New Data, New Findings: An Updated Assessment of Wrongful Convictions

by JON B. GOULD, KATIE HAIL-JARES, and JULIA CARRANO

Ten years ago, in January 2003, the American Judicature Society dedicated a conference to “Preventing the Convictions of Innocent Persons.” Former Attorney General Janet Reno attended the conference and delivered a keynote address that was later reproduced in *Judicature*. In her address, Attorney General Reno reflected on what was then slightly more than 100 wrongfully convicted persons who had been exonerated in the preceding decade. Listening to the panels at the AJS conference and meeting the exonerated individuals, Reno called upon the academic community to provide more research about wrongful conviction and its causes—research that could be used to influence policy decisions and ultimately reform the American criminal justice system. She concluded by saying, “I think the findings are sufficiently grave, in terms of the mistakes the system has made, that we must renew our efforts...to find the truth. And what we do with the criminal justice system, which is the hallmark of the legal system for so many Americans looking in from the outside, will make a profound difference for this century.”

**An Explosion of Research**

Since Attorney General Reno’s call to action a decade ago, investigations have continued to uncover cases of innocent men and women convicted of crimes they did not commit. At the time of this writing, the Innocence Project listed over 300 DNA exonerations in the United States, and the National Registry of Exonerations chronicled several times more defendants who, they said, had been exonerated post-conviction through any means. Research, too, has continued at a furious pace into the sources of erroneous convictions, with scholars like Keith Findley, Brandon Garrett, Sam Gross, Ronald Huff, Richard Leo, Daniel Medwed, Allison Redlich, Dan Simon, Saundra Westervelt, and Marvin Zalman pushing the field forward. The combination of this research “signal[s] a new and deepening interest in the study of miscarriages of justice by journalists and scholars unlike any time since...founding work in [the field in] the 1930s.”

Strikingly, most of this scholarship has come from law professors and legal scholars who have written extensively about the legal causes and consequences of wrongful conviction, as well as about legal and policy reforms designed to reduce their occurrence. Collectively, the research has identified several factors most closely associated with erroneous convictions. Although certainly not dispositive, the most common factors include:

- Mistaken eyewitness identification
- False confessions
- Tunnel vision
- Perjured informant testimony
- Forensic error
- Prosecutorial error
- Inadequate defense representation

**But Are These Factors Causes?**

As useful as the research to date has been in uncovering and exploring potential sources of erroneous convictions, its findings largely have been limited by the nature and scope of inquiry. Initially based on single case studies, researchers have been unable to compare the factors that arose in a particular case of erroneous conviction with those that were found in other exonerations. More significantly, with few exceptions, researchers have not collected data on suitable control groups of cases. Even in those studies with control groups, the underlying crimes at issue generally have been serious

---

felonies, often capital matters. As a result, while the field has been able to highlight particular sources of erroneous convictions, it has been unable to say with certainty whether these factors apply to a multitude of erroneous conviction cases or whether they are shared by other prosecutions that end in different results, including, for example, accurate convictions or acquittals. Put another way, we are still left wondering whether the sources identified to date are correlates or causes of erroneous convictions and whether they are contributing or exclusive sources.

This is not to say that the research is unhelpful or unreliable. To be sure, even case studies or correlational analyses help to narrow the likely sources of erroneous convictions. For that matter, there have been four empirical studies of wrongful convictions that have used control groups. Together, this research has added at least eight other possible explanations for wrongful convictions, including: defendant’s prior record; defendant’s mental illness; number of victims; age of victims; race of defendant and victims; type of defense attorney; amount of evidence introduced at trial; and time from crime to arrest.

A New Contribution

In an effort to build on these studies, we, along with two colleagues, recently completed a large-scale investigation of wrongful convictions that employed a control group and both quantitative and qualitative methods. Our study compared cases of wrongful conviction with a sample of “near misses”—cases in which a factually innocent defendant was indicted but released before conviction on the basis of his innocence. The comparison was posed to answer two overarching questions: (1) What factors explain why innocent suspects are erroneously convicted in certain cases but are acquitted or have their charges dismissed in other cases? and (2) What policy interventions will help the criminal justice system “get it right” and acquit the innocent, thereby preventing future erroneous convictions?

Our study included 460 cases from 1980 to 2012. Each case involved a factually innocent defendant who was indicted by a state for a violent felony against a person and was subsequently relieved of all legal responsibility for the crime. The project employed a conservative definition of factual innocence, which clearly distinguishes factual innocence from innocence based on procedural error or other purely legal criteria (so-called legal innocence). Potential erroneous conviction and near-miss cases were systematically identified using the same multifaceted methods, with researchers examining original records, scouring secondary sources, and conducting interviews with those involved to collect data that eventually populated more than 600 variables. We also used an instrument developed by the Police Foundation to assess the overall strength of the cases. The purpose was to allow us to distinguish between “easy” cases, in which few people would have considered a defendant to be guilty, and “harder” cases, in which the facts of a case might have convinced many reasonable people to believe the defendant was guilty even though he was innocent.

In addition to bivariate and logistic regression analyses, we convened an expert panel of criminal justice professionals to review 39 sample cases in order to check and supplement the quantitative results. Noticeably, the panel independently identified as important most of the factors that we found to be statistical predictors of case outcome as well as additional aspects that we were unable to isolate via quantitative analysis. The panel discussion provided a valuable framework to understand how these factors interact within the criminal justice system to affect the progress of a case.

What Factors Lead to Wrongful Convictions?

In line with past research on wrongful convictions, our quantitative analysis identified several variables that predict an erroneous conviction. However, our research is different in two respects. First, the results actually distinguish between alternative outcomes, that is, explaining why, once an innocent individual is indicted, his case ends in an erroneous conviction rather than an exonerating dismissal or acquittal. Second, by pairing the quantitative research with analysis by the expert panel, we were able to provide not just a list of variables that contributed to case outcome but also offer context for why these factors led to divergent case results.

Together, our logistic regression model and the expert panel identified 10 significant factors that either harm or help the innocent defendant.

Age and Prior History of Defendant: Both a defendant’s age and prior record may harm an innocent defendant. In our dataset, young defen-
dants were at an increased likelihood of conviction. A younger defendant often will not have the sophistication or knowledge to aid in his defense and may be slow to realize the gravity of the situation; he may also have a harder time proving a credible alibi. For example, a teenager whose alibi includes hanging out with friends he met at a party the night before is much less compelling than an older individual whose job can provide a work schedule, coworkers’ alibi statements, and other exculpatory evidence.

A defendant’s prior criminal history can push police and prosecutors into prematurely narrowing the focus to the defendant and ignoring potentially exculpatory evidence. Interestingly, in our study, defendants whose prior record was similar to the case charged were no more likely to face a wrongful conviction, which suggests that simply being known to the police puts suspects at greater risk. Our expert panel acknowledged that even an unrelated criminal history could leave a defendant vulnerable for misidentification or police questioning. As several panel members explained, after a crime occurs, the police may turn to known suspects, either by providing witnesses a photo of the suspects or seeking them out for questioning and perhaps a lineup.

Forensic Error: Error in forensic evidence presented by the prosecution was correlated with an increased likelihood of erroneous conviction. This error most often occurred in testimony or interpretation of evidence, rather than in the actual scientific testing. Errors in forensic testimony may include neglecting to provide the jury with key information, such as the victim’s blood type when it would mask the perpetrator’s; overstating the inculpatory nature of the evidence by providing inaccurate or nonexistent statistics; or misstating the certainty of the results when the forensic technique, such as bite mark, scent, or fiber analysis, does not allow for it. For example, in several cases, an expert witness provided testimony regarding the certainty of bite mark matching even though the testing had not been subjected to peer review scrutiny.

State Punitiveness: Defendants in punitive states (more executions per murder rate) appear to be at an increased risk of erroneous conviction once indicted. 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 rash resolutions to cases involving serious crimes like rape and murder. Additionally, state punitiveness could lead state actors into assuming the defendant’s guilt, thereby overlooking or undervaluing evidence that contradicts the assumption of guilt.

Intentional Misidentification by Eyewitness: Eyewitness identification of the defendant did not initially predict case outcome. However, when we broke eyewitnesses down to two categories—intentional misidentification and “honest” or inadvertent misidentification—the results proved more illuminating. An eyewitness’s intentional misidentification of a defendant decreased the likelihood of erroneous conviction, whereas inadvertent misidentifications were more likely associated with wrongful convictions. Put another way, when eyewitnesses intentionally lie, police and prosecutors are more likely to discover the error and prevent a wrongful conviction than when eyewitnesses are honest but inaccurate in identifying a suspect. Prosecutors on our panel discussed how a thorough vetting of complaining witnesses could identify inconsistencies in initial statements and raise red flags, thus stopping or redirecting an investigation before it goes too far in focusing on the wrong perpetrator. A truly mistaken identification is harder to uncover even with proper investigation.

Strength of Prosecution’s Case, Brady Violations, and Lying Non-Eyewitness Evidence: Unexpectedly, a weak prosecution’s case was more likely to lead to an erroneous conviction than to a near miss. Discussions with the panelists suggested that weak facts may encourage prosecutors to engage in certain behaviors designed to bolster the case, which our statistics show help predict an erroneous conviction. In several of the erroneous convictions, a prosecutor, convinced of the defendant’s guilt despite a lack of conclusive proof, failed to recognize and turn over exculpatory evidence or enlisted a non-eyewitness (such as a snitch) to provide corroborating testimony. These types of actions compound, rather than rectify, previous errors or misconduct in the case, resulting in an escalation of commitment. Eventually, despite the weak evidence, the players involved become so committed to proving the defendant’s guilt that evidence illustrating the contrary is ignored or discounted.

In past research without a control group, false testimony by a non-eyewitness has been understood as highlighting “snitch testimony,” but our research failed to distinguish the
erroneous convictions from the near misses on the testimony of a police informant alone. Rather, it was the larger category of all non-eyewitnesses that was relevant, which in our research included victims. Indeed, our qualitative analysis of the cases suggests that the variable also represents the phenomenon of “false rape” cases.

Strength of Defense: As expected, a stronger defense tended to lead to a dismissal or acquittal of an innocent defendant. Although bad lawyering has received much attention in the discussion of erroneous conviction, our panel was struck by the presence of exceptionally good lawyering among the near misses. These defense attorneys often did months of legwork, hired experts, and, most importantly, persisted in proving the defendant’s innocence rather than immediately working on obtaining a plea. Notably, the type of the defense attorney was not significant in either the quantitative or qualitative analysis. Poor representation—regardless of whether it was a private attorney, an appointed lawyer, or a public defender—was what influenced case outcome. In this regard, defense cases that rested on friends and family members as alibi witnesses were more likely to end in a wrongful conviction than a near miss. Although our panel suggested these cases may have been plagued by an absence of trustworthy alibi witnesses in addition to “bad lawyering,” in general, placing friends and family members on the stand tended to make a bad case worse rather than better.

Tunnel Vision and System Failure: Discussions with the panel highlighted a particularly important factor not explored in the quantitative analysis, namely, tunnel vision or escalation of commitment. According to the panelists, tunnel vision helps explain how one error often leads to additional errors in wrongful convictions. It contributes to and facilitates system breakdown because it dismantles the rigorous testing of evidence that makes the investigative and adversarial processes function effectively. For example, in cases with weaker facts, police and prosecutors may devote additional time or resources to investigate the crime since the facts themselves may not necessarily point to a clear suspect. But, the more invested justice officials become in a case—and the initial suspect—the more likely they may stay focused on that person even when the facts do not justify the narrow attention. This same escalation of commitment may even color the judgment of officials, so they do not recognize that they are in possession of exculpatory evidence that must be disclosed to the defense.

Factors That Did Not Distinguish Case Outcome
In addition to identifying those influences that distinguish erroneous convictions from near misses, our research also excluded other factors previously seen as predictors of erroneous convictions. These include the race of the defendant or victims, snitch testimony, false confessions, police error, and many eyewitness testimony variables (such as inter-racial identification, certainty of the witness, and type of identification procedure). While these variables do not determine case outcome, some of them, like false confessions, police error, and race (an African American defendant, for example) appear in a relatively large proportion of both erroneous convictions and near misses cases. We suggest that rather than being predictors of erroneous conviction, such factors are better understood as explaining how innocent individuals initially are funneled into the criminal justice system than why they are ultimately convicted.

A Systemic Problem: Placing the “Causes” Within Context
One of the conceptual contributions of our study is its distinction

FIGURE A. The Systemic Factors Impacting Divergent Case Outcome for Innocent Defendants

between those problems that lead to the indictment of the innocent and those that prevent the dismissal or acquittal of innocent defendants once they enter the criminal justice system. This point is illustrated conceptually in Figure A. Further, as our expert panel repeatedly reminded us, the factors that predicted a wrongful conviction often acted in concert when tunnel vision went unchecked. Our case narratives illustrated how one factor would spur an investigation, placing an innocent defendant in jeopardy and making further series of errors possible. Ultimately, we concluded that what separates erroneous convictions from near misses is not just a list of individual factors but, more importantly, the process by which initial errors remain undetected or uncorrected in the erroneous convictions and lead to system failure. Indeed, if there is but one conclusion from our research it is that, overall, the erroneously convicted are truly cases of systemic failure.

This is not to say that the near misses were examples of perfect criminal investigations; after all, an innocent person was still indicted. However, the near misses illustrated again and again that the forward momentum towards an erroneous conviction could be stopped by a single individual within the system—a prosecutor, a defense attorney, a forensic technician, a police officer, or a victim.

In many ways, the near misses in our study showcase the importance of individuals who recognized inconsistencies in the cases and raised those concerns. Recently, Judicature published a review of Dan Simon's book, In Doubt: The Psychology of the Criminal Justice Process, which begins with the inspiring quote, "[c]riminal verdicts can be no better than the combined result of mental operations of the people involved in the process." Our findings here largely confirm Simon's hypothesis. It is the people and professionals comprising the criminal justice system that will ultimately reduce wrongful convictions.

Conclusion
By no means was our research dispositive, and, in fact, there are many more issues that future research can help to address. Whereas we compared wrongful convictions to near misses, other researchers would do well to contrast erroneous with accurate convictions or to investigate different stages in the criminal justice process, for example the decision to indict. None of this weakens our work or the significance of our findings. Rather, it emphasizes the context of our research and underscores that our findings are not so much about what causes erroneous convictions but what prevents them once an innocent defendant enters the criminal justice system. In the end, policymakers, practitioners, and even researchers would do well to focus on what the field knows about the sources of wrongful convictions and the dynamic and complex processes by which the criminal justice system safeguards, or fails to protect, innocent defendants who have been erroneously accused. Even as additional and methodologically advanced research is generated, it is essential that officials, professionals, and the lay public alike address those factors that are most open to remedy.

JON B. GOULD
is Professor and Chair, Department of Justice, Law and Criminology at American University.
(gould@american.edu)

KATIE HAIL-JARES
is a doctoral student in Justice, Law and Criminology at American University.
(katie.jares@student.american.edu)

JULIA CARRANO
is a former Research Scholar in Residence in the Department of Justice, Law and Criminology at American University.
(carrano@american.edu)