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## Tunnel Vision: How the System Chooses Its Target

Alison Hill

*“It is better that ten guilty persons escape than that one innocent suffer.”<sup>1</sup>*

An idea has intensified within the innocence community, comprised of those exonerated from prison after being wrongfully convicted and their allies: the theory of tunnel vision.<sup>2</sup> Tunnel vision refers to how state actors focus on a suspect and build a case around that one person in such a way that it ends in a conviction.<sup>3</sup> Typically, both poor and minority communities are systematically left to the mercy of the justice system, including police interrogations, preliminary hearings, prosecutions, public defenders, sentencing, and the appeals process.<sup>4</sup>

Tunnel vision begins when police are called, yet there is a difference in how police respond based on the community in which the situation occurs.<sup>5</sup> When police receive a vague description of an offender, the police tend to set their sights on whoever fits it the most, even if the investigation is flawed.<sup>6</sup> For example, in 1985, Larry Youngblood was convicted of child molestation, sexual assault, kidnapping in Arizona.<sup>7</sup> His conviction was based primarily on the police investigation and an eyewitness identification that turned out to be flawed.<sup>8</sup>

Similarly, in December 2015, Quintonio LeGrier who lived in a poor neighborhood in Chicago, was shot after police were called due to a domestic

<sup>1</sup> Sir William Blackstone, Book the Fourth – Chapter the Twenty-Seventh: Of Trial, And Conviction, *Commentaries on the Laws of England*, THE AVALON PROJECT (YALE LAW SCHOOL) (1765), [http://avalon.law.yale.edu/18th\\_century/blackstone\\_bk4ch27.asp](http://avalon.law.yale.edu/18th_century/blackstone_bk4ch27.asp).

<sup>2</sup> Emily Bazelon, *The Dark Dangers of Tunnel Vision*, SLATE, Dec. 4, 2012, [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2012/12/michael\\_morton\\_s\\_wrongful\\_conviction\\_why\\_do\\_police\\_and\\_prosecutors\\_continue.single.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/12/michael_morton_s_wrongful_conviction_why_do_police_and_prosecutors_continue.single.html).

<sup>3</sup> *Id.*

<sup>4</sup> Keith A. Findley, *Tunnel Vision*, UNIVERSITY OF WISCONSIN LAW SCHOOL, May 11, 2010, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1604658](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1604658).

<sup>5</sup> Eugene Thomas, *When The Crime Is ‘Being Black,’ Police Routinely Respond with Guns Drawn*, THE LENS, Sep. 16, 2014, <http://thelensnola.org/2014/09/16/when-the-crime-is-being-black-in-america-police-routinely-respond-with-guns-drawn/>.

<sup>6</sup> Julia Craven, *Black Cops Aren’t Better For Black Communities Just Because They Have The Same Skin Color*, THE HUFFINGTON POST, June 2, 2015, [http://www.huffingtonpost.com/2015/06/02/community-policing\\_n\\_7486576.html](http://www.huffingtonpost.com/2015/06/02/community-policing_n_7486576.html).

<sup>7</sup> *Larry Youngblood*, THE INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/larry-youngblood> (last visited Apr. 2, 2016).

<sup>8</sup> *Id.*

disturbance and was described as “combative.”<sup>9</sup> When police arrived, they inadvertently shot a downstairs neighbor, Bettie Jones, who was not involved in the altercation.<sup>10</sup> The public perception in poor neighborhoods and communities of color is that when police respond to their calls, their guns are drawn at the ready, with callers’ own lives in the balance.<sup>11</sup>

### POLICE AND PROSECUTORS

Quintonio’s case is not uncommon. In response to the release of a police video showing the killing of Laquan McDonald by a Chicago police officer<sup>12</sup>, a Police Accountability Task Force appointed by Mayor Rahm Emanuel was developed to investigate these tunnel vision-style investigations.<sup>13</sup> The task force reported that blacks in Chicago are disproportionately targeted by traffic stops, tasers, and street stops.<sup>14</sup> Additionally, 74% of the over 400 people shot by Chicago police between 2008 and 2015 have been black.<sup>15</sup>

The Task Force came in the wake of these types of police encounters that led the *New York Times* to dub Chicago not as Cook County, but “Crook County.”<sup>16</sup> Most recently, within the span of a week, 16-year-old Pierre Loury, who was black, was shot and killed for allegedly pointing a gun at an officer, while a 23-year-old white man who pointed a replica handgun was instead arrested and taken into custody without resorting to deadly force.<sup>17</sup>

This disparity in response to crime extends beyond the initial encounter with police.<sup>18</sup> Tunnel vision applies not only to the investigative process, but

<sup>9</sup> *Chicago Police Respond To Domestic Disturbance, Shot and Kill Teen, Neighbor*, NPR, Dec. 29, 2015, <http://www.npr.org/sections/thetwo-way/2015/12/26/461119329/chicago-police-respond-to-domestic-disturbance-shoot-dead-teen-and-neighbor>.

<sup>10</sup> *Id.*

<sup>11</sup> Thomas, *supra* note 5.

<sup>12</sup> Ben Austen, *Chicago After Laquan McDonald*, THE NEW YORK TIMES, Apr. 20, 2016, <http://www.nytimes.com/2016/04/24/magazine/chicago-after-laquan-mcdonald.html>

<sup>13</sup> Nicole Gonzalez Van Cleve, *Chicago’s Racist Cops and Racist Courts*, THE NEW YORK TIMES, Apr. 14, 2016, [http://www.nytimes.com/2016/04/15/opinion/chicagos-racist-cops-and-racist-courts.html?\\_r=1](http://www.nytimes.com/2016/04/15/opinion/chicagos-racist-cops-and-racist-courts.html?_r=1)

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Sun-Times News Wire, *Man Charged With Pointing Replica Handgun at Chicago Police*, FOX32CHICAGO, Apr. 28, 2016, <http://www.fox32chicago.com/news/crime/134102727-story>; Jason Mesiner and Alexis Meyers, *Family of Teen Pierre Loury Sues City Over Deadly Police Shooting*, CHICAGO TRIBUNE, Apr. 20, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-pierre-loury-shooting-20160420-story.html>.

<sup>18</sup> Craven, *supra* note 6.

also to over-aggressive prosecutions.<sup>19</sup> A former Cook County court clerk opines that the Cook County court system is just as prejudiced as the police who patrol the county.<sup>20</sup> However, this problem is not confined to Cook County. As shown in the Youngblood case, Pima County prosecutors in Arizona relied on the unreliable evidence, resulting in Youngblood's conviction.<sup>21</sup> Not until 2000—15 years later— was Youngblood exonerated and released following the recovery of DNA evidence that proved his innocence.<sup>22</sup>

### TUNNEL VISION AND EXONERATION

Youngblood is not alone. Many people who have been convicted and exonerated have similar stories of excessive policing and prosecution.<sup>23</sup> Take the story of Mario Casciaro, a current exoneree<sup>24</sup> under Loyola University Chicago School of Law's Life After Innocence Program.<sup>25</sup> Mario was a recent college grad before he was falsely convicted of murder by intimidation, the only person in the country to ever be charged with that crime, in April 2013.<sup>26</sup> With no body of the missing young man nor any physical evidence connecting Mario to him, Mario was nevertheless sentenced to 26 years in prison.<sup>27</sup> Mario, in discussing this case, explained: "It was a [body]less case. My parents owned the store [where the victim was last seen], and I was there the night he disappeared. From that point on, they [the police and prosecutors] had tunnel vision."<sup>28</sup>

<sup>19</sup> Bazelon, *supra* note 2.

<sup>20</sup> Gonzalez Van Cleve, *supra* note 12.

<sup>21</sup> THE INNOCENCE PROJECT, *supra* note 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> An exoneree is a person who is convicted of a crime and later proven innocent. See Laura Sullivan, *Exonerations on The Rise, And Not Just Because Of DNA*, NPR, Feb. 4, 2014 <http://www.npr.org/2014/02/04/271120630/exonerations-on-the-rise-and-not-just-because-of-dna>.

<sup>25</sup> Sarah Schulte, *Freed Man Mario Casciaro Says Conviction 'Wasn't About The Pursuit Of Truth'*, ABC NEWS, Sep. 24, 2015, <http://abc7chicago.com/news/mario-casciaro-says-conviction-wasnt-about-the-pursuit-of-truth---/1000508/>.

<sup>26</sup> *Mario Casciaro*, LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW (LIFE AFTER INNOCENCE), <http://www.luc.edu/law/experiential/lifeafterinnocence/mariocasciaro> (last visited Apr. 2, 2016).

<sup>27</sup> Schulte, *supra* note 24.

<sup>28</sup> Telephone interview with Mario Casciaro, Exoneree, Loyola Life After Innocence Program, Chicago, Ill. (Mar. 18, 2016).

The need to prove one's innocence would be unnecessary if prosecutors based their case on a thorough police investigation, rather than on profiling.<sup>29</sup> As Mario further explained,

They started getting bits and pieces of evidence that weren't really evidence to make up this story. Their whole story was from convicted felons that were in jail. When someone is sitting in prison and you tell them this is what you need to say in order for them to go home, you have a lot of leverage on them, and that's what ended up happening.<sup>30</sup>

Four years after his conviction, Mario's conviction was overturned, and he has since been accepted into law school. He plans to dedicate his life to making sure that those who have a hand in a person's wrongful conviction are held accountable.<sup>31</sup> Specifically, Mario hopes to become a state representative in the very county that long ago convicted him, advocating for policy to stem the tide of wrongful convictions in Illinois: "[T]he state Legislature needs somebody that's had my experience and my vantage point. . . [s]omebody that's seen the wrong side of the system really to put safeguards into the Legislature so that this doesn't happen to the next person[.]"<sup>32</sup>

#### ACCOUNTABILITY

Who is held accountable? Police are rarely charged with police misconduct after someone is exonerated.<sup>33</sup> Prosecutors enjoy complete prosecutorial immunity from wrongful convictions.<sup>34</sup> The reason behind prosecutorial immunity is to protect prosecutors from excessive suits in criminal prosecutions that may "clog up the court system."<sup>35</sup> However, this protection doesn't account for the exceptions of tunnel vision and exoneration.<sup>36</sup> Mario argues, "it's absolutely senseless to give incentives to [prosecutors to] convict people and [for there to

<sup>29</sup> Findley, *supra* note 4.

<sup>30</sup> Casciaro, *supra* note 28.

<sup>31</sup> Schulte, *supra* note 24.

<sup>32</sup> Hannah Prokop, *After Johnsborg murder conviction overturned, Mario Casciaro plans his future as free man*, NORTHWEST HERALD, Sept. 25, 2015, <http://www.nwherald.com/2015/09/24/after-johnsborg-murder-conviction-overturned-mario-casciaro-plans-his-future-as-free-man/apnwd6>.

<sup>33</sup> Radley Balko, *Absolute Immunity on Trial*, REASON, Nov. 9, 2009, <http://reason.com/archives/2009/11/09/absolute-immunity-on-trial/print>.

<sup>34</sup> Radley Balko, *7th Circuit Pokes A Hole In Prosecutorial Immunity*, THE WASHINGTON POST, Jan. 30, 2014, <https://www.washingtonpost.com/news/opinions/wp/2014/01/30/7th-circuit-pokes-a-hole-in-prosecutorial-immunity>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

be] no repercussions of [wrongful] convictions. The prosecutor who tried my case was just elected State's Attorney in my county after I tried to inform the media and help the community avoid a catastrophe."<sup>37</sup>

Countless high profile cases in recent years have demonstrated that the justice system may not always be just. The system is intended to hold people responsible for their actions, but when on a path of tunnel vision, state actors are seen as having little to no responsibility. In Chicago and other racially diverse but segregated cities in the U.S., most people of color no longer trust that courts and police will treat their communities with fairness and respect.<sup>38</sup> If we as practitioners are to honor the words of Sir William Blackstone, they must prevail not only within the innocence community, but also, the entire justice system. The system must hold all of its actors accountable if we are to continue to be at its mercy.

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<sup>37</sup> Casciaro, *supra* note 28.

<sup>38</sup> Monica Davey and Giovanni Russonello, *In Deeply Divided Chicago, Most Agree: City Is Off Course*, THE NEW YORK TIMES, May 6, 2016, <http://www.nytimes.com/2016/05/07/us/chicago-racial-divisions-survey.html>