NYSBA FALL 2014

Perspective

A publication of the Young Lawyers Section
of the New York State Bar Association

A Message from the Section Chair

"What Is a Young Lawyer?"

As the new Chair of the Young Lawyers Section, people often ask me this question. For some of us, the term is a misnomer. While it is true that we all are lawyers in our first ten years of New York practice, some of us may not see ourselves as young at all. YLS is broadly representative, and with the legal profession currently in a state of flux, many of us are forging our own path, directly or indirectly. As a result of our experiences, we are changing the future our profession—and for the better.

My own path was not a straight line. I went to law school after being a paralegal and, in 2007, I found myself a lawyer. I did what I was "supposed to do" and got a job in hedge funds, but, when the market imploded, my job went with it. A fantastic learning experience? Yes. But my journey from then to now was difficult.

While in law school I considered becoming a solo practitioner. Yet fate had a way of making that "maybe" more definite, and I opened my Albany practice in 2011. Certainly, there are days when I question whether I should be doing something else, but there are many more when I feel that I am exactly where I should be. On those days I truly feel like a "real" lawyer.

As an attorney on my own, I reached out to the New York State Bar Association. Soon, I found a home there, and the more I have put into my membership, the more I have gotten out of it. NYSBA found my input valuable and has provided me with leadership opportunities and the support of people who have been there and done that. Through YLS, I learned skills both in law and in business, and connected with great people that I now count as friends.

These same opportunities exist for you.

> *"[T]he more I have put into my membership, the more I have gotten out of it."*

Get involved with the Young Lawyers Section and other NYSBA Sections that interest you. Go to meetings, attend our CLEs, and get to know your fellow lawyers. Let YLS be a resource to help you find your own path in the practice of law. I know it has been for me.

Sarah E. Gold, *Section Chair*
Gold Law Firm

Inside

NYSBA

From the Editor's Desk

I am excited to bring you this issue, my first as the new editor. In the following pages, you will find that this issue's topics are diverse and far-ranging, providing insight into both legal practice and the policy lightning rods of this past year.

The first ten years of legal practice are some of the most dynamic. It reflects the reality that, as the world around us moves, our profession must move with it. This issue is an extension of my own interests and what, by observance and in conversation, is on the radar of New York's legal community. In the past year, economic, social, and political changes have brought new and complex issues to the forefront of national consciousness and, resultantly, to the attention of New York's next generation of attorneys.

For young lawyers, the legal profession is in a transitional period. It has pushed many of us into unconsidered territories—sometimes far from expectation or comfort. Yet, it has offered new opportunities and spurred creativity in practice. What it means to be an attorney is no longer formulaic or static. Accepting the inapplicability of assumption and blueprints means acquiring a stronger sense of adaptability, imagination, and perseverance.

"In the past year, economic, social, and political changes have brought new and complex issues to the forefront of national consciousness and, resultantly, to the attention of New York's next generation of attorneys."

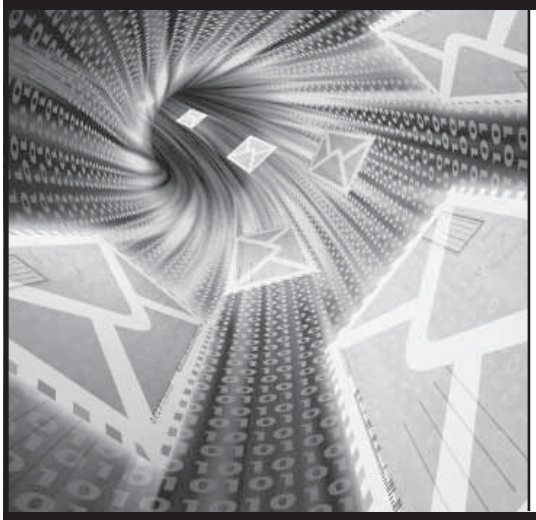
This issue of *Perspective* explores several topics resonant with young lawyers. It begins with Andrew Crocker's analysis of personal privacy after *Riley v. California,* and continues with Katherine Greenier's nationwide survey of restrictions on reproductive rights. Karen O'Keefe then discusses New York's new medical marijuana law, its import and limitations, and Nicholas Herubin looks at financial regulation in the age of algorithms and apps. Underscoring the shifting sands of legal practice, Lonnie Soury examines the increasing awareness around false confessions. Finally, Jessica Coffin profiles her experience as a freelance lawyer, an area of practice increasingly attractive to young attorneys.

Submissions from the legal community sustain *Perspective.* If you are interested in submitting an article, I welcome articles representing a diversity of opinions, ideas, and practice areas. Send your submissions to f.alex.reid@gmail.com; the deadline for the Spring/Summer 2015 issue will be February 9, 2015.

I look forward to hearing from you,

Felicia A. Reid
Editor-in-Chief

Request for Articles



If you have written an article and would like to have it considered for publication in *Perspective*, please e-mail it to:

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Articles should be submitted in electronic document format (pdfs are NOT acceptable), and include biographical information.

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Riley v. California and Personal Privacy in the Glow of the Digital Age

By Andrew Crocker

In June, a unanimous Supreme Court issued its highly anticipated decision in *Riley v. California*.[1] The Court held that the warrantless search of a cell phone, found by police on suspect David Riley during his arrest, violated the Fourth Amendment's protection against unreasonable searches and seizures.

In two prior decisions, *Chimel v. California*[2] and *United States v. Robinson*,[3] the Court established that police may conduct warrantless searches incident to arrest, and that physical evidence seized from an arrestee's person or the area within their immediate control is admissible. The twin rationales for this exception are to prevent arrestees from destroying evidence or using concealed weapons to harm officers.

But searching a cell phone's data fits uneasily with this exception. As Chief Justice Roberts noted in *Riley*, cell phone data cannot directly harm an arresting officer and law enforcement can prevent the remote wiping of data. More important, however, the Court observed that cell phone searches constitute a much greater invasion of privacy than other searches incident to arrest. This has to do with the sophistication of cell phone technology and how people use it.

Even inexpensive cell phones have significant data storage capacity, and that data can take many forms. As the Court noted in *Riley*, arrestees can carry "millions of pages of text, thousands of pictures, or hundreds of videos," something that was physically impossible when the Court decided *Chimel* and *Robinson* in 1969 and 1973, respectively. Further, modern smartphones are multiuse, functioning as "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps [and] newspapers." All of these uses generate data that is readily accessible on a phone. In aggregate, this trove of information allows law enforcement to reconstruct "the sum of an individual's private life." Cell phones are also ubiquitous; they are "not just another technical convenience" but have become a necessity for modern life.

Warrantless cell phone searches present a potential for extreme privacy invasion, the sort of general rummaging for evidence of criminal activity that the Fourth Amendment was designed to prevent. As in *Riley*, a traffic stop can escalate to a felony charge because of a suspicionless cell phone search. As Justice Roberts put it, the answer is simple: "Get a warrant."

Riley is a critical decision in several respects. Police arrest suspects carrying cell phones every day, and it was important that the Court fashion a clear rule. *Riley* is also the Court's latest indication that the Constitution's guarantee of privacy has force in light of new technology. Since *Katz v. United States*,[4] the touchstone of Fourth Amendment analysis has been whether the government has violated an individual's reasonable expectation of privacy. *Riley* underscores how that expectation can change because of technological advances.

The *Riley* decision has significant implications for another area of Fourth Amendment jurisprudence. The case may signal weaknesses in the "third-party doctrine," established in *Smith v. Maryland*[5] and *United States v. Miller*.[6] In absolute form, the doctrine stands for the proposition that individuals lack an expectation of privacy in information they convey to third parties as part of a routine business transaction, such as e-mails sent via an internet service provider.

As Justice Sotomayor explained in her *United States v. Jones* concurrence,[7] the third-party doctrine has taken on increasing importance in the digital age because "people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks." Much of electronic surveillance—from police tracking of cell phone locations to the NSA's collection of Americans' telephone records—is premised on the doctrine. *Riley*, however, challenges the continued viability of the third-party doctrine in its absolute form.

In *Riley*, the Court refused to blindly apply *Chimel*'s and *Robinson*'s precedents about physical searches to searches of digital data. Instead, the Court explained that any extension of these cases "must rest on their own bottom." This is significant, because cases like *Smith* are premised on less-intrusive, analog-era searches. The unanimous *Riley* Court recognized, as Justice Sotomayor argued in *Jones*, that the long-term, aggregated collection of data is far more revealing of an individual's private life than small amounts over a short term.

Riley suggests that the Court may look unfavorably on arguments that the third-party doctrine justifies the long-term collection of a person's information. This is the government's position in several ongoing legal challenges to the NSA's controversial telephone surveillance program. As federal circuit courts hear these challenges, it is likely that one may reach the Supreme Court, giving the Justices the opportunity to consider the third-party doctrine in the *Riley* era.

Endnotes

1. 134 S. Ct. 2473 (2014).
2. 395 U.S. 752 (1969).
3. 414 U.S. 218 (1973).
4. 389 U.S. 347 (1967).
5. 442 U.S. 735 (1979).
6. 425 U.S. 435 (1976).
7. 132 S. Ct. 945 (2012).

Andrew Crocker is an attorney and legal fellow at the Electronic Frontier Foundation in San Francisco, CA.

No Safety in Growing Numbers: 'TRAP' Laws and Reproductive Rights

By Katherine Greenier

Recent federal court victories for women's health—in which judges in Alabama, Texas, and Louisiana blocked measures designed to shut down abortion providers—are important wins for women who rely on the trusted, safe care that women's health centers provide. These victories are a bright spot amid the relentless wave of reproductive rights restrictions enacted over the past three years.

In the United States, an estimated one-third of women will have had an abortion by age 45.[1] Women from all races, ethnic groups, and backgrounds have abortions. According to the Guttmacher Institute: "58% of women having abortions are in their 20s; 61% have one or more children; 85% are unmarried; 69% are economically disadvantaged; and 73% report a religious affiliation."[2]

Accessible abortion services are critical for women's health care needs. Yet, recent statistics indicate that 89% of counties across the nation have no abortion clinic.[3]

Numbers like this are startling and escalating. In 2013, states enacted 70 anti-abortion measures; in 2012, 43; and in 2011, 92.[4] That accounts for 205 restrictions from 2011-2013, greater than the number enacted in the whole decade prior.[5]

These recent measures took many forms, including blatantly unconstitutional bans on pre-viability abortion, bans on insurance coverage for abortion, and interference in medical professionals' provision of medication abortion. At issue in recent federal court cases was legislation that imposed medically unnecessary regulations designed to close women's health centers.

Such laws are called Targeted Regulations of Abortion Providers, or 'TRAP' laws, and are entirely unrelated to a woman's health or safety. Usually, TRAP laws require women's health centers to meet architectural standards meant for ambulatory surgical centers or hospitals. Compliance with such a mandate, at a cost upward of $350,000 per facility in Pennsylvania[6] and almost $1,000,000 in Virginia,[7] means that many clinics are forced to close.

"Controlling whether and when to be a parent, including abortion access, is a cornerstone of women's equality and TRAP laws specifically target a woman's ability to participate fully and equally in society."

Other TRAP laws require that clinic providers have admitting privileges or transfer agreements at an area hospital—giving hospitals the say-so in the operation of a women's health center. Mandating hospital links can shutter these centers when, for example, a provider is unable meet the number of patient admissions a hospital requires in order to grant admitting privileges. This is the goal of TRAP laws: to create obstacles to safe abortion.

Currently, 26 states have some type of TRAP law regulating abortion providers,[8] up from 11 states in 2000. The increase shows that these laws are taking center stage amid the recent wave of anti-abortion measures.[9]

Over half of women in the United States live in a TRAP law state.[10] Many women's health centers in these states have closed, most notably in Texas, which had 44 women's health centers in 2012 and only six in 2014. Virginia is one among 12 states that regulate the width of clinic corridors and specify the size of procedure rooms—requirements that experts agree are unrelated to patient health and safety.[11] In the state, three of 21 women's clinics have been forced to close or stop providing abortion services due to these burdensome and medically irrelevant regulations.[12]

Medical professionals agree that access to the full range of reproductive services that women's clinics provide—like family planning, cancer screenings, sexual health counseling, and abortion—ensures women's health and safety. Consequently, the increasing numbers of TRAP laws and the closure of clinics do more than just endanger women's health. Controlling whether and when to be a parent, including abortion access, is a cornerstone of women's equality and TRAP laws specifically target a woman's ability to participate fully and equally in society. Unless litigation over TRAP laws results in final, favorable decisions or legislatures repeal their TRAP laws, these laws will have a direct, marginalizing impact on the lives of women across the country.

Endnotes

1. Guttmacher Institute, *State Facts about Abortion: New York*, Guttmacher Institute: STATE CENTER, Sept. 9, 2014, http://bit.ly/1uHxSBm.
2. *Id*.

3. *Id.*
4. Heather D. Boonstra and Elizabeth Nash, *A Surge of State Abortion Restrictions Puts Providers—and the Women They Serve—in the Crosshairs*, GUTTMACHER POLICY REVIEW, Winter 2014, http://bit.ly/1uGwBbO.
5. *Id.*
6. Rachel Benson Gold and Elizabeth Nash, *TRAP Laws Gain Political Traction While Abortion Clinics—and the Women They Serve—Pay the Price*, GUTTMACHER POLICY REVIEW, Spring 2013, http://bit.ly/1xwNrtW.
7. Virginia Department of Health, *Regulations for Licensure of Abortion Facilities, Proposed Regulation Agency Background Document*. Jan. 8, 2013, http://1.usa.gov/1ol6zXw.
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11. Guttmacher Institute, *Targeted Regulation of Abortion Providers*, GUTTMACHER INSTITUTE: STATE POLICIES IN BRIEF, Sept. 2, 2014, http://bit.ly/LzzolX.
12. On May 12, 2014, Governor McAuliffe directed the Virginia Department of Health to review the Commonwealth's TRAP rules. The Department of Health completed the review on October 1, 2014, and the Commissioner of Health recommended amending the regulations. *See*, http://1.usa.gov/1wJaoyc.

Katherine Greenier directs the Reproductive Freedom Project at the American Civil Liberties Union of Virginia. She is an alumna of Mount Holyoke College and New York Law School (NYLS). She was co-chair of NYLS' Justice Action Center Street Law Project and worked with the Center's Racial Justice Project on "school to prison pipeline" issues. She was an advocate in NYLS' Urban Law Clinic and also served as head of the campus arm of the ACLU.

New York's Medical Marijuana Law: For Some, Too Little, Too Late

By Karen O'Keefe

On July 5, 2014, New York became the 23rd State to approve a comprehensive medical marijuana law.[1] However, for many New Yorkers who could benefit from medical marijuana, the State's enactment of medical marijuana protections has been slow and insufficient.

New York Assemblyman Richard Gottfried first introduced a modern medical marijuana bill in 1997, the year after California became the first State with such a law.[2] The State Assembly has approved Gottfried's proposals five times since 2007, but the first floor vote in the Senate did not happen until 2014.

Even as Quinnipiac polls found that 83% to 88% of New Yorkers support allowing medical marijuana,[3] Governor Andrew Cuomo resisted calls for a workable law. Instead, in his 2014 State of the State address, he proposed reviving a restrictive 1980 law that had no realistic chance of being implemented. The law relied on either: 1) New York and its and hospitals openly breaking federal law by illegally distributing marijuana, or 2) the federal government giving its blessing for large-scale, access-oriented studies in a timely manner.[4]

In the final days of New York's 2013-2014 legislative session, Cuomo agreed to consider signing Gottfried's and Senate sponsor Diane Savino's legislation if several revisions were made to the bill.[5] Yet, as a result of those revisions, New York's medical marijuana law is one of the most restrictive in terms of access and qualifying conditions. It is also unusual in that it allows the governor to shutter all access to medical cannabis—by terminating licenses to registered medical marijuana organizations if the State's commissioner of health or state police superintendent believes there is a public health or safety risk.[6]

"The need for expediency is critical. Medical marijuana stands to benefit thousands of New York patients, and, in the time since the bill became law, at least two New York children have died while waiting for access to medical marijuana."

The American public increasingly supports medical marijuana legalization.[7] Yet, state legislatures and governors across the country often insist on burdensome restrictions and qualifying conditions for access to it. New York has one of the most limited lists of qualifying conditions and is one of only six states that do not allow patients to qualify based on severe or intractable pain.[8] In some medical marijuana states, upward of 90% of the medical marijuana patients qualify based on severe pain.[9]

New York's law makes ready access to cannabis difficult, even for those who qualify. As is the case in most medical marijuana states, patients can obtain marijuana from a regulated, private dispensary. However, New York is one of only seven medical marijuana states that do not allow patients to cultivate their own cannabis.[10] Throughout the entire State, there will be only a maximum of five growers, with no more than four dispensing locations each.[11]

For patients, and particularly parents whose children face life-threatening disorders, the biggest concern is the law's slow implementation. New York can delay issuance of patient ID cards and authorization of medical marijuana producers until as late as December 2015, or until the health commissioner and police superintendent deem that the law "can be implemented in accordance with public health and safety interests, whichever event comes later."[12]

The need for expediency is critical. Medical marijuana stands to benefit thousands of New York patients, and, in the time since the bill became law, at least two New York children have died while waiting for access to medical marijuana. One, Anna Conte, had been a central part of the campaign to legalize medical marijuana.[13]

Endnotes

1. N.Y. Pub. Health §§ 3360–3369-E.
2. Press Release, Legislature Passes Medical Marijuana Bill; Sent to Governor for Signature (Jun. 20, 2014), http://bit.ly/1Av2ANN.
3. Quinnipiac University, *New York Voters Back Medical Marijuana 10-1, Strong Support For Recreational Marijuana Also*, Feb. 17, 2014, http://bit.ly/1trTpew; Quinnipiac University, *Support For Marijuana Down Slightly In New York, Most Would Allow Marijuana Dispensary Nearby*, May 23, 2014, http://bit.ly/1uHhkHO.
4. Jacob Gershman, *New York's Puzzling Medical Marijuana Plan*, Wall St. J. Law Blog, Jan. 6, 2014, http://on.wsj.com/1uHhuPl; N.Y. Pub. Health § 3397-f.
5. Ken Lovett, *Gov. Cuomo Wants Big Changes to Medical Marijuana Bill*, N.Y. Daily News, Jun. 16, 2014, http://nydn.us/1ow57a6.
6. N.Y. Pub. Health § 3369-C.
7. Pew Research Center for the People and the Press, *Section 2: Views of Marijuana—*

Legalization, Decriminalization, Concerns, Apr. 2, 2014, http://pewrsr.ch/1mWHkLI.

8. N.Y. Pub. Health § 3360 (7). The other states are CT, IL, MN, NH, and NJ. *See* Marijuana Policy Project, *Key Aspects of State and D.C. Medical Marijuana Laws*, 2014, http://bit.ly/1jbNuJi.
9. In Colorado, as of June 2014, 93% of patients identified "severe pain" as a qualifying condition; *see* http://1.usa.gov/1tHTui8. In Oregon, as of July 1, 2014, more than 95.7% of patients identified severe pain as a qualifying condition; *see* http://1.usa.gov/1rV0V5G.
10. Marijuana Policy Project, *supra* note 8.
11. N.Y. Pub. Health § 6357-E (9).
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13. WGRZ.com, *WNY Girl Dies While Waiting for Med Marijuana*, Jul. 23, 2014, http://on.wgrz.com/1psUYWp.

Karen O'Keefe is the director of state policies at the Marijuana Policy Project, where she manages MPP's grassroots and direct lobbying efforts in state legislatures. She was involved in the drafting and passage of most of the state medical marijuana and decriminalization laws enacted since 2003. Karen earned her J.D. from Loyola School of Law, New Orleans, and is admitted to the District of Columbia Bar.

Beware of Geeks Bearing Formulas: The Age of Apps and Financial Regulation

By Nicholas M. Herubin

Today's financial industry has undergone a rapid shift from old-fashioned, clubby Wall Street to a high-tech, lightning-fast world of software engineers, PhDs, and start-ups. At the same time, regulations governing the industry are still based on an old model. As individual and independent investors gain access to increasingly complex investing tools, it is important that regulators and the industry work to ensure that these investors are protected.

As more of the financial world is computerized, individual investors have many opportunities to find themselves in trouble. Take, for instance, a recent case where an E*Trade customer attempted to sell five shares of Apple stock.[1] To do so, he used E*Trade's interactive voice response system (IVR). Though the customer says he told the system to "sell *five* shares of Apple stock," the IVR heard "sell *my* shares of Apple stock." The system then proceeded to sell all 119 of his shares.

Surprisingly, E*Trade does not make audio recordings of IVR calls.[2] Instead, its system features a "speed bump." The system repeats a customer's command, then asks him to confirm that it correctly understood the order. In this case, the customer said the system never asked him to confirm the order, and he took his E*Trade dispute all the way to Financial Industry Regulatory Authority (FINRA) arbitration. The FINRA arbitrators sided with him, awarding him compensatory damages for his lost shares.

The story is one example of what can go wrong when the ease and access of technology are so heavily involved in today's financial transactions.

The latest trend is online investment advising through cloud applications like Betterment and Wealthfront.[3] Critics derisively refer to these programs as "robo-advisors," but they are growing in popularity. Typically, a customer creates an account and enters basic information regarding his or her age, financial information, and investment goals—such as "save for retirement" or "build wealth." The app's algorithms then create a customer's risk tolerance profile and determine investments to fit the profile.

There are significant advantages to these programs. They generally cost less than traditional financial advisors, and can use their algorithms to minimize an investor's tax liabilities while ensuring that investors invest in a mix of stocks and bonds.[4] These programs are particularly attractive to younger clients who tend to have less money to invest and fewer qualms about using technology in this way.

However, algorithm-based investing apps do not fit neatly within the current rules governing brokers and investment advisors. Current brokerage regulations are based on a traditional model where a broker recommends suitable investments for a client.[5] The laws governing investment advisors contemplate that an advisor has a fiduciary duty to look out for the best interests of a client.[6] While these rules make sense when applied to human brokers and advisors, it is unclear how they apply to online, algorithm-based investing.

Algorithm programming can behave in unexpected ways. Anyone who has gotten a wildly misguided Amazon.com recommendation or Pandora song suggestion knows that algorithms are fallible. The "flash crash" of May 2012 showed that computing glitches in the financial sector can have severe, adverse effects on the entire market.[7] When an algorithm is responsible for your 401(k) or college savings, what happens if it goes haywire?

This is not to say that it is wrong for the financial industry to rely on technology, but it is important to recognize that many regulatory safeguards were designed for another era. Customers speak less frequently to financial advisors or brokers and are opting, in greater numbers, to use automated apps to manage their money.

In his 2009 annual letter to shareholders, Berkshire Hathaway Chairman Warren Buffett issued a warning against complex, highly technical investing models. He wrote, "Constructed by a nerdy-sounding priesthood using esoteric terms such as beta, gamma, sigma and the like, these models tend to look impressive. Too often, though, investors forget to examine the assumptions behind the symbols. Our advice: Beware of geeks bearing formulas…."[8]

It is sound advice from one of history's most successful investors and something to keep in mind as our personal finances become increasingly technology-based.

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3. Rob Lieber, *Financial Advice for People Who Aren't Rich,* N.Y. Times, Apr. 11, 2014, at B1.
4. John F. Wasik, *Sites to Manage Personal Wealth Gaining Ground,* N.Y. Times, Feb. 10, 2014, at F10.
5. FINRA Rule 2111.
6. Investment Advisors Act § 206(3).
7. Graham Bowley, *Ex-Physicist Leads Flash Crash Inquiry,* N.Y. Times, Sept. 21, 2014, at B1.
8. Warren Buffett, *2009 Letter to Shareholders,* Berkshire Hathaway, www.berkshirehathaway.com/letters/2008ltr.pdf.

Nicholas M. Herubin is an attorney in Albany, New York and a graduate of Albany Law School. He welcomes any comments on this article or financial regulation in general, and can be reached at *nickherubin@gmail.com*.

New York and the Fallibility of False Confessions

By Lonnie Soury

In New York, over half of overturned wrongful convictions have involved a "false confession," a rate higher than any other State in the country.[1] Nationally, according to the Innocence Project, it is estimated that false confessions have been involved in at least 27% of all wrongful convictions overturned by DNA testing, and over 60% of those involving a homicide.

Not only do false confessions happen, unfortunately they happen often.

Many people say they would never confess to a crime they did not commit. However, so do those who have been convicted in cases involving a false confession and have spent years prison for crimes they did not commit.

The term "false confession" is misunderstood. Those wrongfully convicted based on such confessions often do not stand up in the interrogation room and announce their guilt. Physical abuse and psychologically coercive interrogation techniques can cause an innocent person to make incriminating statements deemed a confession by detectives. Confessions are the gold evidentiary standard in prosecution; when presented to a jury, false or otherwise, they almost always result in conviction.

In 1988, 17-year-old Marty Tankleff awoke to find his parents brutally attacked. When police arrived, they whisked him away, telling him they were taking him to his dying father at the hospital. Instead, he found himself at police headquarters, in a windowless interrogation room. Five hours later, Tankleff "confessed" to attacking his parents. Based almost entirely on that confession—as there was little other evidence of his involvement—he was convicted and sentenced to 50 years to life for their murder.

"Nationally, according to the Innocence Project, it is estimated that false confessions have been involved in at least 27% of all wrongful convictions overturned by DNA testing, and over 60% of those involving a homicide."

Detectives admit they lied to Tankleff on several occasions—a tactic not unlawful during interrogation. They told him that his hair was found wrapped in his dead mother's fingers; that his father was "shot with adrenaline" and had, only briefly, woken from his coma to identify Tankleff as their attacker; and that "tests" proved he had washed off his parents' blood.

What transpired during Tankleff's interrogation will never be known; the recording device was reportedly broken that day. However, Tankleff never wrote his alleged confession, never saw the content of that confession, and never signed it. Tankleff was unaware the confession existed until months later.

Psychology, suggestion, and power struggle underscore false confessions. As in the Tankleff case, after hours of unrelenting interrogation and when presented with false information, suspects in custody may say just enough to enable a detective to finish—or fill in—a confession. Knowing this, how can we stop false confessions and their tragic results?

One suggestion is the institution of mandatory interrogation videotaping. For years, the New York State Assembly has introduced legislation, sponsored by Assemblyman Joseph Lentol and others. Yet it has languished, unable to gain support from the Senate or Governor Andrew Cuomo.[2] The New York Court of Appeals has recently ruled favorably in a number of false confession cases. However, it has not gone as far as issuing clear directives on how to prevent them from happening, nor has the Court made it easy for defendants to bring false confession experts as witnesses.[3]

Police departments across the State do not need the machinations of legislation to begin video recording custodial interrogations. Local officials and appointees —in the case of New York City, Mayor Bill de Blasio and Police Commissioner Bill Bratton—have the power to order the immediate recording of all custodial interrogations to prevent false confessions. This practice has been endorsed by the International Association of Police Chiefs, and nearby states, New Jersey and Connecticut, routinely videotape police interrogations successfully.

Commenting on the need for interrogation, Marty Tankleff—who was released in 2007 after serving over 17 years in prison—said:

> There is no reason that police departments across the city and state should not immediately begin recording all interrogations and witness interviews.

It could go a long way to curtailing false confessions and false testimony, and reduce the incidence of wrongful convictions like mine. It is universally recognized as a benefit to both police and defendants alike.

If a jury could have seen what interrogators put Tankleff and thousands of other men and women through before obtaining incriminating statements, their lives may have been different.

Endnotes

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2. B. A06800, 2014 Leg. Sess. (N.Y 2014); *see,* http://bit.ly/1tSwCKs.
3. John Eligon, *State Court Allows False-Confession Experts, but Bar Is High,* N.Y. Times, Mar. 30, 2012, at A24.

Lonnie Soury is an expert in issue-oriented public relations, crisis management, and public policy. He was part of the defense team that freed Marty Tankleff, and Damien Echols from death row in the West Memphis Three case. He has advised attorneys and public officials on wrongful convictions, and testified about wrongful convictions before the New York State Legislature. He founded FalseConfessions.org to increase awareness about the incidence of false confessions in wrongful convictions.

Freelance Lawyering: When an Unconventional Choice Is the Right Choice

By Jessica Coffin

Not many people graduate law school intending to be a freelance attorney. Becoming one was not part of my initial plan, either. Life, however, rarely happens according to plan.

I graduated from law school with a job at a firm in Orange County, California. I was lucky to work for a company I liked, with great people who became friends and mentors. For the three years I spent there, I gained invaluable experience and adapted to the professional environment. Were it not for my status as a military spouse, I would likely still be there.

When my husband joined the Navy, I assumed that my legal career was over. I knew that we would be moving every three years on average, which meant studying for a new bar, the stress of taking it, applying for jobs, getting acclimated to a new job (if I was lucky enough to get one), and having to quit that job—only to do it all over again. I understood the realities of his work, but I felt as if I had spent so much time and energy in law and had no idea what I could do next.

Freelance lawyering saved my career. Most days, I work from home, my infant son playing happily on the floor, and without the stress of impending upheaval.

When my husband went on his first tour, I quit my firm job and moved to Guam—a tiny island in the middle of the Pacific. Since we would not be staying long I forewent taking the Guam bar and, instead, volunteered at the local Family Violence Court.

After Guam, my husband went to Afghanistan and I returned to California. My job search was daunting and practically impossible since I knew I would not be there for long. But I needed to work; the employment gap on my resume was widening.

I decided to reach out to former colleagues who had recently formed Montage Legal Group, a network of freelance attorneys. I hoped freelancing would provide the temporary and flexible work that I needed. When I joined Montage, I began working almost immediately.

People often assume that freelance attorneys only do low-rate, monotonous document review. That has never been my experience. As a freelance attorney, I have handled a wide variety of substantive and interesting legal projects. The variability has allowed me to develop my legal skills, learn new areas of law, and gain additional experience.

Being a freelance attorney means being adaptable. I have worked 40-hour weeks and five-hour weeks, in law offices and remotely. I have done litigation work for both defendants and plaintiffs. Most important to me is the flexibility; when my husband returned from Afghanistan, I was able to move with him to Rhode Island and still continue my practice.

There are trade-offs, though. I miss going into court, arguing motions, taking depositions, wearing a suit, and actually *feeling* like a lawyer. I do not have the convenience and support of a law office. Westlaw and LexisNexis are not just a keystroke away, and there are no paralegals or secretaries around to offer their invaluable assistance. As much as I enjoy working from home, it does not have quite the same feel of a law office environment.

I also miss those law firm paychecks and the security they provided. Freelance pay is not equivalent—though I do feel that I earn commensurate with my training, experience, and position. My income is not as consistent or guaranteed as salaried employment; I am paid only for the hours I work. However, despite the inconsistency and unpredictability, I feel fortunate to be able to continue my career on this unconventional path. When my family and I move again next year, I cannot imagine a better position to have.

Becoming a freelance lawyer may not be a viable or realistic option for everyone. I encourage attorneys whose plans are not going as they envisioned, to look for what else is available. The legal market is changing and lawyers have more flexibility and diversity in practice. As our circumstances change, and they always will, sometimes our best laid plans will make way for something unexpectedly better.

Jessica Coffin received her J.D. from the University of Southern California in 2008. She began her legal career as an associate at Snell & Wilmer, and was named a Southern California Super Lawyers "Rising Star" in 2010 and 2011. She joined Montage Legal Group in 2012 as a freelance attorney, and is admitted to practice in California and Massachusetts. She currently resides in Rhode Island with her husband and son.

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