PROSECUTORIAL ETHICS AND WRONGFUL CONVICTIONS

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Today, we are going to talk about lessons from wrongful convictions. One of the other opportunities and pleasures that I have at Belmont is the ability to research subjects that have interested me. Certainly, over the last five or ten years that has been the subject of wrongful convictions: how they occur, why they occur, and more importantly, what can be done by, not only prosecutors, but judges, defense attorneys, police, and others to try and prevent wrongful convictions? The assumption is that no one that works in the system, regardless of which side you are on, wants to be a part of a wrongful conviction. The way we look at these cases and how things have developed, including the advent of DNA, has made a difference. It has certainly been a sobering look at the criminal justice system and the realization that in spite of everyone's best efforts, mistakes are made. We are going to look at the historical contexts of wrongful convictions. We will examine some of the main factors that seem to exist in some of the important cases that illustrate those wrongful convictions. We will also talk about the possible causes and look at the role that lawyers play, regardless of which side of the case you are on. I will also touch on some advice for how you, as an attorney, might better be able to identify the warning signs, and prevent a wrongful conviction altogether.

Wrongful convictions are certainly a topic in the popular press, and have been for a number of years, but that is not a recent phenomenon. If we think about it, we can go back to 1692, the Salem Witch Trials, in Massachusetts—Clearly, one of the earliest examples of wrongful convictions in the New World. The crime of witchcraft was a capital crime. It fit uniquely into the overall criminal justice system of that time. The case started with a group of young girls, who had exhibited a lot of bizarre behavior, and the only way that it could be explained was that they were witches. However, the girls claimed that that there were *others* in the

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community who were practicing witchcraft which was causing these girls to exhibit this bizarre behavior. At the time, there was a great deal of belief that Satan was afoot in the community and as the witchcraft allegations came out, there came to be a considerable amount of public hysteria. The young girls made allegations and accusations, and before you knew it, more than twenty members of that community were not only accused, but convicted and actually hung based solely on the allegations. In time, the community decided that they had lost their taste for their most respected community members hung based on accusations of witchcraft. Gradually, the community began to push back, and the public hysteria died down.

One thing that we see while dealing with wrongful convictions is the creation of a number of reform movements. One of the reforms that came out of the Salem Witch Trials was a restriction on the use of spectral evidence, such as dreams and visions. Dreams, visions, and spectral evidence was something that was highly regarded at the time that these cases occurred. After the hysteria surrounding the Salem Witch Trials had subsided, the rules were changed to say, "no more." Even if we are trying someone for witchcraft, we still have to use the evidentiary rules that were in play for all other cases. The president of Harvard University at the time said, "It were better that ten suspected witches should escape than one innocent person be condemned."

After the American Revolution, and once the modern United States came into being, the first known case of a wrongful conviction was the Brothers Boorn.[2] This is an illustration on the screen of what someone at the time believed had happened. This is a situation where the brother-in-law of two brothers had disappeared, and it was suspected that there was foul play. He had disappeared in 1812 without a trace, but there was a lot of public suspicion that both of the brothers were responsible. There was some indication that a relative of the brothers claimed he had a dream that implicated them in the murder. This was similar to the spectral evidence that seemed to carry a lot of weight at the time, but little occurred for seven years other than the suspicion that the brothers were involved. One day, some bones were unearthed on the brothers' property and immediately identified as human bones. Once that happened, both brothers became not only suspects, but defendants. One was arrested immediately and while he was in jail, he had the misfortune of confiding in another inmate. This was an instance involving a jailhouse snitch who came out and said, "Hey, he confessed to me and not only did he implicate himself but he implicated his father and his other brother." Things got so bad that the brother who was in custody even confessed. He said that he had been present, but that it was the other brother, the one who was out of state, who really did it all.

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2. See, Paul S. Gillies, Esq., *The Trials of Jesse and Stephen Boorn*, 38 VT. B. J. 3, 8 (2012).

The brother from another state was dragged back to Vermont, and they were both imprisoned. That brother decided that he was going to confess. However, once the brothers saw that things were not looking good, they decided that they would both recant. Both were convicted. One brother was sentenced to death and one was sentenced to life because he was the first to confess. Through an absolutely odd set of circumstances, the brother-in-law was discovered living happily in the New Jersey area. Apparently, he had some reason not to be in Vermont but he was eventually lured back seven years after the brothers had been convicted. After he showed up, everybody realized that no crime had been committed. That fortunately occurred about a month before the execution was scheduled; just under the wire. Both brothers were released, and both sought compensation from the state. Both were denied because they had confessed. This is the first documented wrongful conviction in the United States.[3]

Now, this is an early book from 1932, *Convicting the Innocent,* by Edwin Borchard.[4] There were several books by that name published in the following years. Professor Borchard was a Yale Law School professor. He was an early advocate, maybe the earliest advocate, for compensation for people who are wrongfully convicted. His book highlighted sixty-five cases of wrongful conviction and several lessons that came out of those cases. First of all, public hysteria and excitement can serve to get the criminal justice system involved, and it can mean that different entities in the system, pushed forward by public hysteria, will make some decisions that they might not otherwise make. It can be dangerous. Before DNA, you really would have to hope that if you were wrongfully convicted, by some miracle the person who is alleged to have been dead would return and re-establish himself as being alive and well. That is not a very comforting prospect.

Many earlier cases also involved false or coerced confessions. Now remember, this is long before the requirement of Miranda rights.[5] It was not uncommon for all kinds of coercion to be used so that people would confess to the crimes that they were charged with. Of course, there was also the jailhouse informant situation; trading information to benefit the informer. Like the Boorn case, the informant was trading information about both brothers so that he could be released.[6] Often after these types of cases when some travesty or injustice has occurred, there are also reforms that occur.

Now, I am going to speak about the DNA revolution in 1985. It was Dr. Alec Jefferies in the United Kingdom who was able to validate for

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3. See, Rob Warden, *First Wrongful Conviction Jesse Boorn and Stephen Boorn*, NORTHWESTERN PRITZKER SCHOOL OF LAW, http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/vt/boorn-brothers.html.

4. See generally, EDWARD BORCHARD, CONVICTING THE INNOCENT (1st ed. 1932).

5. *Miranda v. Arizona*, 384 U.S. 436, 466 (1966).

6. Gillies, *supra* note 4 at 8,10.

the first time that human DNA can be used to distinguish between individuals.[7] Soon after he was able to establish that from a scientific standpoint, there were two terrible rapes and murders of two young women. The first thing the officials did was to go to Dr. Jefferies and ask him if he could use this DNA to determine whether or not they had the right person. He *was* able to do that. In fact, they did not have the right person. That realization then set off a dragnet to figure out who had committed these terrible crimes. Eventually, what the investigators did in that community was ask all of the men to voluntarily give samples of their DNA to run against the DNA from the crime scene. Literally thousands of men did that, but one who did not do so was our friend Colin Pitchfork.[8] Colin thought that it would not be in his best interest to do that, so he got someone else to give their DNA, and paid them. Unfortunately for Colin, that person had a little too much to drink at a local pub and boasted to his friends, "You are never going to believe how I made 100 pounds! Colin Pitchfork paid me to submit my DNA on his behalf." One thing led to another, the officials paid a visit to Colin, got his DNA, and it eventually tied him irrefutably to those two crimes. He was convicted shortly thereafter. He is still imprisoned in the U.K. and was recently denied parole.

Thus, by 1985, DNA is able to be scientifically tested and in 1986, it was first used in a criminal case in the U.K. In 1987, it was used for the first time in the U.S. to implicate someone in a rape case in Florida, and two years later it was used for the first time to exonerate somebody: Gary Dotson. We will talk more about him in a little bit. He was falsely accused, and served ten years for a rape he did not commit, and he was exonerated by DNA.

The Innocence Project was founded in 1992.[9] The cases that you will find on its website, in its database are ones where DNA has been used to exonerate. Today there have been 344 inmates who have been exonerated-twenty of whom were on death row-and more importantly, 148 of the actual perpetrators have been found and brought to justice by the use of DNA. The other thing that has come about as this has gone on is on the civil side where there have been substantial civil judgments levied against local governments, police departments, and so forth for the faulty investigations that led to the arrests of the wrongfully accused.

Another individual directly impacted by the onset of DNA testing was Jeffery Deskovic.[10] Jeffery was a juvenile who confessed to a crime.

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7. Robin McKie, *Eureka Moment that Led to the Discovery of DNA Fingerprinting*, THE GUARDIAN, https://www.theguardian.com/science/2009/may/24/dna-fingerprinting-alec-jeffreys (last visited Mar. 2, 2018).

8. Donald E. Shapiro, *DNA Databanking and the Protection of Privacy: An Oxymoron*, 24 INT'L SOC'Y OF BARRISTERS QUARTERLY 387, 412 (1989).

9. See, Barry C. Scheck, *The Innocence Project*, 35 INT'L SOC'Y OF BARRISTERS QUARTERLY 325, 349-55 (2000).

Later it was proved that he was not responsible for committing the crime. He received $1.8 million from the state of New York, $6.5 million from Westchester County, $4.1 million from Putnam County, and it goes on and on. Some of those judgments were settled and reduced down, but he walked away with a bunch of money. So much so, that Deskovic started his own foundation that works against wrongful convictions. Recently, three men in Mississippi all of whom spent somewhere in the area of 30 years each in the prison system, they received a total of $16 million.[11] Unfortunately, all three are now deceased, but the money went to their families.

Thomas Goldstein, from *Van de Kamp v. Goldstein*, got $8 million for his wrongful conviction.[12] Of course, one of the other wrongfully convicted individuals that people are aware of, particularly lawyers, is John Thompson.[13] He sued and got a $14 million judgement against the District Attorney's office in New Orleans. It was eventually generally set aside by the United States Supreme Court on the issue of prosecutorial immunity. Of course, that meant that states would then, as they started seeing these cases, begin writing compensations statutes. Tennessee certainly has one.[14] They have a process for exonerations and compensation for up to one million dollars.

Now, I am going to talk about factors involved in wrongful convictions. Every wrongful conviction will have one or more of these factors, but the presence of one or more of these factors does not always result in a wrongful conviction. I will explain that further. The factors are: ineffective assistance of counsel on the defense side, faulty witness identification, perjured testimony often in the form of a jailhouse snitch, false confessions, bad forensic technology or bad forensic testimony, prosecutorial mistakes, and tunnel vision or confirmation bias, particularly as it applies to prosecutors and law enforcement.

Now, every wrongful conviction that I am aware of will have one or more of these factors. But there also exist what we call "near misses." Cases where these factors are present but somewhere along the line the deficiency was discovered. In other words, the case was not fully prosecuted; it was dismissed. Something happened to prevent a wrongful conviction from occurring, because somewhere in the system someone realized that there was a problem. In other words, there are a lot of cases where some of these factors occur, but not all of the cases result in a wrongful conviction. Now, in this slide you see the causes of wrongful

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10. James R. Acker, *The Flipside Injustice of Wrongful Convictions: When the Guilty Go Free*, 76 ALB. L. REV. 1409, 1643-45 (2012-13).

11. *Ruffin v. State*, 447 So.2d 113, 114-15 (Miss. 1984); *Bobby Ray Dixon*, THE NATIONAL REGISTRY OF EXONERATIONS (Nov. 23, 2016) https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3179.

12. See, *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009); see also, *Goldstein v. City of Long Beach*, 481 F.3d 1170 (9th Cir. 2007).

13. *Connick v. Thompson*, 563 U.S. 51, 54 (2011).

14. Tenn. Code Ann. § 9-8-108(a)(7) (2013).

conviction, factors versus causes. There has been some work done in the social science area, in a lengthy study where they looked at 460 erroneous convictions – 260 were exonerated after conviction, 200 were acquitted or dismissed beforehand.[15] The social scientists looked at this and they came up with what they called "causes."

The criminal history of the defendant is another factor. Oftentimes, the fact that the defendant has a criminal history can be a very strong lead from a police standpoint. If you have a couple of people that you are looking at and one has a criminal background, you may feel inclined to concentrate on that person, but it also can lead to tunnel vision and can get you off track.

The strength of the prosecution's case is another factor. The situation there is the argument from the social scientist is that the weaker the case, the more likely the prosecutor is going to look at some evidence that is very risky.

Using jailhouse snitches is another factor, as is failing to disclose exculpatory material or making too close of a call on what is exculpatory and what is not. Forensic evidence error is another one. Bad science, but more importantly for this study, bad labs and bad experts. Another big one: the general ability of the defense attorney. Researchers found that this is a critical factor in the "near misses." The near misses where they were culled out of the system early often came from the ability of the defense attorney. And finally, something that they are not sure how to quantify except to say that it has a huge impact. It is the idea of tunnel vision or confirmation bias.

I would like to take a look at a few factors in a little more detail. Ineffective assistance of counsel. According to The Innocence Project, these are early figures from some time ago, in cases where they eventually exonerated the defendant, they found that in 80% of those cases, ineffective assistance of counsel had been rejected by the courts. [16] There is a laundry list of examples of attorneys who slept or were drunk during trial, failed to investigate offenses, or failed to seek any forensic assistance. One lawyer actually got the family of a defendant to raise a significant amount of money for a DNA specialist only to just pocket the money and forget the expert. Other examples included a failure to object to evidence, prejudicial arguments or failure to seek to suppress evidence (searches, confessions, etc.).

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15. Jon B. Gould, Julia Carrano, Richard Leo, and Joseph Young, *Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice*, (February 2013) (unpublished grant report, on file with United States Department of Justice).

16. Emily M. West, *Court Findings of Ineffective Assistance of Counsel Claims in Post Conviction Appeals Among the First 255 DNA Exoneration Cases*, INNOCENCE PROJECT, (Sept., 2010) https://www.innocenceproject.org/wp-content/uploads/2016/05/Innocence_Project_IAC_Report.pdf.

There is no question of the importance of adequate defense representation because this is certainly a question where effective assistance of counsel can be significant in keeping down the incidents of wrongful convictions. But more importantly, for those in private practice, look at the Tennessee Rule of Professional Conduct Rule 1.1.[17] Not many people probably look at that rule, but it says competence is what you are expected to have. What is competence? It requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation. Rule 1.3 says that you shall act with reasonable diligence.[18] The comments indicate that requires commitment, dedication, and zealous advocacy. Do you see the application there? Both rules seem to be grounds for potential disciplinary action against lawyers who are found, under certain circumstances, to have been ineffective.

There are several different lessons revolving around faulty witness identification. This is the situation where there is an honest but mistaken identification. Jennifer Thompson, it was alleged that Mr. Ronald Cotton broke into her apartment while Jennifer was in college and sexually assaulted her.[19] It was a fairly long attack. She made it her specific business to identify and look at her assailant to be able to later identify him for the police. Jennifer gave an initial description. Ronald Cotton had a minor record. His picture was pulled out and she identified Cotton early in the process and later identified him in court appearances. She was a very compelling witness, and pretty much the only thing that they had at this time in that particular case, was her very powerful witness testimony. Cotton eventually goes to prison, but he gets a new trial because the judge had given a faulty jury instruction. By then, Cotton had been at the State prison, and he had heard that a guy named Bobby Poole, was bragging that Cotton was "doing some of my time." Cotton relayed that information to his lawyer, but the best they could do at that point was bring Poole to Court. Jennifer Thompson took the stand again, and they specifically asked her if she could identify who raped her, and she again pointed to Ronald Cotton. They also asked specifically about Bobby Poole, and whether she had ever seen this man before in her life and she responded, "No." Cotton went back to prison, but DNA eventually exonerated him. A distraught Jennifer Thompson met with Ronald Cotton and told him how sorry she was and that she was devastated by the mistake she had made. They became friends. She has also written a book called, *Picking Cotton*, and she has been active and speaking across the country about wrongful convictions generally and her experience personally.[20]

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17. Tenn. R. Prof'l. Conduct 1.1.
18. Tenn. R. Prof'l. Conduct 1.3.
19. PBS, *Summary of Cotton's Case*, https://www.pbs.org/wgbh/pages/frontline/shows/dna/cotton/summary.html (last visited Mar. 2, 2018).

Now, we will talk about Gary Dotson.[21] Gary Dotson's case was a situation where a 16-year-old girl complained that she had been sexually assaulted and was left by the side of the road after her attack. She gave a description. There was a sketch made of the potential perpetrator, and somehow that led to Gary Dotson's arrest. The only problem was that at that time, Gary Dotson had a large mustache when he was arrested. The description was of a clean-shaven male, but that did not seem troubling to anybody. There was some testimony presented at trial that was probably not as accurate as it could have been because since this was pre-DNA, they had just basic serology evidence. Dotson eventually got convicted, started serving his sentence, and the victim got married and moved out of state. Eventually, the victim started realizing that she had done a terrible thing by identifying Gary Dotson, because in reality, she had consensual sex with her then-boyfriend and out of fear of her parents finding out, created a false crime in case she became pregnant.

The victim came forward and recanted, but this was pre-DNA and the courts were still very suspicious of recantation. Gary Dotson got little to no help at this point. Eventually, when DNA testing became available, they did still have some physical evidence from the crime, and they were able to test and determine that evidence from the victim was, in fact a product of consensual sex with her boyfriend.

Now, jailhouse informants. If there is a more dangerous group of people, I do not know who they would be. In an investigation that a grand jury in Los Angeles conducted after they had uncovered an industry of jailhouse informants who would come forward and provide information for high profile or difficult cases, the grand jury concluded that there was widespread perjury by jailhouse informants and that the District Attorney's office had deliberately refused to take corrective action.[22] They failed to fulfil the ethical responsibility that was required of the public prosecutor. Leslie Vernon White stated the reason for this, "The key is they [the prosecutors] want to win." They are looking for that inculpatory evidence. Mr. White was able to show not only the grand jury, but also the *60 Minutes* news show, at one time how easy it was for him to gain enough information to be credible.[23] He would go into the counselor's office and start making telephone calls. He would call the District Attorney's office,

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20. See generally, ERIN TORNEO, JENNIFER THOMPSON-CANNINO, AND RONALD COTTON, PICKING COTTON: OUR MEMOIR OF INJUSTICE AND REDEMPTION (1st ed. 2013).

21. Sharon Cobb, *Gary Dotson as Victim: The Legal Response to Recanting Testimony*, 35 EMORY L. J. 777, 969 (1986).

22. Jana Winograde, *Jailhouse Informants and the Need for Judicial Use Immunity in Habeas Corpus Proceedings*, 78 Cal. L. Rev. 755, 757 n. 10.

23. Robert Reinhold, *California Shaken Over an Informer*, THE NEW YORK TIMES, http://www.nytimes.com/1989/02/17/us/california-shaken-over-an-informer.html?pagewanted=all.

he would call the probation office, he would call all of these people identifying himself as a DA or as a sheriff's deputy, and it was amazing how much information he got. First he would find out, "Who do I want to turn on, what is their crime?" He would start building the information that he needed to know about the case—the information that most prosecutors and police would say that only someone who really talked to the perpetrator would know this information. He would get all of that information together and then he would figure out a way to be in close proximity to the defendant. He was able to say then that, "We rode over to court together," or, "We were in the same holding cell and that is when he told me." All fabricated, all completely fabricated.

This is the logo of the Jeffery Deskovic Foundation for Justice. In 1989, one of Deskovic's 15-year-old female classmates was found murdered.[24] Deskovic was 16, and at that point he had some issues. He thought that he was trying to help the police by giving a lengthy, unrecorded confession in which he said that he had killed this classmate. The prosecution went to the grand jury before they had the DNA evidence back, which seemed to exclude him. But, by that time, he had already been indicted. The defense apparently did not do much with that DNA at trial, and he ended up getting a life sentence. Once he was sentenced, Deskovic kept saying he was innocent. Finally, with DNA testing, he was able to establish not only that he did not do it, but also he was able to find the actual perpetrator, who actually was serving a sentence for a subsequent murder. Not only did Deskovic sue everyone and get a lot of judgments, but a new District Attorney took office, exonerated him, released him, and then commissioned a detailed analysis, almost a post-mortem, of what went wrong. While a lot of things went wrong, there were certainly things present that we have talked about today: ineffective assistance of counsel, certainly missteps and wrongful behavior on the side of prosecutors, but more importantly, this tunnel vision the police and prosecutors had. Investigators got off-track because of a faulty perpetrator profile that had been provided by the NYPD as to who to be looking for, and once they got that profile, it generally fit Deskovic. It was for that reason that investigators and prosecutors concentrated on him, without regard to other people who might be out there. Needless to say, the person that eventually was convicted of the crime had no resemblance to that profile.

There are some issues of bad science where tests have not been adequately vetted or peer-reviewed. A more recent study says that researchers are not so sure that the science was all that bad, but there are concerns that some of it is highly subjective.[25] We need to figure out how

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24. See generally, DESKOVIC: THE JEFFREY DESKOVIC FOUNDATION FOR JUSTICE, http://www.thejeffreydeskovicfoundationforjustice.org/.

25. See, Matthew Shaer, *The False Promise of DNA Testing: The Forensic Technique is Becoming Ever More Common—and Ever Less Reliable*, THE ATLANTIC, (2016) https://www.theatlantic.com/magazine/archive/2016/06/a-reasonable-doubt/480747/.

we can use the same science but have much more objective determinations. Often times, though, it is the forensic investigator that testifies at trial, and some of them are just weak, some are bad, some just do not know and they make statements far beyond what they are qualified to say. That is likely because the prosecutors do not even know that the forensic investigators are really testifying beyond what they can say and the defense lawyers do not know either. So, these experts are able to say things in court that they really should not or they have some kind of agenda.

Now we come to Joyce Gilchrest, she developed a reputation in Oklahoma as being Wonder Woman.[26] It was commonly understood that if the prosecution absolutely had to have some kind of forensic evidence she was the person they wanted on their team. She was so good that she gained the nickname, "Black Magic," because she always seemed to come through with the inculpatory evidence. Unfortunately, none of it was true and she was eventually fired. Currently, there are close to 16 million dollars in judgments against her. She has since died.

Prosecutorial misconduct usually relates to two areas: improper closing argument, and failure to turn over exculpatory evidence. Overlaying all of this, from the investigative and prosecutorial standpoint is tunnel vision, or the idea of confirmation bias. Criminal cases are often imperfect and every prosecutor and police officer knows there are puzzles. The role of both individuals is to try to put together the pieces of the puzzle to form a picture of who actually committed the crime. Some of the time, the pieces are ill-fitting and are just simply unexplained anomalies that result from the differing perspectives of the witnesses, or is it an indication that they have the wrong suspect? The idea of tunnel vision is a major issue. Tunnel vision is the human tendency to search for, interpret, favor, and recall information in a way that confirms one's beliefs or hypotheses, while giving disproportionately less consideration to alternative possibilities. Now, that is part of what prosecutors are supposed to do—evaluate the evidence they have in the case.

There are lots of little pieces that do not quite fit, and you have got to decide if it really is a red flag that indicates, "I have the wrong person," or, "this a piece of evidence that I can't explain but does not give any cause or concern that I have the wrong person." A related concept to that is called belief perseverance— a psychological phenomenon which says there is a tendency to persist in one's held beliefs despite the fact that information is inaccurate or that evidence shows otherwise. It is a challenge to prosecutors because every time you have a piece of evidence that does not quite fit into the puzzle, a prosecutor cannot simply give up, and say, "Oh well, that's it,

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26. Belinda Luscombe, *When the Evidence Lies*, TIME, http://content.time.com/time/magazine/article/0,9171,109625,00.html (last visited Mar. 2, 2018).

I guess I have the wrong guy." But on the other hand, there is a time in cases where the pieces don not fit, that the prosecutor needs to admit to pursuing the wrong person. I think most prosecutors are well-motivated in the sense that they want to get the right person and the last person they want to get is the wrong person.

Michael Morton is an individual whose wrongful conviction has become probably one of the premiere cases of many different things going wrong and certainly prosecutorial misconduct along with the big issues of tunnel vision and confirmation bias.[27] Morton was convicted of murdering his wife, and there was little to no evidence that they had to introduce against him. He became a suspect and, it is well known to anybody who works in this field, where is the first place you are going to start looking? You are going to start by looking at the husband. There was very weak evidence as to the time of death based on the medical examiner's opinion which made Morton an even more appealing suspect. Morton had left for work at 5:30 or 6:00 in the morning and, according to the medical examiner, his wife had to have died somewhere around 1:00 or 2:00 in the morning. Since he was the only person in the house at the time, the investigators determined that he must have done it. There was really very little evidence beyond that. Other people found evidence, such as a bandana that had DNA on it, and turned it into the police. Even though much of the evidence was found near the scene of the crime, nobody ever tested it. Morton's young son, Eric, gave a detailed statement to his grandmother about a man with a bushy mustache who hurt his mother but was not his dad. Who was that stranger?

All of this evidence was turned over to the police, and they never followed up on it. Eventually, after Morton had already spent a lengthy period of time in prison, the DNA on the bandana was tested and investigators found the DNA of another man's DNA, who they were able to establish had been in the neighborhood around the time of the crime. The tragedy is that because police and prosecutors did not follow up on these leads, or considered that Michael Morton may not have committed the crime, that "other man," Mark Norwood, went on to kill another woman named Deborah Baker. Deborah was very similar to Christine Morton in looks and in age, and she was killed in much the same way. There is no question that if investigators had followed other leads, that Deborah Baker might be alive today. Thus, there are things to be on the lookout for whether you work on the prosecutor's side or the defense side to prevent these kinds of convictions.

Cases that involve confessions, identifications, and scientific evidence are all situations where you must do your best for your client, whether these clients are the state or and individual defendant, to test the

27. Josh Levs, *Innocent Man: How Inmate Michael Morton Lost 25 Years of His Life*, CNN, https://www.cnn.com/2013/12/04/justice/exonerated-prisoner-update-michael-morton/index.html (last visited Mar. 2, 2018).

evidence and to make sure you have the guilty party. This is a hard thing to do, and we do not know exactly what the perfect answer is for how to overcome something like confirmation bias. I am becoming very convinced, however, that that is a problem that really is at the bottom of many of these wrongful convictions cases. Thank you.