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Hot Topics In Wrongful Conviction Litigation

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WRONGFUL CONVICTION LAWSUITS

- Claims
  - Due Process/ Brady
  - Fabrication of Evidence
  - False Confessions
  - Malicious Prosecution
- Damages
  - 1 to 2 Million Per year

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WRONGFUL CONVICTION JURY VERDICTS

- Jury Awards $27 Million To Massachusetts Man Wrongfully Convicted Of Murder (2019): https://www.npr.org/2019/10/02/765786518/jury-awards-27-million-to-massachusetts-man-wrongfully-convicted-of-murder
- North Carolina jury awards $75m to brothers wrongly convicted of 1983 murder (2021): https://www.theguardian.com/us-news/2021/may/16/north-carolina-jury-awards-75m-to-brothers-wrongly-convicted-of-1983
- Jury Awards $17 Million To Chicago Man Who Accused Detective Of Framing Him For Murder (2018): https://chicago.cbslocal.com/2018/06/29/jacques-rivera-wrongful-conviction-verdict-detective-reynaldo-guevara/
- Jury's $15 Million Judgment Against Baltimore Detective Affirmed (2021): https://news.bloomberglaw.com/us-law-week/jurys-15-million-judgment-against-baltimore-detective-affirmed

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STANDARD APPROACH

- File a motion to dismiss (lose 95% of the time)
- Subpoena some documents
- Take a bunch of depositions where the witnesses are likely lying but you can't prove it
- File summary judgment motion but the lying witnesses create a fact dispute to defeat your motion and qualified immunity offers no help
- Settle the case to hedge against unacceptable trial risk

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HOW DO YOU WIN?

- Two Options:
  1. Plaintiff Committed the Crime
  2. Police Did Their Job
- Burden
  - Legal = Plaintiff
  - **Practical = Defense**

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MAJORITY OF PENDING WRONGFUL CONVICTION CASES INVOLVE WITNESS RECANTATIONS NOT DNA

- **Chicago**
  - Velez – 16 Years
- **Baltimore**
  - Harlem Park 3 – 30 Years
- **Pennsylvania**
  - Bennet – 3 years
- **Detroit**
  - Burton – 30 Years
- **San Jose**
  - Rubalcava – 15 Years
- **Arkansas**
  - Jimmerson – 28 Years

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3 WINNING STRATEGIES

- Review Recorded Prison Calls
- Check For Fraudulent Documents
- Utilize Experts

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PRISON CALL REVIEW

- **Why Review Prison Calls?**
  - Recorded prison calls provide an unfiltered view into your plaintiff or witness.
  - Their calls provide a treasure trove of helpful material to defend your case.
  - Needle in haystack (Dewitt: 3 of 3000+ Calls)

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PRISON CALL REVIEW EVIDENCE

- **Evidence Uncovered:**
  - Payments to witnesses
  - Threats and witness intimidation
  - Drug dealing
  - Gang associations
  - Damages information
  - Unique window into the everyday life of the parties and witnesses

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PRISON CALLS REVEAL BALTIMORE MAN WON FREEDOM WITH FORGERY AND A $10,000 BRIBE FOR FABRICATED TESTIMONY

- "I already, I prepped him, I prepped him. But I'm gonna, I'm gonna do it again, you know what I mean when it get closer, you feel me?"
- "Me and you and my lawyer, we gonna work something out as far as a contract where as though I give you and your brother ten stacks a piece because that's when I can sue their ass for a lot of their bulls--- they did in my trial,"
- "I can lace your pocket and your brother pocket for real."

Dewitt v. Ritz

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SHOOTING VICTIM RECANTS GRAND JURY TESTIMONY - PRISON CALLS REVEAL WHY

- "The guy who shot me wants to pay me $10,000 to come to court to say he didn't shoot me."
- "That guy tries to get in contact with me. The one who shot me wants me to help him get out of jail. Did something stupid now wants help."
- "He shot me…and he wants me to sign an affidavit, trying to pay me."

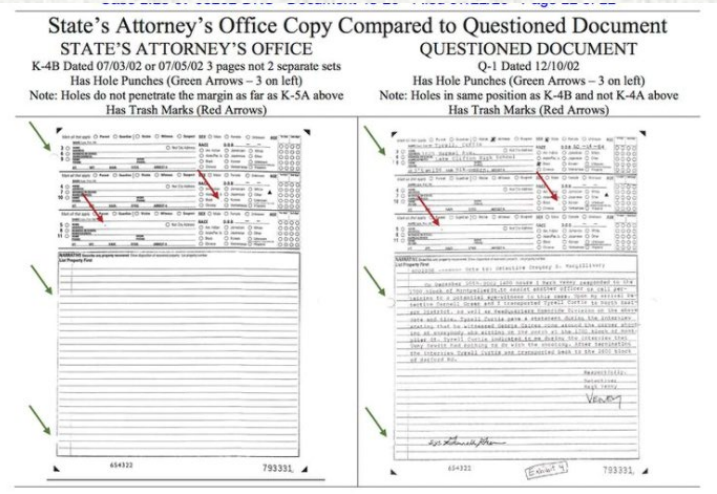
Bishop v. Chicago

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FRAUDULENT DOCUMENTS

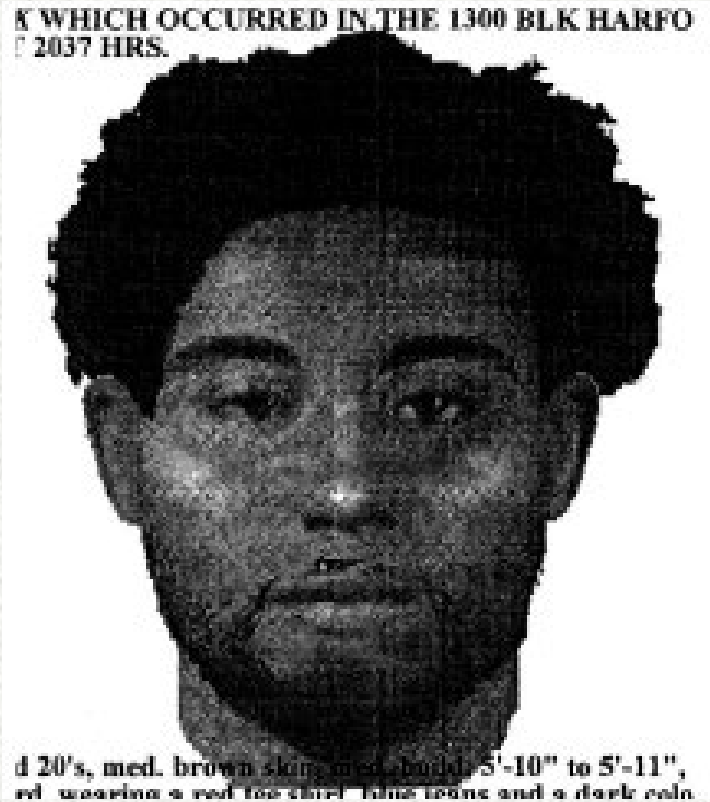
- **Examine Your Documents**
  - If you are suspicious about the authenticity of material plaintiff claims was "withheld" – engage a document examiner

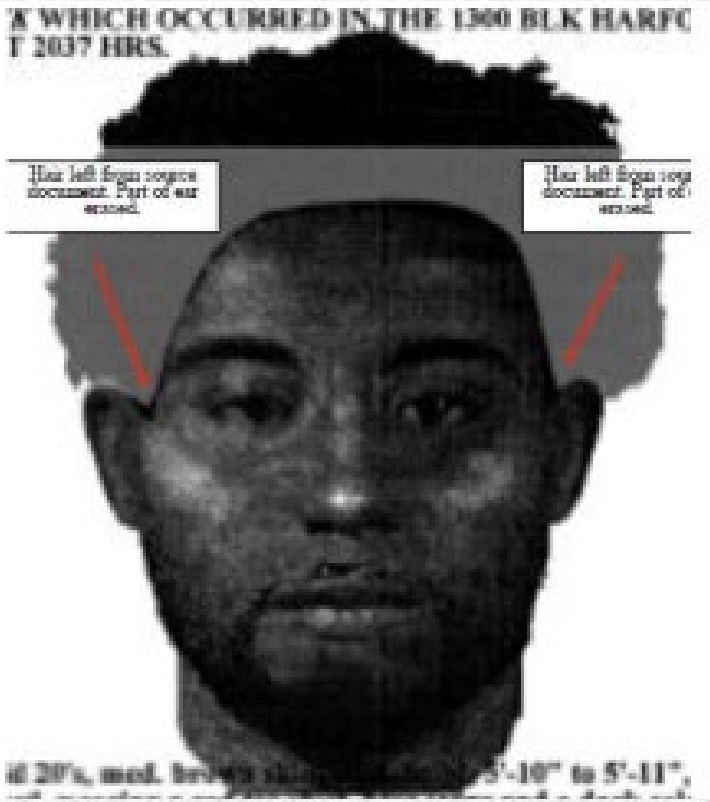




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FRAUDULENT DOCUMENTS





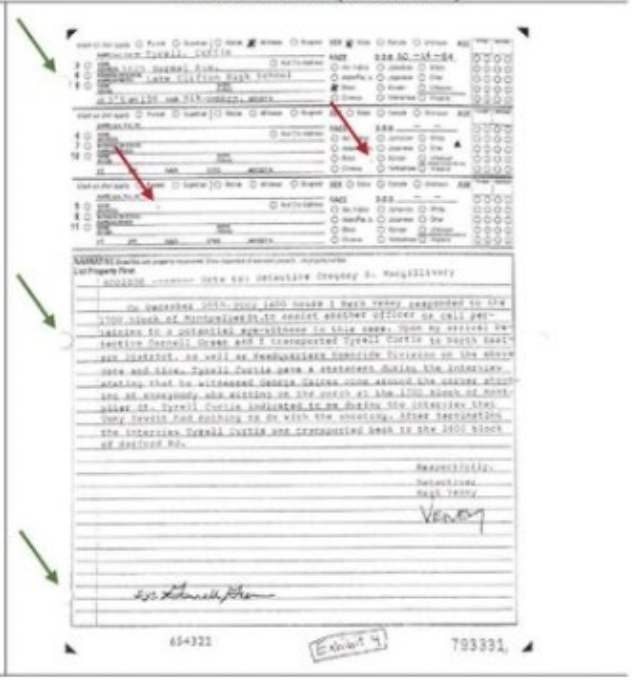
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FRAUDULENT DOCUMENTS

State's Attorney's Office Copy Compared to Questioned Document

STATE'S ATTORNEY'S OFFICE	QUESTIONED DOCUMENT
K-4B Dated 07/03/02 or 07/05/02 3 pages not 2 separate sets	Q-1 Dated 12/10/02
Has Hole Punches (Green Arrows – 3 on left)	Has Hole Punches (Green Arrows – 3 on left)
Note: Holes do not penetrate the margin as far as K-5A above	Note: Holes in same position as K-4B and not K-4A above
Has Trash Marks (Red Arrows)	Has Trash Marks (Red Arrows)





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QUESTION THE SCIENCE WITH EXPERTS

- **DNA**
  - Not Every DNA Case is Exonerating (Bryant)
- **Arson**
  - Cause of Fire Issues (Gray)
- **Eyewitness ID**
  - Was The Lineup Fair? Do you our own study. (Miller)

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CONVICTION INTEGRITY REVIEW UNITS

- Plaintiff will argue that the SAO concedes Innocence
- Attack Underlying Investigation
  - Did the CIU interview the Defendants?
  - Did the CIU retain its own experts?
  - Could additional testing be conducted?
  - Did the CIU record witness interviews?
  - Was the witness allowed to review prior testimony prior to interview?

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MATERIALS TO REVIEW:

- Motion To Dismiss As Litigation Sanction in Dewitt
- Dewitt v. Ritz, No. DKC 18-3202, 2021 WL 915146 (March 10, 2021) (dismissing case as litigation sanction)
- John Velez v. City of Chicago, et al.,, No. 18 C 8144, 2021 WL 32311726 (July 29, 2021) (denying motion to quash defense subpoena for plaintiff's prison calls)

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