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NEAR MISSES

Six chilling examples of an imperfect criminal justice system

By Julius (Jay) Wachtel. Had the FBI not tried for six years to pin the 2001 anthrax attacks on an innocent man, recent revelations that maybe -- just maybe -- they've identified the real killer might have been better received.

Only two months after the Justice Department agreed to pay [Stephen Hatfill](#) \$5.8 million for recklessly invading his privacy (a judge commented that there was "not a scintilla of evidence" of his guilt) the Federal leak machine was already cranking out rumors that a fellow anthrax researcher, [Bruce Ivins](#), was about to be indicted for the attacks that killed five and left America afraid to open its mail. Unfortunately the whole story may never be known, as Ivins killed himself shortly after being released from a hospital where he was treated for a depression reportedly brought on by being in the Fed's bullseye.

Hatfill isn't the only innocent soul whom the FBI has wrongly soiled as a "person of interest". Remember [Richard Jewell](#)? He was the Atlanta security guard who discovered a bomb in a park during the 1996 Olympics and warned off bystanders before the device went off. FBI agents immediately targeted Jewell, grilling him, searching his home and generally making his life miserable. Two years later Eric Rudolph, a serial bomber, was spotted by citizens after an explosion at an abortion clinic. He wasn't caught until 2003. Rudolph later pled guilty to planting pipe bombs at the Olympics and three abortion clinics, including one where an off-duty police officer was killed. (Jewell went on to become a small-town cop and deputy sheriff. He passed away from heart disease last year.)

And who could forget [Brandon Mayfield](#), the Portland attorney who was arrested as a material witness to the 2004 Madrid train bombing because FBI examiners incorrectly matched his fingerprints to latent prints found by Spanish police on a bag of unexploded detonators. Confident in their work (Mayfield happened to be Muslim and represented a suspected terrorist in a civil action), the Feds pooh-poohed Spanish analysts who insisted that the prints didn't match. Eventually Spain positively identified the man who really handled the explosives -- an Algerian terrorist -- and the sheepish Feebs let Mayfield go. (He got \$2 million in taxpayer cash for his troubles.)

It's not just the Feds who get it wrong. Here are three examples of goofs by local cops in the writer's home turf:

- In January 1998 [Stephanie Crowe](#), a 12-year old girl, was stabbed to death in her Escondido (Calif.) home. Detectives quickly zeroed in on her 14-year old brother Michael. After being relentlessly interrogated he confessed and implicated two friends. Meanwhile patrol officers spotted a drifter who had been seen near the residence on the night of the murder. He was at a laundromat, so they took some of his clothes for processing. But detectives were so sure the boys did it that they never sent anything in. Months later during a pre-trial hearing the judge ordered that it be done. Sure enough, spots on the clothes turned out to be the victim's blood. Charges against the boys were dismissed (sorry!) and the man, a violent schizophrenic was convicted and imprisoned.
- “He grabbed my hair and then he started pulling me. And that's when I screamed. I tried to go away, and then my friends were trying to help me, and that's when he started choking me.” In January 2004, as [Eric Nordmark](#) sat on trial in Santa Ana (Calif.) for molesting three girls whom he'd never met, he was convinced that the victims were in fact assaulted, although not by him. But on the second day one of the three finally admitted they made it all up to avoid being punished for coming home late. Nordmark, a homeless person, was picked out because he seemed like a good fall guy. (His accusers were convicted of juvenile offenses and placed on probation.)
- In January 2006, after spending seven months in San Bernardino County (Calif.) jail, Christopher Fitzsimmons was released when DNA tests proved that he didn't rape the 4-year old girl who accused him of assaulting her in a park. Defense investigators discovered that the girl's mother had reported other rapes of her daughter, including two after Fitzsimmons was jailed.

In the above examples innocent persons were forced to endure unimaginable stress, huge legal bills, loss of reputation and employment, even significant jail time. However, unlike wrongful convictions, which have spawned a large advocacy movement, these lesser miscarriages of justice are like Rodney Dangerfield: they don't get no respect. Yet the root causes are the same. And perhaps the most fundamental is shoddy investigation.

Is police work often so poor because because FBI agents and detectives don't get enough training? Or is the fault more likely to be found in the workplace? Even in the face of limited resources, detectives are expected to promptly solve serious crimes and keep clearance rates high. Do such pressures inhibit their ability to discover the truth?

Whatever their cause, investigative shortcomings inevitably affect prosecutors. If police don't inform them about gaps in a case (maybe because they don't know they

exist) they can become equally overconfident. Prosecutors and judges are also political animals, highly attuned to public opinion and reluctant to let defendants off the hook lest they seem soft on crime.

The truly innocent are in the worst position. Few can afford top-notch lawyers and investigators to develop leads that police or the Feds might have ignored. As the pitifully long and sad string of exonerations attests, poor police work that goes unchallenged has repeatedly led well-intentioned jurors to convict the innocent. Finders of fact can only work with what they're given, and if that's a slipshod investigation, that's what will have to do.

What's to be done? Check back next week.