

Mini Review

# Convicting the Factually Innocent: A Review of the Evidence on Wrongful Convictions

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## Abstract

Miscarriages of justice, particularly those involving wrongful convictions, have been at the forefront of consistent scholarly debate, research, and concern. This focus and cause for concern is well-founded, given the copious adverse effects that wrongful convictions can have on an individual as well as society in general. These effects can be socially and psychologically damaging to a wrongfully convicted person. Such psychological effects of wrongful convictions can include post-traumatic stress disorder and other psychiatric disorders, including panic disorder, paranoia and personality change, and drug and alcohol dependence. Wrongfully convicted individuals may also experience issues pertaining to fear, social isolation, self-blame, and social adjustment. Errors associated with wrongful convictions often result in a defendant being sentenced to unwarranted correctional punishment. To this end, understanding the nature and extent of wrongful convictions is critical, especially in today's society where there is a heightened focus on concerns for justice, safety, and system effectiveness.

**Keywords:** Wrongful convictions; Witness misidentification; False confessions; Justice administration

## Extent of the Problem

Extant information regarding the frequency of wrongful convictions often comes from case studies. While numerous wrongful conviction cases have been identified through the years, the quantifiable extent of the problem across jurisdictions remains ambiguous at best [1]. Broad estimates regarding the extent of wrongful convictions range from approximately 0.5% to 20% [1,2]. Considering that there are approximately 2.3 million individuals incarcerated in penal institutions in the United States [3], the estimates insinuate that between 11,500 and 46,000 individuals are incarcerated as a result of a wrongful conviction [1]. Moreover, a recent 2014 study, led by a group of attorneys and statisticians, conservatively estimated that 4.1% of inmates on death row in the United States were falsely convicted [4]. The authors also indicate that at least 340 innocent people that could have been exonerated were sentenced to death since the early 1970s. These estimations, in turn, have clear consequences for the criminal justice system as well as public policy decision-making.

Recent empirical research has brought a sense of urgency to the issue of wrongful convictions. Liebman, Fagan, West, and Lloyd reviewed over 5,000 capital sentences from 1973 to 1995 [5]. The authors found that during the targeted time period, there was nearly a 70% error rate in our capital punishment system. This error, according to the authors, often undercuts the reliability of the facts, evidence, and the sentence imposed to a defendant. Moreover, Leo and of she investigated system errors in the administration of justice and its impact on defendants [6]. Specifically, the authors identified 60 cases of false confessions that resulted from police interrogation. The authors contended that in 29 of the cases, the police-induced false confession resulted in a wrongful conviction. Stated alternatively,

nearly half of the cases originally identified by the authors resulted in the defendant being wrongfully convicted. This research, in part, helps to accentuate the importance of the problem identified in this report and the need to minimize, if not prevent its occurrence.

While research on the issue of wrongful convictions has flourished over the years, there is a limited amount of recent research that examines, in particular, the perceptions of individuals regarding the *prevalence* of wrongful convictions and the factors associated with it. Ramsey and Frank investigated the perceptions of prosecutors, defense attorneys, judges, and police officers regarding the frequency of wrongful convictions and errors associated with such a phenomenon [1]. A total of 798 individuals were surveyed. The study found that respondents perceived that wrongful convictions occurred in their jurisdiction approximately 1% of the time, whereas they believed that such convictions occurred nationally in 1% to 3% of all felony cases. The results also revealed that defense attorneys perceived that wrongful convictions occur more frequently than their professional counterparts. Moreover, Ricciardelli, Bell, and Clow examined student attitudes toward the frequency of wrongful convictions, whether such convictions cause people to lose faith in the justice system, and the extent to which individuals should be further educated about issues associated with wrongful convictions [2]. Using a sample of first and third year undergraduate students at a Canadian university, the authors found that respondents were more sensitive about issues associated with wrongful convictions.

Advancements in forensic science technology, most notably DNA evidence, have given dozens of wrongfully convicted defendants the opportunity to factually prove their innocence over the years. It is not that uncommon for cases involving wrongful convictions overturned by DNA testing to be replete with evidence indicating official

misconduct and procedural errors, among other possibilities. In fact, to date, 321 wrongfully convicted individuals have been exonerated post-conviction by use of DNA testing [7]. These exonerations were secured with assistance from private attorneys, organizations such as the Innocence Project, and from defendants themselves. The Innocence Project is a non-profit organization committed to securing the release of convicted individuals through DNA testing and bringing positive reform to the criminal justice system through raising awareness, conducting research, consulting with practitioners, and developing initiatives designed to prevent wrongful convictions [7]. But what factors lead to an innocent person being wrongfully convicted by the criminal justice system? It is to this area I now turn.

## Contributing Factors of Wrongful Convictions

The issue of wrongful convictions has received a substantial amount of attention from scholars. Research on this phenomenon was pioneered by Yale law professor Edwin Borchard. In 1932, Borchard published a ground-breaking work entitled *Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice* [8]. In this publication, Borchard outlined 65 different cases in which an innocent individual was wrongfully convicted. Throughout the book, Borchard also cited several factors, notably false confessions, eyewitness misidentification, faulty evidence, and prosecutorial misconduct, which lead to wrongful convictions. Addressing these factors, according to Borchard, is critical so that miscarriages of justice can be prevented.

Following the work of Borchard, research on wrongful convictions was sporadic for the next half century. Then, in 1986, Huff, Rattner, and Sagarin published an important study that examined wrongful convictions and the policy implications of such errors [9]. The authors utilized a survey methodology to examine the perceptions of various criminal justice personnel (all U.S. District attorneys and a sample of Ohio judges, public defenders, county prosecutors, sheriffs, and chiefs of police) regarding the frequency and causes of wrongful convictions. For data collection purposes, a database of nearly 500 wrongfully convicted defendants was utilized. The results revealed that nearly 75% of respondents perceived that wrongful convictions occurred in less than 1% of all felony convictions, whereas 20% of the sample indicated that they believed such convictions occurred between 1-5%. That data also revealed that eyewitness misidentification was perceived to be the leading cause of wrongful convictions.

While several factors are commonly attributed to the occurrence of wrongful convictions, eyewitness misidentification testimony continues to be the foremost cause of such convictions. Some scholars have investigated the concept of eyewitness testimony and how it relates to wrongful convictions. For instance, Wise and Safer examined the perceptions of U.S. judges and undergraduate students regarding factors that impact the reliability of eyewitness testimony accounts [10]. For data collection purposes, the authors surveyed 160 judges, 121 undergraduate students, and 57 law school students. The results revealed that law school students were more knowledgeable than judges and undergraduate students about factors associated with eyewitness testimony. It was also found that such knowledge was related to individual perceptions that may reduce the occurrence of wrongful convictions.

True confessions play a fundamental role in the legal system as sources of evidence in criminal cases. Such confessions, for instance, can help facilitate plea negotiations, thereby helping an already overburdened judicial system [11]. Given that most suspects do not instinctively confess to a crime, police personnel often utilize interrogation tactics in an effort to obtain true confessions. Police interrogations are important, given that physical evidence is obtained by police in less than 10% of all cases [12]. However, the problem arises when such interrogations lead to police-induced false confessions, which is another leading cause of wrongful convictions. The notion that an innocent person would admit to a crime that he did not commit is difficult to grasp for some people. Nonetheless, the fact remains that some individuals may, in fact, falsely confess. In some cases, the false confession may derive from a suspect being psychologically manipulated by overbearing police into giving a confession that was not a byproduct of their own free choice. In other instances, a person may feel unduly compelled to confess due to coercive actions of the police. Such tactics, in turn, may lead to innocent individuals being wrongfully convicted of a crime by virtue of a false confession.

The literature is replete with studies that have examined police interrogations and false confessions as contributing factors of wrongful convictions. Leo and Liu examined the perceptions of jurors regarding police interrogation techniques and its impact on confessions [13]. As evidenced in past research, interrogation techniques serve an important role in cases in which police officers attempt to elicit confessions from criminal suspects. However, when such techniques are misapplied to the innocent, it can produce false confessions. When this occurs, innocent individuals can suffer from a miscarriage of justice. The authors noted that police-induced false confessions are one of the foremost causes of wrongful convictions. Results of the study indicated that participants recognized that pressure and police interrogation techniques may be psychologically coercive. It was also found that participants were more apt to perceive interrogation methods as likely to elicit true confessions. Even with this, the authors found that individuals did not believe that police interrogation techniques were likely to elicit false confessions. This finding was largely unexpected, particularly given what past research has found on interrogation practices and false confessions.

Blair recruited a sample of university students to examine the role of interrogation tactics in producing false confessions [12]. Students were randomly assigned to either a treatment or control group. Participants were introduced to a computer-generated task and instructed that a picture of an individual would appear on the computer screen in front of them and then disappear after a few seconds. At the same time, ten other pictures of various people also appeared on the computer screen. The subjects were then instructed to select the picture of the person that he/she had previously seen. The researcher also notified subjects not to simultaneously push the Control, Alt, Delete keys while they were on the computer because it would make it crash. The researcher then left the room. The computer program was designed so it would intentionally crash at a certain point. After a few minutes, the researcher entered back into the lab and asked each subject why the computer program crashed. Each of the subjects indicated that they had not pressed the keys. Afterwards, each subject was presented with, and asked to sign, a false confession

statement. If participants refused to sign it, they were presented with another confession statement and were asked to sign it. The results of the study indicated that perceptions and individual differences explained a large amount of variance in false confessions. The author also found that interrogation techniques only explained a small amount of the variance in false confessions. This finding is largely inconsistent with prior research on the topic. It is also interesting to note that of the original 196 participants, 54 (27.6%) actually signed the confession statement, thus resulting in a false confession.

An additional factor behind wrongful convictions involves official misconduct. It is possible for criminal justice actors, namely judges, prosecutors and police officers, to abuse their authority to the extent to where it leads to a person being wrongfully convicted and falsely imprisoned. Official misconduct relates to a broad range of behaviors that can impact a criminal case. It can include improper or unlawful investigative practices, including perjury, threatening witnesses, fraud, torture, or coercive police interrogations. Such misconduct could also include a prosecutor intentionally withholding exculpatory evidence that points toward a defendant's innocence. In too many cases, criminal justice personnel may lose sight of their primary responsibilities, namely ensuring justice and seeking the truth, and instead focus exclusively on securing a conviction through a plea deal or the criminal trial process. This misguided effort, in turn, can lead to cases that involve wrongful convictions or other miscarriages of justice.

## Conclusion

The issue of wrongful convictions is worthy of significant debate and scholarship. With the extensive number of cases that confront the American criminal justice system per year, it is inevitable that innocent defendants will on occasion be wrongfully convicted and subsequently punished. The exact prevalence of wrongful convictions is unclear; the fact remains, however, that many innocent individuals will suffer unwarranted hardship and incarceration. In many cases, this will come as a result of a false conviction that stems from factors such as eyewitness misidentification, false confessions, faulty evidence and prosecutorial misconduct. To this end, it is often maintained that our criminal justice system is broken and is in need of systematic and

sustainable reform. We need to continue our efforts in addressing the causes that lead to wrongful convictions so as to protect the innocent and hold accountable those individuals who violate the law. The more we learn about wrongful convictions, the better we will be at preventing them, thereby ensuring the proper administration of justice throughout society.

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