

9-15-2023

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Recommended Citation

Alick, Audree (2023) "What are the Causes and Remedies of Wrongful Convictions?," *The Mid-Southern Journal of Criminal Justice*: Vol. 22, Article 3.

Available at: <https://mds.marshall.edu/msjcj/vol22/iss1/3>

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What Are the Causes and Remedies of Wrongful Convictions?

According to the West Virginia University's Innocence Project, "A wrongful conviction is when a person is convicted of a crime they did not commit" (Ostoyich, 2020, para. 1).

Wrongful convictions are also known as miscarriages of justice. The first known wrongful conviction was in 1872 to a man named William Jackson Marion (Cousino, n.d.). Marion and his friend, John Cameron, were on their way to Kansas to search for work on the railroad. However, after stopping at Marion's mothers-in-law house, Cameron disappeared. Marion was the main suspect in this case because he was the last one to see him. A body that was assumed to be Cameron's was found a year later near where Marion was staying. Convicted of murder and sentenced to death, the case was appealed, with the Nebraska Supreme Court ordering a new trial. However, Marion, was again convicted and sentenced to death and was hanged on March 25th, 1887. Four years later, Cameron was found alive. He had traveled to Mexico to avoid marrying a woman who claimed that he was her child's father. Marion was pardoned by the State of Nebraska on the 100th anniversary of his death.

A recent example of a wrongful conviction occurred in 2021 in the case of Kevin Strickland. Strickland was convicted of the 1978 murders of Sherrie Black, Larry Ingram, and John Walker, even though no physical evidence linked him to the crime and his family provided an alibi (Otterbourg, 2021). The case was built on the false testimony of Cynthia Douglas, the sole survivor and eyewitness, who later attempted multiple times to recant her testimony because she said she was pressured by the police. He was also tried by an all-white jury. He was incarcerated for 43 years, making his case the longest confirmed wrongful-convicted case in Missouri. He was exonerated on November 23rd, 2021, for the triple murder. According to the Equal Justice Initiative (2022), thousands of people have been wrongly convicted across the

country. In addition to eyewitness misidentifications the causes of wrongful convictions also include false confessions and false pleas, and investigative misconduct/errors by the police. The remedies for wrongful convictions are DNA testing and independent review commissions/post-appeal review. A review of erroneous convictions can be used to evaluate the inaccuracy and unfairness of the criminal justice system. More research can help identify crucial steps in in the system's ability to convict the guilty and to clear the innocent. Identifying and understanding the causes and remedies of wrongful convictions is critical to maintaining the integrity of our justice system.

Causes of Wrongful Conviction

During the past century, researchers have identified the causes of wrongful convictions, also known as tradition canonical. Jochnowitz and Kendall (2021) believe that there are outside influences that can cause these errors to happen, including racism, gender bias, social class inequality, stop and frisk policies, justice system culture, media, and much more. For example, according to Selby from the Innocence Project (2021),

Black people account for 40% of the approximately 2.3 million incarcerated people in the U.S. and nearly 50% of all exonerees-despite making up just 13% of the U.S. population.

This is, in large part, because they are police more heavily, often presumed guilty, and frequently denied a fair shot at justice. (para. 2)

Poveda (2001) and Lippman (2011) believe that unless the root cause of the errors is identified, the cycle will continue to re-occur. Researchers Colvin (2009), Kassin et al. (2010), and McGlynn (2019) have similarly identified three causes of wrongful convictions: false confessions and false guilty pleas, eyewitness errors, and investigative misconduct or errors by the police.

False Confessions and False Pleas

False confessions are statements to law enforcement that admit some form of participation in the accused crime (McGrath, 2014). False pleas are an acceptance of a plea offered from the prosecutor to undergo a trial to elicit a conviction. According to Benjamin (2022), compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance abuse, and, in some cases, mental limitations, or limited education can lead to false confessions and pleas. Vick et al. (2021) used the case of Christopher Ochoa and Richard Danzinger who were wrongfully convicted in Texas in 1989 of rape and murder of a young woman to explain how false confessions can cost someone their whole life. During Ochoa's 24-hour interrogation, the officers threatened him with the death penalty, which caused him to accept a plea bargain where he falsely confessed and continued the false admissions until falsely pleading guilty to save his life. The authors also used a report from the National Registry of Exonerations (NRE), where researchers found that between 1989 and 2017, 14.6% of exonerations included false confessions that were capital cases where death sentences were imposed, like the case mentioned above.

Vick et al. (2021) noted data from The Innocence Project and the National Registry of Exonerations to explain the commonness of false confessions that have led to wrongful convictions. According to Vick et al. (2021) false confessions make up 12% of the incarcerated populations, having the highest in homicide cases (23%). Jochnowitz and Kendall (2021) noted previous research that the rate of confessions for juvenile defendants were alarmingly high and 25% of false confessions are juveniles under 18, 55% of them being fifteen or younger (Kassin et al., 2010). Juveniles are at risk for involuntary and false confessions in the interrogation room due to failed understanding of the *Miranda* warning. Kassin et al. (2010) discussed factors which

induce juveniles and adult into false confessions, such as situational factors and dispositional factors, such as physical custody and isolation, false evidence, and implied promises.

Eyewitness Errors/False Accusations

Eyewitness misidentification is when a crime victim or eyewitness mistakenly identifies someone as the perpetrator(s) of a crime even though that person(s) did not commit the crime (Department of Public Advocacy, n.d.). Eyewitness identifications can often be unreliable and are a major cause of wrongful convictions. Some common causes of eyewitness misidentification are limitation in human memory, witness stress and anxiety, suggestive or misleading police procedures, cross-race biases, and the fact that witnesses tend to focus on weapons than a perpetrator's identity (Shouse, 2019). According to Jochnowitz and Kendall (2021), "Mistaken Eyewitness Identification make up a third of all wrongful convictions (thirty-one percent). It is highest in sexual assault cases (sixty-nine percent)" (p. 38). They used the case of *State of Maryland v. Kirk Bloodsworth* as an example of eyewitness misidentification that led to a wrongful conviction. In 1984, police discovered the partially nude body of nine-year old Dawn Hamilton in a wooded area near apartments in Rosedale, Maryland. Two boys were reportedly the last to see Dawn as she walked into the woods with a stranger. The boys gave a description of a white male, early thirties, six feet tall, curly blond hair, mustache, wearing a light shirt and tan shorts. An anonymous tip led to the arrest of Kirk Bloodsworth, age 23. It took only two and half hours of jury deliberation and one hour by a judge for Bloodsworth to be convicted of fifth-degree rape, first degree sexual assault, and murder and sentenced to death plus two consecutive life sentences for this crime he did not commit. Bloodsworth had five witnesses identify him during a line up, and two primary witnesses were the children who gave two different descriptions the night of the murder.

Investigative Misconduct or Errors by the System

Investigative misconduct, also known as errors by the system are when a public servant performs an unauthorized act using the power of their office, knowing that the act is unauthorized, or refrains from performing an official duty for such purpose (U.S. Department of Justice, 2023). Misleading forensic evidence and official misconduct are the highest leading causes of wrongful convictions. According to the U.S. Department of Justice (2020), “The Department’s investigations most often involve alleged uses of excessive force, but also include sexual misconduct, theft, false arrest, and deliberate indifference to serious medical needs or a substantial risk of harm to a person in custody” (para. 1). Jochnowitz and Kendall (2021) used data from The Innocence Project and the National Registry of Exonerations to state that official misconduct (police and prosecutorial) consists of 54% of wrongful convictions, highest in homicide cases (71%). False misleading forensic evidence make up 24% of wrongful convictions, highest in sexual assault cases (30%).

The authors used three different cases of investigative misconduct in their research to identify possible structural causes for wrongful convictions; *Arizona v. Youngblood*, *The People of the State of Illinois v. Larry Ollins*, and *People of the State of New York v. Kharey (Korey) Wise and Kevin Richardson*. The three cases show how tunnel vision, coercion, force false confessions, and other factors can easily change an innocent person’s life.

Jochnowitz and Kendall (2021) used the case of *Arizona v. Youngblood* (1983) to explain the investigative misconduct of wrongful convictions. A young Latino boy (David) was attending a church event when he was kidnapped by a man and taken to a house in an unknown location where he was raped twice. He was later returned and brought to the hospital where he described his assailant as being African American with a bad eye who had short afro-like hair

that appeared to be graying. Youngblood was targeted by police because he had committed a robbery about nine years prior. He was convicted and served fifteen years prior to exoneration. He did not receive compensation for his wrongful conviction under State law because of his death. Since Youngblood had been arrested in the past, this prejudicial information was revealed to the jury and could have influenced them. Also, most of the jury members were parents, which appears to be disingenuous since the victim was a young child, and persons on the jury who had children the same age as the victim may have been biased.

Jochowitz and Kendall (2021) used the case of *The People of the State of Illinois v. Larry Ollins* (1988) as an example of investigative misconduct in wrongful convictions papers. *The People of the State of Illinois v. Larry Ollins* (1988) is the case of a medical student Lori Roscetti who was abducted, brutally raped, and killed by several men. After months of investigating, police were being pressured to make an arrest. A large reward, multiple interviews with the threat of arrest, and coercion tactics led to the confessions of Marcellius Bradford and Calvin Ollins and the conviction of Larry Ollins and Omar Saunders. All four men were factually innocent and exonerated by DNA evidence. Investigators used forced false confessions and snitch testimony to get the case to go to trial. There was no credible evidence against the teens, yet the prosecutor still brought charges against them.

In the case of *People of the State of New York v. Kharey (Korey) Wise and Kevin Richardson*, Jochowitz and Kendall (2021) show many of the routine and structural factors also found in the case of *Larry Ollins* that were previously discussed. Wise and Richardson (tried together) were two of the five teens wrongfully convicted in the infamous Central Park Five exoneration cases. These cases specifically included coerced juvenile confessions, racial profiling, poor investigation, poor forensic analysis, overzealous prosecution, tunnel vision, and

misconduct. In 1989, serial rapist Matias Reyes brutally raped and almost killed a twenty-eight-year-old female jogger, Trisha Meili, in Central Park, New York City. Five African American and Hispanic teens were interrogated, arrested, and wrongfully convicted for the crime. The defendants confessed to these crimes after coercive interrogation, and the confessions were the primary evidence used to convince the jury, despite the faulty timeline and forensic evidence.

Colvin (2009) argues for a focus on the interaction between (1) errors occurring when offences are investigated and wrongful accusations are made (for example, errors by eyewitnesses, forensic scientists, or the police), and (2) errors in the adjudicative processes that are supposed to correct the earlier errors and prevent wrongful convictions. Colvin believes that recognizing that adjudicative as well as investigative factors are necessarily involved, theories of wrongful convictions need to take account of variable as well as constant factors. Increasing the focus on these differences may be crucial if there are to be substantial advances in understanding and reducing wrongful conviction rates.

Authors Robert Ramsey and James Frank (2007) used a sample of 798 Ohio criminal justice professionals (police, prosecutors, defense attorneys, judges) and examined the respondents' perceptions regarding the frequency of system errors (professional errors and misconduct). The authors found that respondents perceive system errors to occur more than infrequently but less than moderately frequent. This means that system errors are more likely than society thinks, but do not happen frequently. They also perceive that wrongful felony convictions occur in their own jurisdictions in .5% to 1% of all felony cases, and in the United States in 1% to 3% of all felony cases. Overall, the findings indicated that criminal justice professionals perceive an unacceptable frequency of wrongful convictions and associated system

errors, suggesting programs should be made to reduce system errors and improve professional conduct.

Author Tharakan (2021) discusses that police and prosecutor misconduct is responsible for over a thousand documented wrongful convictions unearthed in the United States since 1989. According to Tharakan (2021), “Over 37% of those cases involve police misconduct, and over half of all exonerations involve misconduct by prosecutors or police” (p. 60). The author used two well-known examples of police misconduct cases, Kevin Strickland and Lamar Johnson. Strickland was wrongfully convicted in 1979 by an all-white jury of killing three people in Kansas City, Missouri. No physical evidence linked him to the scene of the crime and the only alleged witness later recanted her testimony that Strickland was involved. Johnson was convicted in 2004 of shooting a man several times in broad daylight. No physical evidence connected him to the incident, and he had no motive to commit the crime. He became a suspect only when an informant identified the shooter by nickname.

Effects of Wrongful Convictions

To date, there is very little research as to the prison and reentry experiences of those who were wrongfully convicted. Many researchers talk about the causes and remedies of wrongful convictions and not the social aspects, including the short-term and long-term physical and psychological effects. Wildeman et al. (2011) used data from intensive individual, in-person interviews with 55 exonerees, and measured both the short-and long-term psychological effects associated with wrongful convictions. The authors found that a substantial portion of the study participants were suffering from clinical anxiety, depression, post-traumatic stress disorder (PTSD), or a combination of the three.

Clinical Anxiety

Unlike everyday stress, clinical anxiety is a medical disorder defined by excessive feelings of worry or persistent, even intrusive thought about certain fears of constant fear in general. The most common symptoms are feeling nervous, restless, or tense, having a sense of impending panic or doom, and having an increased heart rate. Half of the exonerees said that they felt restless, and almost 40% stated that they often feel tense or keyed up (Wildeman et al. 2011). Furthermore, Wildeman and colleagues found that those who have been out of prison for a shorter period were more prevalent to experience anxiety (i.e., less than 10 years: 81.8% and 10 years or more: 18.2%).

Depression

Depression is a mental health disorder characterized by persistently depressed mood or loss of interest in activities, causing significant impairment in daily life. Depression symptoms include changes in sleep, appetite, energy levels, concentration, daily behavior, or self-esteem. Depression can also be associated with thoughts of suicide. According to Wildeman et al. (2011), a little over half of the exonerees stated that they worry about things too much and 40% report having difficulty sleeping. Furthermore, Wildeman and colleagues) found that a mean score of 1.69 exonerees were employed full time and 1.95 were not employed full time, which indicates that their time in prison has affected their ability to pursue and get a full-time job.

Post-Traumatic Stress Disorder

Post-Traumatic-Stress-Disorder, also known as PTSD, is a disorder in which a person has difficulty recovering after experiencing or witnessing a terrifying event. This condition may last months or years, with triggers that can bring back memories and feelings of the trauma. Wrongfully convicted exonerees have a unique form of PTSD, due to them not actually committing the crime they are being convicted of. Wildeman et al. (2011), state the most

experienced symptom of the exonerees included having repeated, disturbing memories, thoughts, or images of traumatic events (32.7%), loss of interest in activities that they used to enjoy (38.2%), feeling distant or cut off from other people (32.7%), and having trouble falling asleep or staying asleep (34.5%). The data suggests that these disorders may dissipate over time as exonerees become further removed from their prison experience.

Remedies of Wrongful Convictions

Over the years, there have not been many research papers regarding the causes of wrongful convictions, and many do not talk about how wrongful convictions can be decreased. For example, there are two commonly used data sources that are researching the causes of wrongful convictions, the Innocence Project, and the National Registry of Exoneration.

Olney and Bonn (2015) conducted an exploratory quantitative examination of wrongful convictions. Using data from 1989 to 2012 from all known exonerations in the United States, the authors explored the extent to which deoxyribonucleic acid (DNA) testing and/or race of a convicted innocent are related to that person's exoneration. Olney and Bonn (2015) stated:

DNA can be used in forensic analysis of crime scenes to include or exclude individuals as suspects in the crime...The original DNA sample is taken from the crime scene and is usually compared with the DNA of any suspects, the crime victim(s), and sometimes the National DNA Database. DNA evidence can link individuals to, or exclude them from, involvement in a crime scene. (p. 403)

Unfortunately, even when biological evidence is available, not all defendants are able to utilize DNA testing due to cost or misconduct. The authors found that race is a significant factor in the wrongful conviction and exoneration of African Americans for murder or sexual assault.

Analyses of DNA has proven instrumental in cases of wrongful convictions. Forensic science is used as evidence in criminal cases regularly. DNA is a powerful resource for exonerating wrongfully convicted individuals. All fifty-states enacted statutes providing access to post-convicted DNA testing, however only nine states have enacted statutes granting post-conviction litigants access to another important resource, the DNA database. According to Lippman (2011), since DNA was first used in New York in 1991, 27 convictions have been overturned based on DNA evidence (out of 226 nationwide). More actions are needed to prevent erroneous convictions in both the federal and state courts.

Poveda (2001) used inmates' self-reports to estimate the extent of convicted offenders who deny their commitment offenses. Poveda found, according to the 1995 DOCS data on court-ordered discharges, that of the 199 inmates released from custody by the courts, 24 (12.1%) had been convicted of murder. The use of inmates' self-report is another methodological approach to estimating the prevalence of wrongful convictions. Inmate self-reports depend on the reliability and validity of inmates' account of their own criminality. The basic findings are that 197 of the 1,282 prison inmates questioned in the RAND Survey, or 15.4%, claimed that they did not commit the crime for which they had been convicted and imprisoned. Officials in the criminal justice system can learn from the experience of other institutions by publicly acknowledging justice-system errors.

Conclusion

Wrongful convictions have been haunting this country since the first known wrongful conviction in 1872. Many researchers believe that unless the root cause of the errors is identified, the cycle will continue to re-occur. Researchers Colvin (2009), Kassin et al. (2010), and McGlynn (2019) have similarly identified three causes of wrongful convictions: false

confessions and false guilty pleas, eyewitness errors, and investigative misconduct or errors by the police. To date, there is very little research about the prison and reentry experiences of those who were wrongfully convicted. Poveda (2001) talks about the causes and remedies of wrongful convictions and not the social aspects, including the short-term and long-term physical and psychological effects. Researchers like Wildeman and colleagues (2011), have similarly identified three common effects of wrongful convictions: clinical anxiety, depression, and PTSD. Furthermore, there have not been many research papers regarding the causes of wrongful convictions, and many do not talk about how wrongful convictions can be decreased. Analyses of DNA has proven instrumental in cases of wrongful convictions. Each exoneree should have access to the DNA database to test against the DNA evidence against them, which one nine states currently allow. More action is needed to prevent erroneous convictions in both the federal and state courts such as further analysis of DNA evidence, access to evidence post-conviction and educating law enforcement concerning the potential and causes of false confessions.

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