

Chapter 2: 80 Proposals for STOPPING Wrongful Convictions

Below are 80 proposals which have the common goal of stopping wrongful conviction in the U.S. In practical terms, this means bringing the frequency down to .1 percent or less, and bringing the percentage of wrongly convicted people in prison down to that same level.

Each proposal is presented once in a single chapter, but some proposals may be applicable to several stages in the criminal justice process. For example, Proposal 49, regarding the disappearance or destruction of evidence, is presented in Chapter 8, the trial chapter, but it is also applicable in the post-trial chapters as well.

The methods of implementing these proposals varies widely, from Constitutional Amendment (changing standard of guilt, Proposal 55) to judge's courtroom practices (colloquy with prosecutors, Proposal 28) to changed police practices (interviews, Proposal 27).

Chapter 3. National Goal and National Registry

Proposal 1: That the United States establish a national goal of reducing wrongful convictions to .1 percent or fewer of all criminal convictions.

Proposal 2: That the President appoint a National Commission to recommend the changes necessary to prevent, and correct previous, wrongful convictions before the end of this decade with its report to be due in early 2016.

Proposal 3: That a national registry of claims of innocence be established.

Proposal 4: That the national DNA database, CODIS, be expanded to include all citizens and residents of the U.S.

Proposal 5: That the national fingerprint database, IAFIS, and its successor, the NGI, be expanded to include all citizens and residents of the U.S.

Proposal 6: That the country's citizens, corporations and governments utilize the decreasing cost of computer memory and processing to gather more data which can be used to deter and sanction crime.

Proposal 7: That every prosecutor's office have a "conviction integrity unit" to give that office a first review opportunity to detect or prevent wrongful convictions, and to review post-conviction claims of innocence.

Proposal 8: That every state, and the Federal Government, have within it at least one Innocence Project, or equivalent organization, which works on behalf of those claiming innocence.

Proposal 9: That every state have a statewide commission which reviews claims of wrongful conviction and makes recommendations to the judicial branch for exoneration based on innocence.

Proposal 10: That the subject of wrongful conviction be taught at every law school and police academy and that every continuing legal and professional education program for police, lawyers and judges provide further education about wrongful conviction.

Proposal 11: That forensic science standards utilized in all jurisdictions be consistent with those recommended by the National Commission on Forensic Science.

Proposal 12: That a National Forensic Science Agency be established within the Department of Justice.

Proposal 13: That spending for indigent defense be increased to a level whereby judges and juries cannot easily determine by the availability of expertise or the quality of the work performed and testimony given whether a defendant's case is privately or publicly funded.

Proposal 14: That all states abandon the practice of appointing private counsel for indigent defendants and move to the practice of universal state funding of public defender offices.

Proposal 15: That the Innocence Movement participate in the election and judicial nomination processes at every governmental level to promote the goals of preventing and correcting wrongful convictions.

Proposal 16: That biometric software be developed that will standardize and render more accurate eyewitness recollections, including generic photo arrays.

Proposal 17: That the goals be established that the annual level of crime be reduced to the levels of 1960 and/or the levels of crime for men be reduced to those of women and/or that the levels of crime be reduced to those of the United Kingdom.

Chapter 4. Reduce Crime and prison populations

Proposal 18: That all recreational drugs be legalized and regulated.

Proposal 19: That other victimless crimes, including prostitution and gambling, be legalized and regulated.

Proposal 20: That the length of prison sentences be adjusted to reasonable levels, approximating those in Europe.

Proposal 21: That mandatory prison sentencing, and mandatory minimums be eliminated.

Proposal 22: That the bail process be changed from a money-based system to a risk based system.

Proposal 23: That parole, and/or other processes of early release be established or re-established in those states which do not have them.

Proposal 24: That a claim of innocence during parole hearings not be an absolute bar to granting such parole.

Proposal 25: That the number and lethality of guns be reduced through taxation and regulation.

Proposal 26: That the death penalty be abolished.

Chapter 5. Investigation

Proposal 27: That all interviews and interrogations be recorded, preferably video recorded. Further, that no confession be admissible in court without a recording, preferably video, of the confession and the interview(s) preceding the confession.

Proposal 28: That in every criminal case there be full open file disclosure to the defense of everything in the files of the prosecution and police and their experts related to the case against the defendant, except information which may jeopardize the safety of one or more people.

Proposal 29: That the Office of the Coroner or Medical Examiner in each state be placed

within that state's Health or Public Health Department.

Proposal 30: That DNA be collected at all crime scenes where the deposit of the perpetrator's DNA is probable.

Proposal 31: That for every investigation where there is an eyewitness identification, the witness's verbal description of all relevant aspects of the perpetrator be written and signed by the witness, and a drawing or other visual representation be created. And that these steps be taken before there is any lineup or other actual effort to have the eyewitness identify the perpetrator.

Proposal 32: That subsequent use of a physical lineup or photo-array process be conducted without any suggestion or hint regarding the possible perpetrator.

Proposal 33: That checklists be used by law enforcement, prosecutors, defense attorneys and others to ensure that best practices are followed.

Proposal 34: That polygraph examinations be made available to all defendants and witnesses on an ability-to-pay basis, with public funding paying the balance. And that if an exam result is not acceptable to the defendant, s/he may request a peer review of that exam, and/or another exam with a different examiner.

Proposal 35: That where internal and external experts are used by the police and prosecution to prove guilt, an amount of money equivalent to the costs of those experts should be made available to the defense for expert consulting and witnesses. And that if such funding is not made available, the evidence from the government's experts should not be allowed at trial.

Chapter 6. Grand Jury/Preliminary Hearing for Indictment

Proposal 36: That prospective defendants be invited to give testimony to grand juries or to prosecutors who are considering indictments.

Chapter 7. Pleas and Plea Bargaining

Proposal 37: That a prosecutor not proceed, nor continue, with a charge against a defendant unless s/he believes beyond a reasonable doubt that the defendant committed the crime, and that s/he believes that s/he could persuade a jury of the defendant's guilt beyond a reasonable doubt; and that the prosecutor sign a nationally standardized form affirming those beliefs.

Proposal 38: That a judge participate in the plea bargaining process and hear evidence, if necessary, to ensure fairness, and to protect where applicable a defendant's claim of innocence.

Proposal 39: That prosecutors meet with defendants, together with counsel for at least one hour in order that prosecutors understand that they will be prosecuting a human being with a life story. And that questions which prosecutors may ask would come from a national standardized list.

Proposal 40: That the Alford plea, which allows a defendant to plead guilty even while claiming innocence, be eliminated. Alternatively, no plea bargaining should be permitted for a defendant who claims innocence.

Chapter 8. Trial

Proposal 41: That jury training be at least one day in duration and include nationally produced videos, with emphasis on the meaning of “beyond a reasonable doubt” and the risks and causes of wrongful conviction.

Proposal 42: That no witness or victim be asked to identify the defendant at trial.

Proposal 43: That the testimony of defendants be encouraged, and that if a defendant is reluctant to testify the trial judge (in a jury trial, or other judge in a bench trial) intervene to negotiate the terms or boundaries of the defendant’s testimony.

Proposal 44: That when a defendant testifies, the jury be instructed during the post-evidence charge to the jury that if it is leaning toward a guilty finding beyond a reasonable doubt, it must also find the defendant guilty of perjury and make specific findings that specific statements by the defendant were lies beyond a reasonable doubt.

Proposal 45: That when witnesses testified for an alibi defense, the jury be instructed during the post-evidence charge to the jury that if it is leaning toward a guilty finding beyond a reasonable doubt, it must also make specific findings that specific statements by the alibi witnesses were false beyond a reasonable doubt.

Proposal 46: That jurors be authorized by statute or court rule to ask questions during trials, but before deliberations.

Proposal 47: That jurors be authorized by statute or court rule to ask questions after deliberations have begun which may require the reopening of the evidentiary portion of the trial including the recalling of witnesses for

providing additional testimony and/or the production of documents.

Proposal 48: That inmate informants not be utilized to present allegations at trial that during conversations in jail or prison a defendant admitted guilt or said anything else to the informant which was incriminating.

Proposal 49: That when potentially exculpatory evidence which was in the possession of the police or prosecution disappears or is destroyed, that evidence be construed to be favorable to the defendant.

Proposal 50: That where evidence of “consciousness of guilt” is allowed into a trial, the defendant be permitted to introduce evidence of “consciousness of innocence,” or that in the alternative, the concept of “consciousness of guilt” be disallowed as evidence.

Proposal 51: That jury deliberations be structured by written guidelines from the court, with explicit provisions for voting procedures.

Proposal 52: That the number of jury votes on any indictment count be limited to three and if a vote leaves only one or two jurors in the minority, that s/he/they must be advised of the right to request the cessation of deliberations on the count at issue.

Proposal 53: That when a mistrial is declared due to the failure of a jury to agree on a defendant’s guilt, and the jurors’ positions are determined to be reasonable, that such mistrial be deemed to be a trial with a Not Guilty verdict and not subject to retrial.

Proposal 54: That jury deliberations be video recorded and be open to review by either party for up to one year. And that if any irregularities which may have influenced the verdict are

identified, they should be brought to the attention of the trial judge to ensure that the jury verdict was fairly and legally reached.

Proposal 55: That the standard of “beyond a reasonable doubt” be restored to its proper meaning by defining it mathematically as 99.9 percent certain. OR, if that proves unfeasible, to change the standard of guilt to “beyond any doubt” or “no doubt.”

Proposal 56: That juries be re-empaneled in the interest of justice when new evidence develops and that the available jurors be asked whether, for a Guilty verdict, the new evidence would have introduced sufficient reasonable doubt to prevent them from reaching a guilty verdict, or, for a Not Guilty verdict, whether the new evidence would have erased their previously expressed doubts.

Chapter 9. Post-Trial

Proposal 57: That judicial reviews of cases be permitted at any time, but at least every year, when claimants of innocence present new evidence or new interpretations of law, and that such reviews consider all the evidence in a case.

Proposal 58: That filing deadlines for motions for relief from wrongful convictions be waived in the interest of justice when the petitioner has presented a non-frivolous justification for the delay.

Proposal 59: That the standard for the post-trial vacating of a previous verdict be: whether the jury, or fact-finding judge, would have been likely to have had “reasonable doubt” or “any doubt” if all the evidence now available had been presented at trial.

Proposal 60: That in appeals from Guilty trial verdicts, every split decision at the appellate court level be interpreted as a reversal of the lower court's decision on the issues raised, or of the entire verdict.

Proposal 61: That when an appeals court or habeas court rules that a conviction must be reversed for reasons relating to the existence of reasonable doubt as to guilt, the case must be returned for the option of retrial without further appeal.

Proposal 62: That no evidence be discarded or destroyed or returned to owners until the death of a defendant or the end of his/her judicial penalty. But that in severe circumstances where storage is expensive and/or where property needs to be returned to owners, such disposition be with approval of the defendant and his/her counsel which approval shall not be unreasonably withheld.

Proposal 63: That post-trial recantations by witnesses be fairly evaluated for their truthfulness, and that subsequent charges of perjury be initiated only by judges in the interests of promoting truthfulness at all stages of the criminal justice system. And that polygraphs be utilized in that consideration.

Proposal 64: That post-trial reviews of cases utilize the maximum use of DNA testing and other up-to-date forensic knowledge where there was insufficient forensic expertise presented at trial.

Proposal 65: That jurors be encouraged to have a continuing interest in justice in a particular case, and that if they come to believe that the verdict for which they voted is unjust, they be encouraged to step forward individually or as a group with their views.

Proposal 66: That victims and their families be encouraged to continue to seek justice in their cases, which will sometimes involve claims of wrongful conviction.

Proposal 67: That defense attorneys, police, prosecutors and judges be encouraged to have a continuing interest in justice in a particular case, and that if they come to believe that the verdict in a case in which they participated is unjust, they be encouraged to proactively seek justice.

Chapter 10. Executive powers

Proposal 68: That Governors and the President administer their departments and bureaus of corrections and prisons in order to encourage that all claims of wrongful conviction by inmates, parolees and probationers be presented and fairly considered.

Proposal 69: That Governors and the President invite members of the Innocence Network or related organizations to establish offices within every prison system in the U.S. which can provide inmates with onsite confidential appointments to present and discuss their claims of innocence.

Proposal 70: That Governors and the President specifically proclaim to their corrections employees and to inmates, parolees and probationers that they will work proactively to ensure that there are no innocent people in their prisons by the end of the 2010s decade.

Proposal 71: That Governors and the President direct that the libraries of each of their prisons be connected electronically with the law library of a nearby law school and that inmates receive

adequate training and assistance to maximize their utilization of the library's legal resources.

Proposal 72: That Governors and the President use their powers of Pardon and Clemency to release inmates or defendants whose claims of innocence have not received a fair decision before the judicial branch. And that the standard of pardon or clemency be the same as for the granting of a new trial, i.e. would it be likely that a contemporary jury, after hearing all the currently available evidence would find "reasonable doubt" or "any doubt" as to the culpability of the defendant.

Proposal 73: That when governors and the President and their delegates appoint judges and prosecutors, they should consider the proven record of sensitivity to the claims of innocence by defendants and those who have been wrongly convicted.

Chapter 11. Post Exoneration

Proposal 74: That fair compensation be paid to all defendants who suffered imprisonment and other deprivations due to wrongful convictions, and that such compensation begin, at some reasonable level, within 30 days after the inmate's release from prison or the vacating of the conviction.

Proposal 75: That all other vestiges of wrongful conviction be remedied for each exoneree, such as criminal records for the vacated wrongful conviction, immediately upon release from prison or the date of vacating of the conviction.

Proposal 76: That the 42 US Code 1983 statute be amended to change the absolute immunity from civil liability for prosecutors in their "advocative" functions to a qualified immunity,

as already applies to their “non-advocative” functions.

Chapter 12. Substance and procedure in an Adversarial System.

Proposal 77: That wherever the adversarial system faces a choice between the system and its procedures, or truth and justice, that truth and justice prevail.

Proposal 78: That where the enforcement of a procedural rule is likely to deter the presentation of the truth and frustrate justice, a judge would be authorized to waive that enforcement.

Chapter 13. Conclusion

Proposal 79: That everyone involved in the criminal justice system accept a responsibility to ensure that truth and justice prevail.

Proposal 80: That enough of the previous 79 proposals be implemented to STOP and CORRECT wrongful convictions before the end of this decade.