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\$53.4 Million Costs of Failure to Sufficiently Reconsider High Costs of Wrongful Arrests and Convictions

by Patrick Monette-Shaw

Can you exonerate the truly innocent in a legal system having binary verdicts available: “Guilty” vs. “Not Guilty”?

Unfortunately, the answer may be “No” in criminal lawsuits once someone has been unlawfully arrested and subsequently wrongfully incarcerated, since there is no verdict of “Innocent.”

I was stuck by this reading Preet Bharara’s book “*Doing Justice*,” in which he noted “*There’s no such thing as a verdict of innocence.*”

That’s because “*Not Guilty*” comes down — in part — to parsing “beyond a reasonable doubt,” such that if there was credible doubt about guilt, then there may be doubt of complete innocence too. Indeed, *Not Guilty* doesn’t necessarily mean you are *innocent*. Instead, it means evidence presented at trial wasn’t strong enough for a *guilty* verdict. *Not Guilty* only means that a prosecutor failed to prove a defendant was *guilty* beyond any reasonable doubt.

Innocent means that you did *not* commit the crime. *Not Guilty* simply means that there was insufficient evidence to determine that you *did* commit the crime.

Bharara was the U.S. Attorney for the Southern District of New York from 2009 to 2017, when President Trump fired him. In his book, Bharara recounts several stories of innocent people who had been wrongly accused and forever injured because of a *failure to sufficiently reconsider* evidence and facts at multiple points in the criminal justice system, leading to injustice against innocent people. Bharara revisits the issue of a *failure to sufficiently reconsider* several times throughout his book.

He recounts the case of a man who spent 17 years in Sing Sing prison for a murder he hadn’t committed along with five other defendants who had also been falsely convicted in a second murder. In 2013, the convictions against all six were overturned; the defendants received \$3.9 million from the state and New York City paid the wrongfully accused \$40 million in 2016.

It got me thinking about similar wrongful prosecution and incarceration costs in San Francisco.

For those wrongly convicted and then incarcerated, the price of the injustice is high, far beyond the obvious loss of their freedom. And the injustice comes at a high price for taxpayers, too.

The Innocence Project [reported](#) in March 2016 that between 1989 and 2012, wrongful convictions cost California taxpayers at least \$221 million, including \$80 million for costs of incarceration, \$68 million for lawsuit settlements, \$68 million spent on trials and appeals, and \$5 million in state compensation for wrongful imprisonment of people who had their felony convictions overturned.

That included \$12.6 million in San Francisco for 97 wrongful arrests and convictions, and legal settlements and fees during that 23-year period, through 2012. There’s been additional wrongful convictions and settlements since then.

As the *Westside Observer* [reported](#) last March, San Francisco taxpayers have had to foot the \$90.7 million bill for City Attorney time and expenses plus settlement awards in 359 prohibited personnel practice lawsuits brought by City employees involving on-the-job bullying, wrongful termination, harassment, discrimination, and other practices between 2007 and 2018.



Photo: San Francisco County Jail # 4, Center Corridor

Presumption of Innocence: Despite our belief in the legal axiom “*innocent until proven guilty*,” once you’ve been unlawfully arrested, and then wrongfully convicted and wrongfully incarcerated, a judge or jury can issue only one of two verdicts: “*Guilty*” or “*Not Guilty*.” There’s no verdict of “*Innocent*.”

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Wrongful Arrests and Convictions in San Francisco

On top of costs to taxpayers for prohibited personnel practice lawsuits brought by City employees, I wondered how much taxpayers have had to shell out for wrongful incarceration lawsuits against the City.

On April 3 a records request was placed to the City Attorney's Office seeking settlements awarded to plaintiffs, plus the City Attorney's time and expenses involved in wrongful prosecution, wrongful conviction, and wrongful incarceration lawsuits concluded in San Francisco between January 1, 1990 and December 31, 2018.

The City Attorney's Office (CAO) responded on April 29, providing an Excel file listing 366 lawsuits, but excluded one pivotal case, which makes it 367. The CAO qualified its response, writing in relevant part:

"We have made a good faith effort to include all cases that may be responsive to your request ... but because we do not code cases in the precise way that you identified in your request, we cannot guarantee that every matter listed is responsive to your request, nor can we guarantee that we have included every single matter that is responsive. The attached document is our best effort at providing the most information that may be responsive."

The CAO's data reveals taxpayers have had to pay \$53.4 million, at minimum, in City Attorney time and expenses plus settlement awards for 367 lawsuits against the City for unlawful arrest, excessive force by law enforcement officers, and other causes — including wrongful conviction and incarceration — in lawsuits filed between February 1995 and October 2018.

Notably, data provided by the CAO shows 20 categories of types of lawsuits, totaling \$40.3 million. But the CAO withheld data on the \$13.1 million settlement award in the Jamal Trulove lawsuit, because his case is not "fully settled" yet.

Table 1: City Attorney Data by Type of Case

Code	Cause Description	# of Cases	CAO Hours	CAO Time	CAO Expenses	Settlement Award	Total
1	2005 Unlawful Arrest (Police)	227	58,976.24	\$ 9,556,001	\$ 2,959,524	\$ 10,138,661	\$ 22,654,185
2	2001 Excessive Force (Police)	72	39,428.15	\$ 6,927,786	\$ 1,014,506	\$ 1,328,053	\$ 9,270,346
3	2099 Other (Police)	26	13,303.60	\$ 2,560,079	\$ 320,153	\$ 3,769,000	\$ 6,649,232
4	9101 General Injury Damage	10	1,787.45	\$ 311,053	\$ 28,615	\$ 148,500	\$ 488,168
5	5099 Other (Jail/YGC)	2	961.25	\$ 185,853	\$ 24,179	\$ 152,000	\$ 362,032
6	2010 Unlawful Entry (Police)	2	1,070.35	\$ 146,407	\$ 6,405	\$ 153,469	\$ 306,280
7	8099 Other (General Government)	1	776.25	\$ 145,343	\$ 10,047		\$ 155,389
8	5070 Failure to Release (Jail/YGC)	7	504.60	\$ 82,549	\$ 4,579	\$ 7,500	\$ 94,628
9	20 Police Conduct	1	232.00	\$ 50,794	\$ 4,883	\$ 25,000	\$ 80,676
10	4040 Assault By Employee	2	402.80	\$ 64,708	\$ 6,777	\$ 3,500	\$ 74,984
11	2030 Crowd Control (Police)	2	155.70	\$ 20,048	\$ 1,584	\$ 35,000	\$ 56,631
12	9111 Constitutional and Federal Issues	3	253.10	\$ 51,527	\$ 1,112		\$ 52,639
13	Unknown/Unassigned	1	106.85	\$ 14,440	\$ 997		\$ 15,437
14	4530 Legal Malpractice	2	59.00	\$ 13,940	\$ 350		\$ 14,290
15	9108 Injunctions	1	82.00	\$ 13,228	\$ 169		\$ 13,397
16	4060 Fail to carry out duties (not Emergency)	1	47.75	\$ 8,846	\$ 420		\$ 9,266
17	5045 Failure to protect from harm (Jail/YGC)	1	61.55	\$ 8,409	\$ 580		\$ 8,989
18	5040 Unlawful Force (Jail/YGC)	1	40.25	\$ 8,111			\$ 8,111
19	4599 Other Malpractice	1	26.75	\$ 6,243			\$ 6,243
20	9113 Miscellaneous	3	33.10	\$ 5,134			\$ 5,134
Total		366	118,308.74	\$ 20,180,498	\$ 4,384,879	\$ 15,760,683	\$ 40,326,059
Jamal Trulove Wrongful Conviction (Data Pending)		1	Pending	Pending	Pending	\$ 13,100,000	\$ 13,100,000
Revised Total:		367	118,308.74	\$ 20,180,498	\$ 4,384,879	\$ 28,860,683	\$ 53,426,059
CAO Time in Person Years:			56.9				

Source: San Francisco City Attorney's Office, April 29, 2019.

"The CAO's data reveals taxpayers have had to pay \$53.4 million, at minimum, in City Attorney time and expenses plus settlement awards for 367 lawsuits against the City for unlawful arrest, excessive force by law enforcement officers, and other causes."

Table 1 illustrates:

- Of the 366 lawsuits fully settled, 227 (62%) involved *unlawful arrest*, and comprised \$22.6 million (56.2%) of \$40.3 million in total costs for settlements plus the CAO’s time and expenses.
- Among the 366 lawsuits fully settled, another 98 cases (27%) involved *excessive force* by police officers and “*Other*” types of actions by the police, comprising an additional \$15.9 million (40%) of total costs. *Other* includes lawsuits alleging civil rights violations, such as the Caramad Conley case.
- The three combined categories — *unlawful arrest*, *excessive force*, and *Other (Police)* — accounted for 325 (88.8%) of the 366 cases, and \$38.6 million (95.7%) of the total costs.
- Of the 366 lawsuits fully closed at a total cost of 40.3 million, plaintiffs received \$15.7 million (39%) in settlements, while the City Attorney racked up \$24.6 million in time and expenses, 61% of the total.
- Adding in the known \$13.1 million settlement in the Trulove lawsuit, total costs grows to at least \$53.4 million, which will increase when the CAO finally settles Trulove’s case and releases the CAO’s time and expenses.
- Once the Trulove case is fully settled, the \$28.8 million in settlements paid to plaintiffs across the 367 lawsuits will grow to approximately 54% of the \$53.4 million in total costs.
- Somewhat shockingly, in the 366 lawsuits now concluded, the CAO racked up 118,308 hours of time, which translates to **56.9 person years** (formerly known as *manhours* or *man-years*); 2,080 hours equals one person year. That, too, may grow when the CAO gets around to releasing its accounting data for the Trulove case.

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Had more of Bharara’s admonition to *sufficiently reconsider* been given before unlawfully arresting people and using excessive force, perhaps taxpayers would not have been on the hook for the \$53.4 million (and growing) costs!

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Four Cases Involving Wrongful Incarceration

Among the lawsuits filed in San Francisco, four men — all African-American teenagers at the time of their arrests — were innocent, but wrongfully incarcerated. Costs of their cases involve \$30.8 million, and still growing.

Table 2: Costs of Wrongful Incarceration

Plaintiff(s)	Years Incarcerated	CAO Closed Case	CAO Classification Code of Lawsuit	CAO Hours	CAO Time Amount	CAO Expenses	Settlement to Plaintiff(s)	Total	Estimated Costs of Incarceration	Total Taxpayer Costs
Conley, Caramad	18	10/14/2009	2009 Other (Police)	5,956	\$ 1,169,607	\$ 207,289	\$ 3,500,000	\$ 4,876,896	\$ 882,000	\$ 5,758,896
Tennison, John; and Goff, Antoine	13	8/21/2014	2005 Unlawful Arrest	5,183	\$ 844,498	\$ 1,911,542	\$ 7,500,000	\$ 10,256,040	\$ 637,000	\$ 11,530,040
Trulove, Jamal Rashid	6	3/19/2019	Pending	Pending	Pending	Pending	\$ 13,100,000	\$ 13,100,000	\$ 486,000	\$ 13,586,000
	50			Total: 11,139	\$ 2,014,105	\$ 2,118,831	\$ 24,100,000	\$ 28,232,936	\$ 2,642,000	\$ 30,874,936

CAO Time in Person Years: 5.4

Source: San Francisco City Attorney data and various news media reports. Incarceration Cost Estimates: California Legislature’s LAO (Legislative Analyst’s Office).

Table 2 illustrates:

- The \$30.8 million in total taxpayer costs will climb higher once the Trulove lawsuit is finally settled.
- The \$24.1 million paid in settlements to the four men represents 85.4% of the \$28.2 million in known total taxpayer costs, excluding the \$2.6 million in estimated costs of their wrongful incarceration.

The \$30.8 million in taxpayer costs for the three lawsuits involving the four men is probably significantly higher, in part because there's no data on the costs of pre-trial incarceration prior to conviction and subsequent incarceration.

And the City Attorney's Office has refused to release data yet on its costs and expenses in Mr. Trulove's case, despite the fact the Board of Supervisors passed Trulove's \$13 million settlement on first reading on March 19, 2019 and finally passed the settlement on second reading on April 2.

On May 20, the CAO claimed:

*“Unfortunately, we cannot provide you with a firm date when [Trulove's] case will close. Closing a case is an ongoing process that can take time, depending on a variety of factors, and we cannot comment on it further as it is **privileged and confidential.**”*

Why the City Attorney classified Conley's civil lawsuit against the city as “*Other (Police)*” but classified the Tennison/Goff lawsuit as an “*Unlawful Arrest*” isn't known. It could be because Conley's 2012 U.S. District Court lawsuit had alleged civil rights violations, rather than *unlawful arrest*. It will be interesting to learn how the CAO classifies Trulove's civil lawsuit.

Making the total of unknown costs to taxpayers worse, in response to a records request submitted on May 13 District Attorney George Gascón's office claimed that following a “reasonable search” for records, it “*has no records responsive*” regarding its costs, staff time, or expenses involved in the Conley, Tennison/Goff, and Trulove wrongful prosecutions, and Gascón's office has no duty to create or recreate records of its costs.

How can it be that the City Attorney's Office has records of its time and expenses in the three lawsuits, but the District Attorney's Office has no corresponding records? How much more did this cost taxpayers than the known \$30.8 million to \$53.4 million?

Charges In, and Issues About, the Four Wrongful Incarceration Lawsuits

- **Caramad Conley:** After having been locked up in pre-trial detention in 1992, Conley was wrongfully convicted in 1994 and sentenced to serve two life-without-parole terms for a 1989 drive-by shooting that left two dead and injured 11 others. Prosecutors claimed the shooting was gang motivated.

Superior Court Judge Marla Miller ruled in December 2010 that Conley was denied a fair trial, and was wrongly and unconstitutionally convicted, in part because material information was not provided to his lawyers. Miller also found that police investigators knew the prosecution's star witness against Conley had lied, but did nothing to intervene. San Francisco authorities failed to tell Conley's defense lawyers that the Police Department had paid thousands of dollars to its star witness. The lead police investigator in the case, Earl Sanders — who later became San Francisco's Chief of Police briefly — knew a witness had committed perjury, but didn't correct the false testimony. It wasn't the only case in which Sanders withheld information from defense lawyers, a *Brady* offense.

Conley was released in January 2011 after serving 18 years in prison.

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“How can it be the City Attorney's Office has records of its time and expenses in the three lawsuits, but the District Attorney's Office has no corresponding records? How much more did this cost taxpayers?”

“Conley was denied a fair trial, and was wrongly and unconstitutionally convicted, in part because material information was not provided to his lawyers.”

- **John Tennison and Antoine Goff:** Tennison then 17 and Goff then 19, were charged with first-degree murder of Roderick Shannon on August 19, 1989. Police claimed the pair of men had been identified by two teenage eyewitnesses, one girl 14 and another girl 11, but there was no physical evidence linking the two men to the crime.

The Court ruled prosecutors and police had information that another person might have committed the crime but did not disclose it during the trial. Tennison and Goff had filed complaints alleging numerous *Brady* violations by both the police *and* an Assistant District Attorney in their wrongful prosecution.

Prison Legal News [reported](#) that two SFPD investigators — Earl Sanders and Napoleon Hendrix — had coached the 11-year-old girl who witnessed the shooting until she was able to implicate Goff and Tennison; secretly paid \$2,500 to the girl as a cooperating witness; urged her to find a corroborating witness; arranged to pressure a 14-year-old corroborating witness to retract her recantation implicating the two men; ignored witness statements definitively identifying the shooter; and suppressed a video-taped post-trial confession by Lovinsky Ricard, the actual killer.

Tennison and Goff were convicted in San Francisco County Superior Court on October 3, 1990 and eventually sentenced to prison, Tennison with 25 years to life and Goff with 27 years to life.

Both men lost their appeals in state court. Tennison filed a writ of habeas corpus in federal court.

According to the judge, during the police investigation one of the eyewitnesses recanted her testimony; she was sent for a polygraph that was deemed inconclusive. She was put on the telephone with the other eyewitness and reverted back to being an eyewitness after being interviewed by the prosecutor. That evidence was never disclosed to the defense.

Another man had initially admitted to the police he was involved in the shooting. Prosecutors and the police had knowledge another person may have committed the crime, but that confession and information was also never turned over to Tennison's and Goff's defense lawyers.

In 2002 Sanders and Hendrix were accused of misconduct and colluding with prosecutors in suppressing Ricard's confession in the Tennison and Goff case.

U.S. District Court Judge Claudia Wilken ruled that other interviews and documents should have been turned over to defense lawyers, including records of payments of \$2,500 to the two teenage witnesses who had claimed they witnessed the murder.

Judge Wilken overturned Tennison's conviction on August 26, 2003.

- **Jamal Trulove:** In 2010, Trulove was convicted of murdering his friend in 2007 at a Sunnydale housing project. It was an unlawful prosecution and wrongful incarceration. A witness had falsely identified him as the shooter. He was sentenced to life in prison. He successfully appealed his conviction; a state appeals court overturned it in 2014. A second jury acquitted him of murder at retrial in 2015, finding that the police had, essentially, framed him — despite his credible claims of innocence. His retrial was a rare exception that retrials ever occur. It's thought that his private counsel did a terrific job obtaining Trulove's acquittal.

According to [TheRoot.com](#), NPR reported that then, in 2016, Trulove sued four named San Francisco police officers involved. "A federal jury determined that the two lead homicide inspectors on the case, Maureen D'Amico and Michael Johnson, not only made up evidence against Trulove but withheld evidence that would have helped him." The

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four officers named in Trulove's lawsuit have all reportedly retired; none were disciplined for their roles in the case.

[CBS News reports](#) Trulove accepted a \$13.1 million settlement in exchange for the City dropping its appeal of the \$14.5 million in damages a federal jury in Oakland had awarded him last year. It's not clear if his lawyer's fees were separate from the \$14.5 million in damages, or how much San Francisco saved dropping its appeal.

Of note, both the Conley and Tennison/Goff cases involved the same police investigators — Napoleon Hendrix (who has since died) and Earl Sanders, who retired in 2003. The Courts overturned the murder verdicts in both criminal lawsuits because both cases involved allegations that investigators had illegally withheld exculpatory evidence that their defense attorneys were constitutionally entitled to, but were never provided.

Although Earl Sanders was clearly involved in wrongly sending Conley, Tennison, and Goff to prison, Sanders now comfortably receives approximately \$265,883 each year from his City pension, if not more.

Brady Issues

In the Tennison and Goff lawsuit, the U.S. District court ruled that the prosecutor had a duty to ensure *Brady* evidence that came to light after conviction was provided to the defendants. That apparently didn't happen.

The *Brady* doctrine is a pre-trial discovery rule based on the 1963 U.S. Supreme Court case, *Brady v. Maryland*. The Supreme Court ruled prosecutors are required to disclose any information and exculpatory evidence favorable to the defense, in part because *Brady violations* send potentially innocent people to prison. *Brady material* is evidence that could negate a defendant's guilt, could reduce a defendant's potential punishment, or could relate to the credibility of a witness. *Brady disclosure* involves evidence that is significant to proving a person's guilt or innocence.

Dishonest police officers are referred to as "*Brady cops*" when an officer of the law has a proven record of knowingly lying in an official capacity.

Suppression of evidence favorable to a defendant obviously violates due process. Prosecutors have a duty to establish procedures for the police to inform the prosecutor and defense lawyers about anything (and everything) that may prove the innocence of a defendant.

Brady violations often refers to the failure to disclose exculpatory evidence when there is a reasonable possibility the suppressed evidence could have resulted in a different verdict.

Had the exculpatory evidence in both the Conley and Tennison/Goff cases been provided to their defense lawyers, the three men may never have spent their combined 44 years in prison. And taxpayers could have been spared the \$17.2 million in costs in the two cases.

When prosecutors withhold *Brady violation* evidence, and support *Brady cops*, they engage in the worst kind of prosecutorial misconduct and violate prosecutorial ethics.

CAO Spokesperson's Callousness

Over the years, City Attorney Office spokespersons have displayed a lot of hubris — in addition to breathtaking callousness — commenting on the lawsuits. In the Tennison and Goff case, *Prison Legal News* reported that then spokesperson Matt Dorsey said:

“ The Courts overturned the murder verdicts in both criminal lawsuits because both cases involved allegations investigators had illegally withheld exculpatory evidence defense attorneys were constitutionally entitled to. ”

“ Prosecutors are required to disclose any information and exculpatory evidence favorable to the defense, in part because *Brady* violations send potentially innocent people to prison. ”

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“We think the proposed settlements weigh the costs and risks of litigating the case, in addition to the costs that could be incurred on appeal,” said city attorney spokesman Matt Dorsey. “We think financially it’s a good settlement for the city.”

Good for the City? Dorsey’s comment completely ignored the “costs” of the wrongful convictions to Tennison and Goff, who spent 13 years each behind bars for a crime they hadn’t committed and had been framed for. As for the “risks” in litigating the case, Dorsey didn’t mention the \$2.8 million in City Attorney time and expenses involved in prosecuting the lawsuit, the \$7.5 million in settlements paid to the two defendants, or the \$1.3 million estimated costs of incarceration shown in Table 2.

The combined \$11.5 million is not a “good settlement” for the City and San Francisco taxpayers! *Prison Legal News* also reported:

“Of course, it would have been an even better outcome for the city, for San Francisco taxpayers who will foot the bill for the settlement, and for Goff and Tennison had they not been wrongly convicted and imprisoned for 13 years in the first place.” [Emphasis added]

In the Jamal Trulove case, the *San Francisco Examiner* [reported](#) in March 2019 that the now-spokesperson for the City Attorney’s Office, John Coté, claimed:

“We feel this proposed settlement is the best way to resolve this case,” said John Coté, a spokesperson for the office. Had the office not settled, Coté said San Francisco would have been on the hook for more than \$15 million after interest.

“Continuing to appeal could have increased that even further, and there were significant legal hurdles to overcome,” Coté said. ***“Settling this case is the prudent thing to do at this point.”***

Such hubris! The more ‘*prudent*’ thing to have done — which seems to have escaped Coté’s notice — was to have never wrongly arrested and incarcerated an innocent man — Trulove — to begin with. And the ‘*best way to resolve this case*’ would have been to never have wrongfully imprisoned him. It could have save taxpayers millions. Since the City Attorney refuses to disclose its full costs in this case, it appears Trulove’s settlement may be still on-going, perhaps at additional costs, which clearly isn’t prudent and may involve over-litigation.

Failure to Reconsider

Adding insult to injury, after Antoine Goff had been charged with murder in 1990, then served 13 years wrongfully incarcerated, and was released from prison in 2003, and after Tennison and Goff eventually filed a federal lawsuit in April 2004, it took nearly another *six years* before Goff received his \$2.9 million settlement in July 2010, and Tennison received a \$4.6 million settlement — 19 years after their *belated-justice* nightmare began.

Strangely, the City Attorney’s Office claims the Tennison and Goff lawsuit was finally “*settled*” on August 21, 2014 — four years later! Why did the CAO take another four years to officially *settle* that case? Will it take another four years to finally *settle* the Trulove case?

Bharara reminds us people’s understanding of the truth — whether about the correctness of a fact, or the guilt of a person — should never be unalterable. That includes *sufficiently reconsidering* the full costs of wrongful convictions. We need to put ourselves in Conley’s, Tennison’s, Goff’s, and Trulove’s shoes: *Combined, they spent a half century wrongfully incarcerated for crimes they didn’t commit.*

“It would have been an even better outcome for the city ... and for Goff and Tennison had they not been wrongly convicted and imprisoned for 13 years in the first place’.”

“Such hubris! The more ‘prudent’ thing to have done was to have never wrongly arrested and incarcerated an innocent man — Trulove — to begin with.”

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Costs of sending the wrong people to prison for crimes they hadn't committed clearly don't include the costs of allowing those who *did* commit the crimes to continue roaming our streets.

In the end, San Francisco taxpayers will end up forking over well upwards of \$53 million because police officers hadn't gotten it right. A cast of prosecutors, judges, defense lawyers, district attorneys, and jurors also didn't get it right, because of their combined *failure to sufficiently reconsider*. And the failure to reconsider shattered these innocent men's lives.

“ A cast didn't get it right, because of their combined *failure to sufficiently reconsider*, shattering these innocent men's lives. ”

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