



# Lessons From Miscarriages of Justice

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# Sources of Erroneous Convictions

- ✓ Age (being young)
- ✓ Any prior criminal record
- ✓ Forensic errors
- ✓ Honest eyewitness mistakes
- ✓ Lying by non-eyewitness
- ✓ Local punitive culture
- ✓ Prosecution withholding exculpatory evidence
- ✓ Weak defense
- ✓ Tunnel vision

# But, Wait. What is a “Miscarriage of Justice?”

Blackstone → Wrongful Convictions

How about Failed Prosecutions?

False Acquittal? Too limited

Broader Definition: failure to convict a suspect that a reasonable person would believe committed the crime.

# A 2x2 Conceptualization

	Convicted	Go Free
Guilty	System works Plea or guilty verdict	Failed Prosecution
Innocent	Erroneous Conviction	System works Dismissal or acquittal

# How Far to Expand the Sources?

- Failures of victims
- Failures of police investigations
- Failures of prosecutions
- Failures of judges
- Failures of jurors

# Little Research on the Subject

- We “know” that false acquittals occur
- American Jury Trial (1960s)
- Jurors don’t understand the law
- Economic analysis of burden-shifting

*Presumption that police and prosecutor work is fixed. If there are problems, it’s the failure of jurors or the standard of proof.*

# Why the Research Hole?

- Recognition that police and prosecutors have tremendous power  
→ Directed against the defendant
- Attachment to Blackstone Principle
- No formal data collection

# Theoretical Sources

1. Misconduct → exclusion/quashing
2. Over-charging
3. Failures to investigate → missed evidence/witness
4. Use of witnesses who are not credible
5. Mishandling of evidence
6. Older/discredited forensic techniques
7. Poor choice of expert witnesses
8. Failures to prepare witnesses/ cross-ex
9. Failures to strike jurors

# Finally, Some Data

- District Attorney's Office Collected Data
  - Cases that “had a problem.” Their definition
  - Collected in narrative form
  - Coded, Cleaned, Checked
- Urban/Suburban Location
  - Just under 1 million
  - Approximately 80% White
  - 2.5 homicides/100,000 residents
  - 2200+ property offenses/100,000 residents

# Sources of Failed Prosecutions and Near Misses

Reason	Failed Prosecution	Near Miss
Insufficient Evidence	24.5%	35.4%
Witness/Victim Credibility	12.7%	14.6%
Witness/Victim Unavailable	11.8%	---
Improper Stop or Search	9.8%	6.3%
Speedy Trial Violation	8.8%	---
Witness/Victim Uncooperative	8.8%	---
Chain of Custody	2.9%	---
Prosecutor Error	2.9%	---
Victim Requests	2%	---
Wrong Charge	2%	4.2%
Judge Discretion	2%	2.1%
Police Error	2%	2.1%
Restitution	2%	---
Self Defense	1%	10.4%
No Crime	1%	8.3%
Wrong Jurisdiction	1%	---
Defendant Unavailable	1%	---
Other	3.9%	---
Wrong Defendant	---	8.3%
Defendant Incompetent	---	6.3%
Double Jeopardy	---	2.1%
Total	102	48

# Responsible Parties for Failed Prosecutions and Near Misses

Responsible Party	Failed Prosecution	Near Miss
Prosecutor	11.8%	8.3%
Police	39.2%	54.2%
Judge	3.9%	2.1%
Defendant	2%	10.4%
Victim	25.5%	8.3%
Witness	9.8%	4.2%
Multiple	6.9%	12.5%
Other	1%	---
Total	102	48

# Sources and Responsible Parties for Failed Prosecutions

Reason	Prosecutor	Police	Judge	Defendant	Victim	Witness	Multiple	Other
Insufficient Evidence	8.3%	50%	---	---	--	10%	28.6%	100%
Witness/Victim Credibility	---	2.5%	---	---	30.8%	20%	28.6%	---
Witness/Victim Unavailable	---	---	---	---	26.9%	50%	---	---
Improper Stop or Search	---	22.5%	---	---	---	---	14.3%	---
Speedy Trial Violation	41.7%	10%	---	---	---	---	---	---
Witness/Victim Uncooperative	---	---	---	---	26.9%	---	14.3%	---
Chain of Custody	---	7.5%	---	---	---	---	---	---
Prosecutor Error	25%	---	---	---	---	---	---	---
Victim Requests	---	---	---	---	7.7%	---	---	---
Wrong Charge	8.3%	---	25%	---	---	---	---	---
Judge Discretion	---	---	50%	---	---	---	---	---
Police Error	---	5%	---	---	---	---	---	---
Restitution	---	---	---	50%	3.8%	---	---	---
Self Defense	---	---	---	---	---	---	14.3%	---
No Crime	---	---	---	---	3.8%	---	---	---
Wrong Jurisdiction	---	---	25%	---	---	---	---	---
Defendant Unavailable	---	---	---	50%	---	---	---	---
Other	16.7%	5%	---	---	---	10%	---	---
Total	12	40	4	2	26	10	7	1

# Modes of Disposal – Failed Prosecutions and Near Misses

Mode of Disposition	Failed Prosecution	Near Miss
Investigation	4.9%	14.6%
Charge Withdrawn	13.7%	12.5%
Agreement with Conditions	21.6%	4.2%
Voluntary Dismissal	40.2%	50%
Jury Not Guilty	8.8%	8.3%
Bench Not Guilty	10.8%	10.4%
Total	102	48

# Mapping Failed Prosecutions Against Erroneous Convictions

Erroneous Convictions	Failed Prosecutions
Mistaken Eyewitness Identification	Not Credible Witnesses/Victims
Lying Witnesses	Not Credible Witnesses/Victims
Forensic Evidence	Chain of Custody
Weak Evidence	Insufficiency of Evidence
False Confessions	Wrong Charge
Withholding Exculpatory Evidence	Police/Prosecutor Error
Tunnel Vision	Failures to Investigate Failures to Prepare