Serving True Justice – Exposing and Overhauling Criminal Justice Procedures Leading to
Wrongful Convictions

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Serving True Justice – Exposing and Overhauling Criminal Justice Procedures Leading to Wrongful Convictions

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Abstract

Since the early 1990s the United States has seen a significant increase in both the number of exonerations of innocent defendants as well as the academic scholarship surrounding wrongful convictions. From the invention of post-conviction DNA processing has sprouted a newfound awareness within academic circles and the general public around the increasing pervasiveness of erroneous convictions. This paper identifies the leading correlatives that contribute to wrongful convictions within the United States, which include eyewitness misidentification, false confessions, investigator bias, and forensic error. The purpose of this research is to determine how erroneous convictions can be reduced and prevented moving forward. To this aim, the following literature review provides an in-depth analysis of previous research conducted on each of these factors. Furthermore, the paper concludes with procedural and legislative recommendations to overhaul various shortcomings within the criminal justice process that increase the likelihood of a wrongful conviction.
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Section I. Introduction

Ever since Edwin Borchard’s 1913 work in the *Journal of the American Institute of Criminal Law and Criminology*, the topic of wrongful convictions has been dissected and debated within academic circles. While examining the European approaches to unjust convictions, Borchard (1913) declared that false confessions in particular were poorly understood by researchers (Batts, deLone, & Stephens, 2014). In the years since, scholars have asserted that the United States criminal justice system (among those of other countries) falls short in its ability to accurately determine guilt (Medwed, 2005). To many researchers, a prevalence of erroneous convictions represents the antithesis of justice, where the act of punishing a factually innocent individual is reflective of a failed justice system (Gould, Carrano, Leo, & Young, 2013). From this discussion sprouted multiple academic publications on the topic of wrongful convictions. Almost a century after Borchard (1913), a critical evaluation on the level of understanding of wrongful convictions was published by professors Samuel Gross and Barbara O’Brien, who similarly argued that researchers fail to comprehend the intricacies of erroneous convictions (Leo, 2005). The assessments of Borchard (1913) and Gross and O’Brien (2008) proved correct; historically, scholars have documented their theories on the contributing factors leading to wrongful convictions, but they lacked substantial evidence to support such claims to any degree of scientific certainty (Batts et al., 2014). The emergence and advancement of post-conviction DNA testing since the 1990s, however, has armed scholars with such evidence. Coupled with the voices of hundreds of exonerated individuals who have been proven innocent beyond a reasonable doubt, this substantiation has allowed researchers to launch a fresh assault on one of the foremost shortcomings of contemporary criminal justice.
Uniquely, this breakthrough served to transform the role of criminal justice academia from one of pure research to that of an advocacy for change (Gould et al., 2013). The initiation of the Innocence Project in 1992 by Peter Neufeld and Barry Scheck at Cardozo School of Law epitomizes this intersection. Led by a team of professors, attorneys, and academics, the Innocence Project maintains its mission of exonerating wrongly convicted individuals through DNA testing and further reforming the criminal justice system responsible for their unjust imprisonment. To date, the Innocence Project has helped represent and exonerate countless falsely convicted individuals over the last three decades (Innocence Project, n.d.).

Prior to the emergence of DNA analysis, the assumption from the general public (i.e. anyone who do not conduct research specific to wrongful convictions) towards criminal justice was that innocent individuals were rarely convicted, especially in capital cases (Leo, 2005). Since 1989, however, there has been a growing realization in popular culture and among criminal justice professionals and policymakers alike that wrongful convictions are more common in American criminal justice than previously thought (Findley, 2011). As a result of this awakening, very few occurrences within criminal justice today are subjected to the same amount of scrutiny as the exoneration of a wrongfully convicted defendant (Batts et al., 2014). The vigorous outcry from policymakers, media, and the general public whenever an innocent defendant is exonerated symbolizes the gravity of the topic and exemplifies the demand that action be taken to prevent such miscarriages of justice in the future (Medwed, 2005).

Despite the slow progression of public awareness surrounding the topic, wrongful convictions have existed and plagued the United States criminal justice system for centuries. The first documented cases date back as far as the Salem witch trials of the late 1600s, where more than 200 people were accused and prosecuted for witchcraft in colonial Massachusetts. Criminal
proceedings at the time included court cases composed of indictments of the accused, the presentation of evidence from prosecutors, and the utilization of grand juries – similar to how such systems operate today. During the Salem witch trial proceedings, 14 men and 5 women were found guilty of the practice of witchcraft and executed by hanging (Francis, 2005).

When the first exoneration case through DNA testing occurred in 1988, exonerations were still rare in occurrence (Gross & Shaffer, 2012). It would take many more years for DNA profiling to become a standard in forensic evidence gathering. Criminal investigators would compare a criminal suspect’s profile (such as a fingerprint) to forensic evidence at the scene with the goal of determining the likelihood of the suspect’s involvement in a crime – and to rely on this evidence in court (Gould, 2007). Today, the majority of exonerations occur when post-conviction DNA testing is utilized to retroactively establish the innocence of a defendant (Innocence Project, n.d.).

One of the most notorious DNA exoneration cases was the Central Park jogger case in New York, where five Black and Latino teenagers were convicted on the basis of false confessions for the brutal, widely publicized rape of a young woman jogging in Central Park. The teenagers were tried as adults and sentenced to lengthy prison terms, despite many deficiencies in the prosecution (Batts et al., 2014). Their exoneration years later came when the true perpetrator confessed to the crime – a confession corroborated by DNA evidence. The Central Park Five case encapsulates the utilization of DNA evidence to establish the innocence of not one, but multiple defendants who had been erroneously prosecuted, convicted, and incarcerated years earlier (Garrett, 2011). In other cases, DNA profiling has also led to the release of innocent individuals from prison after serving many years on death row (Cohen, 2003). To date, more than 365 individuals have been exonerated across 37 states due to post-
conviction DNA testing. Furthermore, a total of 5,065.5 years of incarceration have been served by falsely accused exonerees, with the average amount of years served by each individual equating to 14 years (Innocence Project, n.d.). These statistics, while significant, do not paint the full picture, as they fail to include the increasing number of wrongly convicted individuals who have established their innocence through non-DNA means of exoneration in the last twenty years (Gross & Shaffer, 2012).

What such data trends show is that there has been little to no decrease in the steady stream of defendants whose innocence is eventually established by post-conviction DNA testing (Garrett, 2011). This comes at a time when the science and technology surrounding the criminal justice system are advancing at an unprecedented rate. DNA analysis, cellphone triangulation, and video facial recognition are increasingly common contemporary practices that aid criminal justice officials in their mission to correctly identify criminals (Gross & Shaffer, 2012). Yet despite these advancements, and despite the increase in scholarly focus and public understanding of exoneration research, the US legal system continues to exonerate wrongfully convicted individuals at an unprecedented rate.

This paper will primarily serve to review contemporary research and raise awareness around the correlatives and causes of violent crime exoneration in the United States – including eyewitness misidentification of suspects, false confessions, racial biases, tunnel vision, and forensic error – in an attempt to determine whether wrongful convictions are preventable. Then, by exposing procedural weaknesses within the criminal process pipeline relating to each of these subtopics, this research will establish various recommendations for change that may serve to reduce and prevent erroneous convictions moving forward.
Section II. Eyewitness Identification

According to the Innocence Project, the most recurrent contributor to wrongful convictions is eyewitness misidentification. Across the country, over three-quarters of known erroneous convictions are, at least in part, the result of incorrect eyewitness testimony – making it the single greatest link to wrongful convictions in the United States (Garrett, 2011). Further research has shown that 32% of eyewitness misidentification cases have involved multiple misidentifications of the same person. Despite these facts, eyewitness identification remains one of the most universally accepted investigative techniques and, in the eyes of the court systems, one of the most influential forms of evidence brought against defendants charged with violent crimes (Innocence Project, n.d.).

Eyewitness identification occurs in many forms during various points throughout the criminal process. Typically, an eyewitness is a person who has seen a crime or has knowledge of its commission (Innocence Project, n.d.). He or she may be a victim, a bystander, or even a participant in the crime who will present information in exchange for a lesser sentence (Clark & Godfrey, 2009). The most common type of eyewitness identification is pretrial identification, of which there are three fundamental types. In a police lineup, the witness is asked to identify the suspect from a group of individuals (decoys); in a showup, often occurring at the scene of the crime, the witness is asked to identify the suspect when no other decoys are present; lastly, in a photographic identification, the witness is asked to select the picture of the suspect from an array of photos (Wells & Quinlivan, 2009). Less commonly, eyewitness identifications may also occur during the trial, where the witness is similarly brought forth to identify the suspect for the record (Clark & Godfrey, 2009).
Malleability of Eyewitness Memory

To better understand the debate over eyewitness reliability, it is worth reviewing psychological research on human memory itself. Conclusive research exposing the fragility of human memory has been well-documented since the 1970s (Loftus & Pickrell, 1995). In one experiment, cognitive psychologist Elizabeth Loftus explored the misinformation effect, which happens when a person’s memory recall becomes less accurate due to post-event information. Loftus found that she could manipulate the memory of her experimental subjects by altering the wording of her questions or by providing misinformation. Participants were shown a slide sequence of a traffic accident and were asked a sequence of questions on the event. In one instance, participants were asked, "How fast was the white sports car going when it passed the barn while traveling along the country road?". This question was misleading in that the car did not actually pass a barn, yet multiple participants reported seeing the barn in the slideshow (Luus, 1991). In a separate portion of the study, post-event information similarly convinced participants that they had become lost in a shopping mall as children when no such experience actually occurred (Loftus & Pickrell, 1995).

This phenomenon of false memory implantation has already made a dramatic impact on the criminal justice system. During what was known as the repressed-memory epidemic of the 1990s, adult patients undergoing psychotherapy began recovering childhood memories of sexual abuse committed by their parents (Wixted, Mickes, & Fisher, 2018). Incredibly, this led to the charge and conviction of multiple parents solely based on the evidence of these long-repressed childhood memories recovered during psychotherapy. Only later did it become obvious that many of the “recovered” memories were actually unintentionally implanted by psychotherapists as they repeatedly probed their patient’s childhood memories (Loftus & Pickrell, 1995). The
conclusion drawn in hindsight of the repressed-memory epidemic exposed how ordinary criminal investigation proceedings can have the effect of contaminating the memory of eyewitnesses, with the result being the misidentification of innocent suspects or, in this particular instance, the reporting of events that did not factually occur.

In light of research demonstrating the malleability of memory, coupled with the historic consequences as it relates to the legal system, it is perhaps not surprising that many psychological professionals now deem eyewitness memory to be unreliable (Wixted, et al., 2018). Wells and Quinlivan (2009) pinpointed and evaluated the precise flaws that stem from the legal system’s overreliance on eyewitness identification, drawing multiple conclusions. Firstly, it was uncovered that inaccuracies often occur at the very instance when a violent crime occurs, as the trauma of the attack can inevitably alter the victim’s perception of the situation. Being confronted by a weapon or facing down the barrel of a gun, for example, can diminish the victim’s recall of the perpetrator’s face and other physical attributes (Gould et al., 2013). When this occurs, evidence gathering is tarnished from the start. Critical time is lost when investigators attempt to piece together the crime based on shaky eyewitness testimony (Innocent Project, n.d.). In many investigations, the pursuit of false leads becomes a focal point for the investigation and innocent persons are mistakenly targeted as suspects (Wells & Murray, 1983).

Clark and Godfrey (2009) supports these findings with a review of the effects of memory on correct versus incorrect identifications of perpetrators. It cites that various nonspecific limitations of memory – such as failures to encode, store, or maintain information over time – will decrease the probability of correct suspect identification by an eyewitness. The presence or absence of stress, the duration of exposure to the violent event, and the amount of time that passes from the event of the crime to the event of memory recall all influence the probability of
correct suspect identification. Conclusively, memory is less accurate when exposure durations are shorter, when stress is higher, and when retention intervals are longer, and the result is a decrease in eyewitness accuracy and reliability.

The idea that memory errors can occur immediately, during the event of a crime, might be reason enough to put the efficacy of eyewitness testimony into question, yet research further identifies how post-event factors also present implications to memory recall (Clark & Godfrey, 2009). In a police lineup, for example, if the perpetrator has changed his or her appearance since the day of the crime, correct identification probability decreases. Furthermore, if an innocent suspect happens to appear in clothing akin to that of the perpetrator (or if his or her appearance resembles the perpetrator in some other fashion) correct identification probability is similarly diminished, and the risk of falsely identifying an innocent suspect is intensified (Gould et al., 2013).

**Cross-Race Identification Bias**

Another factor that augments eyewitness unreliability is cross-race identification bias, which describes the decreased ability of people of one race to successfully recognize and recall the faces of people of another race (Behrman & Davey, 2001). In a study looking specifically at eyewitness testimony, a group of racially diverse participants were asked to watch a video recording of a property crime and then, within the next 24 hours, identify the suspect out of a photo lineup. Most participants failed to identify the correct suspect (many even declared that the perpetrator was not in the lineup), yet successful identification rates were higher among participants that shared the same race as the culprit (Josephson & Holmes, 2008). In a separate study that analyzed juror sensitivity to the cross-race effect, it was found that most jurors when
deciding a verdict did not factor in the race of witnesses nor the potential effect that cross-race biases might have on witness reliability (Abshire & Bornstein, 2003).

**Eyewitness Suggestiveness**

Wells & Quinlivan (2009) further explored how eyewitnesses can be regularly influenced by suggestiveness, which can occur at multiple stages during the identification process. In a lineup scenario, law enforcement officers typically know who the suspect is, as charges have already been filed by prosecutors at this point (Clark & Godfrey, 2009). Naturally, there is a psychological inclination for investigators to aid witnesses in their selection of the culprit (Wells & Murray, 1983). This gives way to the dangerous phenomenon of suggestiveness, or influence. In many jurisdictions, police present witnesses with instructions prior to a lineup or showup. Ideally, these instructions clearly outline two key components: (1) that the perpetrator may or may not be in the lineup, and (2) that the witness is under no obligation to select anyone. Such instructions are considered to be unbiased – they betray no suggestion of the perpetrator’s presence in the lineup – and their importance cannot be understated. The absence of unbiased direction, however, gives way to officers and other observers (whether purposefully or otherwise) providing cues to an eyewitness about which suspect to select (Wells & Quinlivan, 2009). This phenomenon is further heightened by the fact that an eyewitness will naturally assume that the suspect is present in the lineup, which can lead the witness to make a selection despite doubts (Innocence Project, n.d.). The presence of biased suggestiveness (and/or the lack of unbiased instruction) not only increases a witness’s willingness to make an identification, but also increases the probability that that identification is incorrect (Clark & Godfrey, 2009).
Law enforcement offices may also employ suggestive selection practices that make a particular suspect stand out among the others, which is particularly harmful with relation to cross-race identification. For example, Gould (2007) indicates multiple instances of photographic identification where the suspect is the only individual to display a particular hair, skin, or eye color. Even more overtly, one scenario exposes officers displaying all photos in black-and-white except for the colorized photo of their intended suspect. Such practices can encourage an eyewitness to make “relative judgements,” where they select the individual who most closely resembles the perpetrator, as opposed to using independent judgment to ensure that the selected individual is actually the perpetrator.

Suggestiveness can also occur post-selection, taking place directly after a witness has identified a suspect. Officers can reinforce a witness’s selection by offering a verbal comment or displaying some form of body language. This can be as subtle as an officer praising the witness for a “good job” in the identification, or as overt as an investigator thanking the witness for “confirming our suspicion” (Gould et al., 2013). While these gestures are often inadvertent, they run the risk of giving eyewitnesses an elevated sense of confidence in their predictions. Moreover, witnesses are oftentimes unable to recognize when their selections have been influenced by suggestiveness (Wells & Murray, 1983).

**Eyewitness Confidence**

The principal issue with suggestiveness is that it gives witnesses a false sense of confidence in their own predictions (Wells & Murray, 1983). Put simply, suggestive or reinforcing comments doled out by investigators can raise a witness’s confidence and diminish doubts. Research shows that there is little to no relationship between an eyewitness’s confidence
of his or her identification and the actual accuracy of the report. Victims are often quite certain in their identification, yet this has little impact on the actual correctness of their testimony (Gould et al., 2013). This can have dramatic repercussions for the investigation, as an eyewitness’s perceived confidence remains a primary cue that legal system professionals rely on as the basis for eyewitness credibility. In fact, the system is designed so that jurors depend on eyewitnesses to provide them with an accurate description of witnessed events in order that they may render a correct verdict (Luus, 1991). Verdicts are inevitably influenced by the certainty expressed by eyewitnesses. As one survey suggests, 56% of jurors believe that eyewitness confidence is a strong indicator of testimony accuracy (Brigham & Bothwell, 1983). In another study, jurors admitted to being swayed by witnesses based on factors such as body language, confident speech, and the status of being an “expert witness” (Abshire & Bornstein, 2003).

To summarize, research on memory malleability, cross-race identification bias, officer suggestiveness, and eyewitness confidence reveals an abundance of difficult-to-control factors that can inadvertently affect the accuracy of eyewitness identification, thus lending credence to the danger of relying on eyewitness testimony within criminal justice proceedings.

**Section III. False Confessions**

It is accepted both in academic circles and in criminal justice application that evidence in the form of a confession is one of the most relied-upon and important forms of evidence. Its presence is often integral, if not necessary, for the conviction of a criminal offender in court (Innocence, Project, n.d.). Because of this, the main objective of investigators when questioning a criminal suspect is to elicit a confession (Russano, Meissner, Narchet, & Kassin, 2005). To this
end, criminal investigators and other law enforcement officers are trained to utilize interrogation tactics and other interview strategies that encourage guilty parties to admit to their guilt. Studies have shown, however, that confessions are often administered by both guilty and innocent parties (true and false confessions) (Gould et al., 2013). In fact, recent data shows that 28% of all postconviction DNA exoneration cases in the United States have involved a false confession (Innocent Project, n.d.). Additionally, approximately two-thirds of DNA exonerations in homicide cases have a documented presence of false confessions (Gould, 2007).

To the general public, it might seem counter-intuitive that an innocent person would confess falsely to a crime they did not commit. Yet research on the topic has uncovered multiple factors contributing to or causing false confessions, including 1) a real or perceived intimidation of the suspect by law enforcement, 2) the use or threat of force by law enforcement during interrogation, 3) a compromised mental state and reasoning ability of the suspect, whether by stress, hunger, exhaustion, limited education, or mental limitations, 4) devious interrogation tactics, such as the use of false, incriminating evidence, and 5) the fear on behalf of the suspect that failing to confess will yield a harsher punishment (Innocence Project, n.d.). In most instances, police-induced false confessions are the product of psychological coercion (Gross & O’Brien, 2008). Under certain interrogation conditions, police are more likely to elicit false confessions, and certain types of individuals are more vulnerable to interrogation pressure and, thus, are more easily manipulated into giving false confessions. Both of these factors are worth exploring in greater detail.
**Suspect Identification**

Logically, false confessions are elicited only when police mistakenly interrogate innocent suspects, which highlights the gravity of proper suspect identification. As it relates to false confessions, the decision of whether or not to interrogate a suspect is a critical step within the criminal justice pipeline. Contributing factors such as eyewitness identification play a pivotal role and can oftentimes exacerbate the interrogation of an innocent suspect. If the decision is made incorrectly, the consequences are severe; once a suspect is targeted, subsequent steps in the investigative process, including interviews and interrogations, are typically conducted under the presumption of guilt (Gould, 2007).

Police mistakenly classify innocent persons as guilty suspects largely because of the investigative training they receive (Gould et al., 2013). Through various tactics learned and training exercises conducted, officers are engrained with the sense of confidence that they can differentiate between truth and lie at an abnormally accurate rate. Being equipped with the tips and tricks to pinpoint a lie in many cases appears to convert investigators into human lie detectors. Detectives are taught that the following behaviors are symptomatic of deceptive (and thus guilty) suspects: averting one’s gaze, slouching one’s shoulders, the shifting of body posture, touching one’s nose, adjusting or cleaning one’s glasses, the biting of fingernails, and scratching the back of one’s head. Furthermore, suspects who come across as shielded, uncooperative, and who offer far-reaching denials are also generally believed to be lying (Gould, 2007). Yet social sciences research across a variety of contexts indicate that humans, in essence, make poor lie detectors. At best, the chances of making a successful judgment of whether or not a person is lying is 50% (Leo, 2009). This low accuracy is alarming, especially given how routine it is for investigators to attempt to separate the guilty versus the innocent. Kassin and
Wrightsman (1985) further bolsters this revelation by concluding that investigators cannot accurately distinguish between truthful and false denials of guilt at levels greater than chance (50/50). Yet criminal justice proceedings continue to rely on this gamble, weighing heavily on the assumptions of investigators as a determinant of factual guilt.

Regrettably, obtaining a confession is most imperative for investigators in cases where there exists little to no other evidence implicating the suspect (Leo, 2009). The unfortunate truth is that suspects are most likely to be pressured by authorities to confess when less evidence is presented against them. In high profile cases for example, the pressure for detectives to solve the crime accentuates the desperation to obtain a confession. Not surprisingly, the majority of documented false confession cases to date occur in homicide and rape crimes for this reason (Innocence Project, n.d.).

**Interrogation Practices**

Research shows that individuals are more likely to admit wrongdoing (whether truthfully or falsely) in response to anticipated consequences (Yang, Guyll, & Madon, 2017). Furthermore, it has been shown that nearly all documented false confessions in exoneration samples and in literature are the result of police coercion (Drizin & Leo, 2004). Coupling these findings with Stanley Milgram’s research on obedience in the 1960s, scholars have come to understand that most human beings are obedient to authority (Kassin, 1997). Milgram’s research has since been extrapolated upon to further explore why people might waive their *Miranda rights* and incidentally provide self-incriminating evidence, or even go as far as to confess to a crime they did not commit (Kassin, 2017). Stemming from this has arisen the understanding that false confessions are embedded in basic human psychology. As such, most elicitations of false
confessions involve psychological coercion (Gross & O’Brien, 2008). “Old school” interrogation methods such as food, sleep, water, etc. deprivation, induced fatigue or exhaustion, and incommunicado interrogation were traditionally relied upon to elicit a confession, yet, since the 1940s, such methods have become rare within domestic police interrogations. Today, police interrogation strategies chiefly rely on implicit or explicit promises of leniency and/or implicit or explicit threats (Leo, 2009). This dichotomy is best characterized by a particular interrogation strategy known as the Reid Technique.

Reid Technique

Cleary & Warner (2016) conducted research on police training and interrogation practices and identified the Reid Technique as the most common interrogation strategy that police officers are trained to utilize. The Reid Technique, similar to the “good cop, bad cop” mantra, utilizes both maximization techniques (where officers confront the suspect with incriminating false evidence and refuse to accept the suspect’s denials) and minimization techniques (where officers offer sympathy and moral justification, thus implying lesser culpability) to provoke a confession. Furthermore, it has been stated that the Reid Technique is effective at breaking down a suspect’s resistances and eliciting a confession (the creators of the technique boast an 80% confession rate). This claim, however, has not been scientifically verified (Kassin, 2017), and concerns have been raised regarding the technique’s correlation with false confessions (Kassin, 1997). A common hypothesis for this association is the belief that investigator bias (also known as tunnel vision or guilt-presumption) influences the manner in which investigators treat and interview suspects. Narchet, Meissner, and Russano (2010) found that among instances when investigator bias was present, investigators used increased amount of
minimization tactics which led to an increased likelihood of false confessions. Despite these findings, the Reid Technique remains the most commonly used interrogation strategy in American law enforcement today (Cleary & Warner, 2016).

**Vulnerable Groups**

While psychological coercion is the primary cause of police-induced false confessions (Gould, 2007), certain types of individuals vary in their ability to withstand interrogative pressures and thus differ in their vulnerability to eliciting false confessions (Gross & O’Brien, 2008). Highly gullible and compliant individuals, for example, oftentimes too freely divulge information and may even falsely confess simply to appease investigators (Gould et al., 2013). The developmentally disabled are also more likely to confess falsely, for a variety of reasons. Studies show that individuals who demonstrate symptoms of mental illness are 67 times more likely to be arrested by police than persons without such symptoms. Persons suffering from mental illness – particularly involving psychotic disorders – are significantly less likely to understand their interrogation rights (such as their rights against self-incrimination and their right to council) (Redlich, 2004), and are more likely to elicit a confession in response to accusatorial police pressure (Kassin, 1997). Despite these findings, legal safeguards for people with mental disorders afford little protection during the investigation phase. In *Colorado v. Connelly*, the U.S. supreme court ruled that mental illness alone was insufficient grounds for finding a confession to be coerced, and that it must be proven that investigators relied on coercive techniques during the interrogation (Redlich, 2004). Barring such evidence, confessions are deemed to be the product of the defendant’s free will and rational intellect, regardless of the state of their mental health.
Youth is also a determinant of false confession vulnerability (Kassin, 1997). Kostelnik and Reppucci (2009) identified a lack of sensitivity among officers towards the developmental maturity of young suspects, further exposing the liabilities of aggressive interrogation strategies. Investigators studied in this research, trained to use the Reid Technique, were witnessed relying heavily upon coercive pressuring to extract information and confessions from young suspects and displayed little to no variance in their tactics based on the age of the defendant. This is particularly harmful as younger defendants regularly lack the sophistication and knowledge to aid in their own defense and may be slow to realize the gravity of their situation (Kassin, 1997). They may also have a harder time providing a credible alibi (Gould et al., 2013). Further uncovered in research on juvenile cases was the fact that a defendant’s prior criminal history created certain biases that caused police and prosecutors to prematurely narrow the focus on the defendant and ignore potentially exculpatory evidence (Gould, 2007).

Section IV. Interrelated Themes

As mentioned previously, the prevalence of erroneous conviction is perpetuated and compounded when multiple procedural errors occur within the criminal justice pipeline (Gould et al., 2013). Besides the crucial, albeit independent, factors such as eyewitness misidentification and false confessions, there exist many interrelated (or “background”) themes that exponentiate the probability of erroneous convictions. For example, inconsistencies pertaining to race appear at many stages in the criminal justice process, including suspect identification, prosecution, and sentencing (Gould et al., 2013). Racial and ethnic minorities are disproportionately more likely than whites to be stopped and arrested by police, and are furthermore likely to receive harsher,
longer prison sentences during the conviction phase (Medwed, 2005). Research further indicates that mistakes in eyewitness identification are more probable when the eyewitness and suspect are of different races (Behrman & Davey, 2001). Yet another problematic interrelated theme transpires when all-white juries deliberate on cases involving non-white defendants, as racial assumptions and biases can unfairly affect a juror’s judgment and decision-making. There exist various documented cases of all-white juries erroneously convicting Black men based on questionable evidence and inadequate deliberation (Gould, 2007).

**Tunnel Vision**

Other recurrent themes, predominantly tunnel vision and forensic error, are considered to be particularly interrelated due to their presence and influence at multiple phases of the criminal justice process. Tunnel vision explains the psychological phenomenon where an individual, once he or she becomes convinced of a conclusion, is less likely to consider and accept alternative or conflicting outcomes (Gould et al., 2013). Specific to law enforcement, criminal investigators may fall trap to focusing exclusively on evidence pointing to a particular suspect, while ignoring or even suppressing evidence that hints at a different culprit. In the setting of criminal justice, tunnel vision is commonly referred to as investigator bias (Gould, 2007). Interestingly, tunnel vision may help explain how one error often leads to additional errors in an erroneous conviction. When an investigator becomes “locked on” to a suspect, this bias can contribute to and facilitate the collapse of subsequent criminal justice processes. In essence, the biases that tunnel vision creates can dismantle the rigorous fact-checking and evidence testing that makes the investigative processes function effectively.
It can be difficult to quantify tunnel vision prevalence as it relates to erroneous convictions, yet its abundance and subsequent ramifications within the criminal justice system are well documented. Research exposes how criminal justice professionals repeatedly focus on a singular suspect, select and filter the evidence that will “build a case” for conviction, all the while ignoring any suppressing evidence that points towards innocence. Gould (2007) reveals many such instances: in one example, a forensic scientist conducted a hair comparison and saw such a close match between the hair found at the crime scene and that of a particular suspect that he disregarded fingerprint analysis pointing towards a different conclusion. Other instances include a prosecutor becoming so satisfied with a suspect’s confession that he discounted forensic evidence that incriminated another, and a defense lawyer who considered the prosecution’s case so immaculate that he neglected to look deeper into government files providing further details on the case. Each of these illustrations help explain how an innocent individual can be named as a suspect and prosecuted all the way to a wrongful conviction. Such research, coupled with the many case studies of recent wrongful convictions, show that errors attributable to tunnel vision are indeed real and have grievous consequences (Gould, 2007).

**Forensic Error**

Certain types of forensic evidence now serve as a leading catalyst to exonerate wrongfully convicted defendants, yet this form of evidence is not immune to contamination. The Innocence Project indicates that forensic error is present in 50% of DNA exonerations nationwide (Innocence Project, n.d.). Common forms of forensic evidence most susceptible to contamination include fingerprinting, hair and bodily fluid analysis, foot or tire impressions, and gunfire residue (Gould et al., 2013).
Specifically, contemporary research recently debunked the efficacy of fingerprinting and hair analysis as means of matching a suspect to a crime (Gould, 2007). It was determined that a lack of standards for how crime scene investigators and forensic scientists should properly declare a “match” makes such forms of evidence unpredictable. In fact, a Maryland judge recently ruled that fingerprint identification is not sufficiently reliable as an acceptable form of evidence (National Research Council, 2009). Moreover, despite hair comparison analysis continuing to serve as an accepted form of evidence in most courts, The Law Enforcement Assistance Administration Laboratory Proficiency Testing Program, which oversees over 235 crime laboratories in the United States, found hair comparison analysis to be the weakest of all forensic laboratory techniques tested. It was determined that most laboratories within the program reached incorrect results on four out of five hair samples analyzed (Gould, 2007).

Pertaining to DNA mishandling, despite its reputation of helping uncover and improve upon the shortcomings of more aged methods of forensic testing, there are documented cases of DNA evidence being accidentally contaminated with the DNA of an innocent person, resulting in an erroneous conviction (Wixted et al., 2018). DNA contamination can occur at the scene of the crime caused by the mishandling of evidence, or in the laboratory due to improper testing procedures. There are indeed multiple shocking documented cases of improper, deplorable, laboratory practices that have led to the conviction of innocent defendants (Gould, 2007). Nevertheless, actual cases of DNA contamination are rare in comparison to other forms of forensic error, for multiple reasons (Wells & Quinlivan, 2009). Firstly, the quality and accuracy of DNA testing methods have improved over the years. Due to a surplus of adequate research and training, criminal investigators and forensic scientists are now well aware of the possibilities of DNA contamination and thus take precautionary steps to avoid them. Conclusively, DNA
contamination is rare in comparison to that of other forms of forensic evidence, and its efficiency at successfully incriminating guilty suspects while also exonerating innocent individuals makes it a viable and essential method of evidence gathering (Innocence Project, n.d.).

Section V. Recommendations for Change

The underlying issue with erroneous conviction prevalence is that many of the contributing factors explored in this research lead both to the indictment of the innocent as well as the failure to correctly dismiss or acquit the innocent once they enter the criminal justice system (Gould, et al., 2013). While some revisions have already been established at local and federal levels, policymakers and criminal justice leaders should focus on two areas to combat this phenomenon. First, they must dissect the factors that introduce innocent defendants into the criminal justice system in the first place. Second, they must better understand and combat the factors that heighten a defendant’s risk of conviction post-indictment. Procedural overhauls should respond to both of these aspects in order to successfully cut down on wrongful conviction prevalence.

Many of the contributing problems – including the strength of the prosecution, the quality of defense lawyering, tunnel vision, and forensic fraud – are reliant upon the actions and performance of criminal justice officials (Gould et al., 2013). As such, they are all areas in which improved professionalism and greater attention to detail can lessen the risk of wrongful convictions. And while “better training” is a somewhat overemphasized and cliché solution, there is continual room for improved, specific training on key factors such as eyewitness inaccuracy, specific interrogation practices, investigator bias, and the influences of defendant age
and race, so that police and lawyers can better understand the variables associated with wrongful convictions (Roman, Walsh, Lachman, & Jahner, 2012).

Pertaining exclusively to eyewitness identification, Wixted, Mickes, and Fischer (2018) makes a critical argument by countering the popular belief that eyewitness testimony is inherently unreliable, and instead offers solutions to amend the practice as opposed to abolishing it completely. Initially, there should be a threshold of evidence that needs to be met before police place an individual in a lineup. This will ensure that officers validate why a certain person is included and will further serve to foster a “mindfulness” among officers so that they do not put defendants in jeopardy of a misidentification without good reason. Additionally, lineups should be fashioned fairly; the suspect should not stand out in any identifiable way, each lineup should contain only one suspect, and an initial statement of confidence should be obtained from the eyewitness.

Other research suggests replacing showups with quickly assembled computerized arrays of suspects, now that technological advances allow for it, to minimize memory errors and the prejudicial nature of photo arrays (Gould, 2007). Furthermore, witnesses should be shown photographs or individuals in a lineup sequentially (i.e. one at a time) rather than simultaneously as a group (National Institute of Justice, 1999). In a summary of 25 studies comparing simultaneous versus sequential identification procedures, scholars have estimated that sequential procedures can reduce the chances of a mistaken eyewitness identification by nearly one-half (Steblay, Dysart, Fulero, & Lindsay, 2001). Perhaps most importantly, identification procedures should be administered in a “double-blind” fashion so that neither the eyewitness nor the officer administering the lineup knows the identity of the prime suspect and thus cannot guess about or
hint at the correctness of the identification. In this regard, suggestiveness can be minimized (Gould et al., 2013).

Concerning false confessions, a policy overhaul adopting alternative methods of interrogation that are more likely to produce true confessions should be implemented. Khasin (2009) discusses how United States investigators might take a cue from British Parliament and transition towards an interrogation model that emphasizes honesty above all else, arguing that police interrogation guidelines should prohibit the types of deceptive, coercive practices that lead to unreliable results. Despite the fact that for decades scholars have criticized dishonest police practices, American jurisprudence continues to overlook how deceptive practices yield false confessions and, thus, wrongful convictions. Khasin (2009) recommends adopting techniques that revolve around honesty and genuine interaction while expelling coercive practices and guilt-presumption/tunnel bias among investigators. The research states that new legislation should empower the courts to focus on the reliability of confession evidence in determining its admissibility. Additionally, the law should identify the deceptive police techniques that produce unreliable results and encourage courts to definitively exclude such evidence.

Relating to police integrity, Gould, Carrano, Leo, and Young (2013) explores the fact that by electronically recording suspect interrogations, the legal system can minimize the likelihood that a false confession will lead to a wrongful conviction. The benefit is twofold: not only are investigators more compliant with their interrogation strategies (due to the fact that the proceedings will be accessible to the court), but jurors can evaluate the circumstances of the interrogation to determine the legitimacy of the suspect’s treatment while in captivity. This evaluation further aids in cross-checking the accuracy of a witness’s statements (Sullivan, 2005). Videotape surveillance will also serve to curtail the coercive nature of methods like the Reid
Technique, as interrogators will be further deterred from relying on unethical techniques (Leo, 2009). For these reasons, videotape recording of police-suspect interaction should be an obligatory policy nationwide.

The case of Earl Washington Jr. helps exemplify the advantages of electronic recording. His ultimate conviction rested on the prosecution making it appear as if Washington had openly divulged a secret piece of evidence known only to the perpetrator yet, in reality, videotape surveillance would have exposed interrogators holding up that key piece of evidence and asking Washington to describe what he was seeing (Gould et al., 2013).

Tunnel vision can also be reduced by stationing a “devil’s advocate” in the midst of the investigating officers. This spectator can ideally be relied upon to provide fresh perspectives and alternative hypotheses to the case. As the spectator is not directly involved in the case, he or she should be unaffected by any tunnel vision or other internal influences of the investigation (Gould, 2007).

Post-indictment, as a way to evaluate the efficacy of recent convictions, a recommendation could be made for the criminal justice system to embrace the medical model of professional review, which sees errors as a cultural and systemic problem as opposed to a “bad apple” approach. As described by Gould (2007), too often are erroneous cases disregarded by law enforcement and legal officials, who dismiss them as consequences of personal incompetence. Departments and agencies should hold a review whenever there is an erroneous conviction, just as medical committees hold reviews whenever a case emerges of potential medical malpractice resulting in patient death. These committees analyze the techniques and equipment used, as well as physician training, and make revisions wherever necessary. The same should occur within legal systems. With honest critique of policies and procedures, mistakes can
be corrected and amendments can be implemented to reduce the chances that an indicted defendant will be wrongfully convicted.

Conviction review units (also known as conviction integrity units), which currently exist in a sparse few states, can serve as an intersection between the criminal justice and medical models of review. Led by reform-minded prosecutors, existing conviction review units (CRUs) are dedicated to overturning cases of wrongful conviction by identifying and correcting past errors (Hollway, 2006). Notably, many scholars perceive the potential of CRUs to be a driver of quality improvement for the legal system in the future. With the goal of minimizing future oversights, such reviews can serve to identify errors and respond with proposed procedural or environmental reforms throughout a jurisdiction (Innocence Project, n.d.). But the true value of a CRU extends even beyond these important goals. Sincere CRUs that conduct open and honest reviews of post-conviction claims of innocence can stand as a symbol of justice over procedural legal conventionalism, adversity, and bias. As such, an expansion of CRUs can serve to restore faith in the criminal justice system by representing the highest ideals of truth and justice that are often preached, yet too rarely practiced.

Presently, there are too few CRUs operating for too short a time to obtain conclusive assessments of the various criminal justice policies or procedures, or to measure their impact on court case outcomes (Hollway, 2006). The initial step forward will be to standardize the funding for and utilization of CRUs across the country.
Section VI. Conclusion

As the discussion around wrongful convictions continues, this paper has identified key variables that influence the probability that an innocent defendant will end up convicted in the court of law instead of cleared. Foremost among these factors are the strength of evidence used, which largely rely upon eyewitness identification and suspect confession. The clear prevalence of eyewitness misidentification (caused by the malleability of memory, internal biases, and suggestiveness) and false confessions (due largely to deceitful interrogation practices) highlight the system’s overreliance on these forms of evidence gathering. Other contributing factors explored include tunnel vision on behalf of investigators and prosecutors as well as static elements such as a defendant’s mental health, age, and race. Finally, recommendations were made pertaining to each of these categories, with the goal of outlining a path forward to reduce erroneous convictions.

Despite the progress to be made concerning each of these factors, it is important to broaden the scope of the conversation and witness the progress currently being made. Recent post-conviction DNA exonerations have given rise to an “innocence movement” in American law, recognized by some to be the civil rights movement of the twenty-first century (Medwed, 2008). Across the United States at various law schools, there are now more than 70 non-profit innocence projects whose purpose is to investigate and litigate post-conviction claims of innocence as well as propose reforms, in essence behaving similar to CRUs (Innocence Project, n.d.). Additionally, many states have passed legislation to make exonerations easier to judicate and to help prevent erroneous convictions in the future. Six states have created innocence commissions (Gould, 2007), and more than 40 state legislatures have passed statutes to facilitate inmate access to biological evidence for post-conviction DNA testing. Other states have
implemented legislation to address and amend certain sources of erroneous conviction, ranging from poor defense lawyering to malicious interrogation practices (Medwed, 2008). In Baltimore, District Attorney Marilyn Mosby has launched Resurrection After Exoneration, a collaborative program that works with various agencies to ensure that exonerees are connected to the services and support they need post-exoneration. Mosby recognizes the importance of adequate compensation and assisted re-entry for exonerees, who often struggle to find work after being robbed of their opportunity to get an education, gain job skills, and simply exist as a functioning member of society (Innocence Project, n.d.). Even the United States Congress has addressed erroneous convictions by passing the 2004 Innocence Protection Act, which provides funding for state post-conviction DNA testing and raises the annual compensation amount for exonerated federal prisoners (Gould et al., 2007).

Possible directions for future research should include an analysis of how these budding programs and legislations are impacting the national rate of wrongful conviction. Their enactment is a step in the right direction, but their usefulness must be critiqued. It is also important to determine what modifications local and federal law enforcement agencies are making in response to the conclusions made in this (and other) research. Similarly, further research should investigate how both defense and prosecutorial lawyering practices evolve in the coming years as their understanding of wrongful conviction grows. A common theme among these suggestions is the construction of a working relationship between researchers, police, and prosecutors. The increased availability of evidence gathering, suspect interviews, and police records would grant researchers access to undisclosed, point-in-time data. From there, researchers can regurgitate their findings back to legal professionals in a way that promotes internal communication of the weaknesses and safeguards surrounding wrongful conviction.
References


