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## MISCARRIAGES OF JUSTICE: A ROADMAP FOR CHANGE

*To prevent wrongful convictions, education is key*

The system worked exactly like it's supposed to....The Government doesn't owe an apology to anyone about that....This is just one of those horrible, horrible things.

*By Julius (Jay) Wachtel.* Those unforgettable remarks were made by Caddo Parish (LA) Assistant District Attorney Hugo Holland during an on-camera interview about his office's conviction of Calvin Willis, who was cleared in 2003 by DNA after serving twenty-two years in prison for a rape that he didn't commit. Willis was one of eight wrongfully convicted persons featured in the groundbreaking documentary [After Innocence](#), winner of the Special Jury Prize at the 2005 Sundance Film Festival.

Holland's point of view is all too common. Although some cops and prosecutors are deeply remorseful for locking up the innocent, many others seem unfazed, often asserting that despite incontrovertible forensic evidence to the contrary the exonerated may still be guilty. Here's what Asst. D.A. Holland [told the Baton Rouge Advocate](#) shortly following Willis's release: "I'm still not convinced Calvin Willis didn't do it. Calvin Willis is not innocent, he's just not guilty. I just don't know who did it."

What's missing in this picture? Nothing in D.A. Holland's comments suggested that he saw in his role any greater purpose than convicting whomever the police deposit at his door. "Beating" the defense seems to be many prosecutors' main goal. Here's the [last paragraph](#) from the National District Attorney's Association website profile of Clatsop County (OR) District Attorney Joshua Marquis:

Josh Marquis beat famed defense attorney Gerry Spence in a 1985 juvenile proceeding, winning the equivalent of a manslaughter conviction of a 16-year-old accused of shooting a neighbor to death in a property dispute. Although the Oregon Court of Appeals reversed the conviction four years later, Marquis has a book that Spence sent him, with the inscription: "To my friend Josh Marquis, who beat me fair and square."

That inscription seems quite undeserved. The book that Marquis refers to, "Smoking Gun," Gerry Spence's impassioned account of the boy's defense, reports that the Oregon appellate court threw out the conviction because the D.A. failed to

prove the boy's guilt to the required standard: beyond a reasonable doubt. (Marquis seems to take pleasure in advocating against the wrongfully convicted. For example, see his [opinion piece](#), criticized in an [earlier post](#).)

Some prosecutors and police view the process as a zero-sum game that only one side can win. But Calvin Willis's exoneration was a victory for everyone, as it not only freed a wrongly convicted man but alerted the authorities that a dangerous criminal was still loose. Unfortunately, Asst. D.A. Holland didn't agree. "There ain't no place to go with this case," he said. "It's impossible to try a second person when one person has been convicted." That of course is simply untrue, yet the mindset it demonstrates is chilling.

[Calvin Willis's conviction](#) was based on three things: he lived in the neighborhood and had been inside the home in the past; his blood type (O, the most common) matched semen found on the victim's clothes; and the victim identified his photograph.

Yet there was plenty of exculpatory evidence. Willis's wife testified that he was home. A pair of boxer shorts with a waistband ten inches too large was recovered at the scene. The victim, a young girl, described her assailant as having a beard, while Willis had always been clean shaven. She also couldn't identify him in court. And on and on. All this notwithstanding, Willis would still be locked up if it wasn't for the fact that the [Innocence Project](#) took up his case and proved that the matching DNA on the fingernail scrapings and the boxer shorts wasn't his.

[Last week](#) we made these recommendations:

- Prosecutors and police must perceive their roles more broadly, in terms of securing justice rather than only making arrests and gaining convictions.
- They must change how they actually do their work.
- Finally, they need to acknowledge that serious errors will happen. Knowing that, they must implement strategies to identify and correct mistaken arrests and wrongful convictions after the fact.

Had these precepts been followed Willis would have never been arrested, let alone charged and convicted. In their rush to judgment the police applied poor investigative practices, and when their problem-riddled case landed on the D.A.'s lap a prosecutor capitalized on the State's vastly superior resources to make it stick. Once the innocent man was finally released, instead of apologizing the D.A.'s office demonstrated anew

the lack of reflection and capacity for self-criticism that helped the miscarriage of justice happen in the first place.

What's to be done?

- A vigorous re-education campaign at all venues, from police departments to law schools emphasizing that police and prosecutors are first and foremost guarantors of justice. Poor policing doesn't just devastate the wrongly accused: it's dangerous for everyone, as for each mistaken arrest and wrongful conviction a perpetrator goes free. That's why care and precision in law enforcement are much more than good ideas -- they're moral imperatives.
- Coursework and instruction in the causes and prevention of miscarriages of justice should be incorporated into academy, college and university curricula and peace officer and lawyer licensing requirements. It's important to go beyond alerting students and practitioners to poor investigative and forensic practices. As "[The Ten Deadly Sins](#)" suggests, failing to understand and properly deal with workplace routines and pressures can lead even the best-trained and equipped officers and prosecutors to take dangerous shortcuts.
- Finally, police and prosecutors must support vigorous quality control. Knowing that mistakes *will* happen, arrests and convictions must be monitored by independent teams of investigators and prosecutors who are beholden to no one. (A [pioneering approach](#) is underway in Dallas County.)

No cop or prosecutor starts out their career intending to do the wrong thing. Indeed, the very thought of arresting or convicting the innocent is repulsive, an outright contradiction of the principles that law enforcement professionals so eagerly swear to uphold. How to recapture that spirit is the most urgent to-do for American criminal justice in the 21st. century.