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SYMPOSIUM 2010: RIGHTING THE WRONGED: CAUSES, EFFECTS, AND REMEDIES OF JUVENILE WRONGFUL CONVICTION

INTRODUCTION

*Laura Cohen**

As the wintery, late-afternoon sun cast shadows across his Bronx neighborhood, sixteen-year-old Henry Barnes¹ trudged up the stairs to his family's second-floor apartment. It was January 1989, and Henry was returning home after spending the afternoon with his fourteen-year-old girlfriend. Earlier that day, as he left for school, Henry and his mother had argued about his slipping grades. He hoped that she had put the incident behind her.

Henry was the only child of hard-working, Jamaican immigrant parents, who owned the three-family house in which they and two tenants lived. He had always been respectful, a good student, and had steered clear of trouble. In recent months, however, he had, in his parents' view, become involved with the wrong group of friends. He knew his mother and father were worried, but, in typical teenage fashion, resented their concerns and rebuffed their efforts to intervene.

As Henry entered the apartment, he was surprised that his mother was not there to greet him. Not seeing her car keys in their usual place on a living room table, he assumed she had gone out. He headed for his room, in the back of the apartment, but, as he passed

* Clinical Professor of Law and Co-Director, Eric R. Neisser Public Interest Program Rutgers School of Law—Newark.

1. Because the effort to establish Henry's innocence is ongoing, I have changed his name to protect his identity.

his parents' room, he paused. His mother was careful to shut her door when she left, but it was partially ajar. "Mom?" Henry called.

Met with silence, he pushed the door open. A horrifying scene confronted him. His mother was sprawled across her bed, lifeless, a telephone cord wrapped around one arm. Not immediately visible, but apparent when he frantically tried to awaken her, was the knife that had been plunged into her neck. She was naked from the waist down, and the sheets were soaked with blood.

Panic-stricken, Henry called 911 and bolted downstairs to the street. There, sobbing, he waited for the ambulance to arrive. As he stood on the curb, Sharon Grey, one of his parents' downstairs tenants, appeared. Sharon and her husband, Edgar, had moved in just a few months before, and Henry had never spoken with either of them except for a passing greeting. Henry later thought it odd that Sharon would approach him, put her arm around his shoulders, and comfort him without ever asking what was wrong—as if she already knew what had happened.

When the police reached the apartment, they asked Henry a few questions, and, because his father was in Jamaica visiting family, contacted his godmother, who lived a short distance away. When Henry finally reached her home, late that night, the house was filled with grief-stricken friends and relatives. There, the boy spent a sleepless night, filled with the horror of what had happened.

The next day, as the family awaited Mr. Barnes's return from Jamaica and began to make funeral arrangements, a detective from the 47th Precinct in the Bronx—the infamous "Fort Apache"—called. He said that the police were sending a car to pick up Henry, that they wanted him to come to the precinct to answer some more questions. At approximately one in the afternoon, sixteen-year-old Henry, stunned and unaccompanied, was led into an interrogation room. In less than twenty-four hours, he had morphed from grieving son into prime suspect.

The interrogation, conducted by two police detectives, lasted for over six hours. Although the officers did not physically abuse Henry, they engaged in the psychological coercion and manipulation espoused by the "Reid Manual," the classic treatise on interrogation technique.² Henry was isolated throughout the questioning; in fact, although his godmother followed him to the precinct and asked to be allowed to see him, her request was denied. For the first several hours, Henry vehemently denied killing his mother, insisting that he was with his 14-year-old girlfriend at the time of the crime. Finally, the detectives threatened him with prosecution for statutory rape in

2. JOHN E. REID & ASSOCIATES, *THE REID TECHNIQUE OF INTERVIEWING AND INTERROGATION* (2000).

addition to murder if he did not confess. For the exhausted, terrified boy, that threat was enough. He agreed to sign whatever the detectives put in front of him.

That statement told a story that could have been ripped from the headlines of the South Bronx in 1989, and, in fact, created headlines in every New York newspaper the next day. In it, Henry admitted to stabbing his mother to death after she refused to give him money to pay a crack cocaine dealer. After the killing, the statement continued, he rearranged his mother's body to make it look as if she had been raped and robbed, took the money from her purse, and left for school. Only after Henry signed the statement did the police allow his heartbroken godmother into the room.

Over the next several days, the police trumpeted news of the brutal murder and Henry's arrest across every available media outlet. News analysts and columnists used the case to bemoan the sub-human depths to which crack had pulled New York's youth. The New York Police Department congratulated its detectives on their swift cracking of the case. And Henry, who had immediately recanted his statement, was locked in the brutality of the city jail.

Three weeks later, the police were confronted with an unforeseen and uncomfortable development. Edgar Grey, the Barnes's downstairs tenant, was found driving Mrs. Barnes's car with the keys in the ignition. A check of Grey's record revealed that he was on parole after serving a prison term for robbery, which was originally charged as a rape. The seemingly airtight case against Henry, which fit so neatly into the contemporary, fear-driven narrative of crack-addled Black teenagers, was in jeopardy.

Within hours of Grey's arrest, in the wee hours of the morning, the two Bronx detectives travelled across county lines to interrogate him. Grey promptly signed a statement that attempted to reconcile Henry's confession with the inconvenient truth of his possession of Mrs. Barnes's car. According to the thirty-year-old Grey, he and Henry were close friends—so close that, after Henry killed his mother, he came to Grey to ask for help in covering up his involvement. Grey told police that Henry helped him arrange the body and, in gratitude, Henry gave him the keys to his mother's car. Grey, who was on parole and had a prior violent felony record, was charged not with a homicide-related offense but merely with unlawful possession of the car.

Ultimately, of course, the two statements were irreconcilable. Henry's statement said nothing about seeking or receiving assistance from the much older and more experienced Grey. It said nothing about his mother's car. It assumed full responsibility for both the killing and the cover-up. Nevertheless, on the strength of the two statements, a jury convicted Henry of murder, and he was sentenced

to a prison term of fifteen years to life. He was paroled in 2009, after serving twenty years. With the help of the Rutgers Urban Legal Clinic and the Center on Wrongful Convictions of Youth at Northwestern Law School, he continues the fight to establish his innocence.

How could Henry, on the basis of a questionable confession alone, find himself in prison for, potentially, the rest of his life? What role did his youth play in his wrongful conviction, and what policy, practice, or judicial reforms might have prevented it? Why are juveniles grossly over-represented among documented cases of wrongful conviction? *Righting the Wronged: Causes, Effects, and Remedies of Juvenile Wrongful Conviction*, the conference that gave rise to this issue of the *Rutgers Law Review*, explored these and other related questions.

This extraordinary event was the first law review symposium in the country to examine the unique vulnerability of young people to wrongful conviction; the way courts, policy makers, and the public evaluate individual claims of juvenile wrongful conviction; and potential remedies and reforms. Three of the speakers have written pieces for this volume: Joshua Tepfer of Northwestern University Law School, Allison Redlich of the University at Albany, State University of New York, and Tamar Birkhead of the University of North Carolina School of Law. Also speaking were leaders in the fields of juvenile defense, actual innocence, and adolescent psychology: Bryan Stevenson of the Equal Justice Initiative and New York University School of Law, Steven Drizin, founder of the Northwestern University Law School's Center on Wrongful Convictions of Youth, Kristin Henning of Georgetown University Law Center, Laurence Steinberg of Temple University, Rebecca Brown of the Innocence Project, Marsha Levick of the Juvenile Law Center, Patricia Purtiz of the National Juvenile Defender Center, Sandra Simkins of Rutgers School of Law—Camden, and Dean John Farmer of Rutgers School of Law—Newark. Finally, Henry and several other men who were wrongfully convicted of serious crimes as juveniles shared their stories, imbuing the discussion with a sense of humanity, urgency, and purpose.

As the Articles in this volume make painfully clear, numerous factors lead to juvenile wrongful convictions. In their groundbreaking study, *Arresting Development: Convictions of Innocent Youth*, Joshua Tepfer, Laura Nirider, and Lynda Tricarico exhaustively analyze data from the 103 documented exonerations to date of people who were convicted of serious crimes before their twenty-first birthdays.³

3. Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 901-15, apps. A-E (2010).

Their findings, while not surprising, are sobering. The developmental status of adolescents profoundly affects their response to police interrogation techniques and renders them much more likely to make false confessions and falsely implicate other youth.⁴ Similarly, young people are less able to understand their legal rights and more likely to waive them than adult defendants, including the right to counsel and the right to trial. A disproportionate number of exonerated juvenile defendants fall prey to ineffective assistance of counsel and (perhaps convergent) prosecutorial misconduct.

A dominant theme in wrongful conviction literature is the false guilty plea. It is estimated that every two seconds in the United States, a guilty plea is entered.⁵ Approximately 97%-99% of American criminal cases are resolved via a guilty plea, usually made after a negotiation process that offers some real or perceived benefit to the defendant.⁶ (In juvenile courts, which continue to suffer from shockingly high rates of waiver of counsel and are shielded from scrutiny by confidentiality laws, the plea rate may well exceed that of the adult system).⁷ The inherently coercive nature of this process yields some percentage of false pleas, and, given the disproportionate rate of juvenile false confessions, one might expect that number to be higher among youth than adults. Yet, as Tepfer and his colleagues tell us, false pleas were a factor in approximately 8% of the documented adult exonerations, but only 6.8% of the known exonerations of juveniles wrongfully convicted in the adult system.⁸

In *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, Allison Redlich unpacks this counterintuitive finding.⁹ She reviews the extensive body of research exploring the impact of age and developmental status on youths' ability to understand and appreciate the plea decision, as well as their vulnerability to outside influences in making that decision. She points in particular to a troubling study of young people's

4. See *id.* at 901-08. In recent years, the United States Supreme Court relied on adolescent development research in declaring unconstitutional both the juvenile death penalty, *Roper v. Simmons*, 543 U.S. 551, 568-75 (2005), and sentences of life without parole for juveniles convicted of non-homicides. *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010).

5. Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 944 (2010) (citing Timothy Lynch, *The Case Against Plea Bargaining*, REGULATION, Fall 2003, at 24).

6. See *id.*

7. For statewide assessments of juvenile defense delivery systems conducted by the American Bar Association, the National Juvenile Defender Center, and others, see *Assessments*, NAT'L JUV. DEF. CTR., <http://www.njdc.info/assessments.php> (last visited Aug. 27, 2010).

8. Tepfer, *supra* note 3, at 914.

9. Redlich, *supra* note 5.

understanding of the standard plea colloquy, demonstrating that they are less likely than adults to enter truly “knowing” pleas.¹⁰ She posits that, due to ineffective assistance of counsel, inadequate resources, and lack of oversight, the rate of false guilty pleas may in fact be substantially higher in juvenile than adult courts (although lower rates of appeal and post-conviction litigation inhibit collection of this data).¹¹ And, somewhat provocatively, she queries whether the lower incidence of false guilty pleas among youth derives from their developmental inability to engage in the long-term and short-term cost-benefit analysis required by the plea-bargaining process. In other words, are young people unable, due to their lack of future orientation and differential assessment of risk, to evaluate whether a false guilty plea would be in their best interest, given the potentially graver consequences of a conviction after trial and low probability of acquittal?¹²

Like Redlich, Tamar Birkhead views the juvenile court as a petri dish for wrongful convictions. In *Culture Clash: The Challenge of Lawyering Across Difference in Juvenile Court*, she focuses on an often-overlooked cause of the problem: role confusion among juvenile defenders.¹³ Despite the Supreme Court’s unequivocal determination in *In re Gault* that due process in juvenile court requires effective assistance of counsel,¹⁴ and despite ethical codes¹⁵ and practice standards¹⁶ according decisional authority to the client, statewide assessments of juvenile defense delivery systems conducted over the past decade reveal a widespread failure among juvenile defenders to engage in “expressed interests” advocacy on behalf of their clients.¹⁷

10. *Id.* at 946-48 (discussing Barbara Kaban & Judith C. Quinlan, *Rethinking a “Knowing, Intelligent, and Voluntary Waiver” in Massachusetts Juvenile Courts*, 5 J. CTR. FAM., CHILD., & CT. 35 (2004)).

11. *Id.* at 946-51.

12. *Id.* at 951-56.

13. Tamar R. Birkhead, *Culture Clash: The Challenge of Lawyering Across Difference in Juvenile Court*, 62 RUTGERS L. REV. 959, 986 (2010).

14. 387 U.S. 1, 40-41 (1967).

15. *See, e.g.*, MODEL RULES OF PROF’L CONDUCT R. 1.2(a) (2002) (“In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.”).

16. *See, e.g.*, ROBIN WALKER STERLING, THE ROLE OF THE JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT, NAT’L JUV. DEFENDER CTR. 7 (2009), http://www.njdc.info/pdf/njdc_role_of_counsel_book.pdf (“At each stage of the case, juvenile defense counsel acts as the client’s voice in the proceedings, advocating for the client’s expressed interests, not the client’s ‘best interest’ as determined by counsel, the client’s parents or guardian, the probation officer, the prosecutor, or the judge. With respect to the duty of loyalty owed to the client, the juvenile delinquency attorney-client relationship mirrors the adult criminal attorney-client relationship.”).

17. *See Assessments, supra* note 6.

Rather than acting in accord with their clients' wishes, lawyers often advocate for results that they, or other participants in the proceeding, deem to be in the young person's "best interests."¹⁸ In doing so, they cease to comport with criminal defense norms and assume, instead, a protective function.

Birkhead thoughtfully untangles the web of forces that ensnare defense attorneys in this arguably unethical approach to practice. The competing goals of prosecutors, probation departments, and judges (who often have the power to assign or withhold cases from defense attorneys) render "lawyers representing juveniles . . . particularly susceptible to the message conveyed by the other actors in the system: don't investigate, don't talk to state's witnesses, don't file motions, don't make the state meet its burden, and—in short—don't be zealous advocates."¹⁹ In addition, juvenile defense attorneys often identify with, and are directed by, the client's parent rather than the client herself, creating conflicts when the parent's goals for the child, however legitimate, are not aligned with the client's legal interests. As Birkhead sees it:

The result is a culture clash: criminal defense culture versus juvenile court culture versus culture of the family, leaving the child's lawyer caught in the middle . . . [As a result,] accurate fact-finding stops being a priority; advocacy . . . falters; the quality of representation suffers; and wrongful convictions . . . occur.²⁰

Whether it was Edgar Grey or someone else, the person who killed Henry Barnes's mother was never apprehended. How can we prevent tragedies like that which destroyed the Barnes family and, in doing so, ensure that those who actually commit crimes are held accountable? The constellation of factors giving rise to juvenile wrongful convictions is vast and overwhelming. Yet, as the Talmud exhorts us, we must not be "daunted by the enormity of the world's grief . . . [We] are not obligated to complete the work, but neither are [we] free to abandon it."²¹

Fortunately, the conference panels inspired spirited discussion of potential strategies, many of which are explored in the symposium Articles. These include, among others, reform of police interrogation practices to require the presence of defense counsel at, and electronic recording of, every juvenile interrogation; reform of eyewitness identification procedures to require double-blind, sequential line-ups and photo arrays;²² a bright-line rule prohibiting juvenile waiver of

18. Birkhead, *supra* note 13, at 967-68.

19. *Id.* at 979.

20. *Id.* at 982.

21. RAMI SHAPIRO, WISDOM OF THE JEWISH SAGES 41 (1995).

22. For information about eyewitness identification practices and how they

counsel; specialized training in adolescent brain development and youth vulnerability to wrongful conviction for police officers, juvenile court judges, prosecutors, probation officers, and defense attorneys; development of, and adequate support for, a specialized, well-trained juvenile defense bar; repeal of laws expanding waiver of juveniles to adult courts; and, finally, adoption by juvenile defense attorneys of cross-cultural lawyering techniques, particularly the influential “Five Habits” developed by Sue Bryant and Jean Koh Peters.²³

Henry Barnes is now forty-one years old. Out of prison for one year, he is married and holds down two jobs. An accomplished jazz pianist, he has played at several clubs in New York. Yet the taint of his murder conviction, as well as the profound emotional effects of a twenty-year incarceration, continue to define his life. With *Righting the Wronged*, we hope to help other young people avoid Henry’s fate.

contribute to wrongful convictions, see *Eyewitness Identification*, INNOCENCE PROJECT, <http://www.innocenceproject.org/fix/Eyewitness-Identification.php> (last visited Sept. 2, 2010). Dean John Farmer of Rutgers School of Law—Newark, one of the conference panelists, implemented pioneering reforms in this area when he was Attorney General of New Jersey. See Gina Kolata & Iver Peterson, *New Jersey is Trying New Way for Witnesses to Say “It’s Him,”* N.Y. TIMES, July 21, 2001, at A1.

23. Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in RACE, CULTURE, PSYCHOLOGY, & LAW 47-48, 60 n.3 (Kimberly Holt Barrett & William H. George eds., 2005).