

Wrongful Convictions:

Causes, Prevention, Impact and Outlook for Corrections

By Doris Wells

Author's Note: Findings and conclusions reported in this article are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Why are some innocent individuals convicted of crimes, while others are not? A new large-scale empirical study funded by the National Institute of Justice (NIJ) has begun to identify some answers regarding wrongful convictions.¹ The study has identified 10 statistically significant factors that distinguish wrongful convictions from “near misses” (cases in which an innocent defendant was acquitted or had charges dismissed before trial).

It is the first large-scale empirical study on wrongful convictions. Past research has used a “case study” methodology, which is only able to identify factors that are common in cases of wrongful conviction (“correlates”). In this study, researchers used the case comparison methodology — with a control group and logistical regression analysis (a statistical technique for estimating what factors would lead to a wrongful conviction instead of a rightful acquittal or dismissal).

Causes of Wrongful Conviction

During the three-year project, using both quantitative and qualitative analyses, the researchers examined 460 violent felonies that occurred between 1980 and 2012. In 260 cases, the convicted defendant was exonerated after being found factually innocent of the crime. In the comparison group of 200 cases, an innocent defendant had the

charges dismissed before trial or was acquitted at trial. The following factors were found to be statistically significant in explaining why an innocent defendant, once indicted, ends up erroneously convicted rather than released.

Wrongful convictions have a detrimental financial effect on the entire criminal justice system ...

A “punitive” state or death penalty culture. The punitiveness of the state was assessed by using the number of executions per the population of the state. States that executed a larger percentage of the population were considered punitive states, and defendants in punitive states were perceived to be at an increased risk of erroneous conviction once indicted. According to the researchers, “In a punitive legal culture, police and prosecutors may be more interested in obtaining a conviction at all costs (leading to greater Brady violations, etc.) and community pressure may encourage overly swift resolutions to cases involving serious crimes like rape and murder.” A Brady violation occurs when the prosecution withholds exculpatory evidence that could declare the defendant’s innocence.²

Age and criminal history of defendant. Young defendants were at an increased likelihood of conviction. “A younger defendant will often not

have the sophistication or knowledge to aid in his defense and may be slow to realize the gravity of the situation,” the researchers said, or may have a more difficult time proving an alibi. With respect to prior criminal history (e.g., being known to the police or having a mug shot), the expert panel involved in the study noted that this may bias police and prosecutors into prematurely narrowing the focus and ignoring potentially exculpatory evidence (e.g., having tunnel vision).

Weak prosecution cases; prosecution withheld evidence. Many weak prosecution cases lead to wrongful convictions. A weak case may limit the ability of the prosecution to conduct an exhaustive investigation because there are not many facts present. It may also lead to potential Brady violations if the prosecution did not recognize potential exculpatory evidence.

Strength of defense and using a defendant’s family member as a witness. As expected, a stronger defense tended to lead to a dismissal or acquittal of an innocent defendant. “Notably, the type of the defense attorney [private or public defender] was not significant in either the quantitative or qualitative analysis,” researchers said. The researchers concluded that a weak defense; a weak case presented by the prosecution; and the failure to recognize and disclose exculpatory evidence many times work in conjunction with each other. For example, the expert panel participating in the study’s qualitative component affirmed that weak facts may encourage prosecutors to engage in certain behaviors that bolster factors that can lead to an erroneous conviction. “In several of the erroneous convictions, a prosecutor — con-

vinced of the defendant's guilt despite a lack of conclusive proof — failed to recognize and turn over exculpatory evidence or enlisted a noneyewitness to provide corroborating testimony," the researchers said. "These types of actions compound previous errors or misconduct in the case, resulting in an escalation of commitment."

A weak defense often has to resort to using family members to testify as character witnesses. The researchers also found that a higher risk of erroneous conviction was statistically more likely in cases in which a defendant's family member testified as a witness.

Misidentification of the defendant.

Although the overall frequency of misidentifications of defendants was not significantly different in erroneous convictions versus near misses, a significant difference did emerge when misidentifications were broken down as "intentionally false" or "honestly mistaken." That is, "Malicious implication of a defendant led to a decreased likelihood of erroneous conviction ... but an honest, inadvertent mistake increased the likelihood of erroneous conviction."

Errors in the presentation of forensic evidence. Errors in the prosecution's presentation of forensic evidence was correlated with an increased likelihood of erroneous conviction. These errors most often occurred in testimony or interpretation of evidence, rather than in actual scientific testing. "Such errors include neglecting to provide the jury with key information, such as the victim's blood type, when it would mask the perpetrator's blood type; overstating the inculpatory nature of the evidence by providing inaccurate or nonexistent statistics; and misstating the certainty of the results when the forensic technique — such as a bite mark, scent or fiber analysis — does not allow for it," the researchers said.

Lying by noneyewitness. Having an individual who was not present at the crime scene provide corroborating testimony increases the occurrence of wrongful convictions. Surprisingly, the study found that a number of factors that are traditionally associated with miscarriages of justice did not present a statistically significant risk

of a wrongful conviction versus a "near miss." These included the race of the defendant; snitch testimony; false confessions; police error; and many eyewitness testimony variables — such as interracial identification, certainty of the witness and type of identification procedure.

Recommended Prevention Measures

The researchers agreed that prevention should apply to individuals across the whole criminal justice spectrum and recommended the following strategies:

- Create checklists for investigations — checklists that cover the kinds of things that need to be investigated before the case goes forward (e.g., checking out a work alibi before moving the case forward);
- Perform DNA tests early in the case to weed out innocent suspects, if costs allow;
- Place a prosecutor at a police department to help evaluate the evidence as it comes in. The prosecutor will be more qualified to recognize exculpatory or faulty evidence that could prevent conviction;
- Have prosecutors establish open-file discoveries, where the defense has open access to the evidence file and the opportunity to spot exculpatory or faulty evidence that could declare a suspect's innocence;
- Provide a threshold of evidence to support why a suspect is in a lineup. In other words, show the court some strong evidence to support someone being in a lineup and in jeopardy of being misidentified; and
- Establish a post-error review of the case with the intention being not to blame, but to find out what happened and to prevent it from happening again.

The researchers believe that the model they developed could be used to predict future cases of erroneous conviction across the U.S. with a high degree of accuracy — 91 percent.

They conclude that what separates an erroneous conviction from a "near miss" is not just a list of individual factors, but more important, the process by which initial errors remain undetected or uncorrected and lead to system failure. Note that the study does not address how a factually innocent person enters the criminal justice system in the first place — just why one group of innocent people is convicted and the other is released after an initial erroneous indictment. Why the innocent are convicted in the first place could be a significant topic for future research in this area.

Impact and Outlook for Corrections

Wrongful convictions have a detrimental financial effect on the entire criminal justice system, especially corrections. Correctional facilities, currently grappling with enormous budget shortfalls, are forced to bear the financial burdens of providing housing, treatment and training for individuals who are unjustly convicted. For example, according to a recent NIJ-funded study, researchers found that in California, it costs approximately \$129 to house an inmate for one day.³ Imagine the cost when this figure is multiplied many times over; and imagine the cost savings if these individuals are not imprisoned at all, or exonerated.

NIJ is currently developing an ongoing, multifaceted program to understand the causes of wrongful conviction and encourage the development of policies to identify wrongfully convicted individuals and prevent the systemic errors that are likely to contribute to erroneous convictions. It is important for corrections officials and staff to understand the latest developments on this issue, since the corrections community may play a role in helping to correct errors impacting a wrongfully incarcerated or supervised individual. At this time, there is no clear superior practice for identifying and notifying an incarcerated individual that his or her case may warrant a post-conviction review. States are

applying methods that are most suited to their unique situations. Corrections administrators and staff may often have a vital role to play in supporting these individuals as they go through the convoluted process of seeking exoneration.

Understanding the causes of wrongful convictions may help correctional officers focus on such cases and become more willing to assist in exonerations, thus eventually saving their agencies money in reduced housing costs. Correctional facilities become the end result (the repository) for the wrongfully convicted. Correctional officers may now be called upon to help bring justice to these wrongfully convicted individuals. They may be able to provide input from a correctional perspective that can help streamline the exoneration process and save their facilities money.

ENDNOTES

¹ Gould, J.B. and J.R. Firman. 2013. Wrongful convictions: The latest scientific research and implications for law enforcement. Recorded seminar, retrieved from <http://nij.ncjrs.gov/multimedia/video-gould.htm>.

Gould, J.B., J. Carrano, R. Leo and J. Young. 2013. *Predicting erroneous convictions: A social science approach to miscarriages of justice*. Washington, D.C.: National Institute of Justice. Retrieved from <https://ncjrs.gov/pdffiles1/nij/grants/241389.pdf>.

² *Brady v. Maryland* (U.S. 1963) held that a prosecutor under the fifth and 14th amendments has a duty to disclose favorable evidence to defendants upon request, if the evidence is “material” to either guilt or punishment.

³ Researchers at Development Services Group Inc., of Bethesda, Md., and Old Dominion University in Norfolk, Va., conducted the study of California parolees. To read their final report to NIJ titled *Monitoring High-Risk Sex Offenders With GPS Technology: An Evaluation of the California Supervision Program*, visit <http://www.ncjrs.gov/pdffiles1/nij/grants/238481.pdf>.

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