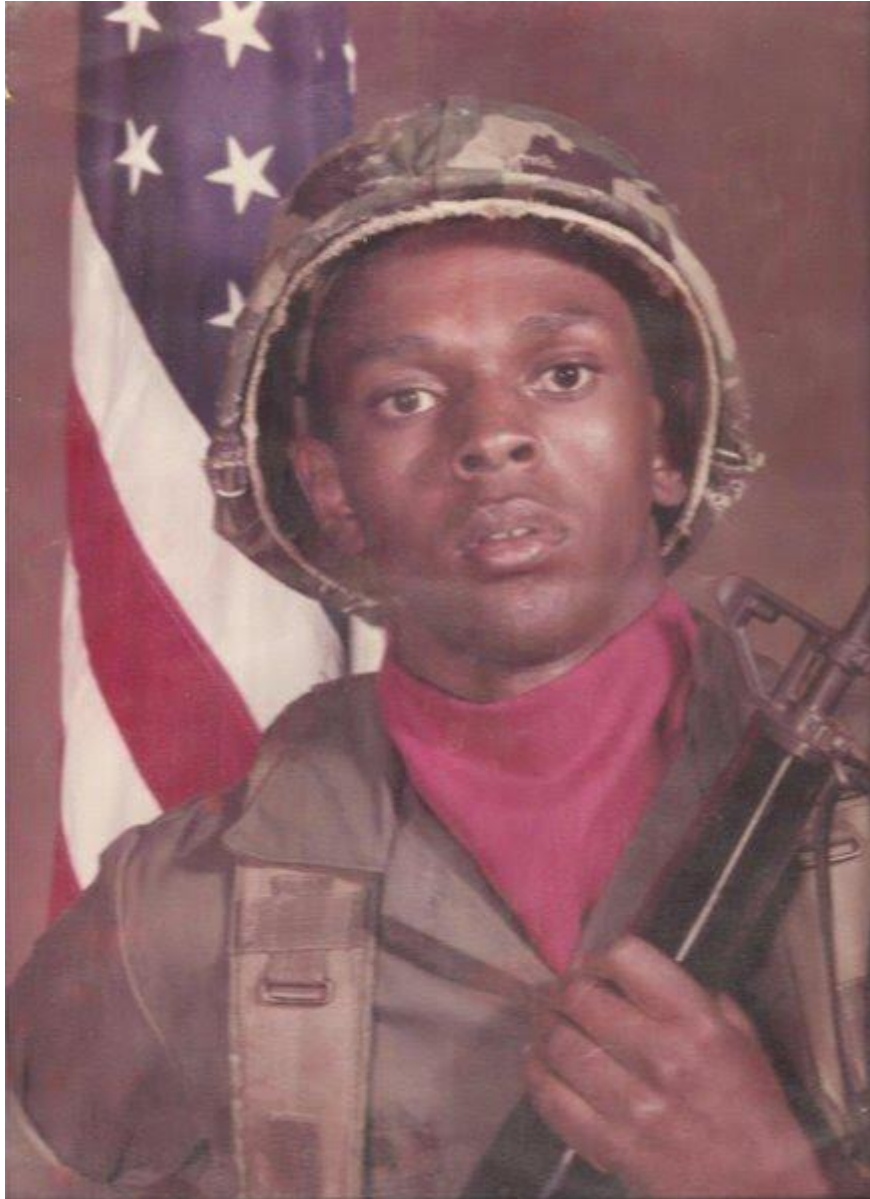


A TRAGIC EXAMPLE OF INJUSTICE IN U.S. CRIMINAL PROSECUTION AND SUGGESTIONS FOR CHANGES THAT ARE NEEDED

THE CRIME **Michele Mallin** was a victim of a violent rape in 1985. The then 24-year-old Texas Tech student was parking her car when she was approached by an African-American who asked for her help to jump start his car with cables. When she said she didn't have any cables he reached in through the window and opened the car door. He placed a knife to her neck, forcing her to the passenger seat and drove off.

He drove to vacant field outside of town where he forced her to perform oral sex after which he then raped her. He then drove back after which he took \$2 in cash from her, her watch and ring then left on foot. Mallin then immediately called the police, reported the crime and the investigation was under way. Mallin described the attacker to the police giving the details about his clothings (shirt and sandals) and also the fact that he smoked a lot. The police said that it might have been the work of a serial rapist (“Tech rapist”) who was suspected of about four other rapes. Composite sketches were then made of the rapist as described by Mallin.

THE ACCUSED This U.S. Army photograph below is **Timothy Cole**, a 26-year-old veteran and Texas Tech student. On the night of the rape, he, his brother and his friends had a card game. Some weeks after Mallin’s rape, Cole was at a restaurant to get pizza when he ran into a female detective who questioned and somehow their conversation earned him a leading spot on the suspect list. The detective proceeded to go to Cole’s house and obtained a Polaroid picture of him. She showed the picture to Michele Mallin together with mugshots of other suspects (keep in mind only Cole’s picture was a Polaroid, the rest were mugshots in which the subjects were facing sideways or not looking at the camera when it was taken). Michelle almost immediately singled out Cole from the pictures as the man who raped her. The next day the police called line up and Michelle again singled out Cole as the attacker, after which Cole was arrested.



THE PROSECUTOR'S CASE Cole was tried in court for the rape of Michele Mallin but not for the rape of the other five. Mallin again pointed out Cole as her attacker. A forensic examiner testified that, "Serology testing found evidence of a Type A secretor on the swabs, and both Mallin and Cole had type A blood. Mallin is a secretor, he said, meaning her blood type can be determined from bodily fluids other than blood. Cole's secretor status was unknown." The forensic examiner further testified about the pubic hairs collected from the victim's underwear and body during her hospital examination. He testified : "the hairs had similar characteristics to Cole's pubic hair, but said the analyst conducting the tests could not make a firm conclusion."

THE DEFENSE CASE Cole's attorney started by presenting the accused's alibis, to which Cole's brother and several friends testified that Cole was with them during the card game after which he went to his room to study. The attorney also reported that the rapes have continued

even after the imprisonment of the accused. Cole further presented the court with evidence that he has a chronic asthma and could not have been the perpetrator who Millan described as “he smoked a lot.”

THE SENTENCE The Jury deliberated for six hours and the next day Cole was sentenced to 25 years in prison. Years went by, appeals kept being denied. He was eventually offered parole but only if he would plead guilty, which he refused to do because he still proclaimed his innocence. A decade later, after the statute of limitation on rape had expired Jerry Wayne Johnson wrote letters to the police and prosecutors that he was the one who committed the rape Cole was being accused of but the letters were not acknowledged.

In the year 1999 after serving 14 of his 25 years sentence, Cole died from an asthma attack. He never knew of Johnson's attempts to confess. In 2008 DNA exonerated Timothy Cole's name and implicated Johnson's.

THE RESPONSE Meanwhile the victim in the case, Michele Mallin, speaks and writes about the case to raise awareness about misidentifications and wrongful convictions. “I was positive at the time that it was him,” she said at a recent speech at the Georgetown University Law Center. “I was shocked when I found out it wasn't him. I joined Tim's family in working to exonerate him because it was the right thing to do. Timothy didn't deserve what he got.” A Bronze statue of Cole holding two books as he looks towards Texas Tech was made to honor his memory. Written on the bindings of one of the books are the words ***“Lest We Forget”***

1.1M views 31.3K upvotes 297 shares 836 comments

[Response by Walter L. Williams, Ph.D. {prisoner rights activist}](#)

Over and over again, stories like this one are revealed, where innocent persons in the United States are misidentified or the charges are inaccurately publicized and they are imprisoned for many years. DNA tests often show the inaccuracies of even first hand testimony by victims.

Most people sitting in American prisons today are not there due to the result of a verdict by a jury, but are because of a plea bargain. Prosecutors regularly use the threat of multiple charges leading to many long years of prison sentencing, to essentially force an accused person to plead guilty to a lesser charge, even if the facts show that person to be innocent. Overwhelmed public defenders are pressured to give in to overzealous prosecutors, meaning that poor people who are not able to afford to hire a private attorney are much more likely to spend time in prison.

And once they get out, even if for a relatively minor sentence of a year, they are labeled as a “felon” for the rest of their life. Such persons are continually discriminated against in getting employment, housing, and even in voting. They are restricted by numerous regulations while under probation, and the mood of many probation officers is to send as many people back to prison as possible. The result, all too often, is that once a person has served time for one charge, they are more likely to be returned to prison—even if they never committed a crime.

This is an awful system, and it needs to be radically changed, at every level.

SUGGESTIONS FOR REFORMS

Prosecutors' salaries should not be based on how many guilty verdicts they produce. Defendants should not be pressured to agree to a plea bargain if they are innocent of a charge. Government attorneys should be assigned to be a prosecutor in one case, and as a defense attorney in the next case, continually alternating which role they play in court. Judges should strictly guarantee the rights of the accused as specified in the Bill of Rights. And overly long sentences should be prohibited. Long sentences do nothing to make society safer; their only effect is to ruin the life of someone who is accused, as well as their family. This is the only way that poor people can get even a semblance of justice.

Considering the injustices that repeatedly occur, the whole philosophy of American prisons needs to be changed. Presently, "punishment" is the approach of most prison guards. What needs to be done, at a minimum, is to radically change that approach. Prison staff should be educated to the facts that some if not many inmates may be unfairly incarcerated or even totally innocent. Prisons should be restructured as holding cells for people who were accused of crimes but who are not necessarily guilty. Since it is impossible for prison guards to know for sure, they should treat every incarcerated person with respect. Small indignities and petty punishments should be drastically reduced.

Education, addiction recovery, and job training should be the focus for younger prisoners, whereas older prisoners should be treated like other elders living in retirement centers. No prisoner should be forced to do labor if they do not agree to do assigned work. The 13th Amendment provision ending slavery, excepting persons convicted of a crime, should be repealed. There should be NO slavery in America, not even for those who are guilty.

Imprisonment should be imposed only to protect society from violent persons. Non-violent persons should if possible be sentenced only to home confinement, or other locales where they will not be able to repeat their crime. Loss of liberty is enough punishment by itself. No one should be labeled as a felon unless they repeat a similar crime after they are released. Probation officers' roles should be to assist the released person in getting housing and employment, not to punish them with multiple petty regulations and limitations.

A system of restorative justice should be implemented, with a focus on the accused person helping the victim in some tangible way, so that the victim feels restored. If there is no identified victim, such as those accused of possessing illegal drugs or pornography, such persons should be released after passing an addiction recovery program and warned not to possess illegal materials again.

Many things that are now illegal should be decriminalized, if Americans are to live in a genuinely free society. The right to privacy in one's home, papers and effects, should be respected, as supposedly guaranteed in the Bill of Rights. Restrictions on individual freedoms should be lifted if there is no demonstrated genuine harm to specific persons. The severity of punishment should be proportional to the severity of the crime. Government violence should be strictly limited, and government violators should be fired or sanctioned. Excessive bail and cruel punishments should be prohibited, as specified in the Bill of Rights.

[Deena Tova](#)

Yes, my identity was stolen and used for illegal white crimes (I think that's what it called). When I found out I didn't have \$200,000 I was told I would need to fight it, and because I don't live in USA (and didn't even have a phone I could call USA plus I was in a very abusive marriage with young children). Over the years it became inactive until I got a divorce. My ex- then wrote a letter to the FBI and may have gone to speak to them telling them that he knows I did fraud etc etc, that I'm a fugitive and I live -(my exact address)figuring if I go to jail he will get the apartment we live in. Because of this "proof", my name is on some sort of FBI wanted list-ALL because years ago I didn't (and still don't) have the money to fight it!

[Michelle Ketchum](#)

Made me cry for so many reasons, most of them all for his beautiful soul and all he could have been...our world lost an upcoming leader, a scholar, a true gentleman hero with the kindest heart full of so many hopes and dreams for the best of futures.... I have chronic asthma as well, especially whenever I'm dealing with issues that cause me fear or high stress...can't even fathom how terrifying it must have been for him to suffocate from an attack so horrible it caused death. It's a complete disgrace and total blatant misuse of power our so called law enforcement was and oftentimes continues to display if they can get away with it--all the better in those who are prone to be power hungry heathens...we can and SHOULD do so much better to fellow HUMANS!! The United States 'justice' system is a cruel joke made at the expense of the poor!!

[Mahesh M](#)

USA has the worst record in innocents being put to long years in prison.

[Hoops Guy \(Criminal Justice Professor\)](#)

I've commented before on the inaccuracies of eyewitness testimony as a sole factor in convictions. Several years ago I was teaching a Criminal Justice class at a college in California and the topic for the curriculum was 'courtroom testimony' and specifically the 'inaccuracies of eyewitness testimony'. Consequently, I conducted an exercise to illustrate this to my 55 students in class that morning.

I arranged for my son, who was 21, 6'2, 185 pounds blonde hair, blue eyes wearing blue jeans, plaid shirt, two separate shoes with different colors, a ball cap with a recognizable logo and a painted on facial tattoo, to enter my classroom, cause a major disturbance, make a threat towards me and flee the classroom. He screamed at me saying 'you gave me an F in this class and you're gonna fucking pay for it'.

The 'eyewitness accounts' were unbelievably inaccurate and completely all over the map and unreliable as evidence: Apparently my son was either a white male, a light skinned black male, or of Hispanic descent. Even 'Pakistani'. He was anywhere from 5' 6" to 6' 4" in height and weighed between 135 and 240 pounds. They named 6 different colors for his pants and numerous different colors for his black and red plaid shirt. The ball cap had the logo of apparently several Major League Baseball teams, or was it the NFL or the NBA or.... There were no facial markings...or were there. One said it was an XIV Norteno tattoo. (Very common for a white male, sarcasm). He was apparently wearing glasses also. In addition 'you're gonna pay for it' translated to some students that 'I am going to fucking kill you'. You get the point.

I wrote all the 'eyewitness' descriptions on the board and it was absolutely embarrassing.

I brought Nick back into class after about 30 minutes of this fiasco and the point was proven, 'beyond a reasonable doubt'. Eyewitness testimony demands corroborating evidence, such as video, DNA, fingerprints etc and cannot stand alone as a conviction modality barring a flat out confession. Way too many bad convictions by overzealous prosecutors to use this as your sole evidentiary source in court.

[Jean Charles](#)

Yet, people want to pretend that the US justice system is color blind....SMH...

[John Williams](#)

Cops and prosecutors don't care about justice and getting the right person. They are usually lazy and will lie to get any conviction

[Jeff Epstein](#)

Another story like the book, *To Kill A Mockingbird*.

[Felix Vu](#)

Before even clicking on the article I knew it was going to be a black guy

[Bigpoppa](#)

Let me guess...this was because of racism. So many black men have to deal with these kinds of sometimes-fatal misidentifications or deliberate miscarriages of justice due to prejudice.