



## Wrongful Convictions

*We are not all to blame but we are all responsible*

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Department of Justice  
Canada

Ministère de la Justice  
Canada

Canada



**“You got an assembly line,  
you’re always gonna have  
some defects.”**

**Jerry Miller, served 25 years in prison in  
Illinois for a rape he didn’t commit**





“I realize I am a voice crying in the wilderness, but I believe that the innocent are convicted far more frequently than the public cares to believe, and far more frequently than those who operate the system dare to believe.

“An innocent person, in my view, is about as rare as a pigeon in the park.”

-Rev. James McCloskey, Centurion Ministries

## WHAT IS A WRONGFUL CONVICTION?

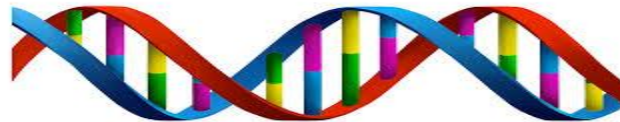
- The conviction of a person who is innocent of the offence for which he/she was convicted
- A person who is found guilty of a crime they did not commit and whose conviction is not remedied through the ordinary court processes in a reasonable period of time



© Can Stock Photo - csp16907221

## FIRST 330 U.S. POST-CONVICTION DNA EXONERATIONS

- Average time spent in prison - 14 years  
(92 were sentenced to life, including 12 to life with no parole)
- The vast majority (80 per cent) were racial minorities
- 62 per cent were African American and 7 per cent Hispanic
- Only 5 were women
- 10 per cent were under 18 years old when wrongfully convicted
- On average were 27 at time of wrongful conviction and 42 by exoneration



- 8 per cent (27) pleaded guilty to crimes they didn't commit
- 85 per cent of those exonerated after a rape conviction were Black men accused of assaulting a White woman
- In 42 per cent of cases, the DNA also identified the true perpetrator
- 20 were at one time sentenced to death or served time on death row
- 47 per cent had spent at least one-third of their lives in prison or on parole when exonerated
- 67 per cent were convicted after 2000



- **72 per cent (236) were convicted based at least in part on mistaken eyewitness ID.**

**(50 per cent of misidentifications were cross racial and in 35 per cent multiple eyewitnesses identified the same innocent person. Some cases had as many as five mistaken eyewitnesses).**

- **21 per cent (68) were convicted based at least in part on a false confession, admission of guilt or guilty plea.**

**(over one-third of those who falsely confessed were juveniles and one-third had a developmental disability or mental illness).**

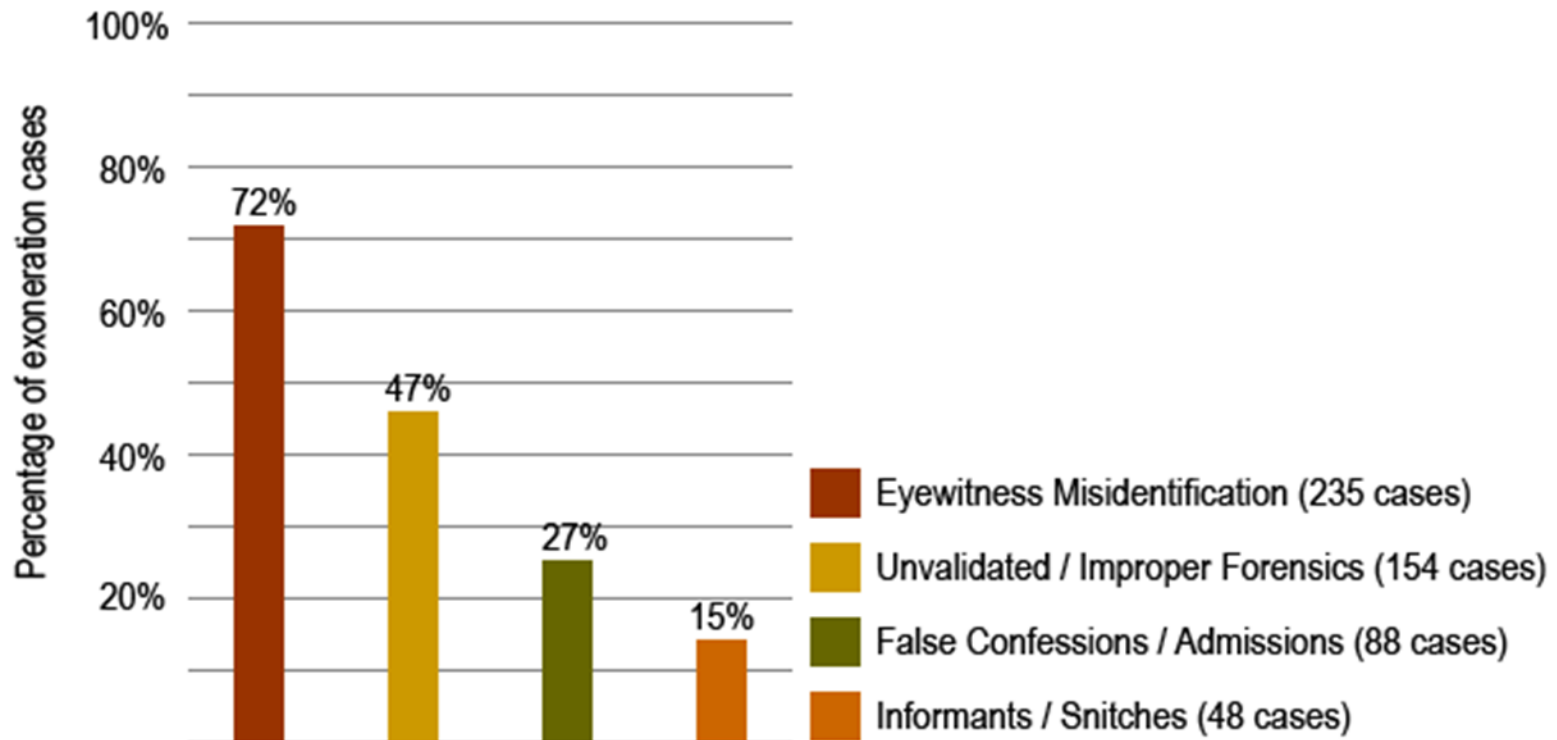
**64 of 68 false confessions were contaminated with inside information**



- **71 per cent were convicted based at least in part on improper or unvalidated forensic science.**
- **24 per cent (80) were convicted based at least in part on testimony from informants.**

## Contributing Causes of Wrongful Convictions (first 325 DNA exonerations)

Total is more than 100% because wrongful convictions can have more than one cause.



## FREQUENCY OF WRONGFUL CONVICTIONS

- **Depends on how hard you look**
  - **Dr. Smith cases**
  - **Manitoba hair/fibre inquiry**
  - **U.S. conviction integrity units**
  - **Criminal Conviction Review Group**
- **How willing are we to acknowledge a wrongful conviction?**



## RECENT ESTIMATES

- “an unknown dark figure?”
- National Registry of Exonerations  
(University of California Irvine Newkirk Centre for Science and Society)

January 1989 – October 2018

2,442 exonerations and growing  
more than 21,200 lost years

*an exoneration occurs when a person who has been convicted of a crime is officially cleared based on new evidence of innocence.*

- Gross et al. 2015  
if all death-sentenced defendants remained under sentence of death, at least 4.1 per cent would be exonerated



## THE CANADIANS

### A very conservative list



**Donald Marshall, Nova Scotia, 11 years (1971)**



**Guy Paul Morin, Ontario, 18 months (1984)**



**David Milgaard, Saskatchewan, 23 years (1969)**



**Herman Kaglik, NWT, 52 months (1992)**



**Thomas Sophonow, Manitoba, 45 months (1982)**



**Gregory Parsons, Newfoundland, 2 months (1991)**



**Clayton Johnson, Nova Scotia, 5 years (1993)**



**Simon Marshall, Quebec, 7 years, 4 months (1997)**



**Randy Druken, NL, 7 years (1993)**



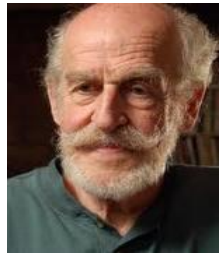
**William Mullins Johnson, Ontario, 12 years (1993)**



**Anthony Hanemaayer, Ontario, 8 months (1987)**



**Sherry Sherret-Robinson, Ontario, 1 year (1996)**



**Rejean Hinse, Quebec, 5 years (1961)**



**Dinesh Kumar, Ontario, 90 days (1992)**





**Maria Shepherd, Ontario, 2 years (1992)**



**Ivan Henry, British Columbia, 27 years (1983)**



**John Salmon, Ontario, 3 years (1970)**

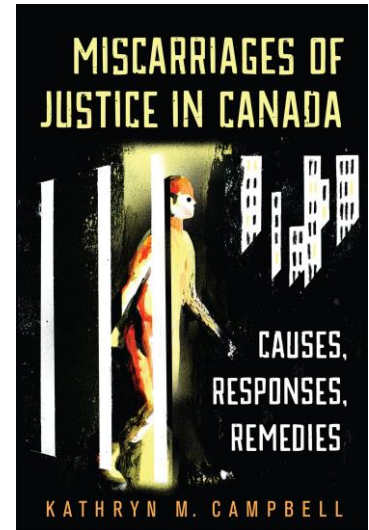


**Tammy Marquardt, Ontario, 14 years (1995)**

## NEW CANADIAN ESTIMATE

70 cases

- 6 women
- 11 Indigenous
- 32 have been compensated
- 50 had their cases overturned by the courts through the ordinary appeal process
- 20 had their cases revisited by the courts as a result of conviction review
- Rarely a single factor
- “Considering the difficulty in establishing a reliable estimate of wrongful convictions in Canada at any given time in Canada, the information on these cases at best simply reflects current information about these cases alone and should not be taken as a definitive picture of the reality of miscarriages of justice in Canada.”



Evidentiary / Procedural Issue	Evidence of Casual or Contributing Factor	Percentages of Wrongful Conviction Cases
Fabricated, erroneous or unreliable eyewitness identification	31	44
Problematic police investigation or police misconduct	27	39
Police/Crown failure to disclose evidence	21	30
Mistaken or problematic forensic or expert evidence	19	27
Fabricated or problematic witness or complainant testimony	19	27
Unreliable co-accused testimony or jailhouse informant testimony	15	21
Erroneous judicial instructions	13	19
False confession	7	10
Racial prejudice	7	10
Overzealous or malicious prosecution	6	9
Poor legal representation	2	3



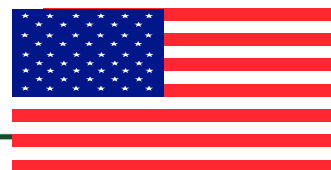
## KNOWN INDIGENOUS EXONERATIONS IN CANADA

- **Donald Marshall (racism, perjury, incompetent defence, police & Crown misconduct)**
- **Herman Kaglik (recantation)**
- **William Mullins Johnson (flawed science – Charles Smith)**
- **Richard Brant (flawed science – Charles Smith)**
- **Jason Hill (flawed identification procedure and erroneous identification)**
- **Tammy Marquardt (flawed science – Charles Smith)**



## **CANADA VERSUS THE U.S.**

- **No death penalty**
- **Better legal aid system**
- **Non-elected judges and prosecutors (even elected public defenders and sheriffs)**
- **Stinchcombe disclosure rules**
- **7 commissions of inquiry**
- **Major investigations conducted by handful of police forces**
- **Updated lineup/interviewing procedures**
- **Independence of Crown from police investigations**



**CANADA**  
**2004**

**UNITED STATES**  
**2016**

August 19, 2004  
Winnipeg, Manitoba

Forensic Evidence  
Review Committee

**Final Report**

Submitted to:  
**Mr. Bruce MacFarlane, Q.C.**  
*Deputy Attorney General  
Manitoba Justice*



**The Washington Post**

Judge orders D.C. to pay \$13.2 million in wrongful FBI hair conviction case



Sentae A. Tribble, right, seen with his son Sentae Tribble Jr., in 2011, served 28 years in prison for a crime he didn't commit due to a flawed hair analysis by the FBI. (Mark Gail/The Washington Post)

FBI admits flaws in hair analysis over decades



FBI headquarters in Washington. (Donnie Jo Mount/The Washington Post)



**What can we learn from each other?**







- Separation of police and prosecution functions
- Commissions of inquiry



- Look beyond your borders
- Importance of good research
- Conviction integrity units

## KEY FACTORS THAT CONTRIBUTE TO WRONGFUL CONVICTIONS

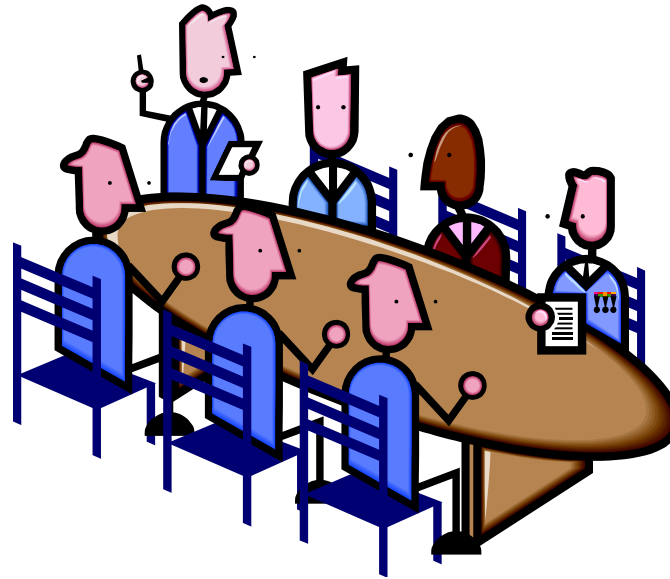
- Tunnel vision
- Mistaken eyewitness identification and testimony
- False confessions/guilty pleas
- False testimony of in-custody informers
- Faulty or unreliable forensic evidence and expert testimony
- Lack of education



## **MCFARLANE’S PREDISPOSING CIRCUMSTANCES**

- **Public pressure to identify and convict an accused in a high-profile case**
- **An unpopular defendant who is a member of a minority group and is often perceived as an outsider**
- **A legal environment or culture that focuses on winning**
- **The presence of “noble cause corruption,” the belief that the end justifies the means, and that improper practices are acceptable to ensure a conviction due to the belief that the accused committed the crime**

# Federal/Provincial/Territorial Heads of Prosecutions Sub-Committee on the Prevention of Wrongful Convictions



# Collaborative Effort



## To View or Download the 2005 Report

<http://canada.justice.gc.ca/eng/dept-min/pub/pmj-pej/toc-tdm.html>

**REPORT ON THE PREVENTION OF  
MISCARRIAGES OF JUSTICE**

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FPT HEADS OF PROSECUTIONS COMMITTEE  
WORKING GROUP



## **Wrongful Convictions**

- **A wrongful conviction is a failure of justice in the most fundamental sense.**
  
- **No matter how many cases are successfully prosecuted every day in our courtrooms, wrongful convictions, regardless of how infrequent, are a reminder of the fallibility of the justice system and a stain on its well-deserved reputation.**



## CONCLUSIONS

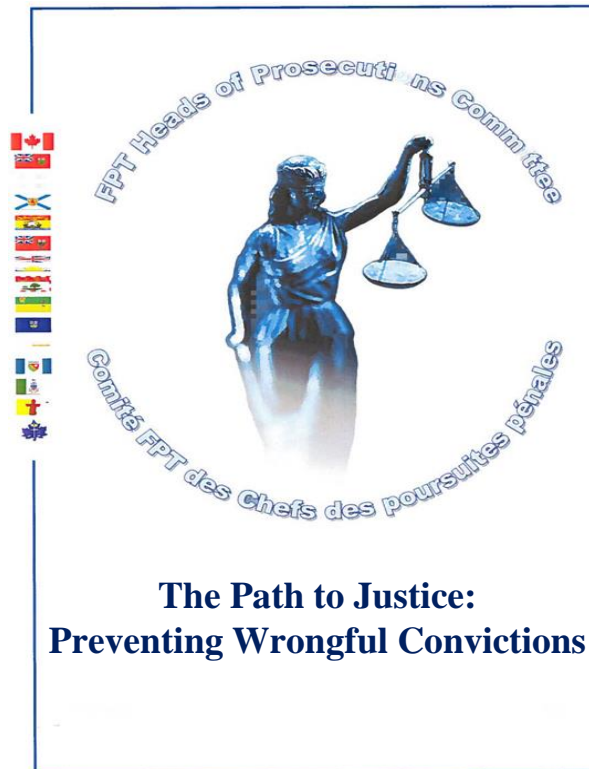
- Usually not one mistake but a combination of events
- Same problems, themes and mistakes time and time again
- Problems relate to conduct of police, Crown, defence, judges and forensic scientists and are not confined to proceedings in the courtroom
- Need multi-faceted solutions





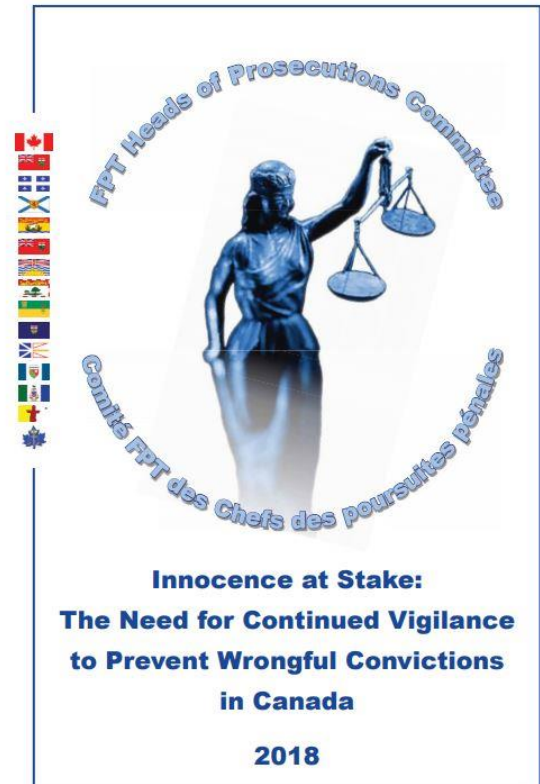
## To View or Download the 2011 Report

[www.ppsc-sppc.gc.ca/eng/pub/ptj-spj/ptj-spj-eng.pdf](http://www.ppsc-sppc.gc.ca/eng/pub/ptj-spj/ptj-spj-eng.pdf)



## New Report

<https://www.ppsc-sppc.gc.ca/eng/pub/is-ip/index.html>





## **Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada**

- Chapter 1: Introduction
- Chapter 2: Understanding Tunnel Vision
- Chapter 3: Eyewitness Identification and Testimony
- Chapter 4: False Confessions
- Chapter 5: Jailhouse Informers
- Chapter 6: Forensic Evidence and Expert Testimony
- Chapter 7: Education
- Chapter 8: False Guilty Pleas
- Chapter 9: Crown Advocacy
- Chapter 10: At-Risk Populations
- Chapter 11: Conclusion
- Chapter 12: Summary of Recommendations





## EMERGING ISSUES

- **Guilty pleas by the factually innocent**
- **At-risk populations**
  - **Indigenous**
  - **Young persons**
  - **Mental illness**
  - **Women**
  - **Racialized communities**

# Eyewitness Identification Recommendations

- The following are reasonable standards and practices that should be implemented and integrated by all police agencies:
  - If possible, an officer who is independent of the investigation should be in charge of photo-pack presentation. This officer should not know who the suspect is, avoiding the possibility of inadvertent hints or reactions that could lead the witness before the identification takes place, or increase the witness's degree of confidence afterward.
  - The witness should be advised that the actual perpetrator may not be in the photo-pack, and therefore the witness should not feel that they must make an identification.
  - Never interview witnesses collectively. Never prompt or coach a witness by offering clues or hints about the identity of the accused in court. Do not participate in a "show-up" lineup. Never show a witness an isolated photograph or image of an accused during the interview.
  - The suspect should not stand out in the photo-pack as being different from the others, based on the eyewitness's previous description of the perpetrator, or based on other factors that would draw extra attention to the suspect.
  - All of the witness's comments and statements made during photo-pack viewing should be recorded verbatim, by video and audio recording, or if that is not feasible, in writing. When an eyewitness makes an identification, a statement should be obtained from that eyewitness indicating how confident they are that the person identified is the perpetrator.

- If the identification process occurs on police premises, reasonable steps should be taken to remove the witness as soon as possible upon completion of the photo-pack presentation to prevent any potential feedback by other officers involved in the investigation and cross contamination by contact with other witnesses.
- Show-ups should be used only in rare circumstances, such as when the suspect is apprehended near the crime scene shortly after the event.
- A photo-pack should be provided sequentially, and not as a package, thus preventing 'relative judgments'.



- The use of expert evidence on the frailties of eyewitness identification is redundant and unnecessary in the fact-finding process. A proper charge and caution by the trial judge can best deal with the inherent dangers of identification evidence.
- Workshops on Cognitive Interviewing should be incorporated in regular and ongoing training sessions for police and prosecutors.
- Presentations on the perils of eyewitness misidentifications, including the academic research and results of experts in the field of memory and eyewitness identification, should be incorporated in regular and ongoing training sessions for police and prosecutors.



## CLOSING THOUGHTS

“Grief cannot be assuaged by incarcerating the innocent”

-T shirt at AIDWYC

“It takes a gentle breeze to blow someone into jail and the perfect storm to get them out.”

-Marguerite Thomas



## CONTACT INFORMATION

Questions?

Please contact...

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