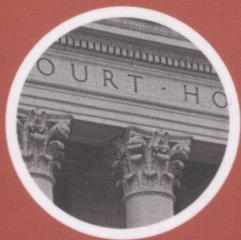


WRONGFUL CONVICTIONS & MISCARRIAGES OF JUSTICE

CAUSES AND REMEDIES
IN NORTH AMERICAN AND
EUROPEAN CRIMINAL
JUSTICE SYSTEMS

EDITED BY
C. RONALD HUFF
AND **MARTIN KILLIAS**



Wrongful Convictions and Miscarriages of Justice: Causes and Remedies in North American and European Criminal Justice Systems

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First published 2013
by Routledge
711 Third Avenue, New York, NY 10017

Simultaneously published in the UK
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

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Library of Congress Cataloging-in-Publication Data

Wrongful convictions and miscarriages of justice : causes and remedies
in North American and European criminal justice systems / edited by
C. Ronald Huff and Martin Killias.

p. cm.

Includes bibliographical references and index.

1. Criminal justice, Administration of—North America. 2. Criminal
justice, Administration of—Europe. 3. Judicial error—North
America. 4. Judicial error—Europe. I. Huff, C. Ronald. II. Killias,
Martin.

HV9960.N7W76 2013

345'.0122—dc23

2012033099

ISBN: 978-0-415-53993-7 (hbk)

ISBN: 978-0-415-53995-1 (pbk)

ISBN: 978-0-203-59728-6 (ebk)

Typeset in Adobe Caslon
by RefineCatch Limited, Bungay, Suffolk, UK

Wrongful Convictions and Miscarriages of Justice

This innovative work builds on Huff and Killias' earlier publication (2008), but is broader and more thoroughly comparative in a number of important ways:

- while focusing heavily on wrongful convictions, it places the subject of wrongful convictions in the broader contextual framework of miscarriages of justice and provides discussions of different types of miscarriages of justice that have not previously received much scholarly attention by criminologists;
- it addresses, in much greater detail, the questions of how, and how often, wrongful convictions occur;
- it provides more in-depth consideration of the role of forensic science in helping produce wrongful convictions and in helping free those who have been wrongfully convicted;
- it offers new insights into the origins and current progress of the innocence movement, as well as the challenges that await the exonerated when they return to "free" society;
- it assesses the impact of the use of alternatives to trials (especially plea bargains in the U.S. and summary proceedings and penal orders in Europe) in producing wrongful convictions;
- it considers how the U.S. and Canada have responded to 9/11 and the increased threat of terrorism by enacting legislation and

adopting policies that may exacerbate the problem of wrongful conviction; and

- it provides in-depth considerations of two topics related to wrongful conviction: voluntary false confessions and convictions which, although technically not wrongful since they are based on law violations, represent another type of miscarriage of justice since they are due solely to unjust laws resulting from political repression.

C. Ronald Huff is Professor of Criminology, Law and Society and of Sociology at the University of California, Irvine. He is a Fellow and Past-President of The American Society of Criminology. His publications include more than 100 journal articles and book chapters and 12 other books. His current research focuses on wrongful convictions and gangs.

Martin Killias is Professor of Criminal Law, Procedure and Criminology at the University of Zurich. Over 25 years, he directed the Institute of Criminology at the University of Lausanne and served as a part-time judge at the Federal Supreme Court of Switzerland. His research has focused on comparative and experimental studies.

Huff and Killias provide a groundbreaking, comprehensive and innovative collection of top-notch research on wrongful convictions from a cross-national perspective. The book deserves to be in the personal libraries of all criminal justice scholars and should be required reading for students taking courses on topics such as comparative criminal justice or wrongful convictions.

- **Talia Harmon**, *Criminal Justice*, Niagara University

Extensive in its scope and coverage, this book provides a valuable extension to the scholarship on how wrongful convictions and miscarriages of justice are to be understood and responded to. A must read for all those interested in the debate about public protection and public policy when justice goes wrong.

- **Michael Naughton**, *Sociology and Law*, University of Bristol, Founder and Director, Innocence Network UK (INUK).

Wrongful Convictions and Miscarriages of Justice is masterful in adding new material that broadens the wrongful convictions critique of the delivery of justice in the U.S. It draws from U.S. and Canadian experience to expand the possibilities for reform and includes especially strong chapters that deal with legal mechanisms found in court settings.

- **Cathleen Burnett**, *Criminal Justice and Criminology*, University of Missouri–Kansas City

An essential read for anyone interested in wrongful convictions in the global context. This book does a particularly good job of helping the reader understand the difference between adversarial and inquisitorial systems of justice, and how each system contributes to or effectively combats wrongful convictions. The new edition includes many important updates, including the role of forensic science in causing, and then correcting, miscarriages of justice.

- **Mark Godsey**, *Law*, University of Cincinnati College of Law

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To our grandchildren, Skylar (“Sky”) Mills Connor and Lena and Flavio Clavel, whose smiles, laughter, and personalities bring great joy to our lives, as well as to a forthcoming grandchild (on the Killias side) who will enter the world at about the same time that this book is published. May they all live in nations, and in a world, that work to improve the quality of justice for all.

CRH and MK

ACKNOWLEDGMENTS

First, we wish to thank all of those colleagues who so readily agreed to contribute chapters to our book and whose work is represented in this volume. Without their scholarship, this book would obviously not exist. We also appreciate the many colleagues of ours, in both North America and Europe, who encouraged us to produce this book, bringing together recent scholarship by some of the world's leading scholars addressing wrongful convictions and other miscarriages of justice. We also appreciate Stephen Rutter at Routledge for approaching us and expressing his interest in this book project and for bringing it to fruition; to Joseph Parry, our editor during part of this project; and to the editorial and production staff at Routledge, who have assisted in the production of the book. Finally, of course, we are indebted to our families and close friends for their continual support and encouragement throughout this project, despite the demands on our time—and their patience!

FOREWORD

Michael L. Radelet

The problem of “miscarriages of justice” has attracted an explosion of attention in the past three decades. When Ron Huff and I started to publish our studies in this area a quarter of a century ago, we could review much of the 20th-century research on the subject in one article (Huff, Rattner, and Sagarin, 1986; Bedau and Radelet, 1987). Almost all the research on erroneous convictions prior to the mid-1980s followed closely in the footsteps of Edwin Borchard (see Zalman, Chapter 16), consisting mainly of descriptions of cases in which innocent people had been convicted. With few exceptions, all the work on the issue had been done in the U.S. or England. Even the terminology was crude, with authors using terms such as “miscarriages of justice,” “erroneous convictions,” “wrongful convictions,” “convictions of the innocent” (among others) pretty much interchangeably. Today, young scholars in this area have available two dozen or more scholarly books, scores of articles and chapters, and shelves full of case studies discussing erroneous convictions as a foundation for their work.

The growing number and quality of studies on erroneous convictions is not all that has changed in the past 25 years. Younger criminologists who wonder if their scholarship can have any influence on public opinion (and maybe even public policy) can look at the literature on erroneous convictions and see an area where criminological research has indeed had major impacts. Indeed, Frank Baumgartner and his colleagues (2008) have argued that concern about erroneous convictions has been the most important factor explaining the recent declines in death penalty support. In 1985, Gallup found that 72 percent of Americans supported the death penalty, and only 15 percent of those standing opposed mentioned

“wrongful convictions” as a reason for their position (Gallup, 1986). Twenty-four years later, 59 percent of the respondents in the 2009 Gallup Poll said that they believed that an innocent person had been executed in the preceding five years (Gallup Report, 2010). Perhaps not coincidentally, by 2011 support for the death penalty had dropped to 61 percent, a 39-year low (Newport, 2011). When support for the death penalty given the option of life imprisonment without parole (“LWOP”) was last measured in October 2010, Gallup found that support for the death penalty outweighed support for LWOP by a slim 49–46 margin (Gallup Report, 2010). Empirical research by criminologists and legal scholars on erroneous convictions (and other issues related to the death penalty) has undoubtedly been a major catalyst for this public opinion shift.

One of the most significant changes over the past 25 years is that virtually all scholars, and even many politicians and participants in the criminal justice system, have grown to realize that erroneous convictions do occur, throughout the world,¹ at least on occasion. It is also more difficult to justify the errors, at least in the way Ernest van den Haag did in 1985 when commenting on a draft of a study that identified 25 20th-century cases in which executed defendants were possibly innocent (Bedau and Radelet, 1987).² Van den Haag found that number of erroneous executions:

if true, a very acceptable number . . . All human activities—building houses, driving a car, playing golf or football—cause innocent people to suffer wrongful death, but we don’t give them up because on the whole we feel there’s a net gain. Here, a net gain in justice is being done.

(Margolick, 1985)

Today, given the extensive publicity attached to erroneous convictions and the opportunities that people have had to study the cases or even meet the wrongly convicted, it is doubtful that many would agree that the death penalty offers a “net gain” that outweighs the horror of wrongful executions.

The chapters in this book, taken as a whole, leave the reader wondering not only about cases where factually innocent defendants are convicted, but also about related errors that lead to imperfect outcomes in the criminal justice system. In the case of homicide, for example, we know of all sorts of cases where defendants argued that they did indeed kill someone, but did

so by accident, in self-defense, or because of insanity. Some might argue that they were guilty of second-degree murder or manslaughter, but not of first-degree murder. How many cases are there annually where a juvenile defendant's mental status is misjudged, and she or he is erroneously waived into our adult courts? But we make these godlike decisions with less than perfect skills, and sometimes we err. Once we realize that we occasionally convict defendants who are totally innocent, we can use the realization as a window through which we can see all sorts of other errors—or potential errors—that can be made and are being made when dividing the line between the innocent and the guilty.

Perhaps the most important effect of the growing attention to wrongful convictions is that it opens (or reopens) the door for research and debate about other imperfections in the criminal justice system. If we can convict defendants who are totally innocent, can we have faith in the idea that most prison sentences are proportionate to harm and culpability? Are the harshest sentences arbitrarily imposed, or, worse yet, systematically predictable by legally irrelevant variables such as race and gender? How prevalent is prosecutor overzealousness or incompetent defense counsel, even with defendants who are unquestionably guilty? How common are departures from judicial neutrality, and are these departures influenced by judicial elections? In the end, we can use erroneous convictions as a window through which we can detect and examine all sorts of imperfections in criminal justice systems around the world, and focus our efforts on eradicating them.

Perhaps the most amazing thing about this area of research over the past 25 years is that it has attracted such an unusually dedicated and creative group of scholars. For this book, Professors Huff and Killias have brought together the very best of these scholars in a way that far surpasses any collection heretofore available. Readers will marvel at Samuel Gross' struggle for precision (Chapter 3), the awakening of Jim and Nancy Petro (Chapter 6), and the compassion of Sandra Westervelt and Kim Cook (Chapter 13). There is not a chapter in this book that can be skipped.

Given the evolution of the study of erroneous convictions over the past quarter century, one can only imagine what scholars in the area will be studying and writing about 25 or so years in the future. We have learned quite a bit, but the most important thing these authors teach us is that we have just scratched the surface.

Notes

- 1 Although the problem is universal, Martin Killias shows in Chapter 4 that the frequency of erroneous convictions varies between countries and types of justice systems.
- 2 When published, this paper included 23 such cases. Originally we included the cases of Ethel and Julius Rosenberg, but in the end restricted our inventory to what we believed were erroneous convictions for homicide and erroneous death sentences for rape.

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1

WRONGFUL CONVICTIONS AND MISCARRIAGES OF JUSTICE IN COMPARATIVE PERSPECTIVE

PREFACE AND INTRODUCTION

C. Ronald Huff and Martin Killias

When we published an earlier book¹ on wrongful convictions with a cross-national, comparative focus, we noted that the extant literature on wrongful convictions seldom included cross-national perspectives. That book included a number of “nation reports,” describing and analyzing wrongful convictions in the context of an array of different criminal justice systems in the U.S., Canada, a number of European nations, and Israel. It stimulated considerable discussion concerning topics such as the causes of wrongful convictions; the respective advantages and disadvantages of the adversarial and continental/inquisitorial systems of justice; how the incidence of wrongful convictions might best be reduced; and other important topics. In the United States, the International Division of the National Institute of Justice, acting in part in response to the book, held a conference on this important subject, bringing together scholars and policymakers from a number of nations on several continents to discuss the challenges posed by wrongful convictions and how we might learn from each other’s experiences. The conference included a keynote address and resulted in a comprehensive report.²