

Wrongful Convictions

By Michelle Hoffmann

"How many more exonerations will it take before our state and national leaders step forward and acknowledge that the justice system is broken? -- D. Thibodeaux (personal communication, January 26, 2015)." On September 28, 2012, after spending 15 years on death row for the murder and aggravated rape of his half-cousin; a crime which he did not commit, Damon Thibodeaux walked out of a Louisiana courtroom a free man, due to the persistence, diligence of investigation, and advocacy done by an organization known as The Innocence Project on his behalf (www.innocenceproject.org). As a nonprofit organization, The Innocence Project is "a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustice (www.innocenceproject.org/)." Between the years of 1992 and 2013, there were an amazing number of exonerations, 325 to be exact. These convictions were eventually overturned due to the diligent work done by The Innocence Project (www.innocenceproject.org/). The very existence of these types of organizations also suggests that many of the main problems with the justice system begin in or with the court system. A major problem with the justice system in the courts is that the court system today is based on an adversarial system in which there is always a winner and loser. Justice, however, has nothing to do with winning and losing, justice has to do with what is right. Unfortunately, if there is to be a winner and a loser, the human nature to cheat, stack the odds and otherwise gain an advantage, will also be the natural consequences of such a system, no matter how altruistic the ultimate goal is. **The courts**

do not dispense pure justice based solely on evidence, rather, the guilt or innocence of a defendant is often determined by legal manipulation or interpretation and it is because of this adversarial court system structure that the opportunity for wrongful convictions exists. It is in an ideal society, or at least the ideal court system, that it would be a simple matter of the prosecutors presenting evidence and the defense attorneys their rebuttals that would result in a fair, just and right verdict being decided. Unfortunately, we do not live in an ideal society, nor is there an ideal court system.

Prosecutors

In the ideal world, the prosecutors are the players who are paid to collate and present evidence that would prove the guilt of, and subsequently convict, the person accused. In reality, prosecutors are employed by a city, county, or state institution, invariably overworked, understaffed and underpaid with heavy workloads, budget limitation, resource limitations, and time constraints. It is understandable that, in their presentations to the judge and jury, rather than give a simple, straight forward presentation, they will manipulate the information that they have in such a manner as to secure a speedy conviction by any means possible. Such manipulation can be as simple as misdirection, i.e. making one piece of evidence seemingly more important than it actually is in an effort to prove the guilt of the accused. The actions could also be as complicated as trying to introduce an accused person's criminal history in an effort to create a pattern of previous actions that would, by implication, create such a predisposition of guilt in the jurors' minds, that they feel that they have no doubt that the person being accused is, in fact, the responsible party. Prosecuting attorneys, in an effort to to imply such an overwhelming feeling of guilt without actually demonstrating

any action or providing proof of said guilt, may also use verbiage such as "a preponderance of evidence". Such statements, by themselves or in conjunction with other innuendo, can have such a profound effect on those hearing the case that the truth often can be overshadowed, perception of the testimony colored and key pieces of evidence overlooked. It is in an attempt to "ambush" the defense, that prosecutors will, at times, propose other likely scenarios where the accused is the star of the story and this story, when told by the prosecutor, can seem so realistic that it may cast doubt on the claims of innocence by the defendant, appear to solidify tenuous evidence, and try to make the defendant seem, beyond a reasonable doubt, to be the guilty party. By using these and any other tactics that can plant the seeds of doubt in the jury's mind as to the innocence of the accused, the prosecutor will attempt to bring back a guilty verdict, regardless of the facts in the case. It is through mental gymnastics and verbal innuendo that facts can be ignored by twelve ordinary people, and despite the judge's instructions to the jury as to the letter of the law, result in the most heinous of all miscarriages of justice, a wrongful conviction (Colloff, 2014).

Defense Attorneys

Theoretically, while it is a prosecutor's job to provide sufficient evidence and promote a convincing argument in the hopes of proving the guilt of a person in the minds of the jurors, it is, on the other hand, the defense attorneys job to make as strong a case as possible demonstrating either that there is insufficient evidence to prove their client's guilt or to provide sufficient reasonable doubt in the minds of the jurors so that their client is found not guilty. Unlike prosecutors, however, defense attorneys are usually paid by the defendant and generally make much more money than their counterparts.

According to two criminal lawyers, public defenders are used by approximately 3 out of 5 defendants with felony charges, due to their indigence (Loberg, L. & Weber, J. A. personal communication, January 2013). Of the paying public, “approximately one out of five [defendants] uses a public defender for a felony charge (J. A. Weber, personal communication, January 2013).” Defense attorneys also get to choose which cases they want to take and which cases they do not. It is then their sole purpose to exonerate their client, regardless of guilt; i.e. the client can admit guilt of the crime to them, and yet, in most cases, due to the “lawyer/client privilege”, they are still required to do their utmost to obtain a not guilty verdict or a dismissal of the charges on behalf of their client (Julian, 2014). Often times, this means manipulating information in an attempt to create a reasonable doubt – such as providing alternate scenarios in which their client is innocent and the possibility of some unknown or alternate suspect is introduced. Like their counterparts, the prosecutors, defense attorneys are also quick to use verbiage as a means to an end. Who can forget the infamous line in the O.J. Simpson trial of 1995, when Johnny Cochran looked at the jury and said “If it doesn’t fit, you must acquit (Cochran)”, when referring to the bloody glove. Everyone, no matter who they are and whether they thought O.J. Simpson guilty or innocent, remembers that single line, the phrase was that powerful. Other means used to create confusion that can be considered as skirting legal requirements are sometimes used, such as failing to share information or evidence with the prosecutor until the last minute. Such lack of full disclosure are sometimes referred to as ambush tactics, and are used to throw the prosecutor off track; causing confusion, delays or even a mistrial. Often, this is the point in the trial, where the defense attorney may attempt to negotiate a deal for their client in

return for a reduced sentence. In essence, a defense attorney can, and often does, while not outright breaking the law, use loop holes or procedural errors to circumvent the law in an effort to win a verdict of not guilty from the jury (Natapoff, 2013).

Judges

Not only do judges have the public image of absolute arbitrators, but in actual fact, are absolute arbitrators within their court (The 'Lectric Law Library, 1995-2014). The office of a judge holds such high regard in society that the office is almost sacrosanct and inviolate (The 'Lectric Law Library). Because judges are perceived to be good, honest, forthright and thoughtful, it is the public's expectations that they make their decisions in an honest and ethical manner. Unfortunately, judges are also human beings and therefore, prey to all of the whims and foibles that accompany such a station. This allows for the human element to enter the court room through them. They have near autonomous control over the courts and over verdicts, which allows for personal agendas, bias, and abuse to take the place of a properly conducted legal proceeding. The judge has the final say over what does or does not happen in their courts and anyone who attempts to disagree with their ruling may, at times, be taken out of the courtroom, fined and/or incarcerated after being charged with contempt of court for resisting a judge's direction, displaying any conduct that the judge finds objectionable or even "impinging upon the dignity of the court (The 'Lectric Law Library)". Admittedly, judges can be removed from the bench, but it is an uncommon and rare occurrence and the abuses must be profound and persistent for a superior court to be called in for such a determination, as evidenced by the removal of 20 year veteran judge, Kimberly Brown from the Marion, Indiana Superior Court, by the

Supreme Court (Evans, 2014). While it is a rare occurrence and has usually only occurred in civil trials, the power of a judge is such that he can even refuse a jury's ruling, should he or she find or deem it to be in conflict with his or her preconceived determination (Roche, 2015). Should a jury come back with a not guilty verdict, and the judge disagrees, he or she may determine that there was some procedural error and declare a new trial. In the event that a jury returns a verdict that the judge agrees with, he or she is then empowered by the law to interpret and amend the punishment to make it more or less severe depending on the crime and the limits allowed by law. Because punishment is laid out by the law and has a range, usually specified in years and dollar amounts, the judge may elect any amount of punitive damages and/or time from that range. If this is not enough power and authority for one person to wield, he can even choose which evidence to hear or not to hear, thereby affecting the outcome through a censorship of information. As an example, should a person have a prior history of criminal activity or charges against them, a judge may, at his discretion, allow or disallow this information to be shared with the jury. The impact of this may be the difference between the perception of a first time offender and a hardened repeat offender in the eyes of the jury. The admissibility of evidence in a trial, from either side, is at the sole discretion of a judge, and thus affects the outcome of the trial. Should hubris be part of the equation, the powers of a judge are such that, through control of their courtrooms, manipulation of evidence heard, and/or determinations of procedure and sentencing, the judge can, in essence (should they choose to), manipulate a trial so that an innocent person may be incarcerated or a guilty person walk free (Berdejó & Yuchtman, 2013).

The Law

The final contributor to the amalgam is the written word. It is black and white; the law is the law, and right and wrong do not come into play when dispensing the law. However, the wording of the law is open to interpretation by judges and the way one judge interprets it may not be the way another judge may interpret it. The law can also be abused in other ways. With 200+ years of law making history and new laws being made daily, the sheer volume of the law can also affect the force of the law that is brought down against a person (i.e. number of charges) with a two fold effect. The number of charges stemming from a single offense may result in multiple charges being brought against a person in an attempt to snowball them. Secondly, multiple charges may be levied against an individual in an attempt to increase the ultimate length of sentencing due to the cumulative effects of the charges. Both of these factors will have a negative effect on the minds of the jury as to an accused person's innocence simply by the sheer volume of charges being brought against the accused, and may result in an innocent being found guilty. Finally, the execution of the law may be affected by other things outside of the law, such as the Penal system, i.e. early release due to good behavior or overcrowding may affect the length of the sentence and a law designed to impose a minimum penalty is circumvented or subverted in this manner (Kahn, 2010). When the law is wielded as a "sword" in a punitive manner, or set aside through circumstances, its purpose, justice, is circumvented.

Concession and Rebuttal

There are those who would say that although there may be flaws in the court system and that some miscarriages of justice may occur, overall, the system works and the

cases of wrongful conviction are few and far between. Everyone agrees that wrongful convictions are not commonplace occurrences, however it is still a fact that they do occur, and more often than we are aware. According to the National Registry of Exonerations, since 1989 there have been 1,532 exonerations to date in the United States (University of Michigan, 2015). One of our country's founding fathers, and engineer of its political and judicial systems, Benjamin Franklin took Sir William Blackstone's words and reiterated them as, "It is better 100 guilty persons should escape than one innocent person should suffer, is a maxim that is long and has been generally approved (Van Leeuwen, 1993-2015)".

Conclusion

All of the previous issues; prosecutors, defense attorneys, judges and the law itself, come together to create an environment rife for exploitation and wrongful convictions which leads to the necessity of organizations such as the Innocence Project. The courts do not dispense pure justice based solely on evidence. Rather, the guilt or innocence of a defendant is often determined by legal manipulation or interpretation. Facts have little or nothing to do with a court case. The prosecutor's goal is to use evidence, innuendo, double talk, and any other means that they can get away with to persuade twelve people to convict the accused, regardless of the facts. It is then the defense attorney's job to discredit any evidence or testimony in order to create a reasonable doubt, even if he knows full well that his client is guilty of the crime which he is accused of. Ideally, the judge's position is supposed to be that of an impartial arbitrator and executor of the law, depending on the verdict reached by the jury and free of personal bias. In other words, for all of the players; lawyers, judges and even the law

itself, it is the human element that creates the system whereby the results may become more important than either the truth or justice, thus leaving the door open to abuse and the possibilities ranging from inappropriate sentences to wrongful convictions.

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