

[Intro music]

Noelle: Whaaaaat up?!

Miranda: Welcome to The Unpacked Project

Noelle: We're your hosts-I'm Noelle

Miranda: And I'm Miranda.

Noelle: We're here to explore all things social justice. It's through casual conversations, interviews, and story telling that we hope to inspire others to take action towards a more compassionate and equitable world.

Miranda: 'Cause honestly it kinda sucks here sometimes.

Noelle: For real, we can do better people.

Miranda: Alright, let's start unpacking.

[Music plays]

Noelle

Fernando Bermudez lost over 18 years in New York state maximum security prisons following his wrongful conviction of murder in 1991. Mr. Bermudez was proven innocent in late 2009 with help from pro bono attorneys in Washington DC, New Jersey and New York. Mr. Bermudez his exoneration makes him the first Latin American male in New York State legal history exonerated on actual innocence grounds. In 2012, he completed his Bachelor's degree in Behavioral Science, and he graduated with honors and also helped abolish Connecticut's death penalty with Connecticut legislators. Mr. Bermudez has a distinguished public speaking career of over 300 lectures at collegiate venues, both nationally and internationally, in addition to the US Department of Justice. He has authored several publications and is currently completing a book and film about his hard won legal fight, and adventures as an infamous New York City graffiti artist. His Final Chapter, the Rib of Revelation encompasses challenges against post traumatic stress disorder, with rebirth in his 10th year of freedom, and building generational wealth through real estate while homeschooling his son.

Miranda

Thank you so much for being here today. We truly appreciate your time. So let's just get started. You know, when I was reading your case summary on your website, Appleseedsforjustice.com, you know, I saw this picture of you. And I'm assuming it was when your conviction was first overturned. And I just imagine so much when I saw that image, you were in tears? Can you just tell us about that experience and what you were feeling when you found out that you were exonerated for a crime that you didn't commit?

Fernando

Sure. And thank you for having me. Welcome, everyone listening and my special hosts right here today Noelle, Miranda, and Vicky and others. Thank you so much for having me. We're talking about a time when--11 years ago, this month, you know, I actually experienced that amazing moment in a courtroom. After 18 long years of fighting against this grave injustice that happened to me. 11 years ago in November, I was able to finally have the realization that I was

declared innocent. And I was so in shock in that courtroom because I had lost 10 appeals, and this was my 11th appeal. And so it was a moment where we had overcome so much., and finally the results were in. And so it was just a moment where I finally had a chance to have a new beginning in my life after fighting so long. So that's something that picture represents something 11 years ago this month.

Miranda

Yeah. Which is amazing. Right? And, you know, funny that we're interviewing you. Can I ask you a little bit about the Alford plea? I had come across that as well. Can you kind of share what that is because I know that was kind of your last ditch effort, right?

Fernando

Yes. Well, to the extent that this was the opportunity, according to the prosecutor for me to get out earlier, sooner rather than later. And so it was an opportunity for me to plead guilty to manslaughter in exchange for them still securing the conviction, but me having received time served, and that was after 18 years. So that was something that was on the table, just in case there was any uncertainty on my end. But for me there was total certainty because I knew that when 2009 hit, and that New Year rang in and I had actually celebrated in Sing Sing prison. We had celebrated the New Year's and we were so optimistic at that point, because we were going to have a new president, President Barack Obama was coming. And more than that, I knew that I had a great legal team at that point, and so when I was offered that deal, I told my wife--my wife and I, we prayed, we said--no, we're not gonna lie to get out, we're gonna stick to the truth, no matter what. And so that's what I did, at the expense of that if I lost this 11th appeal, I could have been seeing a parole board in 2014, absent any other victories.

Noelle

Thank you. So I mean, your story is fascinating that this can even happen. I mean, there's so many things that we're going to get into with regards to our legal system, you know, in our justice system of where things break down to even allow something like this happen, but it's also heartbreaking. You know, I think we think of people sometimes just in specific moments in time. And you know, the fact of the matter is before you were arrested you had a life and you had things going on. Can you talk a little bit about where you were in life prior to your arrest?

Fernando

Sure. I was very happy, young man, in that I was living in Washington Heights, Upper Manhattan, New York City, Inwood section, know what I mean?! It was an uptown thing. And so I was there, I was 22 years old. I was a happy young man. I was the oldest in a family of two parents and four other siblings-3 boys and one girl. And the youngest was my sister, and she was six when I was snatched away. I had all the expectations of being, instead snatched away into an unknown situation. My certainty was that I felt that I could do something with my life. So I had enrolled in college, and I was set to begin that fall in September 1991, I was going to enter the medical profession. That was my hopes and dreams. I wanted to atone for some of my mistakes. I wanted stability with employment. And they told me that if you enter the medical profession, that'd be the best way. I said, let me do this. And so suddenly, I'm arrested a month

before. And as you know, it would become a situation that I never would expect would take so long to resolve.

Miranda

Yes, definitely a long time. You know, ultimately 18 years of your life were forcibly taken from you, really due to an abhorrently mishandled case, right? You were required to sit instead of stand so your height and your weight difference wasn't noticeable from the description of the actual suspect. Eye witnesses were allowed to deliberate in a room together and potentially--I'm pretty sure they did influence each other's decisions, and only one witness actually picked you out in a lineup. And then a year later, all witnesses recanted their testimony yet appeal judges gave little weight to the recantations and argued that the trial testimony was still more reliable, which is, I mean, it really just all sounds ridiculous, right? You're innocent, they're doing all of these things--they're lying. This is the justice system and they're just lying about everything. So can you share more about the appeal process and any legal organizations that worked with you in your fight for justice?

Fernando

Sure, well, for me, it was a matter where I believed in the American justice system, I went to private school for 12 years in the Inwood Section. And even though I was a young graffiti writer, even then, another aspect of my life, but even then I believed in the system, I really did. Cops were heroes to me at that point and so I believe that the system would work, even though I was in a tough place like Rikers, you know. 14,000 people, there had just been a riot there the year before, I entered that fray. You know, Rodney King was happening, you had all kinds of things going on, you know. The LA riots would soon happen, so I would watch this amazed from Rikers Island. And I will be awaiting the appeal process--well really first I waited for the trial process, and after the American criminal justice failed me, then I had to go into the appeal process. So I was found guilty a year after being at Rikers, and it was horrifying. And then I had to wait for that appeal. That is where anyone convicted through our courts systems in America has to wait for that--almost like a lottery like ticket, to be heard and then be granted what's called relief. So I had to go through that. I had to wait. I had to be patient. And I had to prevent myself from getting discouraged because I kept getting denied even though very early on, let me tell you, I had the evidence to demonstrate that I was innocent. According to even what you mentioned, evidence of that was there already, but the judge didn't want to even declare an evidentiary hearing--that is to test the evidence before and with these witnesses. So it grinded on and on and years were just ticking by, but the hope factor keeps you going because you think that--okay, if you lost this one you still got a chance at the next one, or you gotta even manufacture hope.

Noelle

So, you know, one of the main methods that led to your wrongful conviction was that eyewitness identification, or really rather misidentification, we should say, and according to the Innocence Project, eyewitness misidentification is the leading cause of wrongful convictions. And in fact, nationwide, about 75% of wrongful convictions that were overturned because of DNA testing involved erroneous identifications from victims or witnesses. And I can't even imagine

experiencing that. All those emotions you must have, you know, having to go through that, knowing that you're innocent, still being a part of the system, people not wanting to hear you, give you a shot to present this evidence that would prove your innocence. So can you speak to some of the issues around witness identification and exactly how it impacted your case?

Fernando

Absolutely. Well, eyewitness identification is certainly a leading cause of wrongful convictions. You know, we have a total today of over 2,600 documented cases since cases began getting documented in 1989. And that's just the ones that are documented. That's nearly 2,700 cases of men and women and over 24,000 lost years since then. But in my situation, that began my problem because a young lady upon the incident was allowed to be in this room with other teenage witnesses and she took my picture and says--hey, look at this guy! And then she started sharing my picture. That became a contaminating, psychological instant play in which the witnesses then reinforced by saying--oh, yes, and sharing the picture. It reinforced their idea that they may or may not have had the right person, allowing them to proceed to the next step, which grew worse through the contamination of that when I was placed in a lineup, I was told to sit down to hide my height and weight difference. So the identification procedure is being skewed already. Then I'm also placed in a mug shot book and I'm directed as being the subject of the investigation, meaning--tell us who you think is responsible because he's in there. They already had seen me in other photographic identifications. It was a foregone conclusion they were aiming at. So this caused my problem. It really began the problem that made the situation grow worse from that. I mean, it could begin simple enough and honest enough that way, but the corrupting factor grows deeper if then police and prosecutors have a way of exacerbating that potentially wrongful conviction. And that's what happened to me.

Miranda

And, you know, thankfully, exonerations are increasing throughout the country. Still not at a pace that they need to, right? I my guess is that 2,700 is a gross underestimate, you know, of people that are in prison for crimes they didn't commit. So according to the National Registry of Exonerations, there are a record number of 143 exonerations in 2019 alone. And the total since 1989, until end of 2019 was 2,556. So just like you said, so we know that wrongfully convicted persons they, like you, lose years of their life behind bars. And Research also shows that wrongfully convicted people are incarcerated for an average of 13.3 years before even being exonerated. And here you were sentenced to 23 years to life. Ultimately, you served 18 years, but still 18 years of your life, right? Just gone. And it'd be one thing if it was a mistake--and even then if it was a mistake, you know, but it was a lie. You know, it was just--it was fabricated, as well. And you know, in all of that, prison is really traumatizing as well, just the experience in general. There's violence, fear and pressure, isolation from society, which can take a major toll on you both physically and mentally. So what was your experience like and how have you survived that? And how does it still affect you today?

Fernando

Well, it was a bad experience in that I wanted to get out of there so desperately because I was scared. I was scared as a young man in there. And even though at that point I was a

bodybuilder--I mean, I used to even bounce, you know at places. I was like a physically fit dude at that point, but I was scared because things was wild in there. People were cutting each other over the phones, it was black market operations, it was gangs. I mean, you know, the Bloods and the Latin Kings hadn't even developed yet. That's how early I was in there. It was just the Latin Kings who was just coming up, the Bloods weren't even known as a problem in the New York prison system, as I would see later on and all the wars that would happen upstate. So throughout all this, you see, you see all this madness, and it, it penetrates your psyche. It penetrates your psyche because you realize that the humanity that you felt--the bad humanity that put you in prison, has another deeper level of being bad as well with what you see before you, people killing each other and things like that. So for me, I never--I never was able to shake it off when I get out. I thought that getting out would be the end of the story, but then when I got out it wasn't that simple. I came with all this invisible baggage that I didn't know I had to carry out beyond all the books that I tried to salvage that were for me were keepsakes. I had much more baggage than that. And so I had to get psychological counseling I realized, because I started acting strange. I started hyperventilating, I felt that I was still in prison, that I had no permission to be out nor carry money. I never had carried money for over 18 years, so that was taboo in prison. You get caught with money, even though people would use it for black market operations, you go to a special housing unit for that. They'll put you in solitary confinement if they catch you with money. So things like that, you know, it just made me feel like I had no permission for anything. Even walking the family dog became a little crisis because I felt I didn't have permission for that. Then she gave--the little doggie gave me the creeps. At night, she was hoping .I would be pacing at night, I said-- this is really weird. So then the doggie had to leave and my eldest daughter was mad. And then before the doggie left she bit my shoes, I guess I was apartheid shots, you know, to let me know. So I started seeing a psychologist. And the psychologist put me on antidepressants, and I had to then sue the state and things like that. So I had to then document the psychological conflicts that I had. So I continued with that. And it's an ongoing situation, you would think that 11 years later that I'd be over and done with it mentally, but it's not like that. It has surprised me beyond ways that I thought and that that I'm still battling with.

Miranda

Yeah, I mean, well, it's PTSD, you know? Ultimately.

Fernando

Well I think my story really gives many, many connections, but one of them is faith over fear. You know, I had to use my faith to push me forward. My faith, whether it was initially in the American criminal justice system and what I thought it could still do for me as a citizen, but also my faith in God as the discouragement would come and the tough choices that I would have to make, even in prison. Even the decision to even get married, you know, was a tough decision, that I had to use faith over fear and because I didn't want to bring in who would become my wife into the problem. I said--you don't need to deal with this, but she wanted to persevere and continue. And she actually helped bring God to my life, where at times when I doubted it, so it would help. Faith over fear is one of my messages. It's also about educating yourself in any situation that you're in, it's about also educating yourself under the circumstances to be able to

extricate yourself out of them. My situation required education because is a complicated legal situation in which a lot of people wind up in prison, or I should say, a good amount can deal with issues of interpretation, of communication, language barriers, which can incarcerate people of a certain segment of the population, Latino or otherwise, at a higher rate, due to language barriers. I seen that cuz I was an interpreter in prison and I used to help guys write for their medication and other legal rights in prison. They didn't know lick of English so I had to help them with that stuff. So, you know, all of this is just messages that resonate for me, you have to have that perseverance and be able to have that--let me just say this, the ability to choose your circumstances in whatever situation you find yourself in, I found myself in a situation that was a very controlled environment where I was told where to go, who to see, what to eat, what to wear...those were the who, what and whys of my life under living in prison, and how I survived. And what I found was, the ability to choose in that circumstance through a book that I read, called Victor Frankel's Man's Search for Meaning helped inspire me to understand that, is one of the books that helped me.

Miranda

Definitely. I'll link to that in our show notes. We always love when folks give references so thank you. You know, ultimately, if you could reimagine the justice system in a fair and equitable world, having gone through what you've gone through, and also you know, even being in prison and really, it seems like you've--and I don't necessarily know about while you were in, but it really seems like you've kind of seen the silver lining and like--yes, this is a horrible situation but I will persevere, I will make the best of what I can get from this, you know, given the entire situation. So, with all of that, how would you reimagine our justice system in a fair and equitable world and what would it look like and what needs to change?

Fernando

Well definitely we have to have the issue of accountability center square, I think it's something that needs to be addressed, you know, now that I believe we're going to have a new president and the justice system that's going to be forming. And I've worked with the Justice Department before, and I look forward to hitting Washington soon in the future, to address these issues. And I would stress accountability against prosecutors who are found to have maliciously been involved in securing a wrongful conviction. I don't mean by mistake, you know, versus because they were the prosecutor side, I say, instead, the people who are actually involved in securing these wrongful convictions. Because official misconduct, whether it's police and prosecutorial misconduct combined is another leading factor of wrongful convictions today, a new study has also added to that dimension beyond, eye witness identification. Now we have the malicious factor, not just the human mistake error. We need to hold them accountable. I think it's a deterrent factor. Our system is built on laws in which our democracy has laws to deter. So if we don't have a deterrence effect within our criminal justice system against the bad apples, then how are we going to be able to nourish the, you know, the land and the people with the just laws?

Noelle

It makes me think too, you know, we mentioned, we talked about the Alford plea before and how you were offered this lesser plea. For them to still get their conviction, right, you would have been accepting a plea for something you didn't do. And, I mean, we know there's a lot of people sitting in prison right now who had public defenders, who didn't have access to great defense attorneys, and they accept these lower pleas because they don't they don't feel there's any other option. I mean, what are you gonna do, right? Like Miranda said, I mean, that number being probably a gross underestimate of when we think about how many people are sitting in there, you know, for crimes that they didn't commit. They're taking these lesser pleas and, like you're saying, there's just no accountability for the system that's creating this. So I agree with you on that. I think a lot of what we've talked about on previous episodes has been kind of how these systems contribute to these harmful effects that we're seeing on people and on to our citizens, so it would be nice to see some of that. Hopefully--it would be nice to see some of that happening.

Yes, because there's mechanisms in place in which, you know, the securing the conviction is still paramount in the criminal justice system. Alford plea opportunity for some people to get out sooner rather than later, and not risk going to trial, this still secures the conviction, but it forgives or I should say, prevents the state from being sued and things like that. And so it secures it and the thing is, I've seen this happen. I can't tell you how many exonerees--I still call them exonerees even though they took Alford Plea that I know that took it. And that's it. Now they're living their lives and they're picking the pieces together as best as they can, but they're examples of people who had to do it. I'm like--wow. I'm just glad I didn't do it because I don't know how I could live with myself in many ways. Everybody has that right to the decision, but this is something we need to prevent because it's just adding on to the conviction rate. That shouldn't happen.

Miranda

Yeah, well, and even in addition to that, you know, you just talked about being able to sue the state. There's such--I didn't realize and I don't know what the number is, I just read it, but a large percentage of people that are exonerated for crimes they didn't commit that don't get any money. And I'm just like--how do you take years from someone's life and then just like, Okay, I'm sorry, I made a mistake. Like, what?! You talking about accountability, I'm like--you're not even, like, truly apologizing and making things right? You know, so it really is just a culmination of all of these things that are unjust in society and within, you know, our criminal justice system. And it's just another thing. So can you tell me about some organizations that are supporting and driving some of these changes within prison reform and folks that you've worked with?

Fernando

Yes, yes, absolutely. See, we're all in this together and you know, spheres of influence that create the opportunity to create that change that we need. Even what we're doing today--we're informing the public about this. So some of the organizations that are also informing the public is one organization I work with, which is called Represent Justice representjustice.org is a group that formulated--we are system impacted group. Particularly, we have 15 ambassadors, I'm one of the Represent Justice Ambassadors out of 15. And we all system impacted in one way or

another. In other words, we've been incarcerated in one way or another for different reasons. And our mission through the organization is to create dialogue against mass incarceration, you know, to end it, to help increase voter awareness, which is why I created the free our vote shirts and things like that, we'll talk about that. And, and also to change laws and also screen the movie Just Mercy. When I got hired, I got hired to promote the movie, Just Mercy, Bryan Stevenson's movie came out but then the COVID kind of, like, hindered the theater opportunities that most theater movies have. And so I work with them. I also work with New York's Innocence Project, the great people, I work with different innocence projects wherever I can connect, but New York's Innocence Project is one that helped hire me as a speaker. So I work with them and we help change laws, you know, before COVID we were going up to Albany, we were meeting people, different states, it's internationally, we go out--before the COVID we were going out to work on legislations there, things like that. So it's different groups. But those are two main ones that I'm working with.

Noelle

That's awesome. I mean your work is super valued. And I would imagine that it also, you know, helps some of the recovery with the trauma knowing that you are taking what's happened to you and being able to turn it into seeing these positive outcomes and I would imagine that that's fulfilling. We also know you have a book coming out. So that's also exciting, can you tell us about that too, and what platforms people can find you on?

Fernando

Yes. So we have a lot of projects happening like this last year has been amazing. Like you would think that the COVID. But let's just say like this, the COVID has sprung for me, what I call pandemic entrepreneurship. And that is on different levels, particularly mostly focused on my educational scholarships--through Appleseedsor justice. But in that process, I also began writing my book. And so I'm finally at the tail end of my book, it's been a 10 year project. I'm gonna say it again, 10 YEARS! And you go 10 years to write another book, I think Les Miserables or something. But I will say that, you know, that it will have certainly a twist on what it is to grow up in the inner city as a 22 year old who had a life as an aspiring archaeologist, geologists, and then graffiti writer, I transformed my life. I went into the vandalism aspects of it, you know, and then my life changed a bit. I went into the inner city transformation that a lot of people, clubbing scene and what happened to Studio 54 clubs like 1018. It's what my editor calls a cultural artifact, because it's going to capture the nitty gritty of New York City pulse throughout the years, drug wars and things like that. And then, of course, the journey in prison and the coming of age story that I hope to tell and to inspire people. And what I went through in my 18 years in prison, my observations as a sociologist, as a person who was 1) concerned as an academian and to observe what was in prison, almost like an Alexis de Tocqueville did that observation, what he seen from France, what was happening in the new world of Sing Sing, in prisons that I would eventually go to. So I noted my observations, I did studies of some--and I and I'm going to put all of this, and also my business plan as to how I'm making that money for humanity.

Miranda

Alriiiight! Yeah, I love it. And it's your story, and it's an important one to tell most definitely. So thank you so much for being with us today. This episode actually wraps up season one.

Noelle
Yaaaaay!

Miranda
So thank you so much, we really appreciate being able to end with you Fernando. Just the insight that you bring, your experience, thank you for sharing your story. We want to thank all of our listeners for all of your support this season, it's been an enlightening and fulfilling journey. We hope that you've learned and maybe unlearned as well, while unpacking topics such as bias, systemic racism, and exploring our educational and criminal justice systems. We still have a long way to go, and we're only getting started. So join us next season as we unpack equity and inclusion centered around gender and sexuality based topics. See you soon!

Noelle
Bye.

[Outro music plays]

Miranda: The Unpacked Project is produced by Vicky Lee. Branding and Marketing by Raquel Avalos.

Noelle: Show us some love and be sure to like, subscribe and review our podcast. And to stay connected and up-to-date, follow us on Instagram at the_unpacked project.

Miranda: Shout out to all of our listeners who unpacked with us today, we'll see you next week.

Noelle: Peace!

Miranda: Ayye byyyyye