

When Justice Fails

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“I was in prison for 30 years for a crime I did not commit...like any other black man in America,” said my 70-year-old patient with multiple complex medical problems that eventually took his life.

I felt sick to my stomach.

Did it really happen? Does it happen often in America? We hear about it once in a while on TV. How many innocent black men get incarcerated? Imagine one day in prison for a crime you did not commit. Imagine *30 years* living with that truth yet unable to prove your innocence!

It has been well documented that crime and incarceration rates are historically high in blacks. The literature is replete with reports of high imprisonment rates for men from poor black neighborhoods that gravely impact the family and community.^{1,2} In 2013, the US Department of Justice described trends of state prisoner admissions and releases between 1991 and 2011. There has been a decline in the year-end prison population every year since 2009 due to an increase in releases compared to admissions.³ In 2012, the prisoner population at year end was 1,570,400 compared to 1,599,000 in 2011. However, there has been an increase in new court commitments for violent offenses by blacks during this period: 47% in 2011, 44% in 2006, and 41% in 2001. In 2011, 25% of all new white offenders, 34% of black offenders, and 36% of Hispanic offenders were sentenced for violent crimes. For blacks, this was an increase since 2006 when less than 30% of new admissions were for violent crimes. New admissions for murder and non-negligent manslaughter between 2001 and 2011 showed a similar pattern with a reduction in whites from 29% to

24% and an increase in blacks from 46% to 51%.

The imprisonment rate is defined as the number of prisoners under state or federal jurisdiction sentenced to more than one year per 100,000 US residents of all ages in a given year. In December 2012, imprisonment rates based on race and ethnicity revealed that 2.8% of black, 1.2% of Hispanic, and 0.5% of white males were in state or federal prison. Compared to white men, black men were six times more likely to be imprisoned, and the imprisonment rates for black men were at least four times those of white men in all age groups. For black men younger than age 39, the imprisonment rate was six times greater than that for white men of the same age. The biggest disparity was seen in male inmates age 18 to 19; black men in this age group were 9.5 times more likely to be in prison than white men of the same age. Black women age 18 to 19 were three times more likely to be imprisoned than white women.

How many of these were innocent people who were wrongly convicted and suffered for a crime they did not commit?

Historically high numbers of young African-American men are spending their emerging adulthood in prison.³ In 2000, Arnett defined emerging adulthood as the period between age 18 and 25 that defines the individual's foundation for adult life based on choices made in social, occupational, and behavioral domains.⁴ Exposure to prison restricts the complete development of the individual with subsequent failure to thrive as a productive member of society. High prevalence of parental imprisonment among blacks is a distinct childhood risk factor for crime

and subsequent incarceration, thus feeding a vicious cycle that condemns an already susceptible population to inequality from one generation to the next.²

In a recent study that examined false conviction rates for criminal defendants on death row, it was estimated that at least 4.1% of them were innocent.⁵ The principal author of this paper is the editor and co-founder of the *National Registry of Exonerations*, a joint project between the University of Michigan and Northwestern University law schools, which has tracked wrongful convictions since 1989.⁶ According to this registry, most false convictions do not result in exonerations. As of April 2014, this registry had 1,326 exonerations with a record number of 87 in 2013. California (119), Texas (114), and Illinois (112) had the highest exoneration numbers. The average time spent by the exonerees in prison was 10 years, and most spent five to 10 years in prison. Factors contributing to these convictions included perjury or false accusation, official misconduct, mistaken identification, misleading forensic evidence, and false confessions. A study of the basic patterns revealed that of all innocent prisoners, 92% were men, and 46% were black—in a country where African Americans comprise only 15% of the total population. In every category except child sexual abuse—including sexual assault, homicide, and other crimes—more blacks were exonerated than others.

The Innocence Project is a national litigation and public policy organization dedicated to preventing future injustice by exonerating wrongfully convicted individuals

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through reform of the criminal justice system and use of DNA testing.⁷ So far more than 300 wrongful convictions have been overturned, and many more are anticipated. This has been described as a masterful legacy of data on wrongful convictions, yet it only represents the tip of the iceberg. Of these DNA exonerations, 63% of defendants were African Americans.

Who can forget the mind-numbing details of the extreme torture inflicted on more than 100 African-American prisoners by Chicago Police Commander Jon Burge and his officers? Between 1972 and 1991, prisoners were systematically tortured by electric shock and suffocation to obtain coerced confessions leading to wrongful convictions. Andrew Wilson, a prisoner accused of murder, sustained serious injuries after the torture and was examined by John Raba, MD, the medical director of Cook County Jail. The extent of the injuries and Wilson's claim of innocence convinced Dr. Raba to initiate an investigation with the assistance of then Police Superintendent Richard Breczek that triggered a series of events resulting in Burge's termination from the Chicago Police Department and eventual conviction and imprisonment in 2011. Most of the torture survivors received no compensation or psychological counseling. Twenty remain in prison due to convictions based at least partly on their coerced confessions. A few were freed after languishing for decades in prison. Historical injustices like these due to confessions obtained through violence have been reported for centuries. The Miranda rulings were a result of

landmark decisions by the US Supreme Court in the early 20th century against the use of coerced confessions as evidence for conviction. Yet injustices against African-American men and women continue unabated. The recent release of Glenn Ford after conviction by an all-white jury and 30 years on death row for a murder he did not commit forces us to wonder how many more remain unfairly imprisoned.

So what can we do about this?

The Center on Wrongful Convictions at Northwestern University has been a champion for justice in wrongful convictions and has raised public awareness through evidence-based depiction of the current situation. Its ground-breaking legal actions have resulted in a moratorium on state executions, criminal justice reform, expanded DNA testing, increased funding, international reform, and compensation for exonerated prisoners. Many challenges remain, however, including the need to expand electronically recorded interrogation procedures in all criminal cases, implement standard procedures to enhance correct identification of suspects by witnesses, restrict actions that cause suffering from a stigmatizing experience, provide appropriate legal services for all prisoners, and establish structured compensation plans for exonerates.

Thomas Jefferson wrote, "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." It remains to be seen if United States can truly claim to be a land of freedom and opportunity without dis-

crimination based on color. The racial bias that tarnishes the criminal justice system gets attention in only a handful of prominent convictions. Without a sustained multipronged effort from the public, I daresay such discrimination will persist.

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