Wrongful Conviction Claims: An Overview of Police Liability

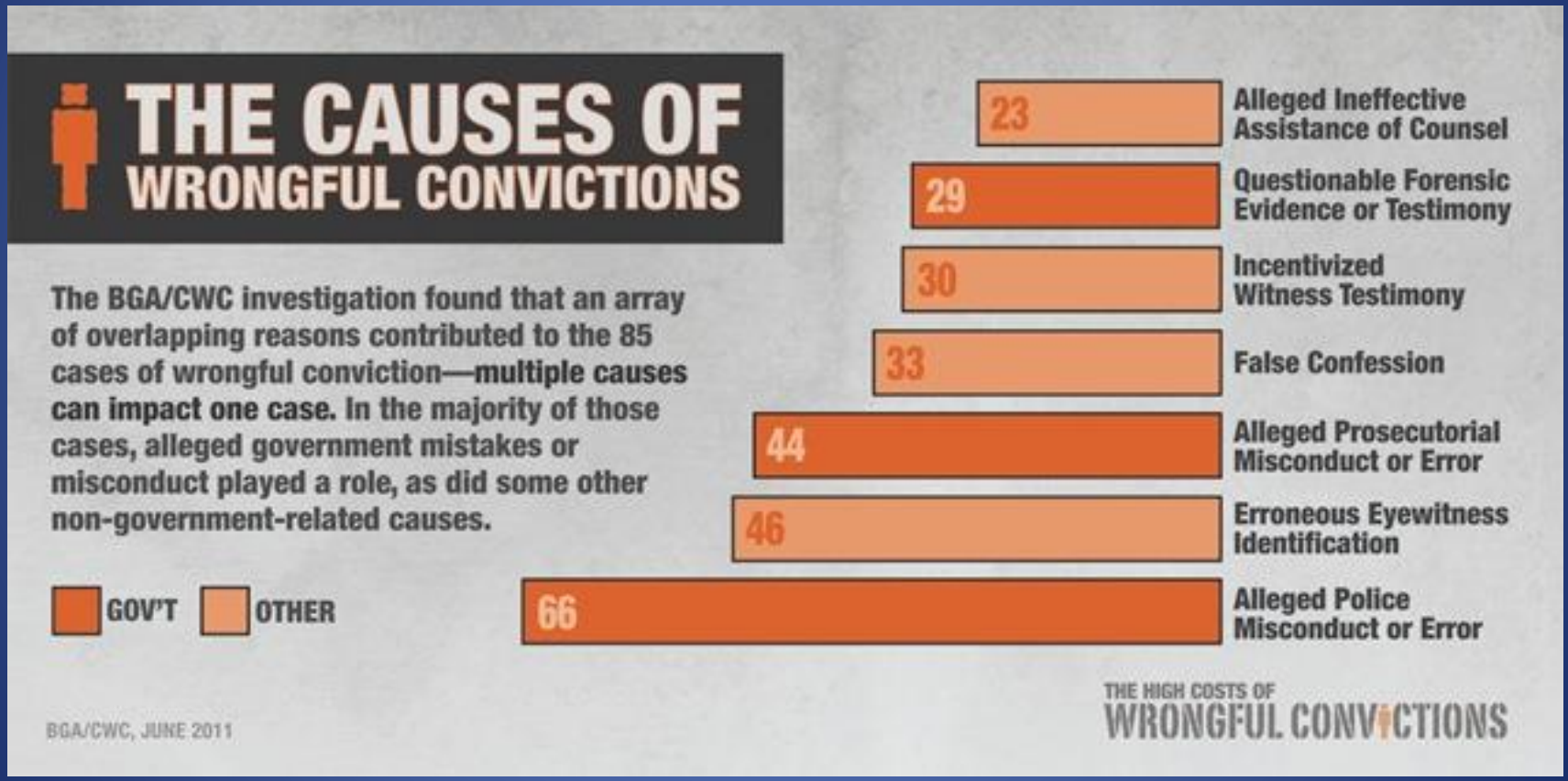


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The Innocent Man Convicted

- "[The criminal justice system]" has been always haunted by the ghost of the innocent man convicted. It is an unreal dream."
  - Judge Learned Hand, *United States v. Garrison*, 291 F. 646, 649 (S.D.N.Y. 1923).
- According to the National Registry of Exonerations 2,009 people have been exonerated since 1989 (updated as of April 7, 2017).

Causes of Wrongful Convictions



Section 1983 Police Liability

- Failing to Disclose Evidence to Prosecutor
- Fabricating Evidence
  - Suggestive Line-Ups
  - Evidence Tampering
  - Witness intimidation/coercion
  - False reporting/testifying
  - Inaccurate/incomplete laboratory testing
- Failure to Preserve Exculpatory Evidence
- Reckless Criminal Investigation (8th Circuit)
- Coerced Confessions
- Sixth Amendment Right to Counsel

Favorable Termination Rule

- *Heck v. Humphrey*
  - Plaintiff cannot pursue monetary damages for a wrongful conviction through a Section 1983 without first demonstrating that his conviction was terminated in his favor.
- *Preiser v. Rodriguez*
  - Cannot overturn conviction through a Section 1983 Claim

Prosecutorial Immunity

- *Imbler v. Pachtman*
  - Prosecutors enjoy absolute immunity from Section 1983 liability stemming from a wrongful conviction for acts intimately associated with the judicial phase of criminal process.
- *Buckley v. Fitzsimmons*
  - A prosecutor can be sued under Section 1983 for administrative and investigative work that are not related to their preparation for hearings and/or trial.
- *Post-Conviction Immunity*
  - Some courts have held that absolute immunity extends to post-trial withholding of evidence if the prosecutor is associated with the appeal.

Statute of Limitations

- Section 1983 claims are governed by the state law statute of limitations and federal law governs the time the claims accrue;
- For wrongful conviction claims, the accrual date is governed by *Heck v. Humphrey*;
- Thus, the date a wrongful conviction begins to accrue, is the date in which the defendant's conviction is favorably terminated.

Wrongful Conviction: Constitutional Rights Implicated

- Fifth Amendment
  - Introduction of coerced confession at trial
- Sixth Amendment
  - Right to Counsel - interrogation or Line-Ups without counsel after Sixth Amendment right attaches
- Fourteenth Amendment
  - Failure to Disclose
  - Fabrication/Manipulation of Evidence
    - Courts evaluate under both substantive due process and procedural due process

Evidence Fabrication

- *Mooney v Holohan*, 294 U.S. 103 (1935)
  - Thomas Mooney was convicted and sentenced to death based on perjured testimony for a fatal bombing that included 10 fatalities and 40 injuries.
  - "[I]f a state has contrived a conviction . . . through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."

Evidence Fabrication

- *Pyle v. Kansas*, 317 U.S. 213, 216 (1942)
  - Six years after *Mooney,* the Supreme Court made clear that the duty to refrain from procuring convictions by the presentation of testimony known to be perjurious applied to law enforcement officers generally.

Duty to Correct False Evidence

- *Napue v. Illinois*, 360 U.S. 264 (1959)
  - Key witness at the defendant's murder trial testified falsely that the State had not made any rewards, promises or inducements for his testimony. This false testimony was not corrected at trial and the defendant was convicted and sentenced to 199 years in prison.
  - "Conviction through use of false evidence is a due process violation not only when known to be such but also when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."

Brady: Duty to Disclose

- The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution;
- Duty to disclose extends even after trial;
- Unclear as to whether *Brady* requires disclosure of "new" evidence discovered post-trial;
- No duty to disclose evidence a defendant already knows about.

Duty to Disclose Impeachment Evidence

- *United States v. Bagley*, 473 U.S. 667 (1985)
- Duty to disclose expanded to include impeachment evidence that is material and without it would undermine confidence in the outcome
- Based on failure to disclose rewards, promises, inducements for testimony

Brady Obligation Extended to Police

- *Kyles v. Whitley*, 514 U.S. 419 (1995)
- *Brady* obligation extended to encompass evidence "known only to police investigators and not to the prosecutor. Thus, in order to satisfy *Brady* a prosecutor "has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including police."

Duty to Preserve Evidence

- Stems from *Brady* obligation to turn over exculpatory evidence
- Due process requires that evidence be preserved if it might be expected to play a significant role in the suspect's defense.
- Evidence must be material and must possess an exculpatory value that was **apparent** before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.
- An officer violates an individual's Fourteenth Amendment due process right if he destroys **potentially useful** evidence in **bad faith**
- No duty to preserve evidence the State did not possess

Coerced Confessions—Procedural Due Process

- A violation of the constitutional right against self-incrimination occurs only if one has been compelled to be a witness against himself in a criminal case.
- A coerced confession that is obtained but not used in a legal proceeding is not a constitutional violation.
- Typically will arise where coerced tactics used to obtain conviction are not disclosed; and coerced confession is introduced at trial which would also implicate *Brady*

Coerced Confessions—Substantive Due Process

- A plaintiff may also bring a Fourteenth Amendment substantive due process claim based on "police torture or other abuse that results in a confession."
- "Convictions based on evidence obtained by methods that are so brutal and offensive to human dignity that they shock the conscience violate the Due Process Clause."
  - *Chavez v Martinez*, 538 U.S. 760, 774 (2003).

Coerced Witness Testimony

- Coercion of a witness to testify is not in and of itself a violation of the criminal defendant's constitutional rights (albeit may be a violation of witness's rights);
- Rationale: coerced witness testimony is not necessarily false;
- Violation of due process occurs where coerced testimony is introduced and the coercive tactics (payment, undue pressure, etc.) are not disclosed, i.e. *Brady* violation;
- If coerced witness testimony is false and there is evidence that law enforcement helped fabricate the false testimony, it is a due process violation for fabrication of evidence.

Suggestive Identifications

- Unduly suggestive identification can be a due process violation where it is introduced at trial;
- Judge's admission of suggestive identification may break causal chain *if* the unduly suggestive procedure was accurately disclosed;
- If unduly suggestive procedure is suppressed by police, it may form the basis of a due process violation under *Mooney* or *Brady*
- Bad eyewitness identifications account for 75% of exonerations based on DNA evidence

Sixth Amendment Violations

- Once the adversary judicial process has been initiated, the Sixth amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings;
- Sixth Amendment violation occurs when post-indictment interrogation or line-up conducted without defense counsel;
- Courts have held that evidence obtained in violation of Sixth Amendment gives rise to Section 1983 claim only if the unlawfully obtained evidence is introduced at trial.
- Jail house snitches invoke Sixth Amendment rights if information was obtained at direction of police

Superseding/Intervening Cause

- Courts have held that where a prosecutor introduces evidence obtained through a coercive confession and/or suggestive lineup and the judge allows it (and the coercive and suggestive tactics have been disclosed to the prosecutor and defense), officer liability is cut off.
  - *Wray v. City of New York*, 490 F.3d 189 (2d Cir. 2007).

Mooney/Pyle Violation
Fabrication of Evidence: Elements

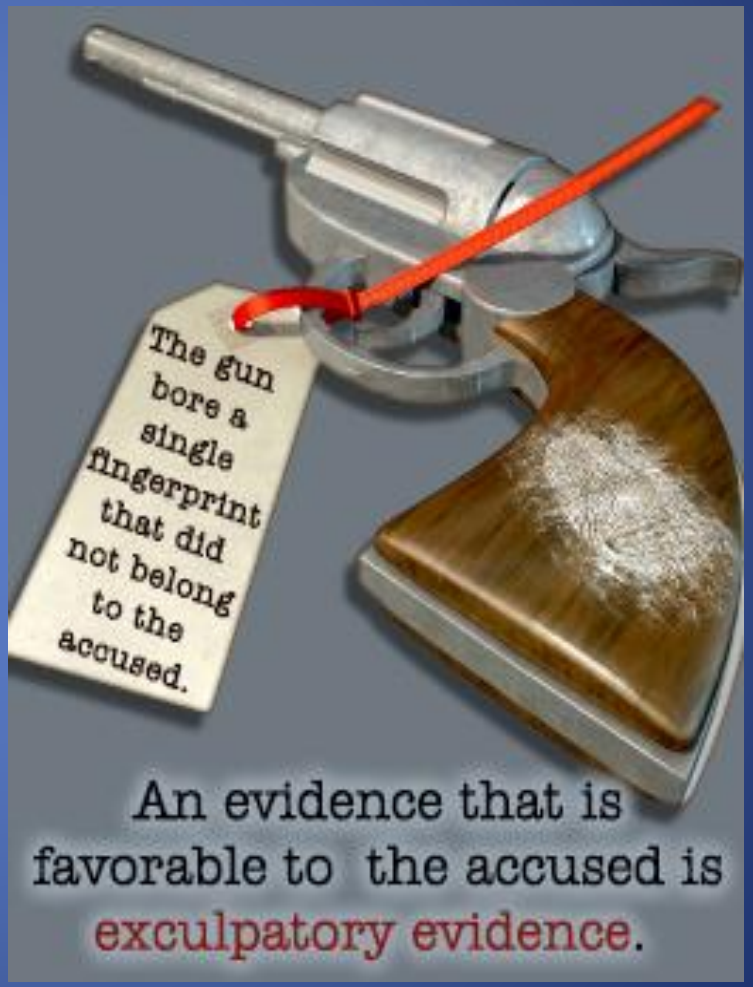
- Investigating official;
- Fabricated evidence
  - 1st Circuit has held that deliberate suppression violates *Mooney/Pyle*
- Fabricated evidence was likely to influence a jury's decision;
- Forwarded that information to prosecutors;
- The plaintiff suffered a deprivation of liberty as a result;
- Deprivation of liberty must be caused by the evidence falsification.

Elements of a Section 1983 *Brady* Claim

- Most common Section 1983 claim against police officers stemming from wrongful conviction
- The evidence at issue must be favorable to the accused, meaning either exculpatory or impeaching;
- The evidence must have been suppressed by the state, either willfully or inadvertently
- Prejudice must have ensued
  - Evidence must have been **material** to guilt or punishment

Exculpatory Evidence

- Evidence that is favorable to the accused that tends to negate guilt
- Impeachment evidence
  - Prior witness statements
  - Rewards, promises, inducements
  - Evidence of witness bias



Suppressed by the Police

- In order to recover damages in a Section 1983 *Brady* claim, plaintiff must prove that it was the police officer (versus the prosecutor who is entitled to absolute immunity) that suppressed the evidence;
- If the defendant knew about the exculpatory evidence prior to trial, it is not a *Brady* violation.
- If the police turned the material exculpatory information over the prosecutor, the police officer has fulfilled his *Brady* obligation;
- Obtain prosecutor's file to see if the evidence that was alleged to have been withheld is in the prosecutor's file;
- Depose prosecutor – did he know about the evidence?
- Where prosecutor is alleged to have conspired with the police officer, the fact that the prosecutor was aware of the *Brady* information will not be sufficient to defeat the claim.

Materiality

- The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different;
- A reasonable probability is a probability sufficient to undermine confidence in the outcome;
- The materiality of *Brady* material depends almost entirely on the value of the evidence relative to the other evidence mustered by the state.

Causation

- Causation elements of Section 1983 claims derive first and foremost from the Constitution itself, not necessarily from the analogous common law tort;
- Where tort law and constitutional principles collide, constitutional principles govern;
- In a *Brady* claim, Plaintiff must prove that he would not have been convicted **but for** the police officer's wrongful withholding of exculpatory evidence;
- Materiality element of a *Brady* claim requires a "but for" causation analysis

Brady State of Mind Requirement in Section 1983 Cases

- An official's negligence cannot support a § 1983 due process claim. *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986);
- Some courts require a showing of "bad faith,", i.e. intentional withholding of evidence;
- No fault standard for civil liability also contradicts absolute immunity for inadvertent disclosures granted to prosecutors
- Some courts require a showing of deliberate or reckless indifference;
- Sixth Circuit has suggested that negligence is sufficient to state a *Brady* claim

Qualified Immunity

- Question as to whether law was clearly established at time of violation
- Most Circuits concur that *Brady* obligation clearly established to extend to police in 1995 by *Kyles v. Whitley*
- Other Circuits suggest that *Brady* clearly established to police as early as 1963 or 1964
- Some judges have suggested that *Brady* still does not apply to police as the duty to disclose has always been described as the prosecutor's duty

Municipal Liability

- Plaintiff must show constitutional violation was a directly attributable to municipal custom, policy, or practice;
- Municipality not entitled to qualified immunity;
- Municipality held to standard of law at time of suit, not time of violation
- Example: Chicago practice of withholding “street files,” a municipal policy of using coercive interrogation tactics, fabricating evidence, withholding exculpatory evidence, etc.

Damages

- Jury awards are generally in the $1 million dollars per year of incarceration;
- Recent New York case, judge reduced jury award of $1.5 million a year to $1 million per year on a failure to disclose case;
- Possible mitigation if plaintiff would have been in jail for a separate crime;
- Possible mitigation if the plaintiff was actually guilty

Jury Awards/ Settlements

- In 2009, a jury awarded a wrongful conviction plaintiff $21 million verdict for 11 years in prison;
- In 2012, a jury awarded a wrongful conviction $25 million for 16 years in prison;
- In 2015, three counties settled a 20 year wrongful conviction case for $20 million dollars;
- In 2016, a jury awarded a wrongful conviction plaintiff $22 million for 18 years in prison for “street files” Chicago case;