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Yevgeny Roymisher
Pace University

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The Absence of Justice in the United States Criminal Justice System

Honors Thesis
Yevgeny Roymisher
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The inherent necessity for justice is the core tenet of the legal system. There is no greater need for the criminal justice system to fulfill than to ensure that innocent people are not convicted and incarcerated. If the justice system fails in this endeavor at any level then there must be avenues for remedy and reform. This need rings especially true in regard to the country with the highest rate of its citizenry in prison. According to the United States Department of Justice Bureau of Justice Statistics, two million of three hundred million Americans are in prison (“Prison and Jail Inmates, 2004”) – it is the highest incarceration rate in the world. Many of the inmates are innocent. Since 1970, One out of every seven men sent to death row has been exonerated – an error rate of 14% (Scheck 218). The current efforts of lawyers, scientists, and activists have provided the tools and talent to fix the broken criminal justice system. The recent discovery of DNA evidence and its ability to conclusively prove innocence demands that states allow their inmates to utilize it. Inmates are not throwaways, they are human beings and - due to the equality afforded to all citizens by the social compact - they deserve every opportunity to prove their innocence. The freedom of innocent people trumps the need for victims of crimes to receive a sense of closure from the conviction and incarceration of criminals. Providing suspects and prisoners the scientific means to prove their innocence is not a burden, it is a mandate! Along with the benedictions of justice that DNA provides, criminal evidence and procedural reforms should be enacted in every state because they could prevent future miscarriages of justice.

Freedom is an abstract concept that is best appreciated when it is stripped away. Prosecutors sometimes maliciously circumvent the law to ensure convictions and politicians sometimes stubbornly resist advocating the necessary reforms to prevent the wrongful convictions for the sake of not appearing to be “soft on crime.” It is an incredibly infuriating phenomenon and a profanation of justice(i.e. wrongful convictions). How can we say that we live in a civilized nation when courts

deem an innocent man's life worthless? It is incredibly naïve to believe that the courts always convict the criminal who did the crime, that prosecutors always act honorably, defense lawyers are always competent, eyewitnesses always identify the real perpetrator, and that juries reasonably ascertain the facts; the precarious possibility for error is the reason that reform is necessary to counteract natural human error.

Human nature dictates that we are prone to error, however, our DNA is an inrefutable tool to correct those errors. Deoxyribonucleic acid is a unique serpentine chain of molecules in the nucleus of every nucleated cell in every organism. "Because of the uniqueness of DNA, theoretically, no two people are exactly the same, save for identical twins" (Zonderman 95). Each person has a few strands of DNA that are unique only to him or her. DNA may be extracted from blood, semen, tissue, bone, hair, urine, and saliva. Scientists Ray White and Alec Jeffries, an American and an Englishman respectively, developed a way to use DNA as an identifying tool in the 1980s. Their technique, *restriction fragment length polymorphism* (RFLP), requires a large specimen of DNA to identify the source with absolute accuracy. Once the DNA is extracted, it is combined with a reacting enzyme that breaks down the DNA. Using a technique called *gel electrophoresis*, the fragments of the DNA strand are mixed with a gel and electrocuted. The fragments line up on electrodes according to size (Zonderman 97). At this point, the fragments are placed on a nylon membrane and then a "genetic probe – a particular type of DNA molecule" is added to the specimen. The probe attaches itself onto specific "polymorphic" strands of DNA. An radioactive photograph (*audiograph*) is taken and distinguishes the strands with the probe. By comparing the audiographs of different specimens, scientists can determine if there is a match in DNA. Paternity tests utilize DNA because a child's DNA, theoretically, contains half of each parent's DNA. Rape cases usually have DNA evidence available as well as some murder cases. But the RFLP technique

is only reliable if there is a large enough quantity of DNA to sample. The problem is that DNA deteriorates over time and the RFLP test may not be useful if there is an insufficient amount of testing material.

Kary Cullis solved the problem of the fragility of DNA evidence when he created a biological technique called *Polymerase chain reaction* (PCR) for expanding the cells of DNA using the principles of fractal photography and mathematical logarithms. Cullis, a biotechnician for Cetus Corp. at the time, worked out that “by adding the right chemicals, the little section of DNA could keep reproducing itself automatically and exponentially” (Scheck 37). Biochemists Henry Ehrlich and Edward Blake used the Mullis technique as a tool for discerning the identity of a perpetrator in a crime and applied the technique to the cells of genetic material from almost any part of the human body. Blake also refined the technique used in rape cases to “isolate and remove the male and female DNA – known as differential extraction – [which] creates a biochemical videotape of the assault yielding evidence from both victim and attacker” (Scheck 39). Physical evidence may be tainted with the DNA from an investigator or forensic technician but the tough and thick walls of a sperm cell (in comparison to other types of cells’ walls) cause a problem. Chemicals are used to break the walls open but the more powerful chemicals necessary to break the sperm cell lining and may destroy the sought after genetic material. Blake’s technique solved the problem by allowing investigators to retain the necessary DNA evidence even after time and chemicals have destroyed the sample. Edward Blake, the creator the technique, also testified in the first trial in U.S. history that exonerated an innocent man with DNA evidence – Gary Dotson.

Blake’s new technique saved the life of Gary Dotson of Chicago - a man incarcerated for the rape of a woman that he never raped. (Scheck 40) Dotson was imprisoned for ten years before Blake’s research saved him from further injustice. In July of 1977, a young woman named Cathleen

Crowell told a police officer that she had been assaulted with a broken beer bottle and raped. Her description of the suspect did not include any facial hair. Five days after police interrogated her, Gary Dotson was arrested. Dotson was a twenty-two-year-old high school dropout with a minor criminal record. He had a full grown mustache (which could not have possibly grown in five days) at the time of his arrest but Crowell identified him with full confidence. Along with the erroneous identification of Dotson, The old methods of forensic testing, provided by “expert” witness Timothy Dixon wrongly convicted him: “Cromwell was lying and Dixon was offering information that was at best incomplete, at worst intentionally misleading” (Cohen 4). Dixon testified that Dotson’s B blood secretion type was rare and was found in Cromwell’s panties and fabricated false statistics about the improbability that someone else could have been the source of the blood. The prosecutor in the case also made up statistical facts about the statistical probability that the public hair found at the crime scene belonged to Dotson and falsely stated in his closing statements that Cromwell was a virgin. Eight years after the jury disbelieved his alibi (corroborated by four friends who were with him) and convicted Dotson of rape, Cromwell confessed to her pastor about making up the rape scenario and self-inflicting her wounds. After the pastor contacted the prosecutors who sent Dotson to prison, they were unresponsive. It took the attention of the local news media to propel the appeal forward. And it would take another four years of legal wrangling, Dotson’s release on bond and subsequent re-incarceration, and media exposure to compel the judge to allow the testimony of Blake (who in 1988 conclusively proved Dotson’s innocence with the PCR technique) and grant the motion of postconviction relief. The State’s Attorney’s office dropped charges against Dotson – a man convicted due to mistaken eyewitness testimony and forensic fraud.

The judicial inefficiencies in the Dotson case are by no means rare or isolated events: mistaken witness identification and forensic fraud arise from systemic defects and account for the

majority of wrongful convictions. “The playfully cynical injunction that you should believe nothing you hear and only half of what you see has its purchase on truth in the criminal justice system. False eyewitness testimony is the principle cause of wrongful convictions in the U.S. courts.” (Cohen 39)

The gift of DNA evidence to criminal justice professionals precipitated the founding of the Innocence Project— a non-profit organization loosely affiliated with Cardozo University School of Law founded by Barry Scheck and Peter Neufeld in 1992. “Not long ago, to claim that an innocent person had been imprisoned was audacious, even risky, a proposition that was close to unprovable.” (Scheck xiii) According to their website, the organization has exonerated over two hundred wrongfully convicted people – including 14 on death row - in the past fifteen years with DNA evidence. The cases in which the decisions were overturned were originally marred with mistaken eyewitness identification, false confessions, snitch testimony, prosecutorial and police misconduct, and forensic fraud.

No matter how confident a person may be, it does not mean that their eyewitness testimony is reliable. In 1902, a German Criminology professor proved that the human memory is not able to recall events – even recent traumatic crimes – with any definite accuracy (Scheck 41). Using his students as test subjects, the professor staged a fake shooting right in the middle of a class lecture. All the students observed a verbal conflict among two rival classmates, a physical struggle, and a revolver going off. But when the students were asked to recount the details for the police, their imaginations ran wild: they indicted students who were not part of the fight as accomplices; they attributed actions that never happened; they put words into the mouths of people who were silent throughout the conflict. Certain events that actually happened were erased in their minds and others were fabricated- even though the even had just happened. German American Scholar Hugo Munsterberg wrote about the incident in his book “*On the Witness Stand* (1908), arguing that

scientific evidence showed eyewitnesses were just as likely to be wrong as right” (Scheck 42). In the 1970s, a Brooklyn College professor tried the experiment with a different approach - he broadcast a twelve-second tape of robbery on local news television with the perpetrators full face shown to the camera. A lineup was then shown and viewers were asked to call in (Scheck 43). Of the two thousand people who called in and vote for the perpetrator, only 14% of them picked the correct suspect from the lineup. “In 70 percent of the cases where the DNA permits us to *know* that we sent an innocent person to prison, eyewitnesses pointed to the defendant at the trial and swore that they were certain that he was the wrongdoer” (Dow 98). The problem of eyewitnesses confidently picking the wrong person is prevalent in the justice system.

The majority of innocent people freed by the Innocence Project (more than 50%) were wrongfully convicted due to mistaken eyewitness testimony. Kirk Bloodworth was convicted of a gruesome crime – the rape and murder of a nine-year-old-girl in Maryland. The case against him was very weak and lacked any physical evidence (Scheck 213). Two eight-year-old boys and a neighbor looking out the window were the last people to have seen little Dawn Hamilton alive; she was seen walking off with a strange man in search of her playmate. During the investigation, neither the woman in the window who saw Dawn walk by nor did the boys she was playing with identify Bloodworth as the man they saw with Dawn during a lineup. The woman only identified Bloodworth after she saw his picture on the news broadcast – a suggestive identification display of a suspect to say the least. But the treatment of the boys was even more egregious. Too scared to participate in the proceedings – understandably so considering their age and the gruesome death of their friend - the boys were pressured to pick a suspect and they chose Bloodworth, even though he was shorter than the height from their description of the suspect and had red hair instead of the blond in the original description. And even though his friends corroborated his alibi that he was

with them at the time at a home gathering, Bloodworth was convicted based on the erroneous eyewitness testimony and sentenced to death. His lawyers appealed on the basis of the fact that police never released evidence they had linking other suspects to the crime; at a retrial Bloodworth was convicted again and sentenced to two life sentences (Cohen 13). But in 1993, nine years after he was originally sentenced to death, Bloodworth was exonerated and received a full pardon because DNA testing conclusively proved that he was not the killer. He was convicted due to mistaken eyewitnesses but became the first person sentenced to death row to be exonerated by DNA evidence. A more explicit example of erroneous testimony involved the murder conviction Isidore Zimmerman in 1938 (Radelet 50-53). It was proven through the uncovering of pretrial statements in later appeals that police hid the conflicting statements of the accomplices to the murder and coached them to give convincing testimony to implicate Zimmerman at the trial. Twenty-five years after his conviction, Zimmerman was released because of proof that the witnesses had perjured and police were complicit in framing Zimmerman.

The examples of abuses of power by the police and prosecutors in the justice system are exhaustive. In 1956, Lloyd Miller's murder confession was coerced and the exculpatory physical evidence was suppressed by the prosecution (Redelet 150). Calvin Johnson Jr. was convicted of rape because police dropped subtle hints about his profession to the suspect during the identification process and even though she did not initially identify him, she was resolutely confident that he was her attacker during trial. (Scheck 198). Jerry Banks was sentenced because police tampered with the physical evidence (the gun) from the crime and hid exculpatory evidence during the investigation and trial (Redelet 177). The problem of erroneous circumstantial evidence, such as false eyewitness testimony has plagued legal scholar for centuries. Yale Law professor Edwin Borchard observes in his book *Convicting the Innocent*:

“The advantages [of circumstantial evidence] are that as, the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail on their purpose. The disadvantages are, that a jury has not only to weight the facts , but to draw just conclusions from them, in doing which they may be led by prejudice or partiality or by want of due deliberation and sobriety of judgment, to make hasty and false deductions”(Borchard 368)

The best way to combat this obstacle of justice is for states to force police investigators to videotape all confessions and custodial identification procedures such as lineups. %25 of all wrongful death row convictions include false confessions by an innocent man (Dow 97). Videotaped confessions, which states such as New York have in place for federal crimes, ensure the legal and just procedures of an interrogation are not compromised by overzealous and perfidious police officers. With these measures in place, lawyers will be able to discern whether confessions or eyewitness identifications were coerced.

The problem of snitch testimony requires more drastic measures; the system of the government buying testimony (with immunity, money, or drugs) is a deplorable aspect of the criminal justice system. Paid informants disproportionately contribute to wrongful convictions. Snitches are never trustworthy because they profit from their testimony. The government profits as well: they attain an easier conviction. It’s not only lazy police work, it’s an abomination of justice. Snitches use the remarkably easy flow of information within the prison system to learn details about a case and then place fake proof of the guilt of a suspect. The framed and snitched on suspect is usually the suspect the police are already leaning towards and it can be done as easily as picking up

the phone and calling the District Attorney's record room, witness coordinator, or coroner's office (Scheck 128). It's an intolerable reality that our government not only allows this type of behavior but actually rewards it. A witness is integral to a trial and providing a clear statement of the facts is essential in the trial process but the *instant* that a witness is being rewarded for their testimony their word becomes worthless. The snitch system must be reined in; federal and state statutes must be passed to prohibit the use of snitches by the police and prosecutors in court. According to a Northwestern University School of Law study, snitch cases account for 45.9% of death row wrongful convictions since 1970 ("Snitches" 3). Tenth Circuit U.S. Court of Appeals Judge Paul J. Kelly Jr. observes "If justice is perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so. The judicial process is tainted and justice is cheapened when factual testimony is purchased, whether with leniency or money" ("Snitches" 15). Convicted rapist and armed robber Darryl Moore was released by prosecutors and paid \$66,000 for snitching on other criminals. He sent James Allen and Henry Griffin to prison for life by falsely testifying about his purported knowledge of their murder plots and drug deals in Chicago ("Snitches" 13). Moore later recanted and revealed that he was paid by the state's attorney's office to frame Allen and Griffin's boss. In 1987, Moore raped an 11-year-old girl in an alley. He is now serving 60 years. These are the type of people that the government employs.

Terri Holland is a career snitch who was instrumental in the government pursuing the conviction of an innocent man, Ronald Williamson. The prosecutors already had the fallacious and "crackpot" science of hair identification as their evidence (which is extremely unreliable because two hairs from the same head might be completely dissimilar in every aspect), they just needed a witness (Scheck 134). Terri Holland was experienced, she was the key witness in two major murder trials in Oklahoma (Scheck 153). Even though Williamson's fingerprints did not match those at the

crime scene, her testimony persuaded the jury. Williamson was a former athlete with deteriorating mental health and he had done time in the same jail as Terri Holland for writing bad checks. When Terri heard about the murder investigation, she learned the gruesome details of the rape, murder, and mutilation of Debra Carter. Williamson and his friend, Dennis Fritz, both spent sixteen years of their lives in prison before DNA evidence eventually exonerated them and implicated Glen Gore of the rape and murder – a man who testified at the trial that he witnessed Williamson harassing Dana Carter on the night of the murder. Both of the witnesses lied. Terri Holland stole sixteen years from the lives of two men so that she can have her minor check fraud charge dismissed.

Snitches do not only covet impunity from minor crimes, they will implicate innocent people for their own felonies. Randall Dale Adams was convicted of the murder of police officer in Texas in 1977; it was the real murderer who testified against him in court that persuaded the jury. (Radelet 62) The snitch, David Harris, was a man who had picked up Adams as a hitchhiker. Both men were suspects in the crime but police trusted the testimony of Adams, even though the physical evidence pointed towards Harris and was corroborated by witness accounts of what the real killer looked like. Adams was sixteen at the time and was too young to be eligible for the death penalty, but Adams was twenty-eight. A documentary made about the case “implies that authorities were pleased to have a suspect they could lawfully execute” (Dow 102). The police changed a form he signed acknowledging that Adams *knew* Harris into a *confession* of the crime. The prosecutor used an “expert” psychologist to testify that Adams was a violent psychopath. The man was charming on the stand and convinced the jury to deliver a guilty verdict and sentence Adams to death. The “expert,” Dr. James Grigson is, “it is fair to say, a discredited charlatan” (Dow 104) He interviewed Adams for fifteen minutes and had never spoken to him before in his life. But Grigson’s testimony on the stand lasted two and half hours. Of all of the people that he deemed violently psychotic, not a

single one of them had ever exhibited violent behavior after their convictions; all of his predictions were entirely false. Adams was not executed due to the federal moratorium on executions after the 1972 Supreme Court decision in *Furman v. Georgia*. But it would take the aforementioned documentary to spur the public awareness of the injustice to get the Texas Court of Appeals to hear and overturn the conviction. Hurricane Carter – the boxer immortalized in Bob Dylan’s song and portrayed by Denzel Washington on film – was convicted of murdering three people in a diner. It took the support and efforts of the entertainment community to bring to light the mistaken eyewitness testimony and prosecutorial fraud and for his habeas corpus motions to pass (Chaiton 58) *Habeas Corpus* is the right of a prisoner to have a judge review the lawfulness of their detention and is listed in Article 1, Section IX of the U.S. Constitution, (Bodenhamer 5) But the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 severely limited the scope of habeas corpus petitions in the criminal justice system. For example, “Section 2254(d) prevents a federal court from granting relief to a death row inmate who had been denied relief by the state court unless the state court’s decision...was so wrong as to be deemed unreasonable” (Dow 38). According to Dow’s citation of a study by professor James Liebman, “the rate of successful death penalty appeals has plummeted in comparison to the rates before the passage of AEDPA” (Dow xxii). The error of law is no longer enough to determine unlawful detention in a capital crime case. The new provisions remove the avenues of relief for wrongfully convicted people on death row—whether they are incarcerated by intentionally evil or unintentionally erroneous methods.

The criminals who maliciously send innocent people to jail under the pretense of being “experts” are a rampant injustice in states such as West Virginia, Texas, Oklahoma, and Nebraska – but the allure of easy convictions can theoretically entice any prosecutor in any state to sully the code of justice. A perfect example of malicious intent on account of a judicial employee - Fred

Zain, a professional prosecution witness on biological evidence, contributed to the convictions of countless innocent people. When he was reviewed by the American Association of Crime Lab Directors, it was revealed that he faked *all* the results of his DNA, blood, and hair tests for West Virginia prosecutors for a period of over ten years (1979-1989) ! (Scheck 113) “He had failed organic chemistry in college. He flunked an FBI course on forensic sciences. His assistants said he would make statements about evidence based on slides that had nothing on them” (Scheck114). The problems in the criminal justice system require that each state maintain a commission of lawyers, scholars, and medical technicians to oversee the procedural patterns to ensure that this type of injustice never occurs again. We need commissions to oversee “expert” testimony and testing. According to the Innocence Project website’s press release section, North Carolina created a commission on wrongful convictions in 2002. The group consists of 30 members who operate 6-8 weeks a year, funded entirely by an annual grant of \$37,250. (“Innocence Project Press Releases”) The staff would not need to be trained because they are already practicing professionals in the legal and forensic fields and it would not be a burden on the state budgets.

States must also take measures to preserve all DNA evidence from violent crime scenes. The Congressional report on the Innocence Protection Act of 2001 - which was incorporated into and led to the passage of the Justice for All Act of 2004 - included materials that urged legislation to “require the preservation of biological samples in all pending death penalty cases, and should require testing upon defense request in cases that have not yet been tried.” (“Innocence Protection Act of 2001” 125). The measures to give innocent people a chance to appeal their convictions and the assurance that they will have the necessary evidence available are imperative to rectify and prevent the mistakes of the past. The Justice For All Act of 2004 – passed into law by President George W. Bush - allocates funds to federal courts and forensics labs to provide convicts the right

to petition for DNA testing, increases the budget for public defenders, and funds the testing of evidence from crimes that was never tested before. (“Justice For All Act 2004”). The state courts must follow suit on their own accord. New York and Illinois are the only states that allow convicts to obtain DNA testing for an appeal at any point after a conviction. (Scheck 261) But New York is one of the 28 states that currently do not have statutes on the books that force the courts and police to preserve evidence from crimes. The futility of the courts to guarantee that innocent men and women are never wrongly convicted and forgotten about necessitates the passage of these reforms. Eliot Spitzer testified before the Senate Judiciary Committee in 2001 about the role of New York in the fight to preservints:

“In 1994, the New York Legislature amended the New York Criminal Procedure Law Section 440.30 to authorize trial courts to order post-conviction DNA testing in certain circumstances. This statute requires a court to grant a defendants request for post-conviction testing forensic DNA testing where a court makes two determinations; first that the specified evidence containing DNA was secured in connection with the trial resulting in the judgment; second, that if a DNA test had been conducted on such evidence and the results had been admitted in the trial resulting in the judgment, there exists a reasonable probability that the verdict would have been more favorable to the defendant.” (“Post-Conviction DNA testing” 36)

States must follow New York and Illinois’s lead and pass statutes allowing inmates to appeal at any time and request DNA testing. The majority of state statues impose a 30-day limit on appeals on the basis of new evidence after a conviction. As a testament to the poor investigation and utilization of DNA evidence, More than 100,000 rape kits sit in police

evidence storage that have never been tested (Scheck 255). Clearly, the government does not try the hardest it can to determine the identity of the guilty and to free the innocent.

Anything less than absolute dedication to the principle of justice dictates that the federal and state governments are too incompetent to administer the death penalty. Excluding the moral dimension of this debate, the 14% error rate of death row convictions proves the incompetence and unreliability of the administration of capital punishment. “It goes without saying that even those support capital punishment recoil at the prospect of executing the innocent” (Turow 39) Furthermore, the capricious nature of how the punishment is doled out further proves the injustice of the system: prosecutors and judges decide who to try under capital punishment, it is not necessarily a punishment reserved for the most heinous crimes. It is essentially an arbitrary punitive option.

The urgent need for this reform is predicated on the fact that since any one of us may be arrested, convicted by trial, and then murdered by the state for a crime of which we are completely innocent, then it is the collective responsibility of society to prevent that possibility. Hope for the abolition of widespread wrongful convictions abounds because of the efforts of those like the Innocence Project are determined to preserve justice instead of the feint of an infallible justice system. Reforms are necessary to oversee immoral prosecutors, compensate for the pathetic efforts of incompetent defense attorneys, and act as a buttress against the possible dangers of mistaken eyewitnesses and snitches. It is no trivial matter – this concerns the most valuable thing society can preserve: an innocent human life. Kirk Bloodworth, whose wrongful conviction was recounted earlier in this essay testified before the House of Representatives in 2000 – from the viewpoint of someone whom the justice system failed miserably – on the reforms needed to prevent future injustice:

“Does the system work? In my mind it did not...My family lived through this nightmare with me. My father spent his entire life savings. As a result, he cannot retire, and at 72 he must still work. My mother, whom I loved and who died five months before I was released. She never heard the results of the DNA tests, but she knew her son and she knew her son couldn't commit such a crime...We need more. We need DNA testing, across the board look, and we need to stop executing people in this country now” 51-52)

Prison is hell on earth and Kirk Bloodworth, along with hundreds of other innocent people, suffered and endured it for the sins and mistakes of the criminal justice system. If only 1% of our criminal justice system is innocent - and with consideration of all the evidence, I think the percentage is at the very least least 1% - that means there are over 20,000 people wasting away in prison for unjustifiably. To this injustice to continue is unconscionable; these people deserve the earnest and unwavering efforts of society to preserve the effectiveness and integrity of the criminal courts. DNA evidence has catalyzed a movement of reform in the criminal justice system, but it must be realized all the way through to truly enact a change in the system. The system must be an equal opportunity institution or else the Fourteen Amendment's Due Process Clause is meaningless and we are not truly a free and civilized society.

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