

# THE HILL



## Fixing false convictions

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By Ronald Goldfarb

To mark the historic anniversary of the signing of our Constitution, the Washington, D.C.-based Constitution Project invited documentarian Ken Burns to receive an award and lead a panel on the lessons of his film "The Central Park Five." Joining Burns were experts on cases involving innocents convicted of crimes and the question of coerced confessions.

Behind the specifics of the notorious rape of a jogger in New York City's Central Park years ago that led to a wrongful conviction is the question of the constitutional right to a fair trial, as well as the related question about why people would confess to crimes they didn't commit, as these defendants did.

Later disclosures showed that there were failures of police, prosecutors, media, defense counsel in that case. After they served 13 years in prison (two of the defendants were 14 and two were 15 when convicted, and the fifth was mentally impaired), the real culprit confessed, and eventually the defendants were released. DNA and other evidence incriminating the actual defendant and exculpatory evidence related to the five convicts was available at the trial but not mentioned by prosecutors nor discovered and used by defense counsel.

Experts offered suggestions to curb the problem of false confessions, which occur more often than most folks think. The Innocence Project, which investigates wrongful convictions, has won reversals in hundreds of cases.

Once the false confession is made, a tide forms to take the case to conviction. Police are committed to the evidence they secured. You can't unbelieve a confession, the thinking goes. Who'd confess if they weren't guilty, reasonable jurors wonder. But law enforcement experts testify that key sources of evidence — eye witnesses, informants, forensics, along with false confessions — are too common and are often used to convict innocent defendants. Most

defendants waive their Miranda rights, are naive if not dumb, even mentally impaired, are represented by incompetent lawyers, have limited resources to proceed effectively, and are carried along in a tide toward conviction and incarceration.

From the Salem witch trials to the present, overzealous law enforcement officials exceed their rightful authority and force confessions to expedite convictions and close cases, usually believing they had the right defendant, sometimes knowing they did not.

An expert on false confessions pointed out that prisoners of war as well as common criminal suspects confess to crimes they didn't commit after stressful, prolonged, deceitful interrogation.

There are some helpful restraints that might alleviate this problem, such as recording all police interrogations, not only the final confession after the excessive practices have been used; assuring better defense counsel, which is a result of constant funding problems; and public attention to the predicament.

But behind it all is the modern paradigm of criminal law: No longer do we subscribe to the historic public attitude that it is better 99 guilty defendants go free than one innocent man be convicted. I believe people today think that it is regrettable but acceptable that some innocent people may be convicted (not my kid, however) if it will assure that ANY guilty defendants do not get away.

We need to think about that.

*Original story can be found [here](#).*