

## CONFESSIONS, CONVICTIONS AND CONTROVERSY: AN EXAMINATION OF FALSE CONFESSIONS LEADING TO WRONGFUL CONVICTIONS IN THE UNITED STATES THROUGHOUT HISTORY

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### I. INTRODUCTION

American history is unfortunately replete with hundreds, if not thousands, of instances of false confessions.<sup>1</sup> Due to our error prone systems in place, the likelihood of the police obtaining false confessions from otherwise innocent people for crimes they did not commit is not as small as one might believe.<sup>2</sup> These false confessions then turn into wrongful convictions, resulting in a win for the law enforcement and prosecutors by way of a closed case, yet a loss of liberty and freedom of the accused.<sup>3</sup>

Unfortunately, this issue carries ramifications that go beyond an innocent person who will be quickly forgotten and left in jail serving a sentence.<sup>4</sup> The real perpetrators live free within society to commit the same crime over and over until they are caught; that is, if they are caught.<sup>5</sup> The retributive justice of the incarceration system goes unfulfilled, as society erroneously believes they have avenged the crime, while the real perpetrator roams free.<sup>6</sup> Equally important, rehabilitation of the perpetrator is not achieved as their behavior remains unaltered. Further, utilitarian justifications for our criminal system also go unfulfilled as there are absolutely no benefits to society when erroneously convicting. There is no deterrence or reform as the

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<sup>1</sup> Richard A. Leo, *False Confessions: Causes, Consequences and Implications*, in *Journal of the American Academy of Psychiatry and the Law*, AAPL (Sept. 2009).

<sup>2</sup> *Id.*

<sup>3</sup> *False Testimony/Confessions*, CALIFORNIA INNOCENCE PROJECT, <https://californiainnocenceproject.org/issues-we-face/false-confessions/>.

<sup>4</sup> Paul G. Cassell, *The Guilty and the "Innocent: An Examination of Alleged Cases Of Wrongful Conviction From False Confessions*, 22 HARV. J. L. & PUB. POL'Y 523, 524 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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real criminal has not been punished. Lastly, there is no incapacitation of the harmful individual as they remain with their liberty in society to commit the crime again.

Equally as important, moral condemnation is paid by the wrongfully convicted when the individual seeks to reacclimate into society.<sup>7</sup> Individuals may be seen as outcasts in their community, have trouble securing employment, and often find themselves feeling out of place in the same community in which they belonged to before the conviction.<sup>8</sup>

This Note proceeds in four parts and discusses how false confessions have been elicited dating back to the 1600's until present day, which have led to wrongful convictions of the most vulnerable people. This Note discusses how wrongful confessions have been obtained from innocent defendants through various techniques by law enforcement. In addition, how our judiciary system has continuously made exceptions to the same law that was meant to prevent such erroneous convictions. Further, this Note addresses how many of those who have been exonerated have been given second chances at their liberty thanks to the help of organizations, such as The Innocence Project. This organization has relied heavily on postconviction DNA evidence to establish the innocence of their clients. Further, this Note discusses how media attention plays an important role as the bridge to providing innocent defendants the legal help and tools they need for an appeal. In discussing this, Part I begins with the earliest widely known instances of mass coercions of false confessions during the Salem Witch Trials. This section takes place as early back as the 1600's, communities in the United States, where people were accused of crimes by false confessions. Although this took place hundreds of years ago, since then our justice system has not completely rid itself of these troubling issues. Part II discusses individual convictions which were argued before the United States Supreme Court. Even after the creation of our Constitution, which contains the Fourth, Fifth and Sixth Amendments, wrongful convictions still occur. Part III then focuses on exonerations which were made possible due to DNA evidence. Organizations, such as The Innocence Project, have been able to exonerate many individuals that were erroneously convicted by

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<sup>7</sup> Seri Irazola & Erin Williamson, *Addressing The Impact Of Wrongful Convictions on Crime Victims*, NIJ J. 274 (2014), <https://www.ojp.gov/pdffiles1/nij/247881.pdf>.

<sup>8</sup> *Id.*

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utilizing DNA evidence. Lastly, Part IV discusses how the media has helped bring widespread attention to the issue of wrongful convictions by examining the cases of Steven Avery and Adnan Syed.

It is important to keep in mind the similarities between the groups of people being wrongfully accused. The most reoccurring groups that have lost their liberty appear to share minority status, some are of a young age, and others with intellectual limitations. Do the Constitution's promises of "equal protection of the laws" and "due process" not apply to the most vulnerable people who need it the most?

## II. FALSE CONFESSIONS AS EARLY AS THE 1600'S

False confessions can be traced back hundreds of years in the United States. We can date back as far as 1692, in Salem Village of colonial Massachusetts, where a series of hearings and prosecutions occurred over the span of several months known as The Salem Witch Trials.<sup>9</sup> The community in Salem and its surrounding towns consisted of Puritans that feared witchcraft, and not only considered it a sin, but also a crime.<sup>10</sup> Individuals of this community began accusing one another of partaking in witchcraft which resulted in numerous arrests.<sup>11</sup> The Governor of this community established a court system to handle these new, yet common "crimes."<sup>12</sup> This practice became notorious for its witch trials and executions of an estimated 156 people, who were accused of witchcraft.<sup>13</sup> Of these people, 19 women were hanged when found guilty.<sup>14</sup> By the time the trials ended, over 55 individuals confessed to being witches.<sup>15</sup> However, most of the evidence used to convict these individuals was based on testimony of community members and the behavioral observations of the defendants as well as observations from "experts" who testified to the behaviors related to witchcraft.<sup>16</sup> The behavioral observations included inexplicable fits, contortions, and illnesses of the defendants.<sup>17</sup> Not all 55 executed

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<sup>9</sup> Jane Campbell Moriarty, *Wonders of The Invisible World: Prosecutorial Syndrome and Profile Evidence in the Salem Witchcraft Trials*, 26 VT. L. REV. 43, 44 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 45.

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individuals confessed to witchcraft, however, many of them admitted their involvement with the devil and often testifying about "signing the devil's book," while others continuously maintained their innocence.<sup>18</sup>

When considering why these people would confess to witchcraft, commentators have stated that "a well-phrased and tearfully delivered confession was clearly the best guarantee against hanging."<sup>19</sup> Others have suggested that this phenomenon can be explained as hysterics.<sup>20</sup> Commentators believe that the people accused of witchcraft were suffering from some unknown disease which would cause hysteria, which could be a reason they were confessing.<sup>21</sup> More logically, some have suggested that the "confessions were instead the result of intense psychological pressure through positive and negative reinforcement."<sup>22</sup> Commentators have also stated that not all confessions were extracted through psychological pressure, but rather physical coercion.<sup>23</sup>

Researchers have made efforts to explain by scientific means the strange behavior of the individuals convicted of witchcraft during the Salem Witch Trials. These trials began after a group of young girls claimed they were possessed by the devil and accused several women of witchcraft as well.<sup>24</sup> Following this, a wave of hysteria spread throughout the town. Some of the symptoms believed to be caused by witchcraft were having fits, including violent contortions and uncontrollable outbursts of screaming.<sup>25</sup> Although witchcraft has not been proven, a study published in *Science* magazine in 1976 cited the fungus ergot (found in rye, wheat and other cereals), which toxicologists say can cause symptoms such as delusions, vomiting and muscle spasms.<sup>26</sup>

Reflecting back to the Salem Witch Trials, many would agree that the beliefs shared by this community would not be as common today. Would this same town in Massachusetts, or anywhere in the United States be so quick to convict individuals by way of coerced confessions? These practices appear archaic; however, they have

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<sup>18</sup> *Id.* at 64.

<sup>19</sup> Martha M. Young, *The Salem Witch Trials 300 Years Later: How Far Has The American Legal System Come? How Much Further Does It Need To Go?*, 64 TUL. L. REV. 235, 253 (1989).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 254.

<sup>23</sup> *Id.* at 254.

<sup>24</sup> *Salem Witch Trials*, HISTORY (Nov. 4, 2011), <https://www.history.com/topics/colonial-america/salem-witch-trials>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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transformed only mildly over the years and have existed in this country even with newer form of government and laws in place.

### III. FALSE CONFESSIONS AND THE SUPREME COURT

The methods of gathering evidence to convict wrongdoers did not completely rid itself of violent coercions despite the passage of time. An example of this was seen in the case of *Brown v. State of Mississippi*.<sup>27</sup> In this case, the United States Supreme Court decided on the issue of whether a defendant's involuntary confession would be admissible against him to convict him of murder.<sup>28</sup> Ultimately the court decided that allowing such a coerced confession would be a violation of the Due Process Clause of the Fourteenth Amendment.<sup>29</sup>

Defendants Ed Brown and others were indicted for the murder of Raymond Stewart, whose death occurred on March 30, 1934.<sup>30</sup> They were indicted on April 4, 1934 and then arraigned and entered pleas of not guilty.<sup>31</sup> During the one-day trial, the defendants were found guilty and sentenced to death.<sup>32</sup> However, aside from their confessions, there was no other sufficient evidence to warrant the submission of their case to the jury.<sup>33</sup> The defendants then argued that their confessions were false and procured by physical torture.<sup>34</sup> The case then went to a jury and if a jury had reasonable doubt as to the confessions having resulted from coercion, and that they were not true, they were not to be considered as evidence.<sup>35</sup> The case eventually made it to the United States Supreme Court on appeal.<sup>36</sup>

The opinion written by Chief Justice Hughes narrates the brutal treatment suffered by the defendants.

On that night one Dial, a deputy sheriff, accompanied by others, came to the home of Ellington, one of the defendants, and requested him to accompany them to the house of the deceased,

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<sup>27</sup> 297 U.S. 278, 279 (1936).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 280.

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and there a number of white men were gathered, who began to accuse the defendant of the crime. Upon his denial they seized him, and with the participation of the deputy they hanged him by a rope to the limb of a tree, and having let him down, they hung him again, and when he was let down the second time, and he still protested his innocence, he was tied to a tree and whipped, and still declining to accede to the demands that he confess, he was finally released and he returned with some difficulty to his home, suffering intense pain and agony. The record of the testimony shows that the signs of the rope on his neck were plainly visible during the so-called trial. A day or two thereafter the said deputy, accompanied by another, returned to the home of the said defendant and arrested him, and departed with the prisoner towards the jail in an adjoining county, but went by a route which led into the State of Alabama; and while on the way, in that State, the deputy stopped and again severely whipped the defendant, declaring that he would continue the whipping until he confessed, and the defendant then agreed to confess to such a statement as the deputy would dictate, and he did so, after which he was delivered to jail.<sup>37</sup>

The Supreme Court then held that a defendant's confession that was extracted by police violence cannot be entered as evidence because it violates the Due Process Clause of the Fourteenth Amendment, which states,

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>38</sup>

The U.S. Constitution was drafted in 1787 by delegates seeking to make a new plan for the nation.<sup>39</sup> Delegates representing the states of that time gathered to create a framework which would balance the interests of the federal government, the states and the interests and

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<sup>37</sup> *Id.* at 281-82.

<sup>38</sup> U.S. CONST. Amend. XIV, § 1.

<sup>39</sup> *First Draft of Constitution Debated*, HISTORY (July 21, 2010), <https://www.history.com/this-day-in-history/first-draft-of-constitution-debated>.

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rights of the American people.<sup>40</sup> With the intentions of protecting the interests of individuals, The Fifth Amendment of the Constitution was drafted to provide safeguards to protect the rights to liberty of an accused.<sup>41</sup> The Fifth Amendment states as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.<sup>42</sup>

This clause reiterates the principle to protect individuals from being imprisoned without fair procedures and provides that an accused person may not be compelled to reveal to the police, prosecutor, judge, or jury any information that might incriminate or be used against him or her in a court of law. However, the question then turns to how an individual would know of these rights if they are unfamiliar with their rights, especially before having the chance to consult an attorney and during a time of unfamiliarity and high stress, such as an arrest or apprehension by law enforcement.

This issue was the primary focus in the landmark decision of *Miranda v. Arizona*.<sup>43</sup> Ernesto Miranda, the defendant, was taken into custody by Arizona police and interrogated.<sup>44</sup> He was not advised of his right to counsel or his right to remain silent, and shortly after the interrogations began, the police obtained a written confession from the defendant for the kidnapping and rape of a woman.<sup>45</sup> The written confession was admitted into evidence at trial, despite the objection of the defense attorney and the fact that the police officers admitted that

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<sup>40</sup> *Id.*

<sup>41</sup> Brian P. Smentkowski, *Fifth Amendment*, BRITANNICA (Jan. 9, 2020), <https://www.britannica.com/topic/Fifth-Amendment>.

<sup>42</sup> U.S. CONST. Amend. V.

<sup>43</sup> 384 U.S. 436 (1966).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 440.

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they had not advised Miranda of his right to have an attorney present during the interrogation.<sup>46</sup>

This case was eventually heard by the U.S. Supreme Court and the opinion delivered by Chief Justice Earl Warren stated,

Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.<sup>47</sup>

The Court held that without certain specific warnings regarding the right to remain silent and the right to counsel, statements made during custodial interrogation were inadmissible at trial.<sup>48</sup> After the *Miranda* decision, police officers throughout the country are now required to inform any suspects of their rights, (commonly referred to as their *Miranda* rights), prior to custodial interrogations as part of criminal investigations.

This change in law following the *Miranda* decision was widely criticized.<sup>49</sup> Many argued that it is unfair to inform or advise suspects of their rights.<sup>50</sup> President Richard Nixon also denounced the *Miranda* decision by stating that it undermined the police and that the decision would lead to an increase in crime.<sup>51</sup> During his presidential campaign, President Nixon promised to nominate only justices who would reverse a judicial philosophy he regarded as "too soft on crime."<sup>52</sup> However, some have pointed to studies show that the *Miranda* decision has not had an effect on the ability of police to obtain confessions from

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 444-45.

<sup>48</sup> *Id.* at 492.

<sup>49</sup> James E. Clayton, *The Miranda Decision: Criminal Wrongs, Citizen Rights*, THE WASHINGTON POST (Aug. 7, 1983), <https://www.washingtonpost.com/archive/entertainment/books/1983/08/07/the-miranda-decision-criminal-wrongs-citizen-rights/9955124b-20b8-4ac6-8b82-3652b79a04e8/>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

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suspects.<sup>53</sup> This may be true given the fact that even after being given a *Miranda* warning, suspects can waive these rights and offer confessions implicating themselves.

In determining why the *Miranda* warnings have failed to protect suspects, and how police and prosecutors are still able to obtain guilty verdicts, some have argued that the *Miranda* decision was incorrectly made on determinations and ideas that suspects would be able to fully understand the *Miranda* warnings and would be less likely to proffer incriminating evidence under custodial interrogations.<sup>54</sup> Additionally, many argue that law enforcement has developed countless loopholes in delivering the *Miranda* warnings.<sup>55</sup> Examples of this include presenting the warnings in ways that inherently undermines them and by questioning suspects before they are taken into custody.<sup>56</sup>

In addition to law enforcement undermining the *Miranda* decision, the Supreme Court repeatedly has subverted *Miranda* in many decisions over the years since it was decided. An example of this is seen in *Harris v. New York*, where the court held any that statements obtained without Mirandizing could still be used against the suspects due to the exclusionary rule.<sup>57</sup> In this case, the defendant, Viven Harris, was arrested and charged for selling heroin twice to an undercover police officer.<sup>58</sup> Before receiving the *Miranda* warnings, Harris said he had made both sales at the request of the officer.<sup>59</sup> This statement was not admitted into evidence at the trial.<sup>60</sup> However, Harris later testified in court that he did not make the first sale and in the second sale he merely sold the officer baking powder.<sup>61</sup> When Harris confessed to selling heroin, his initial statement to the officer was used in an attempt to challenge his credibility in front of the jury by pointing out the discrepancies in the defendants' statements.<sup>62</sup>

Chief Justice Warren E. Burger issued the opinion, which held that the defendants' conflicting statements used as evidence during the

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<sup>53</sup> Erwin Chemerinsky, *Why Have Miranda Rights Failed?*, DEMOCRACY JOURNAL (June 27, 2016), <https://democracyjournal.org/arguments/why-have-miranda-rights-failed/>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Harris v. New York*, 401 U.S. 222 (1971).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 223.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

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trial without being given the *Miranda* warning were admissible in court.<sup>63</sup> Furthermore, the Court held the *Miranda* decision did not require that inadmissible evidence against a suspect must be barred for all purposes from the trial.<sup>64</sup> The dissent argued this provided a way for officers to ignore the requirements set forth in *Miranda*, since officers knew improperly obtained confessions could still be used in some capacity during trial.<sup>65</sup>

In *New York v. Quarles*, the Court held *Miranda* warnings do not need to be given in instances where an officer has a concern for public safety.<sup>66</sup> In this case, Benjamin Quarles was charged with the possession of a firearm.<sup>67</sup> Quarles was apprehended in an empty grocery store by a police officer, who had learned of a suspect and the suspect's description from a woman claiming she had just been raped.<sup>68</sup> When the officer handcuffed Quarles, he noticed Quarles was wearing an empty gun holster.<sup>69</sup> The officer then asked Quarles where the gun was, to which he responded by nodding in the direction of the gun and saying, "the gun is over there."<sup>70</sup> The officer retrieved the gun, formally arrested Quarles and then read him his *Miranda* rights.<sup>71</sup>

Although Quarles was not charged with rape, he was charged with possession of a firearm.<sup>72</sup> Quarles argued that his statement of "the gun is over there" was inadmissible since he was not read his *Miranda* rights at that time.<sup>73</sup> The Court held, "there is a 'public safety' exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence, and that the availability of that exception does not depend upon the motivation of the individual officers involved."<sup>74</sup> The Court further stated, "Whatever the motivation of individual officers in such a situation, we do not believe that the doctrinal underpinnings of *Miranda* require that it be applied in all its rigor to a situation in which police officers ask

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<sup>63</sup> *Id.* at 225.

<sup>64</sup> *Id.* at 224.

<sup>65</sup> *Id.* at 226.

<sup>66</sup> 467 U.S. 649 (1984).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 651.

<sup>73</sup> *Id.* at 653.

<sup>74</sup> *Id.* at 655.

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questions reasonably prompted by a concern for the public safety.”<sup>75</sup> Therefore, Quarles’ statement, “the gun is over there,” was used as evidence against him, although this decision conflicted with the framework set out by the *Miranda* decision.

Furthermore, in *United States v. Patane*, the defendant, Samuel Patane, was arrested after making calls to his ex-girlfriend, violating his restraining order.<sup>76</sup> When police apprehended Patane and began to read him his *Miranda* rights, Patane stated he already knew them, at which point the officers stopped reading them.<sup>77</sup> The officers then asked Patane about a gun, to which Patane responded was located in his home.<sup>78</sup> The officers searched Patane’s home and retrieved the gun, which was not permitted as Patane had a felonious record.<sup>79</sup> Patane was found guilty for possession of the weapon, to which he argued his Fifth Amendment right against self-incrimination was violated because there was no probable cause to arrest him and because the gun had been found as a result of an un-*Mirandized* confession.<sup>80</sup> The Supreme Court held that “a failure to give a suspect *Miranda* warnings does not require suppression of the physical fruits of the suspect’s unwarned but voluntary statements.”<sup>81</sup> Therefore, the Court found that any tangible evidence found without giving the suspect their *Miranda* rights could still be used in court although the testimony itself would be inadmissible.<sup>82</sup>

Our justice system has again left open or created significant exceptions to the 5<sup>th</sup> and 6<sup>th</sup> amendments. These exceptions and limitations indicate that although our courts have made attempts to protect our citizens, officers and judges are continuously discovering anomalies which contradict the protections we have in place. *Miranda* has failed in part because the Court assumed that suspects would understand their rights and that providing suspects with this information would decrease any opportunities for unlawful interrogations. Unfortunately, our constitutional rights, including our

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<sup>75</sup> *Id.* at 656.

<sup>76</sup> 542 U.S. 630, 634 (2004).

<sup>77</sup> *Id.* at 635.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 635-36.

<sup>81</sup> *Id.* at 633.

<sup>82</sup> *Id.* at 643.

Fifth Amendment privilege against self-incrimination, remains vulnerable.

#### IV. EXONERATIONS WITH DNA BASED EVIDENCE

As discussed, wrongful convictions are not as uncommon as one may think. This raises questions such as how many individuals have been wrongfully convicted for their confessions and further, how many of these convictions were later overturned? Many individuals have formed organizations over the years to challenge wrongful convictions. The Innocence Project<sup>83</sup> was founded in 1992 by lawyers Peter Neufeld and Barry Scheck at Cardozo School of Law and works to exonerate those who have been wrongfully convicted using DNA testing and<sup>84</sup> to reform our criminal justice system in an attempt to prevent these atrocities.<sup>85</sup> Eddie Joe Lloyd, a client of The Innocence Project, was exonerated after serving 17 years for a crime he did not commit.<sup>86</sup> Lloyd was initially convicted due his false confession and having received an inadequate legal defense.<sup>87</sup> Leading up to his conviction, Lloyd suffered from mental illness and had been non-voluntarily admitted to the Detroit Psychiatric Institute.<sup>88</sup> He was convinced he had supernatural powers with which he could help law enforcement agencies solve crimes.<sup>89</sup> His conviction began with a letter he wrote to law enforcement during his stay at the psychiatric ward which suggested he had details regarding the rape and murder of a 16-year-old girl in Detroit.<sup>90</sup>

Upon receipt of these letters, the police interrogated Lloyd several times at the facility he was held.<sup>91</sup> They even began to feed him information regarding the crime scene and led him to believe that by confessing it would help them catch the real perpetrator.<sup>92</sup> Lloyd then

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<sup>83</sup> INNOCENCE PROJECT, <https://www.innocenceproject.org/about/>, (last visited Oct. 2, 2019).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Eddie Joe Lloyd*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/eddie-joe-lloyd/>, (last visited Oct. 2, 2019).

<sup>87</sup> *Id.*

<sup>88</sup> Jeremy W. Peters, *Wrongful Conviction Prompts Detroit Police to Videotape Certain Interrogations*, N.Y. TIMES (Apr. 11, 2006), <https://www.nytimes.com/2006/04/11/us/wrongful-conviction-prompts-detroit-police-to-videotape-certain.html>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

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executed a written confession giving specific details of the crime scene and also offered a confession which was taped.<sup>93</sup> During these interviews, Lloyd was never offered a lawyer, and the prosecutor was able to use his written confession and tape during trial where he was convicted of first-degree felony murder and sentenced to life without parole.<sup>94</sup>

In addition to the written confession and the tape, evidence presented at trial merely consisted of semen stain on long-johns and a bottle that was forced into the victim.<sup>95</sup> The prosecution also relied on a piece of paper with a semen stain that was stuck to the bottle.<sup>96</sup> However, the semen was not tested to see if it matched Lloyd.<sup>97</sup> The only testing presented was merely confirming the presence of semen and other biological matter on the bottle and pants.<sup>98</sup>

Lloyd attempted to appeal his conviction, however his court appointed attorneys failed to provide him adequate legal representation and therefore his appeals were not heard.<sup>99</sup> Then Lloyd contacted The Innocence Project, which was able to obtain evidence and have DNA testing conducted on the evidence.<sup>100</sup> The testing revealed that the DNA did not match that of Lloyd's.<sup>101</sup> Lloyd was exonerated in 2005, but unfortunately passed away just two years later.<sup>102</sup>

A few years later in the neighboring state of Illinois, a man named Angel Gonzalez found himself in a situation not very different from Eddie Joe Lloyd.<sup>103</sup> In 1994, a woman was abducted by two men from her apartment building and driven to a backyard where she was brutally raped by her kidnappers.<sup>104</sup> After the attack, the victim called the police and provided law enforcement with descriptions of her

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<sup>93</sup> *Eddie Joe Lloyd*, *supra* note 86.

<sup>94</sup> NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, <http://www.nlada100years.org/story/wrongfully-convicted-eddie-joe-lloyd-case-exposed-flaws-system>, (last visited Oct. 2, 2019).

<sup>95</sup> *Eddie Joe Lloyd*, *supra* note 86.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Angel Gonzalez*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/angel-gonzalez/>, (last visited Oct. 2, 2019).

<sup>104</sup> *Id.*

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attackers as two Hispanic men in their mid-twenties, with average height and build.<sup>105</sup> She also provided the police with a description of the car used in the attack as a dark sedan with tinted windows.<sup>106</sup>

Moments later, Angel Gonzalez was leaving the apartment complex of his friend, where the victim and her boyfriend lived.<sup>107</sup> The boyfriend saw Gonzalez' car which matched the description and told police he did not believe that Gonzalez' car belonged on the property.<sup>108</sup> Gonzalez was later pulled over by a cop, who immediately drew his weapon, even though Gonzalez' physical description did not match that of the perpetrators provided by the victim.<sup>109</sup> In addition to a notable goatee, Gonzalez had a large birthmark under his right eye, which were details the victim did not provide in her description of the attackers.<sup>110</sup>

The victim was then driven to the scene where Gonzalez was stopped, where she identified his vehicle as the one used in the attack.<sup>111</sup> She then positively identified Gonzalez, however she did so from afar, and in the back of a police car.<sup>112</sup> Gonzalez, who is a Mexican immigrant that spoke very little English, was taken into police custody and kept overnight without being told the reason.<sup>113</sup>

After being kept awake for over twenty-six hours, two investigators read Gonzalez his *Miranda* rights in English, which Gonzalez waived.<sup>114</sup> Gonzalez offered an alibi in which he stated he was visiting his girlfriend's sister who also lived in that apartment complex and denied attacking the victim.<sup>115</sup> However, the alibi was never investigated despite officers returning to apartment complex to further investigate the crime scene.<sup>116</sup>

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Nick Bogert, *DNA Clears Angel Gonzalez, Wrongly Convicted Man But Freedom Delayed*, NBC NEWS (Mar. 9, 2015), <https://www.nbcnews.com/news/latino/angel-gonzalez-cleared-after-serving-20-years-wrongful-conviction-n320091>.

<sup>111</sup> *Angel Gonzalez*, *supra* note 103.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

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Gonzalez was then questioned in Spanish by Detective Marquez and was asked to write out a statement in Spanish.<sup>117</sup> This statement was translated and typed up by Detective Marquez, however the statements were completely different from the previous statement.<sup>118</sup> Later that night, a video tape confession was recorded in which Gonzalez was read his *Miranda* rights in English and signed the statement typed by Detective Marquez in English.<sup>119</sup>

Gonzalez was tried and convicted on June 16, 1995 for kidnapping and sexual assault and sentenced to forty years in prison.<sup>120</sup> Although there were several witnesses for Gonzalez' alibi, the jury was convinced, given the victims identification of Gonzalez, as well as the signed confession.<sup>121</sup> Fortunately, using DNA testing, his counsel with The Innocence Project were able to exonerate Gonzalez, who served twenty years, by showing the biological matter found on the evidence did not match the profile of Angel Gonzalez.<sup>122</sup>

The Innocence Project has helped exonerate many individuals that were wrongfully convicted.<sup>123</sup> In some instances, the organization has helped reform the justice system by arguing cases in the highest court of a state.<sup>124</sup> Another example of this comes from the story of Anthony Wright.<sup>125</sup> Wright was convicted in 1993 to life in prison for the rape and first-degree murder of an elderly woman named Louise Talley.<sup>126</sup> Wright was also charged with robbery and possession of an instrument of crime.<sup>127</sup>

On October 18, 1991, 77-year-old Louise Talley was raped and murdered in her North Philadelphia home.<sup>128</sup> Wright was only twenty years old when taken into custody by law enforcement.<sup>129</sup> After a mere fourteen minutes of being in custody, Wright gave a full and complete

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>, (last visited Oct. 4, 2019).

<sup>124</sup> *Id.*

<sup>125</sup> *Anthony Wright*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/anthony-wright-exonerated/>, (last visited Oct. 4, 2019).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

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signed confession to the crime.<sup>130</sup> However, during trial, Wright stated he only signed the confession, which the police wrote out, after the interrogating detectives threatened him with bodily harm.<sup>131</sup>

In addition to the signed confession, evidence used against Wright consisted of clothing found at the crime scene.<sup>132</sup> The clothing was never tested for DNA during the trial, and after his conviction, Wright tried for several years to have the clothing tested to prove his innocence.<sup>133</sup> However, his appeals were denied as judges held that he was unable to seek DNA testing since he had already signed a written confession.<sup>134</sup> Under old Pennsylvania law, an inmate's voluntary confession precluded him from seeking post-conviction DNA testing.<sup>135</sup>

After six years of legal battles, Wright's attorney was able to have the clothing tested.<sup>136</sup> Pennsylvania's high court held that "a confession, even if previously and finally adjudicated as voluntary, does not constitute a per se bar to establishing a prima facie case, and the convicted person may, therefore, obtain DNA testing under Section 9543.1 if he or she meets all of this statute's pertinent requirements."<sup>137</sup>

Wright's case was remanded for further proceedings.<sup>138</sup> Following this, Wright was exonerated when the DNA proved that Wright had never worn the clothes found at the crime scene.<sup>139</sup> The DNA testing also ruled out that Wright was not involved in the rape, and the biological matter recovered belonged to the real perpetrator, Ronnie Byrd, a homeless man that had been squatting in a home behind the victim's house.<sup>140</sup>

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Commonwealth v. Wright*, 609 PA. 22 (2011).

<sup>136</sup> *Anthony Wright*, *supra* note 125.

<sup>137</sup> *Wright*, 609 PA. 22 at 25.

<sup>138</sup> *Id.*

<sup>139</sup> *Anthony Wright*, *supra* note 125.

<sup>140</sup> Paul Solotaroff, *How Tony Wright, an Exonerated Philly Man, Won \$10 Million from the City*, ROLLING STONE (June 15, 2018), <https://www.rollingstone.com/culture/culture-news/how-tony-wright-an-exonerated-philly-man-won-10-million-from-the-city-628395/>.

## V. MEDIA ATTENTION: THE STAIRWAY TO FREEDOM?

The individual exonerees discussed above are just a few examples of innocent people who spent too many years of their lives in prison for crimes they did not commit. Fortunately, they were able to get the attention of attorneys of The Innocence Project and these attorneys worked tirelessly on their cases. However, this raises the question of how many innocent individuals remain incarcerated because they have not been able to get the help they need to appeal their cases. Further, these individual cases are unlikely to receive the wide-spread attention needed for their cases to get a second look from willing attorneys. The more attention an individual's story gets, the more likely they are to get the recognition from attorneys or organizations that have the resources to help them.

For example, the most well-known The Innocence Project client was Steven Avery. Steven Avery gained a lot of attention after a documentary known as "Making a Murderer" was released on the Netflix streaming platform in 2015.<sup>141</sup> The documentary tells the story of Steven Avery, a man from Manitowoc County, Wisconsin, who served 18 years in prison after a wrongful conviction for the sexual assault and attempted murder of a woman jogging along the shoreline of Lake Michigan, named Penny Ann Beersten.<sup>142</sup>

In this case, Beersten was captured by an unknown male who forced her into the nearby woods and sexually assaulted her.<sup>143</sup> After the attack, Beersten went to the police who showed her several photographs of men.<sup>144</sup> Of the photos shown to her, she selected Steven Avery and identified him as her attacker.<sup>145</sup> Steven Avery was then arrested and tried.<sup>146</sup> During trial, the prosecution provided a hair recovered from Avery's shirt was consistent with Beersten's hair.<sup>147</sup> In response, Avery presented over a dozen witnesses who accounted for

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<sup>141</sup> Mekado Murphy, *Behind 'Making a Murderer,' a New Documentary Series on Netflix*, N.Y. TIMES (Dec. 20, 2015), <https://www.nytimes.com/2015/12/21/arts/television/behind-making-a-murderer-a-new-documentary-series-on-netflix.html>.

<sup>142</sup> Christine Thompson, *Penny Beersten, the Rape Victim in "Making a Murderer," Speaks Out*, THE MARSHALL PROJECT (Jan. 5, 2016), <https://www.themarshallproject.org/2016/01/05/penny-beersten-the-rape-victim-in-making-a-murderer-speaks-out>.

<sup>143</sup> *Steven Avery*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/steven-avery/>, (last visited Oct. 8, 2019).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

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his whereabouts on the day of the assault.<sup>148</sup> The jury still found Avery guilty and he was sentenced to 32 years in prison.<sup>149</sup>

Avery filed several appeals, and eventually The Innocence Project was able to obtain a court order to test the DNA of hair taken from Beersten immediately after the attack.<sup>150</sup> Upon testing the hair samples, it was reported that the hair belonged to a man named Gregory Allen.<sup>151</sup> Allen was a convicted felon who resembled Avery and was at the time of the testing, already serving a sentence for sexual assault of a different woman.<sup>152</sup> Avery was exonerated and released in September 2003 after serving eighteen years.<sup>153</sup>

Then in 2005, a woman named Teresa Halbach disappeared and her last known location was at an appointment at Avery's business, Avery's Auto Salvage.<sup>154</sup> Upon her disappearance, Halbach's family and friends along with volunteers began a search party looking for her.<sup>155</sup> Soon after on November 5, 2005, two volunteers saw Halbach's RAV4 on Avery's forty-acre partially covered by tree branches, fence posts, boxes, plywood, and auto parts.<sup>156</sup> The license plates had been removed and the battery cables disconnected.<sup>157</sup>

Law enforcement obtained a search warrant for the property and found a key to Halbach's vehicle in Avery's bedroom and then found bloodstains in the vehicle which matched Avery's.<sup>158</sup> Investigators later also found bone fragments belonging to Halbach near Avery's home in a fire-pit.<sup>159</sup> Among the remains were pieces of a cellphone and camera of the same make and model used by Halbach, as well as a zipper and rivets from a brand of jeans that Halbach was known to wear.<sup>160</sup> Crime experts determined, based on the remnants of Halbach's skull, she had been shot twice in the head.<sup>161</sup> There were

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Dassey v. Dittmann*, 860 F.3d 933 (7th Cir. 2017).

<sup>155</sup> *Id.* at 939.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

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also several witnesses who reported seeing a large bonfire outside of Avery's home following the days when Halbach went missing.<sup>162</sup> Avery was subsequently arrested and charged with Halbach's murder, kidnapping, sexual assault, and mutilation of a corpse on November 15, 2005.<sup>163</sup>

At this time, Avery is being represented by an attorney named Kathleen Zellner.<sup>164</sup> On Zellner's website for her law firm, she provides updates regarding Avery's case and has provided a link for donations to fund the legal fees needed for Avery's case.<sup>165</sup> Although it is unclear how many people have donated money to help Steven Avery, the likelihood of him getting any donations would have been much lower had it not been for the Netflix documentary. Before the documentary, it is doubtful that strangers around the country would be willing to donate money for the defense of a man convicted for murder.

Although many remain incarcerated for crimes they did not commit, yet confessed for various reasons, the media can be thanked in part for bringing light to the unfortunate situations for hundreds, if not thousands, that falsely accused prisoners face. An example of the light shed on victims of our criminal justice system by the media is Adnan Syed.

Adnan Syed became a household name when WBEZ Chicago created a podcast, popularly known as "Serial."<sup>166</sup> The podcast captured and portrayed the story of Adnan Syed and the murder of his ex-girlfriend, Hae Min Lee.<sup>167</sup> Syed was a high school student who was tried and eventually convicted of murdering Lee and sentenced to life in prison, yet maintains his innocence till this day.<sup>168</sup> Although Syed is still in prison, he has garnered hundreds of thousands of supporters, if not millions, who have followed his story and are doing whatever they can to help.<sup>169</sup> Numerous attorneys have filed amicus curiae briefs in

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<sup>162</sup> *Id.*

<sup>163</sup> John Ferak, *Update: Steven Avery Case Timeline*, POST CRESCENT (Jan. 28, 2016), <https://www.postcrescent.com/story/news/local/steven-avery/2016/01/28/steven-avery-case-timeline/79450680/>.

<sup>164</sup> LAW OFFICES OF KATHLEEN T. ZELLNER, <https://kathleen-zellner.squarespace.com/steven-avery>, (last visited Mar. 6, 2021).

<sup>165</sup> *Id.*

<sup>166</sup> *Serial Season One*, SERIAL PODCAST, <https://serialpodcast.org/season-one>.

<sup>167</sup> *Id.*

<sup>168</sup> Baynard Woods, *Adnan Syed to argue his innocence at hearing to consider new evidence*, THE GUARDIAN (Feb. 3, 2016), <https://www.theguardian.com/us-news/2016/feb/03/adnan-syed-serial-hearing-new-evidence-hae-min-lee-murder>.

<sup>169</sup> *Id.*

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support Syed's petition for certiorari.<sup>170</sup> Although the updates regarding a retrial are skim, many remain hopeful for his release. However, the argument can be made that these appeals, briefs, or any instance of such widespread support would not have been possible without the podcast capturing such attention.

## VI. CONCLUSION

Wrongful convictions prey on vulnerable suspects by virtue of their youth, age, and lack of intelligence, which has had detrimental impacts on the American criminal justice system. The National Registry of Exonerations notes that in 2018 the United States saw a record number for the amount of years lost by defendants from being incarcerated for crimes they did not commit.<sup>171</sup> In 2018, a total of 1,619 years were spent in prison which averages 10.9 years lost by each exoneree.<sup>172</sup> The total number of years spent by exonerees in prison has just recently surpassed 21,000.<sup>173</sup> Most noticeably, such practices can have impacted minorities the most.<sup>174</sup> A study done by the Department of Justice revealed that nearly half of the wrongfully convicted individuals were African American.<sup>175</sup>

Wrongful convictions can be caused by a variety of factors. Whether it's racial profiling, coerced confessions, or poor legal work, the one uniformity is that wrongful convictions have seriously deteriorated our society's trust and positive or trusting outlook on the American justice system. This distrust in our criminal justice system has created a very noticeable divide amongst citizens and law enforcement. Although some individuals have been exonerated and given a second chance at life, they have lost out on too many years, experiences, time with family and friends. And although these individuals and their loved ones may be happy to be re-united, the struggles these individuals face to reestablish meaningful lives after

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<sup>170</sup> Justin Brown, *Adnan Syed Updates*, BROWN LAW, <http://cjbrownlaw.com/adnan-syed-updates/>.

<sup>171</sup> *The National Registry of Exonerations, Exonerations in 2018*, UNIVERSITY OF MICHIGAN LAW SCHOOL (Apr. 9, 2019), <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf>.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Samuel R. Gross, *Race and Wrongful Convictions In The United States*, NEWKIRK CENTER FOR SCIENCE AND SOCIETY (Mar. 7, 2017), [http://www.law.umich.edu/special/exoneration/Documents/Race\\_and\\_Wrongful\\_Convictions.pdf](http://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf).

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losing so many years to our broken criminal justice system remains an incredible challenge. This issue has existed in our country for long enough. The United States is in dire need of new legislation to protect the liberty interests of its people and to create a positive change and reduce the number of unjust outcomes innocent citizens have endured.