

Example of research paper on understanding wrongful convictions

[Law](#), [Criminal Justice](#)



Introduction

Cases of miscarriage of justice have been reported in our news channels for many years. Today, thousands of political prisoners languish in jails, all over the world, and they do so, unjustly. Increased terrorism in the 21st century has made it even worse. With wrong convictions as a result of prejudice with regard to ethnicity, religion, activism among other perceived evils, the numbers swell by day. This paper advances the view that the law has been applied selectively in many cases, and especially in America, leading to significant cases of misplaced justice, with regard to victims of terror.

Borchard, E (1932) chronologies a series of sixty five cases where innocent people had been convicted of various criminals. In his book, ' Convicting the innocent: Sixty five actual errors of criminal Justice', Bocharid identified a number of cases where the innocent people had actually been sent to the gallows for mistakes made by the legal team, and not themselves.

Borchard identified a number of issues that were the ' likely sources of these errors' and noted that they included false confessions, erroneous eye witness accounts, circumstantial evidence as well as prosecutorial excesses.

The modern society is quite informed, unlike in the olden days when information was not easy to come by. This means that there is a lot of public participation in the legal process, as much of the proceedings information can be availed through all means such as print, broad cast and even social media.

This means that the legal practice is being watched from all quarters and any mistakes made with regard to miscarriage of justice is easily informed to

the citizenry, and such is the courage that the victims below have harnessed and are now demanding justice for their wrongful convictions.

David Hicks is a classic example of how justice can be miscarried. In his book, *Guantanamo, My journey*, he discusses his nightmare. Hicks is a native Australian, converted to Islam and therefore changed his name to Mohammed Dawood. At some point, Hicks traveled to Afghanistan where he was captured by the Northern alliance forces and unjustly linked to the dreaded Al Qaeda. He is later sold to the US for bounty, later tried in military court and automatically convicted. Does he have a chance? Isn't the trial a formality?

Hicks was detained in the dreaded Guantanamo for more than five years, as prisoner number 002. He had arrived in January 2002, the same day the prison opened its doors. Hicks was accused of his being an 'unlawful enemy combatant' a term that does not have any basis in law, but rather borrows credence from World War II.

In this case, Hicks faced gross injustice, mainly because of the laws that protect the US army, and specifically the Military commission's act. In his case, guilt by accusation sufficed. During this period, hearsay and coerced confessions was the order of the day. Judicial fairness was rather foreign, and international law could not afford to protect the victims as torture had become US official policy.

International law that prohibits torture did not matter, nor did the US Supreme Court decisions that bar coerced confessions as admissible.

Therefore, Hicks was wrongfully convicted, apparently for 'material support for terrorism', a charge that actually had no legal meaning. In fact, it did not

even exist in the US legal parlance. In recognition of this fact, this term was later invented and gazetted in 2006, mainly to prosecute others like Hicks. The above is a classic case study of the many cases of wrongful conviction that abound in our society and especially in the United States. The problem mainly is that there are not many people like Hicks who have the capacity to seek redress in the event that miscarriage of justice happens to them, and they therefore continue to suffer in silence, as these atrocities happen to them.

Previous research

Cases of wrongful conviction, as earlier stated are not new phenomena. As early as the beginning of the study of law, judicial mistakes have always abounded. There was however no documented studies on this subject, at least not until the 20th century. Beginning with Borchards work in 1913, there have been significant studies into this subject, through the 80's with most of the significant work appearing in the mid 90's especially with the advent of DNA tests. The significance of these tests is evident from the more than 250 cases of wrongful convictions that advocates have been able to unearth, some even carrying death row penalties.

These cases drew a lot of media attention to the weaknesses of the criminal justice system specifically in America. Documented evidence from FBI records indicate that DNA tests have exonerated about 25% of all cases brought in by police as the prime suspects, raising questions on the efficiency of the police in the delivery of their work. This issue of DNA drew

scholars to investigate the issue of wrongful convictions in a more detailed and inclusive manner.

Prevalence of wrongful conviction

Despite the significant number of studies on this subject, there is still a lot of uncertainty with regard to the magnitude of the problem. Dan Simon, of the University of South California professor once said that the rate of error in criminal justice is unknown, and probably unknowable. This may be true with regard to the exact figures but subsequent studies have narrowed the range to between 3-5%, with much of the variations arising from the definition of wrongful conviction as well as the methods employed in these studies.

In order to understand this issue, it's important to distinguish between procedural errors that can actually lead to what is called legal innocence, and factual error, which leads to a factual innocence. When one is released or acquitted on grounds of ' legal technicalities' and declared innocent, then a mistake is made, as this person is not actually or factually innocent, but rather legally innocent. Accordingly, to say someone is innocent when they actually have blood in their hands brings to question the numbers that are actually erroneously convicted and therefore a distinction needs to be drawn.

The year 2000 saw the publication by Liebman, J et al, of works of the last 22 years indicating that about 68% of capital convictions were actually thrown out due to what they called the serious flaws in the investigation and prosecution process. But this did not mean that the accused was factually innocent. Subsequent studies indicate that on re trial, only 5% of this

number was actually acquitted of their crime, indicating the large number of miscarried justice that takes place in our criminal judicial systems.

Consequences of wrongful conviction

Cook and Westvelt (2008) have carried many studies by interviewing individuals who have been exonerated of capital crimes. In their conclusion, the researchers noted that these criminals' experiences were similar to live threatening traumas. Another study by Adrian Grounds (2004) noted that people released as a result of wrongful conviction suffered significant psychiatric as well as adjustment difficulties normally experienced by people who have suffered severe psychological traumas. He noted that a number of needs of these exonerates would go unmet, and these include medical attention, connecting with family and children, social stigma and rejection amongst others.

The issue that remains with regard to the consequences has to do with state compensation in the realization that one was wrongfully detained. Several scholars have agreed that this state compensation either does not exist or the mechanism is simply deficient. There are also cases of states that put a lot of restriction on those who can be compensated and also ensure that the amount of compensation is capped at a really low rate.

Sources of wrongful convictions

There is actually no universal causes that lead to this issue of unlawful convictions, however, studies have shown a lot of consistence in their findings as to what really goes wrong resulting in these convictions. These are explained briefly, below.

Mistaken eyewitness identification

This is probably the most important, and may be the most prevalent cause of wrongful convictions. Nationally, over 75% of all wrongful convictions have been as a result of this erroneous eyewitness identification. Natural and psychological errors in human judgment have been blamed for the cause of this wrong eyewitness accounts. As authors have noted, stress as well as other environmental factors significantly affect the victim's visual and memory ability. Look at a situation where a victim is held at gun point. He/she may spend most of their time concentrating on the weapon, and remember very little about the gun holder, and this explains the many cases of wrongful conviction.

False confessions

It's actually difficult to understand why someone would falsely accuse others, especially if a crime is involved. Studies from as far as 1987, have shown significant cases of false confessions ranging between 14-25% of all cases reviewed. DNA tests have been significant in this front. False confessions have actually been proven so, when DNA results indicated otherwise.

Other sources

The above list is not conclusive. Studies show that forensic science, prosecutorial misconduct, inadequate defense misrepresentation, interrelated themes, tunnel vision, as well as informant testimony are some of the other leading sources of wrongful convictions.

Conclusion

Wrongful convictions have been with us, and will continue, as long as the legal profession exists, mainly because it's not easily avoidable, given the

specific sources as noted above. Overreliance on prosecutor evidence, which is sometimes obtained through coercion, does not make things any better, as was witnessed in Tulia drugs convictions, where people were convicted on grounds of word of mouth of one Tom Coleman, an undercover officer. In this case, no large sums of money or drugs were found on the accused, and in most of the cases Coleman gave wrong descriptions of the accused yet the state department still went ahead and wrongfully convicted most of the accused people.

Cases of wrongful convictions can be reduced, or even eliminated altogether, if the legal practice adopts a stringent level of evidence that becomes the threshold of convictions. Use of technology in the identification of crime suspects as well as an objective evaluation of available evidence before convictions could work significantly towards the reduction in cases of wrongful convictions.

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