

The Mayhem of Wrongful Liberty Documenting the Crimes of True Perpetrators in Cases of Wrongful Incarceration

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Abstract

When the wrong individual is incarcerated for a crime they did not commit, they suffer a terrible injustice. But they are not alone. The victims of the crime suffer in multiple ways: from a false assurance that the crime has been solved, possibly from participating as a witness leading to a wrongful conviction, and later from the consequences of exoneration. These events may leave the original crime victim doubly victimized; once by the criminal and then by the criminal justice system. But the wrongs may also include a third category of innocent victims. When the state arrests and incarcerates the wrong person, the true perpetrator remains at liberty. In many cases these individuals commit a series of crimes during this period of “wrongful liberty” (which we define as the period between the original crime and when the true perpetrator is arrested). In recent years, North Carolina has seen 36 exonerations. Of these cases, we have identified nine cases where the true perpetrator of the original crime was later convicted. Looking at the period between the crime and the later arrest of the true perpetrator, we review legal and media sources to document the crimes committed during this period of “wrongful liberty.” In the well-known *Picking Cotton* case, for example, the true perpetrator not only committed the two brutal rapes for which Ronald Cotton was incarcerated, but he committed six more before he was eventually arrested. Thus, there were six additional victims of the “wrongful liberty” of a guilty criminal. Our goal is to document, for one state, the number of crimes associated with such situations and thereby to expand our understanding of the social costs of wrongful incarceration. Those most directly affected include: a) the victims of the original crime; b) the person wrongfully imprisoned; c) the subsequent victims of the criminal who was wrongfully left at liberty. Advocates for victim services are natural allies of the innocence movement but they are rarely part of the conversation partly, we think, because the crimes of wrongful liberty have never been fully recognized. We focus on North Carolina as a first step and to document the feasibility of such a project, but we hope that our project will form the basis for studies in other states as well.

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The Mayhem of Wrongful Liberty

The many violent crimes he [Harris] committed after killing Officer Wood stand as vivid and sobering evidence in support of one of our main contentions: that wrongful conviction is not just a “liberal” issue concerning the rights of suspects, but also a public safety issue. Every wrongful conviction enables the real offender to continue victimizing others (Huff, Ratner, and Sagarin, 1996).

When a crime occurs and an innocent person goes to jail, the guilty party remains on the street, free to commit more crimes. These “crimes of wrongful liberty” have not received the attention they deserve, as attention to this aspect of wrongful conviction has the potential to broaden the coalition of supporters for the innocence movement. When confronted with evidence of the crimes committed by individuals who would have been in jail if authorities had arrested them, rather than another, for the crime they originally committed, no one can support such a system.

***The Thin Blue Line*, Randall Adams, and the Crimes of David Harris**

Many are familiar with the case of David Harris, whose killing of a Dallas police officer and framing of Randall Dale Adams were documented in the film *The Thin Blue Line* (Morris 1988). In November of 1976, at just 16 years old, Harris stole his neighbor’s car and his father’s gun and drove from his small home town of Vidor, Texas, to Dallas. While there Harris offered a ride to a man he saw walking along the side of the road. The man, Randall Dale Adams, had just arrived in Dallas in search of work. Adams spent the following day with Harris, then returned to his hotel. After dropping Adams off at his hotel, Harris was stopped by police for a routine traffic violation. During the stop he shot Dallas police officer Robert Wood six times with the stolen .22 caliber pistol, continuing to shoot after the officer had fallen to the ground (Huff, Ratner, and Sagarin, 1996). Harris was eventually arrested in his hometown of Vidor for driving the vehicle involved in the murder. Harris framed Randall Dale Adams for the crime. Though the evidence pointed overwhelmingly to Harris, he made a far less appealing defendant than the 28-

year-old Adams, particularly because Harris was too young to be eligible for the death penalty (Yant, 1991).

With a Dallas police officer killed in the line of duty, tensions were high and prosecutors were anxious to punish. Adams, a blue-collar worker, was new to town and was easily portrayed by police and prosecutors as a “hippie” (Adams, 1991). Prosecutors agreed to drop a set of charges pending against Harris for previous crimes in exchange for his testimony against Adams (Yant, 1991). Adams was convicted and sentenced to death. He spent twelve years in prison before being released in 1989, in large part due to the publicity garnered by the now famous documentary film about the case, *The Thin Blue Line* (Morris 1988). Though Harris admitted to the murder during the filming of the documentary, he never formally confessed to it and was never charged. With Adams released and Harris never charged, the killing of the Dallas police officer led to no conviction, as prosecutors treated the truly guilty party as an informant rather than a suspect. Even after admitting to the crime years later on film, he was not charged. Of course, by that time, he was already in jail on other charges, as Mr. Harris was a career criminal.

After this early brush with police, Harris went on to commit a number of crimes before joining the army (Huff, Ratner, and Sagarin, 1996). In 1978, while stationed in Germany, Harris committed a series of burglaries, an armed robbery, and violently assaulted his commanding officer. He was court martialed and sentenced to one year and one month in Ft. Leavenworth Military Prison on (he served 8 months of this sentence before being paroled) (Yant, 1991).

Following his release on June 29, 1979, Harris stole a car and drove to California. Harris and an accomplice picked up a hitchhiker named James Filaan in San Bernadino County. Filaan had been arrested for passing bad checks but had no violent criminal history. In the ensuing twenty-four hours, Harris and his accomplice forced Filaan to take part in a series of thefts and robberies. Eventually police confronted the three men while they were robbing an electronics store. Harris aimed his gun at one of the police officers and pulled the trigger, which misfired. The three men were taken into custody and Harris was charged with armed robbery and

kidnapping. During his trial, Harris attempted to pin the crimes on Filaan just as he had done with Adams, but this time his tactic failed. He was sentenced to six years in San Quentin prison. While incarcerated, Harris was convicted of possession of a deadly weapon by a prisoner and sentenced to an additional two years (Texas Attorney General, 2004).

Harris was released from San Quentin in 1984 and was permitted to return to Vidor through a special arrangement (Yant, 1991). In the early morning hours of September 1, 1985, armed with a .38 caliber revolver, Harris broke into the apartment of Mark Mays and his girlfriend, Roxanne Lockhard. While entering their bedroom, Harris woke the couple up and ordered Mays to lock himself in the bathroom. He led Lockhard out of the home at gunpoint and told her to get into his pickup truck. Mays freed himself, and followed Harris and Lockhard with a 9 mm pistol. At trial, Lockhard testified that after hearing gunfire, she got out of the truck to find Mays bent over, wounded. She ran back into the house to call the police, and a shootout ensued. Harris was hit twice before killing Mays and fleeing the scene. Forensic pathologists testified at trial that the muzzle of Harris's gun was within two feet of Mays' body when the fatal shot was fired (Texas AG, 2004). Some accounts suggest that Harris shot Mays three times at close range while he lay on the ground wounded (Yant, 1991). Four days later Harris was arrested after being pulled over on suspicion of drunk driving (Texas DOCJ). During interrogation, Harris attempted to blame Mays for the gunfight, telling police that nothing would have happened if Mays had stayed in the apartment: "That man was crazy," he said, "He tried to kill me" (Yant, 1991).

We will never know how many crimes David Harris committed. But the summary above suggests that, after evading charges for the killing of a Dallas police officer, he was guilty at least of:

1. A series of burglaries in Germany while in the US Army
2. Armed robbery
3. Assault on a commanding officer
4. Car theft
5. Kidnapping of James Filaan
6. A series of burglaries and thefts in California
7. Attempted killing of a police officer
8. Possession of a deadly weapon while in San Quentin prison
9. Armed robbery
10. Kidnapping of Roxanne Lockhard
11. Murder of Mark Mays

David Harris is far from alone in engaging in an extended crime spree during a period when, if he had been arrested and convicted for his earlier crime, he would have been incarcerated. We have little information on how many crimes are associated with such periods of “wrongful liberty.” In this paper we propose that documenting these crimes on a larger scale is entirely feasible, and that doing so could shift public opinion and elite debate.

Documenting Crimes of Wrongful Liberty

We began our work with a list of North Carolina exonerees. Here we began with the National Registry and supplemented it to include other cases including some that occurred before the Registry’s list in 1989. (The Appendix lists our 36 cases and the dates of their crime, arrest, and release.) We then associated each exoneree with the true perpetrators of the crimes for which they were falsely imprisoned. In our case this involved 36 exonerees and nine perpetrators, as we explain more detail below. We then collected information about the criminal history of the true perpetrator, through methods discussed in greater detail below. Data collected included the individual offense, case file number, date of offense, date of conviction, subsequent crime status, and what classification the offense falls under. Crimes were split into the following categories: infractions, unknown designations, felony drug crimes, felony sex crimes, felony property crimes, felony violent/weapon offenses, misdemeanor drug/alcohol crimes, misdemeanor violent/weapon crimes, misdemeanor property crimes, all other misdemeanors, and all other felonies. There were no misdemeanor sex crimes present in the data. Our experience in North Carolina suggests that law students working with undergraduate students and the supervision of attorneys experienced with state criminal records databases can gather such information easily. A small financial grant or coordinated effort among innocence projects could allow a more comprehensive national approach. Documenting the crimes of wrongful liberty even for one

decade's worth of exonerees would potentially allow a dramatic demonstration of another aspect of the cost of wrongful convictions. As we discuss below, this is entirely feasible, especially for the more recent cases where electronic records are more easily available.

Since search methods will likely vary from state to state, we suggest beginning the subsequent crimes search by determining the most legitimate and comprehensive source of criminal records in the jurisdiction at hand. There should be one source in each state that the court system itself uses, which should provide the most accurate information. In the case of North Carolina, this system is called ACIS (Automated Criminal Infraction System). Generally, a state's Department of Corrections is likely to provide accurate information as well. Finding case information for crimes committed before records were digitized and crimes committed outside of the state was more difficult. Here we again required the help of local attorneys, including those with access to criminal records in other states. Careful attention to terminology that differs across states' criminal records systems, including terms referring to release dates, was also important. Though Westlaw and LexisNexis might be useful for identifying case file numbers, we found them insufficient for identifying subsequent crimes because they are often missing complete data on charges and convictions.

We began by looking at the North Carolina Department of Corrections website. Their website allows for relatively easy compiling of a criminal's history, which can be downloaded as a pdf file. Unfortunately this is not the case in many other states. Some states require written requests be sent in by mail, or offer an online portal to acquire the records of clients. Additionally, we were fortunate to be able to work with the local public defender's office to access ACIS. To better understand the charges originally faced by exonerees, we also searched news articles through LexisNexisAcademic and Google News. For those unfamiliar with the cases, news coverage can provide valuable information about the underlying charges facing exonerees and about codefendants (true perpetrators) who might have been rightfully convicted at the time of the exoneree's conviction.

Finally, it was important to ensure the accuracy of offense dates to ensure that subsequent crimes were in fact subsequent. Many of the true perpetrators had extensive criminal records before the crime associated with the wrongful conviction. While this is pertinent to discussions of why the authorities did not charge them for that crime, these are not crimes of "wrongful

liberty” and we were careful to include only those crimes committed during that period between the crime of wrongful conviction and the date when the true perpetrator was finally incarcerated. When there were discrepancies in the offense date, we used caution when determining whether the offense had occurred before or after the offense for which the exonerees were convicted. For example, ACIS provides a date of service of the arrest warrant but not the date of offense. This is often the date the offense occurs, but not always. If someone was caught two weeks after committing breaking and entering, the date served is likely the day they were arrested, rather than the date of the offense. Ultimately, we recommend using caution and common sense when working with the data and erring on the side of underreporting if it is unclear whether a crime is subsequent or not.

Some Preliminary Estimates of Crimes of Wrongful Liberty

In a February 2014 news release, the New York-based Innocence Project provides these figures:

- More than 300 individuals exonerated through DNA testing since 1992
- 153 cases where the true perpetrator was identified
- 130 perpetrators in these cases (some were involved in more than one wrongful conviction)
- These 130 true perpetrators were later convicted of:
 - 139 additional violent crimes, of which there were
 - 76 sexual assaults
 - 33 murders
 - 30 other violent crimes.

Because these were all DNA-related cases, a relatively high proportion involve a “match” where the DNA evidence allowed prosecutors not only to release the innocent, but also to identify the guilty party. In North Carolina, we have 36 exonerations, only some of which are DNA-related. Of these 36 cases, nine involve the identification of the true perpetrators. In one of these cases (that of Alan Gell), the true perpetrators were arrested at the same time as the exoneree, leaving eight cases with known perpetrators who could have committed subsequent crimes. Subsequent crimes were committed in 6 of those 8 cases. These six individuals collectively were arrested and convicted of 99 subsequent crimes of which 35 were felonies and 13 were violent crimes. These are all crimes that could have, should have never occurred if these

criminals had been in prison for their earlier crimes. The Appendix shows the list of exonerations in our database and the cases where the true perpetrator was arrested.

There are also several cases that mirror that of Randall Adams, in which true perpetrators have been identified but have not been charged or convicted. For example, in the case of Erick Daniels, who served seven years in prison for a robbery he did not commit, the true perpetrator admitted to the crime while in prison on unrelated charges but was never convicted of the crime for which Daniels was wrongfully incarcerated. Samuel Strong is in prison but has not been charged with the crime for which Mr. Daniels served nine years. We do not include such cases in our analysis because we want to be conservative in our estimates and to rely on official judicial findings of guilt. However, expanding the list of perpetrators to include such cases would expand the list of crimes committed.

The most prolific serial criminal in our database is Albert Turner, who was the true perpetrator associated with the case of Willie Grimes, who was arrested on October 27, 1987 for a rape Albert Turner committed three days before. Grimes was exonerated in 2012 after having served 24 years of a life sentence. During the period when Mr. Grimes was serving time for his 1987 crime, Mr. Turner did not stop committing crimes. In fact, during his period of wrongful liberty, his prison record shows that he was convicted of these violent crimes (we do not list drug possession or other crimes here). In fact, Mr. Turner was well known to police at the time of the original crime but was not arrested. Having evaded justice at that time, he continued to assault women over the next 30 years, finally going to prison in his 50s after a life of violence (see Possley, 2014).

Violent Crimes Committed by Albert Turner during the Period Willie Grimes was Imprisoned for his Earlier Crime.

Crime	Date	Conviction
1	9/26/1988	Simple Assault
2	12/20/1988	Assault on a Female
3	3/26/1990	Simple Assault
4	1/5/1994	Simple Assault
5	12/20/1998	Communicating Threats
6	12/20/1998	Communicating Threats
7	3/28/1989	Simple Assault
8	5/13/1995	Assault on a Female
9	6/13/1995	Assault with a Deadly Weapon
10	2/2/1997	Assault on a Female
11	1/10/1999	Assault on a Female
12	4/9/2006	Assault on a Female
13	4/9/2006	Assault with a Deadly Weapon
14	4/4/2008	Assault on a Female
15	9/6/2008	Assault on a Female

Thus far we have identified 99 subsequent crimes committed by the true perpetrators after someone else was falsely imprisoned for their crimes. This is certainly an under estimate of the number of crimes committed during these periods of wrongful liberty. Known subsequent crimes range from nonviolent crimes including larceny, trespassing and breaking and entering to violent crimes like assault. There were sixteen violent subsequent crimes, fourteen of which were assault convictions. Thirty-five of the subsequent crimes were felonies. Since we lack complete information for the criminal records of some true perpetrators and about the identities of true perpetrators in several cases, these are very conservative estimates. There are at least this many cases of subsequent crimes and very possibly more. In fact, the 36 North Carolina exonerees served a total of approximately 387 years in prison for crimes they did not commit. During that period, the true perpetrator was typically on the street, and if Albert Turner's case is any indication, they collectively could be guilty of hundreds of violent crimes. Getting it right matters.

Conclusion

Serial criminals as Albert Turner, David Harris, or Bobby Poole victimize us all. Their victims include the original victim, who is doubly victimized by the crime and the fact that the true

perpetrator remains free. The list extends to the individual who goes to prison for a crime he or she did not commit, and the friends and family members of the wrongfully convicted as well as the victim. But the list of victims extends far beyond these individuals and their families. In many cases, those not arrested are well known to the police at the time of the crime, and in some unknown number of cases they go on to long and sustained sprees of crime, sometimes for decades. These criminals left on the street victimize untold numbers of victims during a period when they should have been incarcerated. Bringing attention to these crimes of wrongful liberty can help us understand another element of the costs of wrongful convictions. Our small project documenting the extent of the issue in North Carolina suggests it is feasible to consider a national collaboration to document these facts nationwide.

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Appendix. North Carolina Exonerations

Name	Crime	Convicted	Exonerated	Years	Arrest?
John Wesley Benton	1942	1943	1943	1	
Samuel Poole	1973	1973	1974	2	
Christopher Spicer	1973	1973	1975	3	
Lonnie Sawyer	1975	1975	1977	3	
Sandy Sawyer	1975	1975	1977	3	
Leo Waters	1981	1982	2003	22	Y
Lesly Jean	1982	1982	1991	10	
Ronald Cotton	1984	1985	1995	11	Y
Darryl Hunt	1984	1985	2004	20	Y
Sylvester Smith	1984	1984	2004	21	
Dwayne Allen Dail	1987	1989	2007	19	Y
Willie Grimes	1987	1988	2012	25	Y
Levon Junior Jones	1987	1993	2008	16	Y
LaMonte Armstrong	1988	1995	2013	19	
Robert Kelly	1988	1992	1997	6	
Kathryn Dawn Wilson	1988	1993	1997	5	
Joseph Lamont Abbitt	1991	1995	2009	15	
Keith Brown	1991	1993	1999	7	Y
Jonathan Scott Pierpoint	1991	1992	2010	19	
Gregory Taylor	1991	1993	2010	18	
Glen Edward Chapman	1992	1994	2008	15	
Floyd Brown	1993	1993	2007	15	
Charles Munsey	1993	1993	1998	6	Y
Jerry Lee Hamilton	1994	1994	2003	10	Y
Alan Gell	1995	1998	2004	7	Y
Jonathon Hoffman	1995	1996	2007	12	
Alfred Rivera	1996	1997	1999	3	
Terence Garner	1997	1998	2002	5	
Derrick Allen	1998	1998	2010	13	
Shawn Giovanni Massey	1998	1999	2010	12	
Steve E. Snipes	1998	1998	2003	6	
Erick Daniels	2000	2001	2008	8	
Kenneth Kagonyera	2000	2001	2011	11	
Robert Wilcoxson	2000	2002	2011	10	
Noe Moreno	2006	2007	2012	6	
Donald Edward Sweat	2007	2007	2009	3	
Totals, 36 exonerations				387	

Note: Several additional cases saw the identification of a perpetrator, but not their arrest and conviction for the original crime. We list only those cases where a subsequent conviction confirmed their status as the perpetrator.