



### E6 Bad Lawyering and Wrongful Convictions

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After attending this presentation, attendees will recognize the value of competent and ethical lawyering and forensic testing, but will also understand that misconduct of prosecutors, forensic scientists and/or defense counsel (ineffective counsel) can result in the wrongful conviction of the innocent.

This presentation will impact the forensic science community by showing how testing methods, results, and interpretations, if not done neutrally, dispassionately, and without bias and proper validation, can assist in the rendering of legal harm of innocent people.

Both lawyers for the prosecution and defense have certain ethical and legal obligations in all criminal cases to protect against wrongful conviction of the innocent. Coupled with this is the obligation of any forensic expert, involved in a criminal prosecution or defense, to provide information that is scientifically sound and not to advocate. This presentation will examine samples of conduct that have led to the wrongful conviction of the innocent and provide an understanding of what should have been done to protect those innocent individuals.

In 1987, an 18-year-old man was arrested and convicted of three counts of sexual intercourse without consent on an 8 year-old girl and was sentenced to three, forty-year concurrent terms in prison. In the year 2000, after being rejected for parole release because he would not participate in the prison's sexual offender treatment program, the case was re-investigated.

The re-investigation discovered that the State's case included "fraudulent" forensic testimony from the state's forensic expert concerning hair samples. The expert testified that the head and pubic hairs found at the scene were "indistinguishable" from the Defendant's and gave a statistical probability of a non-match (1/10,000) without any having any standard by which such a statistical conclusion could be rendered. Semen found in the victim's underwear could not, at the time, be typed and thus the testimony of the state's forensic expert became critical to the State's case.

Moreover, the identifications of the Defendant by the victim were highly suspect. The Defendant participated in a videotaped lineup which was shown to the victim after she could not identify the Defendant in a "live" lineup. After these two separate identification procedures, she indicated her confidence was 60 to 65% of her pre-trial identification of the Defendant. At trial, she indicated "she was not sure". Even under those circumstances, the Court permitted the identification of the defendant before the jury.

The Defendant's trial lawyer never challenged the pre-trial identification methods or her in-court identification. The Defendant's lawyer failed to conduct any investigation of the case, hired no expert to refute the state's forensic expert, filed no pre-trial suppression motions, made no opening statement to the jury, did not prepare a closing statement, and failed to file an appeal after the conviction of the Defendant.

The Defendant was ultimately exonerated by DNA testing. The forensic scientist headed the state's major crime lab and had testified in hundreds of cases in two states. The scientist was investigated by a committee of forensic scientists, and the committee concluded that his statistical evidence was "junk science." Before his release, the Defendant spent fourteen-and-a-half years in prison for a crime he did not commit.

When the Defendant in this case was released, he was the 111<sup>th</sup> person in the United States to be exonerated from a wrongful conviction; more have followed. Bad lawyering (ineffective counsel) plays a large part in wrongful convictions, as does the misconduct by the prosecution, police and forensic scientists.

#### **Wrongful Convictions, Ineffective Counsel, Prosecutorial Misconduct**