Performance Task 1: Individual Research Report

AP Seminar

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<div align="center">Cultural/Social Considerations in Wrongful Convictions</div>

Introduction

      Wrongful convictions are a concerning issue for the U.S criminal justice system. Boaz Sangero, Head of the Department of Criminal Law at the Academic College of Law, states that there were 2,566 exonerations from wrongful convictions as of March 2020. Earl Smith, Professor of American Ethics and Sociology at Wake Forest University, furthers the extent by estimating that six percent of people incarcerated are innocent. If this is accurate, "as many as 140,000 people may be factually innocent" (Smith and Hattery 3). This is problematic because, in wrongful convictions, innocent people are punished while perpetrators remain free and the public is at risk, according to Jon Gould, Professor in the Department of Justice, Law and Criminology at American University. Additionally, data shows racial disparity as a contributor to wrongful convictions. Seventy percent of exonerees have been black, despite only being 40-50% of the incarcerated population, illustrating that they are "disproportionately represented" in wrongful convictions (Smith and Hattery 4). This literary review analyzes wrongful convictions with a cultural/social lens. A careful evaluation of research highlights how the effects of racial bias, and unreliable evidence lead to wrongful convictions, and how reforms in the criminal justice system can prevent them.

The Effects of Racial Bias

      As previously mentioned, racial bias influences wrongful convictions. Jessica Blakemore, an associate at Linklaters LLP, identifies implicit bias as a component of racial bias. She defines

it as a "relatively unconscious and relatively automatic feature of prejudiced judgment" (Blakemore 2). Robert Smith, Director of the Fair Punishment Project, further describes it as having a "stronger implicit connection between 'black' and the concept 'guilty' than they do between 'white' and 'guilt'" (4). Therefore, people may form the unconscious belief of stereotypes such as "all Black men are engaged in criminal behavior", and therefore a black defendant is guilty (Smith and Hattery 16). Consequently, members of the judicial system, including jurors, "treat defendants of a different race more severely" and are likely to prioritize evidence against them rather than defending them (Blakemore 5).

Negative stereotypes however, are not the only form of implicit bias. While many authors tend to focus on negative biases, Smith, who is more experienced with wrongful convictions, argues that "we also must consider implicit bias as white favoritism" (35). Favoritism, or the "automatic association of positive stereotypes and attitudes with members of a favored group" also affects wrongful convictions (Smith 5). Previously, implicit bias connected black people with harmful words such as "criminal", however it also associates white people with positive words such as "peaceful and lawabiding" (Smith 45). This becomes an issue when a black defendant goes against a white victim or eyewitness, and those responsible for their sentencing are more likely to trust the white person.

Lastly, Eric Rassin, Endowed Professor of Legal Psychology at Erasmus University, highlights confirmation bias as another factor in wrongful convictions. People with confirmation bias become "convinced that the suspect is guilty, and may then no longer be open to alternative scenarios in which the suspect is actually innocent" (Rassin 1). This affects many aspects of the system, such as investigations (choosing "incriminating versus exonerating investigations" based on suspicions alone) or convictions (Rassin 15). When added to the aforementioned biases,

police or jurors who associate black men as criminals, or white men as innocent, will try to find evidence that confirms this bias and ignore evidence against it (Rassin 2).

Unreliable Evidence

Unreliable evidence is another factor in wrongful convictions. The use of eyewitness testimonies and confessions are often essential in convictions, however they are not always reliable. Eyewitness identifications, for example, are likely to convince juries of a defendant's guilt, however memory is "prone to errors and bias" (Sangero 2). Deionna Ferguson, Community Service Chair at Washington University Black Law Students Association, explains that witnesses often focus on weapons or their stress, and "pay less attention to the perpetrator", making it easy to misidentify a similar looking suspect (5). Race influences this concern because "faces of different races are harder for [witnesses] to identify" (Ferguson 4). When witnesses cannot accurately identify faces, they may convict innocent suspects.

False confessions are another piece of persuasive evidence that lead to wrongful convictions. Gisli Gudjonsson, Professor in the Psychology Department at Reykjavik University, explains how the Reid technique, used in the U.S, works. It begins with an interview which turns to an investigation if "the suspect is judged to be lying" (Gudjonsson 2). This is unreliable because police interrogators "cannot accurately distinguish between truthful and false denials of guilt" with more certainty than the average person (Gould 22). The technique is "inherently deceptive and manipulative", because officers use tactics like presentation of false evidence, minimization of offenses, plea deals, etc (Gudjonsson 2). Sheri Lynn Johnson, Assistant Director of the Cornell Death Penalty project, adds to Gudjonsson's argument by highlighting how it affects people with mental disabilities. Disabled suspects are "more likely to confess" to a crime they did not commit (Johnson 2). They are susceptible to believing in their own guilt if police tell

them they have suppressed memories because they "already distrust their memory" (Johnson 15).
Both eyewitness testimonies and confessions bear a lot of weight, however it is clear they are not
always good indicators of innocence versus guilt.

Reforms in the Criminal Justice System

Wrongful convictions have many causes including racial bias and unreliable evidence. It
is difficult to find one solution, however, smaller solutions will improve the system by reducing
the causes. Cheryl Staats, Research Associate at Kirwan Institute for the Study of Race and
Ethnicity, explains that education aimed towards "raising awareness about implicit bias can help
debias individuals" (2). Jerry Kang, Professor of Law at UCLA, identifies the reasoning. In
racially motivated cases, jurors are "more careful and thoughtful about race and their own
assumptions and thus do not show bias in their deliberations" (Kang 19). Additionally, people
who deem themselves objective are less likely to recognize their biases and will display more
bias, therefore they should be reminded "they are human and fallible, notwithstanding their
status" (Kang 50). Blakemore also encourages education, because she believes that it will "go a
long way to combat the effects of implicit bias" (14). Finally, jurors can be educated regarding
eyewitness misidentifications and false confessions and be instructed to be careful when
considering it during deliberations.

While education is important, there are also ways to change the system. To improve
eyewitness misidentification, Ferguson suggests the usage of a sequential (photos shown one by
one) rather than simultaneous (shown all at once) lineups . Simultaneous lineups are harmful
because witnesses "compare people in the lineup with each other" rather than their memory,
which makes it easier to misidentify someone (Ferguson 16). With sequential lineups, the

witness is forced to rely on their actual memories, and are more likely to correctly identify the perpetrator.

Similarly, when decreasing false confessions, Gudjonsson suggests replacing the Reid technique with the PEACE method (Preparation, Planning, Engage, Explain, Account, Clarification, Closure, Evaluation), currently used in the U.K. When using it, police are "not allowed to lie to suspects or present them with false evidence", which decreases the number of suspects who may confess out of fear (Gudjonsson 2). Gudjonsson argues that this technique is "superior" in its inquisitorial technique rather than accusatory, because it produces "fewer false confessions", however it may also produce fewer real confessions (Gudjonsson 4).

Conclusion

From this review of literature, wrongful convictions are clearly a threat to the criminal justice system, and result in the incarceration of innocent people. While many people believe they are not biased, studies have shown that bias is prevalent in trials. Additional research towards the impact of education inside the court should be considered. With this research, people can find how to best implement it into the system and reduce wrongful convictions.

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