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## WRONGFUL AND INDEFENSIBLE

### *Coerced confessions cost two innocent men thirty years in prison*

*By Julius (Jay) Wachtel.* On September 3, 2014, nearly thirty-one years after their arrest and imprisonment for the rape and murder of an 11-year old girl, a North Carolina judge declared Henry McCollum, 50, and Leon Brown, 46, factually innocent. Significantly, McCollum had served his entire term on death row.

It never had to happen. Newly arrived in the small town where the crime occurred, both were detained and grilled by local police. Unsurprisingly, after hours of grilling, the mentally retarded half-brothers confessed.

Within weeks a local resident, Roscoe Artis, confessed to another rape/murder. (His confession was genuine, and he was convicted and imprisoned.) Artis happened to live only a block from where the body of the victim supposedly slain by McCollum and Brown was found. Inexplicably, prosecutors ignored the lead. Although the accused promptly repudiated their confessions, it was to no avail. It took nearly three decades for authorities to test DNA on a cigarette butt found near the girl's body. You guessed it - it proved a perfect match for Artis.

Joe Britt, the original prosecutor, and Ken Snead, a retired state investigator, unashamedly denounced the exonerations. "It's a tragic day for justice," said Britt. "Someone should have been called today to refute the evidence [for exoneration]," said Snead.

Really.

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What happened in North Carolina seems disturbingly similar to the case of the Central Park Five, one of the most "celebrated" episodes of wrongful conviction in modern times.

In April 1989 police arrested five youths for the brutal rape and beating of a jogger in New York City's Central Park. Each was put through the wringer, and four confessed on tape to an assistant D.A. Although the four promptly recanted, all five were convicted and were sentenced to terms up to fifteen years. But in 2002 a miracle happened. Troubled by his conscience, the real perpetrator, who was serving time for an unrelated rape/murder, came forward and said he alone was responsible. His improbable but highly welcome confession was promptly corroborated by DNA.

Despite the D.A.'s vehement protests (he claimed, among other things, that the five could have participated in the crime) their convictions were quickly vacated. New York City later acknowledged that the five men were innocent and, on the day this very post was published, settled their legal claims for \$41 million.

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Settled, but with fingers crossed behind its back. “The City of New York has denied and continues to deny that it and the individually named defendants [i.e., cops and prosecutors] have committed any violations of law or engaged in any wrongful acts.” According to city attorney (“corporation counsel”) Zachary Carter, “Our review of the record suggests that both the investigating detectives and the assistant district attorney acted reasonably, given the circumstances with which they were confronted.”

In other words, stuff happens.

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Over the years Police Issues examined many wrongful convictions that had been precipitated by false and coerced confessions. Here are a few:

- George Allen, a schizophrenic, exonerated in 2012 after serving twenty-nine years for murder. Evidence aside from his “confession” included erroneous blood work. Conveniently, prosecutors ignored fingerprints found at the scene that weren’t his.
- Damon Thibodeaux, exonerated in 2012 after serving sixteen years for murder. Authorities ignored DNA that wasn’t his.
- Douglas Warney, a former psychiatric inpatient with an IQ of 68, exonerated in 2006 after serving nine years for murder. DNA eventually identified the real killer.
- Jeffrey Deskovic, also exonerated in 2006 after serving 15 years for rape and murder. Deskovic was convicted even though DNA recovered from the victim wasn’t his. It did, however, ultimately identify the real killer.
- Earl Washington, a mentally disabled man with an IQ of 69, exonerated in 2000 after serving 18 years for murder (and nearly being executed.) Again, he did not match victim DNA; again, the real suspect was ultimately arrested.

As before we could close by setting out ways to prevent these all-too preventable tragedies. For example, recording entire interviews, not just, as in the case of the Central Park Five, the juicy parts, where the suspects (falsely) confess.

But this time we’ll let the reader page through our former posts (see below for links). Really, this latest example literally screams for a new approach. So here goes. When cops and prosecutors use unduly suggestive or coercive interrogation techniques, or purposely turn a blind eye to indicators of possible innocence, why not arrest and prosecute *them*?

There *is* some precedent. Remember Michael Morton, the Texas man who served twenty-five years for killing his wife? Except, of course, that he didn’t do it. Last year Texas judge Ken Anderson, Morton’s one-time prosecutor, served nine days in jail and accepted disbarment for failing to disclose exculpatory evidence to Morton’s defense attorney.

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Current statutes prohibit various kinds of misconduct by government officials. Morton's persecutor (yes, we meant to say that) was charged with evidence tampering, tampering with a government record and contempt, for lying to a judge in a pretrial hearing. To stem the plague of mistaken arrests and wrongful convictions it may be necessary to craft new laws. For example, that require police and prosecutors make good-faith efforts to investigate indications of innocence, and which outlaw using threats and coercion when taking statements.

Does that seem too harsh? It's not outlandish to require that government officials, whose goofs can and have caused unspeakable injury (including executing the wrong man) at least try to do quality work. On the other hand, perhaps the authorities have already reformed. Perhaps advances in DNA and other forensic techniques make catastrophic errors a thing of the past. Perhaps twenty years into the future there will be no more examples of innocents serving decades in prison.

Perhaps not.