

Innocence and life without parole in Louisiana

By Bernadette O'Reilly



The Louisiana State Penitentiary, commonly known as 'Angola'.

What began as discussions, sharing reviews and books between myself and another lawyer over the years about the 'West Memphis 3'¹, 'Central Park 5'², Darryl Hunt³ and other famous cases eventually culminated in a decision to volunteer at the Innocence Project in New Orleans. From January to March 2016 myself and Angela Jones⁴ worked with staff at the project on various cases.

We chose New Orleans as Louisiana has the highest rate of incarceration, not only the USA, but the world. So, just to compare with NSW, our population is approximately 7.7 million⁵ and the approximate prison population is 12,600 people⁶. Louisiana has a population of 4.5 million⁷ and yet has 38,000 in jail.⁸ This incredible number is best illustrated by per head of population with other countries.

Compare Louisiana's incarceration rate of 816 people per 100,000 people with the following countries:

- Russia 492,
- Australia 196,
- China 119,
- France 100,
- Germany 78.⁹

In Louisiana, not only do the courts frequently sentence people to life without parole, they also have the three strikes law¹⁰, which means the third time a person commits a felony they generally receive a life sentence.¹¹ What this means is that an

enormous number of people are serving lengthy jail terms, some for crimes they did not commit. Angola Penitentiary remains the largest maximum security prison in the United States.¹² It houses over 6,000 prisoners. The average sentence for prisoners there is 93 years. About 75 percent of people serving time at Angola will die there under current laws.¹³

Once a person has exhausted all their direct appeals (conviction and severity), they then have to be able to establish factual innocence to be exonerated, that means essentially establishing that the defendant did not commit the crime. There is no funding for representation for these cases, and prisoners who cannot afford a lawyer (the vast majority) are then dependent on groups such as Innocence Projects.

Innocence Project New Orleans (IPNO) is a non-profit law office with full time staff attorneys working cases from start to finish, supported by investigators, paralegals and volunteers. Since 1991, there have been 43 exonerations in Louisiana and at least nine in Mississippi.

Since 2001, IPNO has won the freedom or exoneration of 28 wrongfully convicted prisoners who served a total of 573 years in Louisiana and Mississippi's prisons between them. Sixteen of the 28 cases had no DNA evidence. Ten of these clients were teenagers when they were arrested. They use their clients' cases to ask for changes in laws and policies that cause indigent prisoners to be wrongly convicted.¹⁴

Wrongful convictions occur. While there is no way to accurately

determine how many people are serving time in prisons and jails across the USA for crimes they did not commit, experts estimate that for people sentenced to death:

...if all death-sentenced defendants remained under sentence of death indefinitely at least 4.1 per cent would be exonerated. We conclude that this is a conservative estimate of the proportion of false conviction among death sentences in the United States.¹⁵

In Australia there is no reliable data on how many wrongful convictions there are. There has been over the years a number of high profile cases:

- Lindy Chamberlain, who was wrongfully convicted of murdering baby Azaria in 1982.
- Andrew Mallard, who was wrongfully convicted of murdering Pamela Lawrence, served 12 years in jail.
- Alexander McLeod-Lindsay, who served a nine-year jail term for the attempted murder of his wife before he was eventually exonerated.
- Ray, Peter and Brian Mickelberg, who were exonerated after a detective confessed to framing them for the Perth Mint swindle.
- Roseanne Beckett (Catt), who served 10 years for planning to kill her husband, was exonerated in 2001.
- Darryl Beamish, was convicted in December 1961 of murdering Jillian Macpherson Brewer and John Button was convicted of manslaughter, following the death of Rosemary Anderson, Button's girlfriend. Beamish served 15 years, while Button was sentenced to ten years and served five, both had their convictions quashed as it was considered that the murders had probably been committed by Edgar Cooke the 'Night Caller', an Australian serial killer who from 1959 to 1963, terrorised Perth by committing 22 violent crimes, eight of which resulted in deaths.

How do wrongful convictions occur in Louisiana in the first place?

There are a number of reasons and causes. Below is a chart prepared by the National Registry of Exonerations.¹⁶ The Registry has registered 1905 exonerations between 1989 and 2016.

Exonerations by contributing factor	
As at 10/27/2016 Total = 1905	
Factor	Percentage
Mistaken witness ID	30
Perjury or false accusation	56
False confession	12
False or misleading forensic evidence	24
Official misconduct	51

1. Mistaken witness identification evidence

During a trial the prosecutor may call evidence from eye witnesses to identify the defendant. Prosecutors and juries alike see this evidence as powerful and convincing, however, as research has shown over the years (including in Australian jurisdictions), identification evidence is notoriously unreliable. More than 48 per cent of Louisiana and Mississippi's exonerations have involved some sort of error by eyewitnesses.¹⁷

IPNO client Kia Stewart was exonerated in 2015.

Kia was mistakenly identified as the man who shot Bryant 'BJ' Craig on a public street in broad daylight on July 31, 2005, just a month before Hurricane Katrina.

Within hours of the shooting, police developed Kia as a suspect in the case. This was based on a factually inaccurate anonymous tip. By the end of the day, without canvassing the scene for witnesses or doing anything else to develop leads, police included Kia's photograph in an array for BJ's distraught friend to identify. This single eyewitness (BJ's friend) identification was the only evidence against Kia.

At the time of his arrest, Kia was just 17 years old. Four years after his arrest, Kia was wrongly convicted after a short trial at which the state presented one eyewitness.¹⁸

2. Perjury or false accusation - 'Snitches' and Rewards

In 46 per cent of Louisiana and Mississippi's exonerations, defendants have been wrongly convicted based, at least in part, on the testimony of witnesses who lied, including witnesses who had an incentive to testify against the defendant.¹⁹ 'Incentives' to testify range from financial reward for information / testimony, to reduced jail time for a 'snitch', to the real perpetrator testifying to conceal his own guilt.

In 2011, Louisiana passed HB 305, which provides for the reduction of a defendant's sentence for substantial assistance in an investigation. IPNO was opposed to this bill, but worked

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with legislators to help ensure that when a snitch witnesses testifies, the content of their deal and the substance of their testimony is disclosed to the defence.

Other incentives include being offered a reduced sentence in exchange for giving testimony or claiming reward money from Crime Stoppers. A report in 2005 by the Chicago Center on Wrongful Convictions found that 38 innocent death row prisoners were convicted because of 'snitches'.²⁰

3.False confessions

In many wrongful conviction cases, suspects have confessed to crimes. You may be asking why would an innocent person admit to a crime he or she didn't do?

False confessions often follow interrogations which can be very intense and coercive. Examples include aggressive violent behaviour by interrogators, being misled or lied to, such as being told that there is already irrefutable evidence of their guilt, in order to obtain a confession, access to food, or toilet breaks may be restricted, sleep may be denied for extended periods. These tactics are surprisingly effective at producing a false confession.

In approximately 16 per cent of Louisiana and Mississippi's exonerations, the defendant has either made allegedly incriminating statements, confessed to the crime or pleaded guilty, in spite of their innocence.²¹

Nationally, one quarter of the defendants, who were later exonerated by DNA testing, gave a false confession. Not surprisingly juveniles and people with intellectual disability, or mental illness, are particularly vulnerable to falsely confessing when interrogated, and yet, virtually no protections exist for these groups.²²

A recent example were the confessions of the child Brendan Dassey in 'Making of a Murderer'.²³ At the time of the interview, Dassey was 16, and did not have an attorney or a parent present. According to court records, Dassey has an IQ of somewhere between 69 and 73 and the tape shows police putting detailed questions to Dassey, who replies with short, often one-word, answers.

Brendan's statements were involuntary, his lawyer Dean Strang said:²⁴

His statements were also wholly unreliable and flatly wrong on essential details, which is one of the obvious risks of coercing a statement from someone in custody. Our federal courts are often the last protectors of our liberties and justice. We are thankful and proud that a federal court fulfilled its fundamental role for Brendan Dassey today. In doing so, this federal court served all Americans.'

He was bullied by investigators, and the Milwaukee Federal Court Judge William E. Duffin found Dassey's confession to be involuntary under the Fifth Amendment, and overturned the conviction after granting his petition for a writ of habeas corpus.

4.False or misleading forensic evidence

Forensic science may seem infallible, given its glamorisation in TV crime dramas such as CSI. Juries are often seduced, or persuaded, by the expert evidence, and give it undue weight. Not only is much of it still in its infancy, but some methods rely on 'junk science' to produce evidence. Shoe print comparison, bite mark analysis, firearm tool mark analysis and hair analysis, among other methods, are commonly presented at trial, but often fail to meet scientific standards expected in other fields, and have not been subjected to sufficient scientific evaluation.

Meanwhile, forensics techniques that have been properly validated, such as serology, commonly known as blood typing, are sometimes improperly conducted, or inaccurately conveyed, in trial testimony. In some cases, forensic analysts has fabricated results or engaged in other misconduct.

All of these problems constitute invalid or improper forensic science, which is the second greatest contributor to wrongful convictions that have been overturned with DNA testing. In about half of DNA exonerations, invalidated or improper forensic science contributed to the wrongful conviction.²⁵

5.Official Misconduct

Incompetent counsel

Errors, negligence and deliberate misconduct by prosecutors and criminal defence lawyers are the most pervasive cause of wrongful convictions in Louisiana. This type of conduct caused, at least in part, 77 per cent of the wrongful convictions of Louisiana and Mississippi cases.²⁶

Many of IPNO's clients were represented either by incompetent counsel or by overworked and under-resourced public defenders. In many cases, the lawyers represented a client at trial without investigating the state's case or preparing a defence. Often defence lawyers have failed in the most basic of investigation tasks, such as interviewing alibi witnesses.

In 1984, the local bar had divided all of Shreveport's lawyers alphabetically, to represent the indigent. In one murder case, a man named Glenn Ford was randomly assigned to be defended by an oil and gas attorney and a slip-and-fall insurance attorney. They failed to challenge prosecutors' selection of an all-white



Bernadette O'Reilly (L) and Angela Jones (R) at the Innocence Project, New Orleans.

jury, which then found Ford guilty after deliberating for only three hours. He spent the last three decades of his life on death row, before being exonerated in March 2014. More on his case later.

This is not an isolated case, and the practice of assigning cases to inexperienced and inappropriate counsel continues. In Caddo Parish, Louisiana, due to a state-wide funding crisis and lack of funds for public defenders, judges have assigned cases to all the lawyers in Shreveport, including those specialising in real estate, personal injury, taxes and adoption - anyone admitted to practise and with a professional address in the parish.

Insurance attorney Ryan Goodwin found himself in a visiting area of the Caddo correctional center in Shreveport, Louisiana, bracing for an awkward conversation. He had to make an admission to his new client – a 16-year-old who was facing life in prison for stealing someone's wallet and cell phone at gunpoint.

'I don't do criminal defense,' he told the teenager, Norman Williams Jr. 'But I promise you, I'll definitely try my best.'

Goodwin typically represents insurance companies in litigation following car accidents. His job involves finding out what injuries the victim claims to have and whether they were caused by the crash. He has no criminal law experience.²⁷

Misconduct by Police and Prosecutors

Wilful misconduct committed by either police or the prosecution can play a significant role in producing wrongful convictions. Ultimately, it is the prosecutor who determines what evidence is presented during a trial and what is withheld. With this power, prosecutorial misconduct can occur when evidence is either deliberately misrepresented at trial or altogether withheld.

In the US, prosecutors have a great deal of influence over the jury selection process. In some cases, this can result in a jury assembled with a bias. Often, this can be seen through a racial lens, as in the case of former Louisiana death row inmate Glenn Ford.

Ford, a black man, was convicted of a 1983 murder and spent 30 years on death row. In 2014, he was released following new testimony proving his innocence. A.M. 'Marty' Stroud III, one of the prosecutors who sent Mr. Ford to prison, wrote [an article](#) for the *Shreveport Times*, apologising for his role in the case, after he had helped assemble an all-white jury and presented questionable evidence at trial.²⁸

Reginald Adams, an IPNO client, was exonerated in 2014 after spending nearly 34 years in prison for a murder he did not commit. His case illustrates both a false confession and withholding evidence resulting in a conviction.

Patterns and profile of exonerees and their cases.³¹

The National Registry of Exonerations has analysed the patterns and profile of the national data it collects. To date, there have been 1905 exonerations across the US.

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Basic patterns of exonerees

As of October 2016, the Registry included 1,905 exonerees:

- Sex: 90 per cent men; 10 per cent women.
- Race: 47 per cent black; 40 per cent white; 12 per cent Hispanic; 2 per cent Native American, Asian or Other.
- Trials and Guilty Pleas: 77 per cent convicted by juries; 7 per cent convicted by judges; 17 per cent pleaded guilty.
- Crimes: 42 per cent falsely convicted of homicide; 27 per cent of sexual assault (includes 11 per cent convicted of child sex abuse); 13 per cent of other violent crimes; 17 per cent of non-violent crimes.
- DNA: 23 per cent were exonerated at least in part by DNA evidence; 77 per cent without DNA evidence.
- Time served: All told, these exonerees spent nearly 16,618 years in prison—on average nine years each. Almost all (80 per cent) were imprisoned for more than one year; 38 per cent for 10 years or more; 57 per cent for at least five years.

Contributing factors that led to their wrongful convictions (many cases have multiple factors):

- Among exonerations in specific crime categories:
- The rate of perjury or false accusations is highest in child sex abuse cases (84 per cent) and homicide cases (68 per cent).
- The rate of official misconduct is highest in homicide cases (68 per cent).
- The rate of mistaken identifications is highest in sexual assault cases (69 per cent).
- The rate of false or misleading forensic evidence is highest in homicide cases (23 per cent) and non-violent crime (such as drug possession) cases (30 per cent).
- The rate of false confessions is highest in homicide cases (22 per cent).

National Registry of Exonerations

IPNO was successful in exonerating Jerome Morgan in 2016.

In 2014, Jerome Morgan's murder conviction was overturned, he walked out of prison after spending 20 years incarcerated for a crime he didn't commit. However, he remained accused of that crime, and lived in a state of pre-trial limbo with restrictions on his freedom until May 27, 2016, when the state finally dismissed the charges and he was fully exonerated.

Reform to Louisiana criminal justice system³³

Case study

In 1980, after being interrogated for five hours by the police, Reginald confessed to the crime. This confession, riddled with errors and getting nearly every fact about the crime wrong, was the only evidence used against him at trial. Reginald's first trial in 1983 was for first-degree murder, and prosecutors sought the death penalty. He was convicted and sentenced to life in prison. The Louisiana Supreme Court reversed his conviction, and he was retried for second-degree murder in 1990. He was again convicted and sentenced to mandatory life without parole.

At both of Reginald's trials, the NOPD homicide detectives assigned to the case testified that, despite a thorough investigation into the murder, they were unable to develop any real leads until he confessed. The detectives testified that they never located the gun used to kill the victim, or any of the property stolen from the victim's home, and never had any other real suspects in the crime.

During IPNO's investigation, they discovered an NOPD supplementary report located in an unrelated file in the district attorney's office. The report revealed that the homicide detectives had discovered the murder weapon, traced it to a pair of siblings who had access to the gun shortly before the murder, and had subsequently arrested one of the siblings, on whom they found a bracelet stolen from the victim's home, for accessory to first degree murder, all within one month of the crime. This report was intentionally suppressed by the prosecutors at Reginald's first trial, and made it clear that the NOPD detectives had perjured themselves on the stand.

Days later, the conviction and sentence were formally dismissed. Reginald Adams was freed the same day and went home with his family.

District Attorney Leon Cannizzaro apologized to Mr. Adams,²⁹ saying the 'handling of this case was shameful. Not only did the police and prosecutors' intentional acts harm Reginald Adams, who was wrongfully incarcerated for more than three decades, but also it denied this community any opportunity to hold the real perpetrator criminally responsible for this violent crime.'³⁰

There are many basic reforms that Louisiana could implement that would help guard against wrongful convictions in the first place.

- Eyewitness identification procedure reforms and corroboration requirements
- Specialised discovery rules and evidentiary restrictions in single witness cases
- Recording custodial interrogations of suspects and special protections for juvenile arrestees
- Higher standards for admissibility of forensic testimony in criminal cases and independence / increased oversight of crime labs
- Improving ethical compliance and performance standards of prosecutors and defence lawyers

The following policies and procedures would ensure that wrongfully convicted prisoners are exonerated and helped back into the world outside prison.

- Access to DNA and other forensic testing
- Proper evidence preservation and cataloguing
- Access to public records
- Proper public record preservation
- Access to legal assistance and the courts
- Adequate and prompt compensation after exoneration and immediate access to services

Current NSW profile

In NSW, the Exoneration Project at the University of Sydney was established in 2015 by Dr C van Golde. Specially selected students from the university's psychology and laws schools are scrutinising prisoner's cases to see if there really has been a miscarriage of justice. To date, they have had around 30 applications.

Some of the problems and issues we encountered in Louisiana just don't arise in NSW. What we observed led us to be thankful for our system that is comparatively fair. Although mistakes do occur, we at least have a funded Legal Aid and Aboriginal Legal Service.

We have procedures and policies, such as recording a suspect's interviews, recording ID parades, children's independent person present when interviewed, and recording of forensic procedures, that provide some safeguards against many of the issues we observed in Louisiana. However, our legal system continues to struggle with funding cuts to Legal Aid and the Aboriginal Legal Services. Properly funded legal representation

Case study

In 1993, Jerome was wrongly arrested at age 17 and prosecuted for the murder of Clarence Landry, III at a sweet sixteen birthday party held in the ballroom of a New Orleans hotel. A fight broke out between two groups of boys at the party. Shots were fired and three teens were hit—two survived, but 16-year-old Clarence Landry died on the scene. By all accounts, the gunman fled the ballroom immediately after the shooting and was chased down the street to an alley, where he jumped over a fence. When the police arrived, they sealed the room, and the detectives took down the names of everyone in the room, including Jerome, whose name was listed by the detectives in their report.

Jerome was prosecuted, based upon the identification testimony of two teenaged witnesses, one of whom had previously told the police it was definitely not Jerome. Post-conviction investigation by Innocence Project New Orleans revealed that the prosecutors had in their file a complaint history that proved that it took police a mere six minutes to arrive after the shooting, not 30 to 45 minutes as the jury heard. This made the already questionable theory that the gunman, after successfully fleeing from the crime scene, returned to a room of over 80 witnesses, even less likely—there simply was not enough time for the gunman to flee, run down the street to an alley, jump over a fence, hide the murder weapon, and return to the scene of the crime unnoticed before the police arrived and sealed the room. The teenaged witnesses also admitted in 2013 that the detectives had told them to name Jerome Morgan; one of several people about whom rumours were circulated among high school students in the months after the shooting.

Based on both the discovery of the complaint history and the recantation of the two teenaged witnesses, Jerome was freed on bond February 4, 2014 and granted a new trial. For two years after his conviction was overturned, IPNO fought to clear Jerome's name, while the district attorney first fought the ruling overturning his conviction, and when unsuccessful, fought to re-prosecute Jerome in spite of the clear evidence of his innocence. Meanwhile, since his release in 2014, Jerome has worked full time, mentored high school students at McDonough 35 and won a Propeller grant to help his effort to set up a barbershop through which he mentors teens. On May 27, 2016, the Orleans Parish district attorney dismissed the second degree murder charges against Jerome, and he was finally exonerated.³²

FEATURES

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greatly reduces the risks associated with wrongful convictions. We need to monitor and be vigilant to the increased pressure accused persons face to plead guilty to avoid lengthy jail terms applying standard non parole periods. We need to be alive to the alarming increased imprisonment rates never seen before in NSW, and the enormous backlog in criminal trials. We need to be on guard to ensure that shortcuts throughout the criminal justice system are not taken, and that mistakes made in other countries, failed policy and procedures are not replicated or adopted here. Finally there needs to be consideration given to a model and procedure for reviewing convictions in NSW.

Endnotes

1. West Memphis 3, Damien Echols, Jessie Misskelley, and Jason Baldwin were convicted in the deaths of three local boys. The prosecution alleged it was part of a satanic ritual. The case was documented in the film *Paradise Lost: The Child Murders at Robin Hood Hills* as well as two sequels and gained a large following, including many celebrities, who believed in the innocence of the defendants. In 2011, they entered Alford pleas in exchange for having their sentences reduced to time served. While their convictions stand legally, they are widely considered to have been wrongfully convicted.
2. Central Park 5, Yusef Salaam, Antron McCray, Raymond Santana, Kevin Richardson, Kharey Wise, who were between the ages of 14–16 at the time, were convicted of the assault and rape of Meili, who was jogging in Central Park. They were convicted on the basis of coerced confessions and faulty scientific evidence. The convictions were vacated in 2002 when Matias Reyes, a convicted rapist and murderer serving a life sentence for other crimes, confessed to committing the crime alone and DNA evidence confirmed his involvement in the rape.
3. Darryl Hunt, Hunt was convicted of murder on the basis of eyewitness testimony. He was later cleared by DNA testing.
4. Solicitor, Legal Aid NSW.
5. Australian Bureau of statistics. 3101.0 - Australian Demographic Statistics, Mar 2016.
6. NSW Bureau of Crime Statistics and Research, custody statistics: quarterly update sept 2016. www.bocsar.nsw.gov.au
7. U.S. Census Bureau. The state's estimated population on July 1 2015 was 4,670,724.
8. National Institute of Corrections. As of December 31, 2014, the Louisiana prison population was 38,030.
9. The World Prison Brief. Institute for Criminal Policy Research. University of London data compiled by Roy Walmsley, Director .
10. Three strikes legislation mandate [courts](#) to impose harsher sentences on those convicted of an offence if they have been previously convicted of two prior serious criminal offences (a felony). Introduced to Louisiana in 1994. As an example see 'Louisiana Man May Face Life For Shoplifting Snickers Bars' Huffington Post 19 April 2016.
11. A felony may be punishable with imprisonment for two or more years.
12. Angola for Life. Sep 09, 2015. Video by *The Atlantic*. There are more than 6,000 men currently imprisoned at the Louisiana State Penitentiary at Angola—three-quarters of them are there for life, and nearly 80 percent are African American. In this *Atlantic* original documentary, national correspondent Jeffrey Goldberg goes inside Angola to speak with inmates and with warden Burl Cain, who has managed the prison for two decades. www.theatlantic.com/video/index/404305/angola-prison-documentary/
13. As above at 12.
14. IPNO www.ip-no.org
15. Samuel R. Gross. Proceedings of the National academy of sciences of the United States of America. Rate of false conviction of criminal defendants who are sentenced to death. vol. 111 no. 20
16. National Registry of Exonerations, a project of the University of California Irvine Newkirk Centre for Science and Society and University of Michigan Law School and the Michigan State University College of Law. www.law.umich.edu/special/exoneration/Pages/mission.aspx
17. IPNO www.ip-no.org
18. IPNO www.ip-no.org
19. IPNO www.ip-no.org
20. The Center on Wrongful Convictions in Chicago 'The Snitch System: How Incentivized Witnesses Put 38 Innocent Americans on Death Row.' 2005 The study provides a comprehensive look at the problem of informant testimony, and describes in detail how the use of informant testimony contributed to the conviction of specific innocent defendants.
21. IPNO www.ip-no.org
22. Innocence Project New York. www.innocenceproject.org/
23. Making a Murderer is an American documentary television series that premiered on Netflix on December 18, 2015. Written and directed by Laura Ricciardi and Moira Demos, explores the story of Steven Avery, a man from Manitowoc County, Wisconsin, who served 18 years in prison for the wrongful conviction of sexual assault and attempted murder, before being fully exonerated in 2003 by DNA evidence. He filed a suit against the county on this case. In 2005, Avery was arrested on charges of murdering Teresa Halbach, a local photographer, and convicted in 2007. The series also covers the arrest, prosecution, and conviction of Avery's nephew, Brendan Dassey, who was also charged in the murder, largely based on his confession under interrogation. Netflix 18/12/13.
24. Statement to The Huffington Post 13/08/2016.
25. Innocence Project New York. www.innocenceproject.org/
26. IPNO www.ip-no.org
27. 'Louisiana a lawyer with a pulse with do.' The Guardian September 2016
28. Shreveport Times 3/8/15
29. Press conference on 12 May 2014
30. IPNO www.ip-no.org
31. National Registry of Exonerations, a project of the University of California Irvine Newkirk Centre for Science and Society and University of Michigan Law School and the Michigan State University college of law
32. IPNO www.ip-no.org
33. Summary list of reforms that IPNO seeks IPNO www.ip-no.org
34. A special thanks to the Innocence Project New Orleans staff and exonerees for allowing us to be part of your organisation.