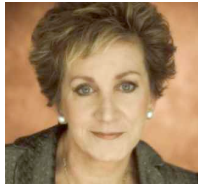


## Research probes why justice fails



By Barbara Etter\*

In December 2012, a major report on Miscarriage of Justice issues published in the USA aimed to identify what caused wrongful convictions.

The project was sponsored by the National Institute of Justice, US Department of Justice. The report is entitled *"Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice"*.

The report attempts to identify those factors that are exclusive to erroneous convictions. The report aimed to provide a basis for comprehending what policy interventions can influence the justice system to prevent future erroneous convictions.

The research identified a set of 460 erroneous conviction and "near miss" cases that met a stringent definition of innocence. The team then researched and coded the cases along a number of variables. The research was both qualitative and quantitative in nature and included the assistance of an expert panel.

The results indicated that 10 factors helped to explain why an innocent defendant, once indicted, ends up erroneously convicted. The factors were as follows:

1. State Death Penalty Culture (Executions per population in US States)
2. Age of Defendant
3. Criminal History of Defendant
4. Strength of Prosecution's Case
5. Intentional Misidentification
6. Forensic Evidence Error
7. Prosecution Withheld Evidence
8. Lying by Non-Eyewitness
9. Strength of Defense
10. Defendant Offered Family Witness

Other factors traditionally suggested as sources of erroneous convictions including "criminal justice official error" appeared to increase the chance that an innocent suspect would be indicted but not the likelihood that the indictment would result in a conviction.

The qualitative review of the cases revealed how the statistically significant factors were connected and exacerbated by tunnel vision, which prevented the system from self-correcting once an error was made. The report found that tunnel vision provided a useful framework for understanding the larger system-wide failure that separated erroneous convictions from near misses. At page xii, the report stated:

*Tunnel Vision: Tunnel vision is nearly impossible to quantify in terms of its prevalence among erroneous convictions. However, previous qualitative and case study research suggests that tunnel vision is common. Findley and Scott explain that when criminal justice professionals "focus on a suspect, select and filter the evidence that will 'build a case' for conviction, while ignoring the suppressing evidence that points away from guilt," they are at risk of "locking on" to the wrong suspect and inadvertently leading to his continued prosecution and conviction (2006: 292).*

The report found that increased attention had to be given to the "failing dynamics of the criminal justice system", rather than simply isolated errors or causes. The results also suggested that there should be greater emphasis at all levels and on all sides of the criminal justice system, including police, prosecutors, defence attorneys and judges, to analyse and learn from past mistakes before they resulted in serious miscarriages of justice.

One telling quote from the report is as follows (at page 94):

*Indeed, if there is but one conclusion from our research it is that, overall, the erroneously convicted are truly cases of **systemic failure**. Just as a jetliner may crash when a multitude of problems arises and distracts the crew's attention from the task at hand (National Transportation Safety Board [NTSB], 1973), erroneous convictions see a combination of errors by those charged with control of the criminal justice system; unfortunately, this "perfect storm" leads to systematic injustice. (emphasis added)*

**For the original:**

<http://www.american.edu/spa/djls/prevent/upload/Predicting-Erroneous-Convictions.pdf>

See also: <http://www.american.edu/media/news/>

[20120226\\_wrongful\\_convictions.cfm](http://www.american.edu/media/news/20120226_wrongful_convictions.cfm) and <http://phys.org/news/2013-03-reveals-factors-wrongful-conviction-cases.html>

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