

# Waiting for Justice in an Era of Exonerations

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Once an unfathomable notion, but now a disquieting phenomenon, wrongful convictions based on false confessions have become a recurring theme in headline news in the age of postconviction DNA analysis investigations. The idea that any person would falsely incriminate himself in a serious crime that he did not commit conflicts with the natural instinct of self-preservation that we are all presumed to bear. Yet, the media and research literature in various social science disciplines are replete with examples of persons who, for a variety of seemingly inexplicable reasons, falsely confess to serious crimes, despite the attendant consequences of doing so. With the technological advancement and application of DNA analysis to crime scene evidence, some individuals who recant their false confessions and proclaim their innocence have benefited from a powerful source of scrutiny needed to vacate their wrongful convictions. Accordingly, headlines reporting criminal exonerations based on new DNA evidence have become increasingly common.

On September 2, 2014, two brothers were exonerated after serving approximately 31 years in prison for the rape and murder of an 11-year-old girl in North Carolina, because new DNA evidence implicated another individual.<sup>1</sup> Henry Lee McCollum and Leon Brown were ages 19 and 15, respectively, and both had intellectual developmental disabilities when they were arrested and interrogated by police for the crime in September 1983. After hours of interrogation, both teenagers confessed to the crime,

provided details about the crime, and signed confession statements. Mr. McCollum also implicated two other individuals who were never prosecuted. Shortly after their interrogations, both Mr. McCollum and Mr. Brown stated that their confessions were coerced and recanted them. Despite the lack of physical evidence tying either teen to the crime scene, they were convicted largely due to their confessions. Both teens received death sentences following their convictions. After new trials on appeal, Mr. Brown's sentence was reduced to a life term, but Mr. McCollum was again placed on death row.

Of note, in 1994, U.S. Supreme Court Justice Antonin Scalia referred to Mr. McCollum's conviction and death sentence to underscore his support of the constitutionality of the death penalty in response to Justice Harry Blackmun's dissenting opinion that the death penalty was unconstitutional because it could not be fairly applied.<sup>2</sup> In that dissent, Justice Blackmun stated:

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed [Ref. 2, p 1145].

Four months later, the Court denied Mr. McCollum's petition for a writ of *certiorari* regarding the constitutionality of his death sentence.<sup>3</sup> In his dissenting opinion, Judge Blackmun noted that Mr. McCollum had an intellectual disability (IQ between 60 and 69 with a mental age of a 9-year-old) and was capable of reading at only a second-grade level. Although his dissent did not question Mr. McCollum's guilt, Justice Blackmun pointed out that Mr. McCollum's circumstances con-

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firmed his conclusion “that the death penalty experiment has failed” (Ref. 3, p 1256). In the time that has elapsed since the Court’s 1994 rulings, two major developments have come to pass: the Court’s change-of-course decision in *Atkins v. Virginia* (2002) that the execution of individuals with mental retardation (now referred to as intellectual developmental disability in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) violates the U.S. Constitution’s Eighth Amendment,<sup>4</sup> and the exonerations of Mr. McCollum and Mr. Brown for the horrific crime that was volleyed between Justices Scalia and Blackmun during their death penalty debate.

The McCollum and Brown exonerations are the latest in an ever-growing list of documented wrongful convictions, and it appears that more may be on the way. On September 8, 2014, Cathy Woods, a woman imprisoned for more than 30 years for a 1976 Nevada murder, was granted a new trial and released from prison on the basis of DNA evidence that pointed to another individual.<sup>5</sup> Apparently, Ms. Woods had been arrested after she claimed to have killed a woman in Reno during an inpatient psychiatric hospitalization at the Louisiana State University Medical Center. She later recanted her incriminating statement, but was convicted of murder in 1980 and reconvicted on appeal in 1985.

Undeniably, each exoneration generates shockwaves throughout the legal system in all directions. Questions arise regarding the seemingly unimaginable circumstances under which an innocent could be found guilty in a legal process that requires a finding of guilt beyond a reasonable doubt. The tenet of justice that resides at the core of the legal system is inexorably and simultaneously wounded with the injury to the wrongfully convicted. Justice inadvertently slips away as the true culprit manages to evade detection with the falsely accused left to hold his place. During the aftermath of actual innocence brought to light, a familiar question is posed: how could this happen?

According to the Innocence Project, a nonprofit legal organization that focuses on criminal exonerations through DNA testing, the first 225 DNA exonerations in the United States revealed that the wrongful convictions involved eyewitness misidentification (77%), improper forensic science (52%), false confessions (23%), and false informant testimony (16%).<sup>6</sup> The organization also identified government misconduct and bad lawyering by defense

attorneys as other common causes of wrongful convictions. The University of Michigan Law School and The Center on Wrongful Convictions at Northwestern University School of Law jointly maintain The National Registry of Exonerations, which currently lists 1,428 exonerations between 1989 and 2014.<sup>7</sup> The registry also indicates that false confessions are most often a factor in wrongful homicide convictions (20%) in comparison with wrongful convictions for other types of crime.

Of interest, despite the growing body of literature attesting to the existence of wrongful convictions, government officials involved with the particular case in question sometimes resist acknowledging the actual innocence of the exonerated individual, even when faced with exculpatory DNA evidence. Orenstein<sup>8</sup> pointed out that when confronted with exculpatory DNA evidence, some prosecutors have minimized the significance of the DNA evidence, altered the original prosecutorial theory of the case that led to the conviction, or hypothesized that a previously unmentioned accomplice must have been involved. One clear example of government officials’ resistance to the significance of exculpatory DNA evidence can be found in the 1989 Central Park Five case.

Antron McCray, Kevin Richardson, Korey Wise, Yusef Salaam, and Raymond Santana, Jr., known collectively as the Central Park Five, were teenagers when they were arrested in 1989 for the brutal beating and rape of a female Wall Street investment banker. The African-American and Latino teens, ages 14 to 16, provided inconsistent, but incriminating, statements against themselves during police interrogations. The teens recanted the statements following their interrogations. The victim was unable to provide an account of the crime because the viciousness of the attack rendered her comatose and she had no memory of the assault. The teens had been in Central Park on the night of the attack, but no physical evidence tied them to the crime scene, including hair and semen samples found on the victim. Based on their incriminating statements, the teens were convicted at trial.

In 2002, the New York Supreme Court overturned the convictions after DNA evidence pointed to a serial rapist, Matias Reyes, as the actual perpetrator. Each of the teens was incarcerated for approximately 7 years, except for Korey Wise, who served approximately 12 years in prison. In 2003, the Central Park Five initiated a civil litigation action for

damages related to their wrongful convictions. Despite the lack of incriminating physical evidence, questionable circumstances surrounding the teens' interrogations, exculpatory DNA evidence, and a confession from the actual perpetrator, prosecutors and detectives involved in the case have maintained their belief in the teens' involvement in the crime and that no wrongdoing occurred during the investigation. The prosecutor, Linda Fairstein, even hypothesized that the perpetrator, Matias Reyes, somehow worked with the teens to commit the crime, although there was no mention of an unknown accomplice at the teens' trial.<sup>9</sup> It is no surprise that the resolution of the Central Park Five's 2003 lawsuit was drawn out and hard fought. However, on June 26, 2014, the New York City comptroller's office announced its approval of a \$40 million settlement of the long-standing wrongful conviction lawsuit.

### **False Confession Claims and the Forensic Psychiatrist**

There are several ways that forensic psychiatrists may become involved in legal matters involving false confession claims. This involvement can arise in both criminal and civil law matters. In criminal matters, an expert may be asked to provide a professional opinion regarding a defendant's claim that his or her mental state was impaired in some way when self-incriminating statements were provided to police during an interrogation. Naturally, questions would arise about whether a defendant competently and voluntarily waived *Miranda* rights before speaking with police and whether the defendant had a mental vulnerability that increased the risk of providing unreliable statements against his interest. Accordingly, pretrial proceedings would consider whether a defendant's confession should be suppressed because of lack of understanding or voluntariness of the waiver or whether the defendant's waiver of *Miranda* rights is sufficient to allow the confession to be heard by a jury at trial. Defendants who unsuccessfully challenge their confessions at the pretrial stage will typically be permitted to offer evidence at trial challenging their incriminating statements. Depending on the relevant jurisdiction's evidentiary rules and the nature of a proffered expert's opinion, psychiatric and psychological testimony may be introduced regarding a particular defendant's susceptibility to providing unreliable, incriminating statements to police.<sup>10</sup>

Evaluations in false-confession claims should consider the potential influence of various psychological factors that may cause a defendant to be particularly susceptible to police interrogation tactics resulting in unreliable statements. The presence or absence of psychological vulnerabilities, such as juvenile status, intellectual disability, mental illness, and substance intoxication or withdrawal, should receive special consideration during these evaluations. Such consideration is important, since the interplay between psychological vulnerabilities and sanctioned police interrogation tactics, including deception, isolation from family and friends, minimization of the crime, and minimization of the defendant's role as a suspect, may inadvertently culminate in the production of a false confession. It is also critical to consider the defendant's reported motivation for providing the confession, the circumstances under which the confession was elicited, and the interaction between the police and the suspect leading up to and during the interrogation.

Unlike the situation involving a defendant's claim during criminal trials of false confession, a civil lawsuit related to the confession centers on an exonerated individual and a proven false confession. Civil lawsuits may be filed by exonerees claiming that government officials violated their civil rights and caused them to be wrongfully arrested, prosecuted, convicted, and incarcerated. In such matters, psychiatrists may be asked by the plaintiff or defense attorneys to offer opinions about the presence or absence of any mental disorders that the exoneree may have and any matters of causation related to those disorders. Problems related to emotional distress during the interrogation, psychological distress related to the loss of social reputation or relationships, psychological distress from adverse events that occur during incarceration, and difficulties with re-entry into society after release from prison are significant concerns raised in such cases. Typically, plaintiffs' attorneys in these matters seek to offer psychiatric testimony to emphasize the emotional and psychological toll of the wrongful conviction, whereas defense attorneys seek to offer opposing expert testimony to mitigate psychological damages.

### **Knowing Where the Line Is Drawn**

As with all evaluations, forensic psychiatrists are ethically obligated to strive for objectivity in forming professional opinions. This obligation remains in

place, of course, even when one contemplates the likely experience of a wrongfully convicted individual who has been incarcerated for decades or sentenced to death, only to be found innocent eventually. In criminal trial matters, the expert should carefully arrive at his professional opinions while avoiding an inadvertent stumble into the jury box. Deciding the question of whether a confession is in fact false belongs to the jury. Clearly, the expert would not know that a confession is false and the credibility of a defendant's false-confession claim remains in the jury's domain for the purpose of determining guilt or innocence. The expert's role in criminal matters serves to educate the judge and jury about the nature of a defendant's psychiatric and psychological vulnerabilities that might influence his communications to police during interrogations. Whether those vulnerabilities in fact influenced the defendant's statements to police should be left to the jury. Proffered expert testimony that crosses that line is likely to be considered inadmissible.

Similarly, forensic psychiatrists, who are asked to evaluate exonerated individuals for the purpose of determining the presence or absence of any mental health disorders and causation of psychological damage, should also strive to maintain objectivity in civil litigation matters. Beyond the examination of an exoneree's description of his ordeal and symptoms, careful consideration of available medical, psychological, educational, and other records from before,

during, and after the exoneree's incarceration will assist in attaining the goal of professional objectivity. As in criminal matters, the role of the psychiatric expert remains limited in civil matters, since it is the judge's and jury's role to cure any injustice suffered by the exoneree. Accordingly, the expert's role in these cases, whether retained by the defense or plaintiff's counsel, remains that of an educator in the courtroom.

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