature around the idea that our criminal justice system is not conducive to discovering the truth—and that wrongful convictions are evidence of this— while acknowledging that truth is not always discoverable and that there is not necessarily such a thing as an objective truth. In scholar Ray Finkelstein’s words:

⁵⁴ Huff, C. Ronald. *Wrongful Convictions in the United States*. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 61). Temple University Press.

I doubt the existence of an absolute or objective truth. But, what I do not doubt is that our legal system is not geared to finding the truth, however it is defined. The question that naturally rises, then, is if no one can authoritatively define the truth, how can one argue that a legal system should bother to seek the truth? The short answer is that, even if the courts cannot realize an absolute truth, the public still expects the courts to try. Whether futile or not, the search for truth is central to the court's legitimacy in the public's eye. The public's confidence in the courts' ability to find an objective truth may or may not be philosophically sound, but in the end that does not really matter—the courts must be pragmatic and search for the best approximation of the truth.⁵⁵

As Finkelstein points out, truth is not an absolute or tangible thing, it is subjective and cannot be attained in any totally sound or perfect sense. Yet one would think we should expect and be able to trust that our criminal justice system's primary goal is to discover the truth, and to do its best to serve justice that is consistent with the truth. It seems clear though that this is not the case, based on real outcomes in criminal justice and, in particular, in wrongful conviction cases.

In this chapter, I assert the following: because wrongful conviction cases are clear, striking instances in which the outcome was not consistent with the truth, they should raise questions about our system's methods of truth finding. Furthermore, that they occur so frequently should raise questions about whether or not our system is such that truth is the primary goal in criminal justice at all.

The very fact that wrongful convictions occur demonstrates clearly that our system does not always discover the truth, which is perhaps obvious, since it is unlikely that any criminal justice system could discover the truth in all situations without error, and since truth is not absolute. The fact that wrongful convictions are regularly produced by certain various factors,

⁵⁵ Finkelstein, Ray. (2011). The adversarial system and the search for truth. *Monash University Law Review*, 37(1), 135-144.

however, should suggest that the structure of the system inherently and automatically corrupts the discovery of truth.

I base this argument on three points about the nature of our system: the structure and fundamental problem of the adversarial system (and of the nature of the roles of actors within the system), the incentive structure and use of coercion in our system, and the opacity of our system's inner workings. All of these factors, which are fundamental structural issues built into the criminal justice system, together can trump any pursuit by the criminal justice system for the truth and for true justice. This, in its most obvious and extreme manifestation, can result in wrongful convictions.

The Adversarial System and Prosecutorial Construction of Guilt

The foundation of our criminal justice system is the adversarial system, in which two sides present a case, and a third party makes a decision about what the outcome should be, based on that which is provided by each side.⁵⁶ The design of the adversarial system that we use is “a major contextual factor in the production of wrongful convictions.”⁵⁷ This system “relies on the skill and resources of the prosecution and the defense,” and ideally, the side which is promoting the truth should have a better case and therefore win, resulting in a verdict consistent with the truth.⁵⁸

⁵⁶ Goodpaster, Gary. (1987). On the Theory of American Adversary Criminal Trial. *The Journal of Criminal Law & Criminology*, 78(1), 118.

⁵⁷ Huff, C. Ronald. Wrongful Convictions in the United States. (2008). In HUFF C. & KILLIAS M. (Eds.), *Wrongful Conviction: International Perspectives on Miscarriages of Justice* (pp. 61). Temple University Press.

⁵⁸ *Ibid.*

Yet by nature of the way our system structures and conducts investigation and trial, in nearly all criminal cases, “the prosecution enjoys considerably more resources than does the defense,” including more staff—police and detectives, forensic scientists, and prosecutors are all on the side of the prosecution while often a single lawyer or team of lawyers makes up the side of the defense— as well as “budgetary resources.”⁵⁹ By comparison, defense counsel relies almost entirely, if not entirely, on the police and prosecutorial investigation, “rather than conducting an independent investigation to establish the facts.”⁶⁰ In other words, the adversarial system is set up such that the defense receives the leftovers of the investigation that was done with the sole intent to prove the guilt of the defendant.

The idea behind the adversarial system is that two sides present their case and “the trier of truth,” either a jury or a judge, decides the outcome. But “this assumes that both sides will present vigorous arguments and will have conducted thorough investigations to determine the facts of the case.”⁶¹ In reality, the arguments of the prosecution and defense are not equally powerful, both because the police and prosecution have such a head start over the defense and because, based on the statistics of misconduct in wrongful conviction available, it is clear that we cannot assume that both sides will play fair. Therefore, we cannot assume the adversarial system will provide us with the truth.

The nature of the jobs and roles of agents working in the adversarial criminal justice system is conducive to producing guilty verdicts rather than the truth. This can be seen firstly in the imbalance of advantage and power given to the side of the prosecution over the defense, as well as in the fact that the job and purpose of investigators and prosecutors in criminal cases is to

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

literally construct guilt as a believable narrative, a story, to be given to the jury as though it is truth. In his work, “On the Theory of American Adversary Criminal Trial,” Gary Goodpaster says the following:

The American adversary criminal trial is a regulated storytelling contest between champions of competing, interpretive stories that are composed under significant restraints. The parties compose their stories for and present them to an impartial and passive audience which acts as a decision-maker, by assigning criminal liability on the basis of the stories.⁶²

Because the two sides in a case present opposing arguments and are competing, and because in order to do well at their role they must fulfill the function of their role (prosecutors are meant to secure a conviction and by doing so are doing their job and fulfilling their role), they “are generally committed to prevailing rather than to discovering the truth.”⁶³ Criminal investigation and trials are essentially a competitive game of narrative skill and storytelling, rather than an investigation based on an effort for determining the truth, and the narratives provided in court are presented as truth when in fact they are stories created by individuals whose jobs are to construct and obtain guilt, or to deny and cast doubt upon guilt.

Constructing guilt is creating a narrative. In their pursuit to prove guilt, agents on the prosecutorial side create it, they “shape the evidence and use their persuasion skills toward that end.”⁶⁴ During investigation, police and detectives form theories about what might have happened, and due to confirmation bias might ignore all evidence that does not fit into their theory of what happened, which inevitably twists the truth. This was so in Chester Hollman’s

⁶² Goodpaster, Gary. (1987). On the Theory of American Adversary Criminal Trial. *The Journal of Criminal Law & Criminology*, 78(1), 120.

⁶³ Goodpaster, Gary. (1987). On the Theory of American Adversary Criminal Trial. *The Journal of Criminal Law & Criminology*, 78(1), 122.

⁶⁴ *Ibid.*

case: despite all of the exculpatory details available from the very beginning of the investigation, detectives latched onto the fact that his car was similar to the getaway car, decided Chester must be guilty, and did whatever was necessary to create the results that confirmed their story.

The narrative license afforded to prosecutors at trial can influence outcomes of cases regardless of the truth. Prosecutors “develop a narrative at trial that focuses the jury on the investigation and the law enforcement perspective, rather than simply on proof of the defendant’s criminal conduct.”⁶⁵ In taking the jury through the investigation by explaining “why and how law enforcement identified and pursued the defendant,” they create a narrative of guilt based upon supposed logical conclusions as well as expertise of criminal justice agents.⁶⁶ In other words, conveying reasons why a defendant was pursued inherently implicates the defendant by justifying the investigation behind them, even if there actually is little or no evidence against the defendant.

Additionally, prosecutors “present testimony instructing the jurors how to view the evidence, sharing the law enforcement perspective on what might otherwise seem to be inconsequential or innocent action.”⁶⁷ By framing pieces of evidence from the perspective of law enforcement and finding a way in which to frame evidence as being proof of guilt, prosecutors have a great deal of sway over juries. They tell juries a story which has been created and told with the sole purpose to construct guilt, and their narratives either exclude or explain away exculpatory evidence. For example, in the wrongful conviction case of Jeffrey Deskovic, a seventeen year old who falsely confessed to the rape and murder of a girl from his high school,

⁶⁵ Poulin, Anne. (2016). The Investigation Narrative: An Argument For Limiting Prosecution Evidence. *Iowa Law Review*, 101(683), 684.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

Dezkovic's DNA did not match a semen sample from the scene. During trial, the prosecutor asked that the jury ignore that evidence, asserting that the DNA could be from consensual sex shortly before the crime, which was total conjecture.⁶⁸

When investigators and prosecutors engage in misconduct, though not excusable, this behavior is born out of the very nature of their job as it is defined within the adversarial system. Where investigators and prosecutors' job descriptions are essentially to obtain guilty verdicts, and where their success and reputation in their career depends upon proving guilt and obtaining guilty verdicts, it makes complete sense not only that the way in which they do their job is oriented around constructing guilt, but also that they might feel pressured—both by the nature of their job and by various external pressures as discussed in the previous chapter—and be tempted to construct or fabricate implicating evidence to strengthen their narrative, especially when they believe they are pursuing the right suspect.

Coercing Admissions of Guilt

As the nature and purpose of the roles of investigator and prosecutor are oriented around constructing guilt and producing guilty verdicts, so are the modes of investigation that these agents use. There are mechanisms of incentives and coercion built into the structure of how the system operates which often produce the result of guilt. Two such mechanisms are interrogation, as well as plea bargaining, which I have yet to address.

Proponents of plea bargaining might assert that the practice is beneficial for the sake of efficiency, because it mitigates the costs and hassles of going to trial, and because it can benefit a

⁶⁸ Garrett, B. (2010). The Substance of False Confessions. *Stanford Law Review*, 62(4), 1051-1118.

defendant who pleads guilty in exchange for a lesser sentence.⁶⁹ What some fail to realize, however, is that the structure of plea bargaining actually discourages defendants from exercising their right to go to trial and incentivizes guilty pleas in a way that is coercive and not entirely of a defendant's free will.

Prosecutors have free reign in deciding the terms of plea deals, and may lie to and manipulate a defendant in order to pressure them into a guilty plea. For example, they may claim to have evidence which implicates the defendant, even if no such evidence exists, and promise to recommend a lenient sentence, or to drop one of multiple charges, if only the defendant pleads.⁷⁰

Plea deals are mechanisms of incentives which effectively pressure, manipulate, and coerce defendants into admitting guilt, and an efficient, convenient way for a prosecutor to obtain a conviction. By threatening defendants with a harsh penalty for going to trial if found guilty (whether or not this is done blatantly) and promising leniency in exchange for pleading guilty and forfeiting their rights, prosecutors are sometimes able to essentially secure their victory in a case without even going to trial.

False confessions reveal that interrogations, too, are coercive. Scholars Norris and Redlich draw an essential connection between interrogation and plea bargains as being built to encourage and produce admissions of guilt, which can trump the truth. According to Norris and Redlich, a crucial and fundamental aspect of the criminal justice process is “the securing of a guilty admission.” They continue that, “at its very core, the desire to have suspects and defendants admit guilt—whether through interrogations or plea bargains— and essentially

⁶⁹ Parker, J. F. (1972). Plea bargaining *American Journal of Criminal Law*, 1(2),187-209.

⁷⁰ Parker, J. F. (1972). Plea bargaining *American Journal of Criminal Law*, 1(2),187-209.

provide the basis of factual guilt the state needs to meet its burden, raises questions regarding the search for truth and the pursuit of justice.”⁷¹

These investigative processes are structured such that there are incentives in place for suspects or defendants to admit guilt, even when they know that they are innocent. Though these two processes occur at different parts of the criminal process, one in investigation and the other in pretrial, “both are designed to induce the suspect or defendant to admit guilt in exchange for at least the perception of leniency.”⁷² As such, they effectively can pressure, persuade, and coerce individuals to admit guilt, whether or not they are actually guilty, by making suspects or defendants feel that doing so is the only way to mitigate more severe punishment.

Norris and Redlich also suggest that both practices play to the idea that confessions and admissions of guilt must be true while obscuring from public view how the truth was determined—agents do not typically disclose the events leading up to a confession or to a defendant's decision to take a plea. In both confessions and plea deals, “the state agents involved tend to rationalize this sharing of the perceived truth as a remorseful act, rather than a human reaction to the coercive authority with which the suspect is presented.”⁷³

Norris and Redlich call into question the very nature of these processes. They assert that both of these coercive processes are based upon presumed guilt, that suspects are interrogated when they are already believed to be guilty, and that the fundamental and entire purpose of interrogation is “securing a confession from the guilty party.”⁷⁴ When an investigator develops tunnel vision, which can happen easily due to the nature of their job and the processes of

⁷¹ Norris, R. J.; Redlich, A. D. (2013). Seeking justice, compromising truth criminal admissions and the prisoner's dilemma. *Albany Law Review*, 77(3). 1010.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

investigation that they use, “the resulting single-mindedness of the interrogation may compromise the search for truth.”⁷⁵

Transparency and Accountability, or Lack Thereof

I do not attempt to untangle the various ways in which criminal justice agents are not held accountable for their actions, but what is significant to this discussion is the relationship between transparency and accountability, and that the criminal justice system is broadly lacking in each.

According to scholar James Vorenburg, there have been various court decisions and measures implemented since the late 1960s that are intended to limit the impact of discretion in criminal justice, reflecting “a broader demand that those who exercise authority in public institutions should operate with a higher degree of visibility and accountability.”⁷⁶

While the significance of visibility or transparency to holding criminal justice agents accountable is clearly not new and is perhaps even obvious, issues of opacity inevitably remain, allowing for discretion and misconduct to occur, a fact which wrongful conviction highlights.

Scholar Kate Levine, in her work, “Police Suspects,” describes criminal justice as having a “problematic culture of criminal justice insiders,” in which criminal justice agents (insiders) have power and knowledge about the system that regular citizens (outsiders) do not. Due to the “bureaucratic professionalism” of the criminal justice system, problems of justice arise including “lack of transparency, lack of participation by ordinary citizens, and lack of accountability for police and prosecutors.”⁷⁷

⁷⁵ *Ibid.*

⁷⁶ Vorenburg, J. (1981). Decent restraint of prosecutorial power. *Harvard Law Review* 94(7), 1522.

⁷⁷ Levine, K. (2016). Police suspects. *Columbia Law Review*, 116(5), 1206.

Levine refers, rather scathingly, to the criminal justice system as an “opaque, unaccountable machine.”⁷⁸ This opacity allows criminal justice agents “to operate in a largely unknown and therefore unchecked sphere, meting out justice according to their own pressures and incentives,” such as case backlog and social pressures to convict.⁷⁹

Prosecutorial tactics and discretion in particular are an enormous problem both in wrongful conviction and in criminal justice generally. Prosecutors exercise an inordinate, relatively unrestrained and unsupervised amount of power and freedom in making decisions about charging and plea bargaining. According to Vorenburg, “the fate of most of those accused of crime is determined by prosecutors, but typically this determination takes place out of public view—in the hallways of the courthouse, in the prosecutors’ offices, or on the telephone.”⁸⁰ Plea deals offered by prosecutors to defendants are entirely within the power of the prosecutor, and threats and manipulation during this process go unmonitored.

Prosecutors have power over charging, plea bargaining, and sometimes “initiating investigations.”⁸¹ In conspiring with investigators, they are able to construct narratives of guilt without jurors seeing precisely how criminal justice agents have drawn their conclusions about defendants, how they have constructed their narratives. As investigators and prosecutors carry out their work in attempting to solve a case, they do so in ways which inevitably construct guilt because of the very purpose of their job.

The nature of this story telling, adversarial system, and the coercive modes of investigation it employs, is such that the stories given and conclusions made in court can be

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

portrayed as fact, when in reality, the processes constructing these narrations of guilt are hidden from the public, from the jury, thereby obscuring the corruption of truth.

Conclusions

It is very easy for police and prosecutors to make a defendant appear guilty, because it is literally their job to construct guilt, to find evidence in support of a theory, to create a narrative that is believable to a jury of how a crime could have happened and how a particular defendant could have committed it. To conclude, I briefly revisit the case of Chester Hollman.

In Chester's case, the prosecution asserted that they had an eye witness who saw Chester fleeing the scene, and that the woman in the passenger seat of his car implicated him. They used a statement that had been entirely fabricated by Chester's interrogator, and they extrapolated that this statement automatically proved Chester's guilt, as though it were common sense.

The arguments that prosecutors make in constructing a defendant as being guilty can, at face value, seem to concretely prove a defendant's guilt, and can convince a jury that the story they tell is the truth. But what jurors do not see is precisely *how* these conclusions and alleged truths are determined, how criminal justice agents in cases like Chester's are conducting their work and investigation, what is going on behind the scenes of such seemingly simple, cut and dry statements implicating a defendant.

Jurors are not seeing the process leading up to an eyewitness making a statement against a defendant, nor are they seeing the full picture of how an interrogation was conducted in coercive ways. Information that does not fit in with the prosecution's narrative of what happened is either ignored, explained away, or outright excluded from trial altogether.

In scenarios in which investigators and prosecutors use coercive methods or outright fabricate evidence against defendants and ignore all evidence to the contrary in order to construct a narrative of guilt, regardless of whether they believe they are implicating the right person, it is

essential to understand that these are not simply immoral or incompetent people who are bad at their job.

Learning about wrongful conviction statistics and specific cases should highlight the regularity of these phenomena, and show how agents fall subject to confirmation bias and are motivated by various external pressures which can cause tunnel vision in investigators or create incentives to cut corners.

Criminal justice agents causing wrongful conviction—whether through accidental means or through deliberate misconduct— are doing so precisely because of the nature of the adversarial system and the purpose of their roles within that system being to prove guilt, by constructing it, and to secure convictions. They are also doing so due to incentives such as pressure to solve cases quickly, and there are incentives in place for suspects to implicate themselves, through confession or plea bargaining, regardless of truth. The lack of transparency and accountability in our criminal justice system obscures mistakes as well as coercion, threats, and misconduct by criminal justice agents which can lead to wrongful conviction.

Return to Spectacle

In more recent years, concerns around transparency and accountability of criminal justice agents in general are prevalent in part due to advancements in technology and an increase in abundance of media platforms including everything from Netflix to Twitter. While social media platforms like Instagram and Twitter allow the widespread share of phone video recordings of public police brutality, Netflix and other modes of television showcase films and documentaries exposing private, behind the scenes activity. Social media platforms then provide a space for

people to express their opinions on such films and documentaries and share information about them virtually so that anyone can learn about them and then watch for themselves. The nature of technology and media today makes information about these subjects more accessible than ever, and stories about miscarriages of justice can and do spread like wildfire.

Media centering on wrongful conviction cases and problems in criminal justice more generally seem to be very concerned with transparency, with exposing and highlighting these happenings. While the ways in which people as spectators interact with and understand punishment are typically very disconnected from realities of punishment and instead spectacularized in media and entertainment, these interactions with and understandings of punishment can still be useful.

For one thing, in their spectacularization, they can be extremely effective at garnering attention by catering to human emotion and outrage. Humans have a great capacity for compassion, despite our love of drama. Subject material centering on wrongful convictions and misconduct in criminal justice do well in media and entertainment partially because portrayals of a person wronged by the criminal justice system can be deeply and almost viscerally upsetting and angering to the average person.

Media portrayals of an innocent, exonerated person are a really effective way of catching widespread attention and sparking awareness to the fact that our criminal justice system is deeply flawed, at the same time that such portrayals can prompt spectators to target and assign blame to individuals. The construction of guilt of criminal justice agents in wrongful conviction cases does not undo the construction of guilt of the innocent by those agents. Such portrayals in media

and retribitional reactions elicited by media exist in the same paradigm of good and bad, right and wrong, guilty and not guilty, that portrayals of criminals exist.

Closing Thoughts

This thesis is limited in scope, and was informed largely by my interest in criminal justice in media and the impact of spectacle. There are many ways in which it could be expanded and enriched. For one thing, I believe it would be fruitful to observe and analyze patterns across wrongful conviction and the broader criminal justice system, particularly the day-to-day operations of policing and punishment. Patterns of coercion, power, misconduct, and opacity exist in the sphere of low level crime and policing just as they do in violent crime and in wrongful conviction, and misconduct can occur at all levels of the criminal justice system. It could be lucrative to use wrongful conviction cases as a lens through which to look more technically at faulty mechanisms in the criminal justice system at large. Furthermore, as there is not much data on wrongful conviction for nonviolent crimes, it would be interesting to attempt to understand a broader picture of wrongful conviction which includes convictions for lesser offenses.

Another way to expand upon this thesis would be to assess the conceptual complications and fallacies of innocence. While material surrounding wrongful conviction builds the case for outrage on the factual innocence of the individuals in question, I do not wish to suggest that wrongful convictions are the worst case scenario in miscarriages of justice. People are impacted and injured by the criminal justice system at all of its levels, every day, and people who are technically guilty of a crime may still be injured by the system. For example, for very minor

offenses, individuals may become trapped in cycles of debt and jail time due to predatory fining and to infractions as punishment for being unable to pay such fines.⁸²⁸³

Furthermore, it would be interesting to analyze precisely who gets to be regarded as innocent at all. People with a criminal record may be more likely to be charged and found guilty of a crime because of a sort of tainting effect, for example. In other words, the existence of a criminal record may render a defendant, in the eyes of criminal justice agents or a jury, automatically less innocent than a person with no criminal record. Furthermore, certain neighborhoods—namely neighborhoods populated by people of color—are often disproportionately policed as compared to affluent white neighborhoods, which impacts who is being policed and charged with crimes. As policing practices such as stop and frisks are found to disproportionately target Black and Latino communities, this inevitably impacts which areas and individuals more often come into contact with police, are charged by police, and are treated as guilty subjects.⁸⁴The extent to which individuals are considered innocent is undoubtedly strongly impacted by race, therefore, which in and of itself could be an entire project of its own.

While I do not claim that wrongful convictions are necessarily worse or more deserving of attention than any other problem of injustice in criminal justice, I do think they may operate as a naturally compelling lens through which to question the mechanisms and motives of the system fundamentally. As such, it would be interesting to attempt to draw comprehensive comparisons between the highly spectacularized wrongful conviction phenomenon and the day-to-day

⁸² Eisen, Lauren-Brooke and Matthew Menendez. (2019). The Steep Costs of Criminal Justice Fees and Fines. Brennan Center for Justice.

⁸³ This article details a report from within the last year showing steadily increasing court fees and fines. The report finds not only that such costs have been increasing, but that they are actually ineffective at raising revenue to fund court systems. This article describes how people are punished for being unable to afford to pay court costs and other fees or fines with jail time.

⁸⁴ NYCLU. Annual Stop-and-Frisk Numbers. Retrieved from <https://www.nyclu.org/en/stop-and-frisk-data> .

practices of criminal justice, to view misconduct in these lower profile scenarios, and to question the structure and motives of the mechanisms at play, as I have done in thinking about wrongful conviction.

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