

Wrongful Incarceration: A Foucauldian Analysis

Eric Dunning, University of Alabama

Abstract

This paper seeks to take some initial steps in examining the meaning and modality of wrongful conviction. In engaging the issue from a sociological framework, this analysis benefits from utilizing the work of Michael Foucault and the socio-power dynamics articulated in *Discipline and Punish: The Birth of the Prison* (1975). Foucault's work on incarceration is not only a valuable tool in understanding the social nature of punishment, but can also be applied in a new manner, to see how wrongful conviction works as a social tool, and more importantly, why the state seems to have so little interest in seeking a remedy. This paper will first engage some of the broader, philosophical arguments of Foucault, then apply these concepts to issues of wrongful conviction.

Discipline and The Panopticon

Although Foucault's socio-historical discussion of incarceration reaches into many cultural corners, it is buttressed by the conceptualization of "discipline". While there is an appreciation of traditional discipline (i.e. actions on the body), Foucault enlarges the focus to encompass the power relationships/interaction of the individual body and larger society. The major spheres in which Foucault frames these are: (1) torture, (2) punishment and (3) the Panopticon. However, before "Foucauldian discipline" can be examined, a brief overview of the historical bedrock mined by Foucault will follow.

It should come as little surprise that the most severe form of discipline is one that has the most immediate effect on the viability of the human body: torture. While torture is

an intimate link between the condemned and punishment, Foucault reminds us of the historically *visible nature* of torture, as it is a “public spectacle” that disciplines the condemned as it indirectly disciplines other members of society. This is accomplished by the state instituting apparatuses that make torture visible/easy by engaging in prescribed actions that utilize physical manifestations (i.e. the rack, stocks, Heretic’s fork) as well as the socio-judicial (i.e. court, evidence, confessions). Therefore, the body is a signaling mechanism for political/state power, “The body is directly involved in a political field; power relations have an immediate hold upon it, they invest it, mark it, train it, torture it, force it to carry out task, to perform ceremonies, to emit signs” (p. 25). Public torture is a ceremony to invest and mark the body as something controllable by the state, as well as establishing the hierarchy of values, norms and cultural ideals. Therefore, deviance must be met with an impressive response of power implementation, “Torture forms part of a ritual that meets two demands. It must mark the victim and public torture and execution must be spectacular” (p. 33).

With the spectacular nature of this ceremony, the state has power not just over the physical body, but the psyche as well. It is here that Foucault lays claim to the disciplinary power of torture on the soul/spirit of the general population, “the people played the roles of audience, witness, participant and possible and indirect victim” (p. 68). In synthesizing this concept we would be well served to put a new twist on an old adage: If a slanderer of the King is beheaded, and no one is there to witness, what purpose does the execution serve? The answer to this question, for Foucault, provided the impetus for a new conceptualization of punishment.

The penal reforms of the 18th century, for Foucault, were a major turning point in the treatment of the condemned as well as societal reaction to punishment. The shift from a torture-centric system to a punishment-centric system took the body out of the public arena of spectacle and diversified the means of power for the state by increasing the avenues by which power-relationships could be more intimately woven into the lives of individuals,

“The shift from a criminality of blood to a criminality of fraud form part of a whole complex mechanism embracing the development of production, the increase of wealth, a higher juridical and moral value placed on property relations, stricter modes of surveillance, a tighter partitioning of the population, more efficient techniques of locating and obtaining information: the shift in illegal practices is correlative with an extension and a refinement of punitive practices” (p. 77).

For Foucault, this changing nature of punishment is a conduit for the changing nature of power relationships between the state and the people. Rather than acting *directly upon the body*, the state now acts *with the body*. In doing so, it moves from a publicly violent and multi-variant form of power to a daily, structurally coercive one, “The power to judge should no longer depend on the innumerable, discontinuous, sometimes contradictory privileges of sovereignty, but on the continuously distributed effects of public power” (p. 81). These “distributed effects” is what Foucault calls “disciplines”: the tools/techniques by which the state distributes the effects of power. It should be understood that the transition from the spectacle of torture to a regulated form of punishment served to make the exercise of power and discipline much more effective, creating what Foucault terms a “new economy and technology” of punishment.

The new economy/technology paradigm, by standardizing the application of punishment, makes it more economically and politically cost-efficient because it becomes a power exerted across *all parts of the social body*, not just the condemned. Therefore, punishment moves into a retributive framing whereby the sanctity of society, not just the sovereign, is taken into account, “The right to punish has been shifted from the vengeance of the sovereign to the defence of society” (p. 90). This new conceptualization manages the social body by ensuring that individuals are aware that one day, they may find themselves a ward of the state penal system. So, while the condemned “pays their debt” to society, the

citizenry self-regulates. Therefore, we ought to consider Foucault's notion of punishment as creating a power-discipline dynamic that serves as coercive water that flows through all social spigots.

While torture is directed to the body of the condemned and punishment is directed toward the social body, the means and manner by which punishment is implemented, according to Foucault, deserves consideration. Calling on Bentham's "Panopticon", an architectural design of prisons by which prisoners are made more visible, more psychologically sure of their visibility and, therefore, easier to control, "Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power" (p. 201). Foucault reminds us to be cognizant of the fact that excessive punishment by the state can lead to revolt and anarchy. Therefore, the true exercise of disciplinary power must be covert, natural, continuous and internalized. Extending this stone and mortar construction into the social realm, Foucault argues that the Panopticon is no longer just an architectural expression of power, but a mode of social interaction that, "must be understood as a generalizable model of functioning; a way of defining power relations in terms of everyday life of men" (p. 205).

There is an interior/exterior dynamic to Foucault's use of the Panopticon, whereby the observation of prisoners is open to those outside the Panoptic system as well. This democratization of power removes discipline from being recognized as state-imposed apparatus on society, for the discipline is so ingrained it becomes normalized, a covert tool that recreates society into a carceral existence, "one can speak of the formation of a disciplinary society...not because the disciplinary modality of power has replaced all others; but because it has infiltrated others" (p. 216). This infiltration, for Foucault, is vital for universalizing disciplinary forces and creating organic power relationships that change the body from a tool of political force (i.e. torture, punishment) to a tool of utility (i.e. service, production). The Panopticon, for Foucault, is a state imposed construction that modulates power relationships by: (1) making the social body visible: something that can be easily

observed, (2) making the social body productive: something that can be used to produce needs for the state and (3) making the social body pliable: something that can be controlled through managed pressure and discipline.

With this in mind, a move to how Foucault's theory finds application in the realm of wrongful conviction is in order. Once again, disciplinary forces reign, however, two specific areas will intersect: Foucault's conceptualization of "docile bodies" and "complete and austere institutions." These are different sides of the same coin, for one cannot exist without the other. The disciplinary forces of the state (i.e. police, forensic scientists, DA's, etc.) create the docile bodies of the wrongfully convicted. However, as equally important, are the disciplinary forces of the social body (i.e. general public, juries) that maintain these docile bodies. To date, most research regarding wrongful conviction has been quantitative and descriptive rather than qualitatively analytic, more an examination of the "story" of wrongful conviction as opposed to investigating the "how" and "why" that causes the story to come into being. Previous studies (Ramsey & Frank, 2007; Cohen, 2003) have shown that wrongful conviction results from a consistent emergence of several issues, however, the three which are the most potent examples of Foucault's framework are: (1) eyewitness misidentification, (2) police/prosecutorial misconduct and (3) false confessions. Therefore, this paper is not a content analysis of specific cases, but an examination of the larger systemic operation in wrongful convictions, and more importantly, the specific power-dynamics in operation.

Docile Bodies – Building blocks of the judicial stat: Eyewitness misidentification

Eyewitness misidentification accounts for 75% of the nationwide cases overturned by DNA testing (The Innocence Project, 2009). From good-faith mistakes to coerced/perjured testimony, it continues to be a major impediment to ensuring correct convictions (Borchard, 1932; Rattner, 1988; Wells et al, 2006).

“The Center on Wrongful Convictions recently studied eighty-six cases in which defendants sentenced to death were exonerated on claims of actual innocence. Eyewitness testimony played a part in forty-six convictions and was the only evidence against thirty-three defendants. In thirty-two cases, only one eyewitness testified.”

While misidentification must be addressed on procedural grounds we must also understand the power dynamics, along Foucauldian lines, that: (1) allows eyewitness misidentification to continue and (2) enables it to be given credibility in the courtroom. Although a witness has physical agency in the manner in which they see a crime (i.e. sight, sound, etc.) they are, however, rendered “docile” through machinations of the judicial system. The moment a witness steps into the carceral mechanisms of the police and district attorney, *they become reactive to all information and the manner in which it is presented*. Foucauldian discipline requires that institutions individuate bodies according to their tasks as a means for training, observing, controlling and making them capable. For the witness, their “task” is to testify against the accused, and for the police/DA, the task is to “observe” and “control” the witness to make them a “capable” arbiter of the truth. This is done through a variety of disciplines, foremost of which, is the police procedure of a “show up” in which the witness, often still under stress/trauma, is asked to identify the suspect in the back of the police car, often from a substantial distance as seen in the case of Orlando Boquete (FL),

“The victim identified Boquete as her attacker from 20 feet away as he was in a police car. Boquete had a large, black mustache at the time of his arrest. After identifying Boquete, the victim added to her description that the attacker had a mustache.” (The Innocence Project, 2009)

The presence of the suspect in the back of the police car “trains” the witness to make the cognitive leap toward guilt. Both the suspect and witness become “docile” in which the suspect’s body is controlled by location (i.e. police car) and the witness is

controlled by *being asked to respond immediately from an inadequate distance within which to make a correct assessment*. For Foucault, power is based on knowledge and makes use of that knowledge, for power reproduces knowledge in accordance with its intentions and goals. This "power-knowledge" is a micro-relationship, which while ubiquitous, can be unstable – *which means that the stability must be managed by the state*. This management controls whom/what may have access to knowledge, as in "show ups" which are often augmented to help make the witness more "capable", as seen in the wrongful conviction of Habib Wahir Abdal (NY),

"Abdal was picked up over four months later and identified by the victim in a show-up procedure. Though she had been informed by police that Abdal was a suspect, she initially failed to identify him as her assailant. The victim then viewed a photo of Abdal that was four years old. She returned to the show up and eventually identified him as the perpetrator." (The Innocence Project, 2009)

The issue of physical/photo lineups and the docility of the witness, brings with it some slightly different issues, for they are not there to identify a possible perpetrator, *but the actual perpetrator*. In finding themselves in a specific location (i.e. police station), in which they are controlled/disciplined (i.e. signing in, visitors badge, affidavits, waiting, etc.), the witness is primed/trained to seek justice, for they know they are not expected to leave without providing an answer. Once the witness has been controlled, disciplinary "power-knowledge" is further exercised. The use of a photo/physical lineup, where the witness is observed by the police, is only the beginning.

Research by experimental psychologists has found police lineups to be easily manipulated - intentionally or unintentionally - by verbal/nonverbal cues (Wells, 2006; Wells & Seelau, 1995). These manipulations are most prevalent in the often used simultaneous lineup, where the police know who the suspect is, and the suspect and "fillers" (i.e. non-suspects) are presented to the witness at the same time, as in the case of the

photo lineup with Thomas McGowan (TX), in which the victim did not identify McGowan in an initial physical lineup,

“McGowan was pictured in one of these three photos – his photo was in the system because of a minor traffic violation. The victim said she ‘thought’ he was the perpetrator, but the police officer administering the lineup told her: ‘You have to be sure, yes or no.’ After the officer’s instructions, the victim said McGowan was ‘definitely’ the man who attacked her.”(The Innocence Project, 2010)

When a witness mistakenly identifies a filler, suggestions to “take your time”, “look at everyone carefully” and “to be certain” operate as discipline and a control of knowledge that benefit the state. In many cases, the direct influence of power (i.e. police) creates knowledge that benefits and maintains the power-dynamic, as seen in the wrongful conviction of Alejandro Dominguez (IL),

“The victim testified that the lead detective had singled out Dominguez during the lineup and asked the victim if he was ‘the one.’. She concurred.” (The Innocence Project, 2009)

It is important to also note that the micro-relationship between the body of the suspect, the witness and police is all an exercise in power, as the state is controlling/managing a very specific form of knowledge: *the perpetrator is in this lineup*, a corruption of knowledge as evidenced by the cases of Thomas Doswell (PA) and Jeffery Pierce (OK),

“The police showed the victim a photographic lineup. None of the photographs were marked except for Doswell’s. His photograph had the letter “R” written on it. At trial, a police officer explained that photographs marked with an “R” represented photographs of people who had been charged with rape.” (The Innocence Project, 2009)

"The initial description of the perpetrator did not match Pierce and, when he was pointed out to her, the victim could not identify him. Months later, police arrested Pierce and placed his picture in a photo lineup wearing a tan shirt, which was an element of the victim's initial description of her attacker. The victim identified him from this array." (The Innocence Project, 2009)

Power-knowledge also works by framing the suspect *as someone who should join other incarcerated individuals*, either through photo or physical lineups or a combination of both as in the cases of Marcus Lyons (IL) and Marvin Anderson (VA),

"Police obtained an employee ID from AT&T, where Lyons worked, and showed the victim a six-photo lineup. The other five photos in the lineup were police mug shots, and Lyons was the only lineup member in a shirt and tie. The victim identified Lyons." (The Innocence Project, 2009)

"The officer went to Anderson's employer and obtained a color employment photo identification card. The victim was shown the color identification card and a half dozen black-and-white mug shots...the victim identified Anderson as her assailant....within an hour of the photo spread, she was asked to identify her assailant from a lineup. Marvin Anderson was the only person in the lineup whose picture was in the original photo array shown to the victim." (The Innocence Project, 2009)

Power-knowledge can also be exerted by withholding knowledge or the wholesale creation of it as exhibited in the wrongful convictions of Wilton Dredge (FL) and Leo Waters (NC)

"At the time of the crime, Wilton Dredge weighed 125 pounds and is 5'5" tall. At the second trial, the investigating officer testified for the first time that Dredge was wearing boots with higher than normal heels to compensate for the difference

between the victim's description and Dredge's appearance." (The Innocence Project, 2009)

"The victim gave police a full description and viewed numerous photographic arrays. She was hypnotized in April 1981 in an attempt to bolster her memory of what the perpetrator looked like and details about the car he drove." (The Innocence Project, 2009)

In many wrongful conviction cases, the power-knowledge dynamic is not especially covert, as seen with Albert Johnson (CA),

"The detective assembled a highly suggestive lineup, assuring the victim that the perpetrator was present, despite her reservations, and encouraging her to make a selection. The woman said that Johnson had lighter skin than her attacker, but the detective explained that Johnson had been in prison working out and had little exposure to the sun, hence the lighter skin. Ultimately, she identified Johnson as the assailant, at which point she was given confirmation that he was the suspect. She would later claim that she was pressured into making this identification."

(The Innocence Project, 2009)

All of the above cases of misidentification are important because the simple instruction that the suspect "might or might not be present" in a lineup has been shown to substantially reduce mistaken identification rates (Stebly, 1997; McQuiston et al, 2009). This statement grants more knowledge to the witness, and consequently, introduces more instability into the power-knowledge dynamic, an instability not useful for police officers who want to close cases or prosecutors who need convictions to keep their jobs.

Foucault's power-knowledge dynamic is prevalent throughout witness misidentification, managed from beginning to the end by the state to control what knowledge is accessed by the witness and the means by which they will access it. The

importance of this is articulated by police officers who have complained about implementing the more effective and valid double-blind sequential lineup as it, in their view, "disrupts the relationship" an investigator tries to build with a witness (Mecklenburg, 2008). This relationship is a micro-physical manifestation of power, an attempt to maintain stability that becomes even more powerful when exercised in a courtroom. In much the same manner that the witness becomes docile in the police station, jurors become docile as *an extension of power of the state via the witness*. It is important to note that Foucault's argument of power and punishment becoming normalized plays a crucial role here as well.

The erroneously influential effect eyewitnesses have on juries has been well documented (Deffenbacher and Loftus, 1982; Brigham and Bothwell, 1983; Tversky and Marsh, 2000). There are many reasons for this granting of over-credibility by jurors regarding witness testimony: (1) a lack of understanding the dynamics of memory as well as the relationship between the witness and the state, (2) the assumption of a common, empirically based objective reality and (3) and assumption that all people, having a "common understanding", will intake/remember visual stimuli the same way. In short, jurors assume the eyewitness is credible because they assume their memories are equally incorruptible and are unaware of how the state has "assisted" the witness. As stated earlier, eyewitness testimony and memory is influenced by "event factors" (i.e. lighting conditions, speed/distance, presence/absence of violence, etc.) and "witness factors" (i.e. fear, stress, expectation, age/gender, etc.). Many studies have shown that memory is malleable and degrades with time, however, Foucault's normalization of power is especially applicable here, as the witness is presented by the state as being an "average citizen" who just happened to be in the "right place" to see the crime. Socially, we grant certain members of institutions leeway to act on behalf of the larger social body (i.e. politicians, firefighters, etc.). With a witness, however, the power of the state becomes normalized *through the body of the common citizen*, resulting in a sanitization of state power. The witness is rarely an expert or correct in their recall of the events, yet they are given the utmost credibility by

the jury because, ironically, they are the epitome of normalcy, the antithesis of deviance. The power/credibility of the witness comes from a normalization that frames them, for the jury, as someone that the prosecution was lucky to find to back up their case, a Foucauldian example of making power seem "organic." The "normalized body" of the eyewitness is placed by the state in a very specific location of control (i.e. courtroom) in which they interact, according to disciplinary rules, with twelve other disciplined bodies (i.e. jury).

Police/Prosecutor Misconduct - Institutional Power & Corruption: Foundational Misconduct

Unlike witnesses and juries who are largely docile, misconduct is a result of active agency within what Foucault, via Baltard (1829), calls "complete and austere institutions." In the same manner that there is an internal/external dynamic of the Panopticon, there is an internal/external dynamic of "complete and austere institutions." Although Foucault did not apply this framework to agents of the state during judicial proceedings, such an application will be the focus of this section, and in doing so, Foucault's explanation of the purpose of prison will be the launching point,

"Procedures were being elaborated for distributing individuals, fixing them in space, classifying them, extracting from them the maximum in time and forces, training their bodies, coding their continuous behavior, maintaining them in perfect visibility, forming around them an apparatus of observation, registering and recording, constituting on them a body of knowledge that is accumulated and centralized." (p. 231)

Only by understanding the power constructions can one fully grasp the influence that misconduct wields as a structural force that makes the entire system more amenable to misconduct as a normalized disciplinary power. Misconduct operates on different tiers of

egregiousness and each one brings with it some unique dynamics that are worthy of discussion.

The suppression/falsification of evidence should be considered a type of foundational misconduct, as it takes a form of social knowledge (i.e. evidence) and manipulates it to take advantage of the docility of the jury. Socially, juries have been trained, managed and controlled to expect evidence in a trial, a control that registers/records and constitutes on the accused a body of knowledge that is accumulated and centralized. Evidence, although false, is registered and recorded – made admissible - giving it validity in the institution of the courtroom. Conversely, the suppression of exculpatory evidence plays a major role, as its absence lends credence to misconduct, a manipulation of power-knowledge as seen in some of the following cases:

- Kirk Bloodsworth (MD): exculpatory evidence withheld pointing to another suspect.
- Clarence Brandley: (TX): suppressed evidence placing others at the scene of the crime.
- Paris Carriger (AZ): failure to disclose information to impeach the state's witness.
- Terry Harrington (IA): witness intimidation and suborning the perjury of a state witness.
- Lesly Jean (NC): failure to disclose evidence of hypnosis of key witness and victim.
- Ronnie Marshall and Robert Spurlock (TN): use of false evidence.
- James Joseph Richardson (FL) use of perjured testimony and ignoring confession.
- James E. Richardson (WV): fabricated evidence/ withholding of exculpatory evidence.
- Robert Wilkinson (PA): exculpatory evidence destroyed.

The coordination of social authorities (police, prosecutors, etc.) accumulates false/suppressed evidence and centralizes it into a coherent narrative for a docile jury, a use of power to create a specific form of knowledge by which to control the outcome of the case. Foundational misconduct normalizes power-knowledge imbalances and weaves it deeper into the fabric of the justice system, as seen in a March 2001 expose by the *Chicago Tribune* that found, nationwide, 381 homicide cases since 1963 have been overturned because prosecutors concealed evidence or presented evidence they knew to be false. Not one of these prosecutors has been convicted of a crime or disbarred. Prosecutorial immunity, upheld by the U.S. Supreme Court, under the aegis that a prosecutor is engaging in "advocative" functions (*Imbler v. Pachtman*, 1976; *Forrester v. White*, 1988) is a legal

normalization of misconduct. Bennett Gershman, law professor at Pace Law School in New York and author of *Trial Error and Misconduct* puts the Foucauldian power dynamic in the most succinct terms, "If a prosecutor withholds evidence, it's not a crime" (*The Atlantic*, Nov 1999).

Foundational misconduct is inherent in the very power structure of the adversarial judicial system. The inequities of resources between prosecution and defense have been well documented (Margulies, 1989; Blankenship and Blevins, 2000). The lack of financial support for defense, especially for the indigent, is a clear call toward Foucault's "juridico-economic" framework of disciplinary power. Less money means less access to judicial knowledge, which benefits the state. However, the complete and austere quality of the prison is also present in these inequities. Prison, for Foucault, is not only a carceral institution, but an institution that makes all aspects of society, in some manner, carceral via controlling/management of time and isolation,

"The isolation of the convict guarantees that it is possible to exercise over them, with maximum intensity, a power that will not be overthrown by any other influence; solitude is the primary condition of total submission...isolation provides an intimate exchange between the convict and the power that is exercised over him." (p. 237)

The current justice system controls not only the movement/social position of the accused, but the defense as well. Lacking resources and time, substandard defense becomes expected and normalized. This "isolation" of the defense is a power-disciplinary force imposed by the state in which the lack of time/resources separates the defense from the intricacies of the cases - *which enables police/prosecutorial misconduct to be more easily implemented and remain undetected*. As agents of the state, prosecutors do not carry this burden. Conversely, the lack of isolation for the prosecution allows for a judicial intimacy between prosecutors and the courts, as exemplified by prosecutors Paul Zacks (FL) and U.S. Assistant District Attorney Steven D. Mellin, (VA.),

"The court also rejected Smith's claim that Zack coached a witness outside the courtroom during trial. Smith appealed for another hearing and the state Supreme Court remanded for another hearing because prosecutor Paul Zacks had engaged in improper *ex parte* communications with the judge presiding over the hearing while the judge was preparing his order." (Center for Public Integrity).

"Jurors had reported that evidence that the court had ruled inadmissible -- a calendar allegedly obtained from the possessions of the deceased--had made its way into the jury room anyway. There, they told the judge, it had been 'very influential' After a hearing, Judge Lee concluded that the chief prosecutor in the case, Steven D. Mellin, had put the calendar in the evidence box that had gone to the jury." (Cassel, 2004)

Although the original conviction was thrown out, the defendant, Jay E. Lentz, was convicted in a second trial. Upon hearing his sentence, Lentz inadvertently put his finger on the power-knowledge dynamic when Judge Ellis admonished him to refrain from outburst, lest he be removed from the courtroom. As quoted in the *Washington Post* (2006) Lentz responded, "What difference does it make? You're in on it, too!"

Positional Misconduct

The second tier of misconduct moves from examining the texture of the chessboard, to the integrity of the individual pieces. The power dynamics between individuals working within the judicial system cannot be ignored, for this is what leads to what should be called positional misconduct. Cohen (2003) provides a conceptual starting point from which to work,

"Misidentifications are not always the honest mistakes of well-meaning citizens doing their civic duty. They are prompted by police eager for arrest, orchestrated by

prosecutors hungry for a conviction, nourished by judges who owe their seats to a public that has not outgrown its wistful reverie of frontier justice.”

Although suppressed/falsified evidence, coerced confessions and the use of jailhouse informants are blunt examples of disciplinary force, an equally influential form of prosecutorial misconduct occurs with improper/inflammatory closing arguments, and it is defined as, “any disparaging or prejudicial statements calculated to influence the jury to consider improper factors in determining life in prison or the death penalty.” Based on *Chapman v. California* (1967), courts still permit the use of inflammatory/improper closing arguments based on the assumption that they would not change the juries’ verdict and, therefore, are not fundamentally unfair. In disproving this thesis, Platania and Moran (1999), in researching the responses of 328 potential jurors, found that those who watched videotape of inflammatory/improper closing arguments recommended the death penalty significantly more often than those who had not. However, it is interesting to note that the U.S. Supreme Court has ruled, in *Buckley v. Fitzsimmons* (1993), that prosecutors are not immune when they make inflammatory comments to the press as well as in *Kalina v. Fletcher* (1997), ruling that a prosecutor who perjures themselves in certifying facts to obtain an arrest warrant should not be covered by immunity. While these decisions appear to mitigate prosecutorial misconduct, they do not breach the walls of the complete and austere institution of the justice system. The prosecutor is not allowed to make improper/inflammatory comments at press conference, *but is allowed to do so in a courtroom, to twelve docile bodies in a jury box*. So, the die of the judicial system has already been cast, establishing an entrenched Foucauldian disciplinary force exemplified by the 1976 Supreme Court ruling in *Imbler v Pachtman*, which codified that prosecutors have absolute immunity from liability *for their official actions during trial*. This has led to the overarching, catch-all judicial notion of “harmless error” used by appellate courts to uphold convictions despite illegal tactics by prosecutors. This disciplinary force is a power-

knowledge dynamic, through discourse, that defines prosecutorial illegality as “harmless” and an “error” which grants more power to the state, as their misconduct is minimized, reduced and accepted. However, Foucault’s carceral society also exerts its disciplinary force on prosecutors themselves, with results that often pave the way for positional misconduct.

The Social Panopticon

Although the policies and professional cultures of DA offices vary, they all share one commonality: the job of district attorney is almost always an elected position. This forces a response to social/populist pressure for many DAs. Here, we see the reemergence of the Panopticon, however, with an important distinction that reaffirms that carceral disciplinary forces are not limited to prisons. While the “prison Panopticon” allows one guard to supervise several prisoners, for the DA, it is inverted, as they are the lone prisoner in a “social Panopticon” supervised by many guards (i.e. the public). While the prison Panopticon forces prisoners to self-regulate due to increased visibility, the visibility of the DA in the social Panopticon causes a lack of self-regulation (i.e. positional misconduct). For the DA, carceral mechanisms have made their way over the prison wall and into their office, becoming diversified means by which to control not only the DA’s office, but the social body,

“Criminal justice policy, once a non-entity in political debates, became a perennial campaign issue, with candidates on the local, state and national level promising to be ‘tough on crime’. Sentence lengths, police practices, and even the details of the substantive criminal code itself were submitted to the electorate for approval.

Criminal justice policy – for better or worse – was frequently dictated by majority vote.” (Simmons, 2009)

In the Panopticon, the “good prisoner” is docile while the “good DA” is active and aggressive. Political pressure leads many prosecutors to focus completely on conviction rates (Smith, 2001) and refuse to consent to DNA testing after a conviction – lest a mistake

be revealed to the public (Medwed, 2004). The election season for prosecutors is rife with ads touting conviction rates and the number sent to death (Bresler, 1996).

The obsession of prosecutors for convictions, and the subsequent positional misconduct that comes with it, is not without a Foucauldian cause that runs through the entire issue of wrongful conviction: the disciplinary force of power-knowledge. The electorate, docile in regards to the intricacies of criminal justice policy, can exert power in only one substantive way: by voting the prosecutor out of office. Having little knowledge of the vagaries of criminal statutes, their only knowledge of what makes a "good prosecutor" is: a high conviction rate. These two, taken together, are accumulated and centralized forms of discipline exerted upon the prosecutor, a means to exact utility and code their behavior, as the election is an apparatus of observation. After the election, carceral disciplinary forces, working hand in glove with power-knowledge, registers and records the power implementation (i.e. election results). Someone will remain in office...or not.

The State v. The Body – Controlling the soul of the accused: False Confessions

False confession can be one of the most problematic aspects of wrongful conviction, for it brings a palpable cognitive dissonance that can be distilled down to one question: Why would anyone confess to something they did not do? For many, the same many that find themselves on a jury, a false confession is an inconceivable notion, as "only the guilty confess" is a social construction laden with an almost inexorable power. False confessions encompass not only psychological, emotional and physical aspects, but also the institutional power of the state, as well as the "rightness" of state power as perceived by the innocent.

Obtaining a confession is one of the most important aims of police interrogators, as an estimated 80% of cases are solved by a confession (Conti, 1999). Confession evidence is considered to be the most damaging form of evidence at trial (Underwager & Wakefield, 1992; Wrightsman & Kassin, 1993; Zimbardo, 1967) as well as serving to relieve doubts of judges and jurors (Driver, 1968; Reik, 1959; Schafer, 1968, Nietzel & Fortune, 1994).

Currently about 25% of the over 240 wrongful convictions overturned by DNA evidence in U.S. have involved some form of false confession (The Innocence Project, 2010). This problem has an ignoble history as Bedau and Radelet (1987) discovered that in 49 of 350 wrongful convictions, the foremost cause was a false confession brought about by coercive interrogation. Tracking back even further, Munsterberg (1908), in his book, *On The Witness Stand*, discusses false confessions where, "in some instances the confessing person really believe themselves guilty" (p.146). All the above should remind us that false confessions are not a new phenomenon, however, in better understanding them, an appreciation of the power dynamics and disciplinary forces at play is necessary. A complete examination of the multi-variant nature of false confessions is beyond the scope of this paper, however, some pertinent issues can be addressed. In the arena of false confession, coerced-compliant and coerced-internalized confessions are where the Foucauldian framework finds the most fertile soil.

Coerced-Compliant Confessions

Coerced-compliant confessions occur when a suspects confesses, despite knowledge of their innocence, due to extreme methods of police interrogation (Gundjonsson, 1992; Kassin, 1997). These types of confessions are usually the result of: threat/intimidation, use of force, diminished capacity (i.e. mental impairment, exhaustion, etc.), ignorance of the law, or devious interrogation techniques (i.e. false claims of incriminating evidence). Although not particularly intricate, the power-knowledge constructions in these types of confessions are efficient, as they are the direct use of the Foucauldian concepts of isolation, control of time and the body to deconstruct the suspect's knowledge (i.e. I am innocent) into a knowledge that serves the power implementations of the state (i.e. I confess).

For individuals isolated in an interrogation room, the lack of knowledge about judicial procedure is an area ripe for an interrogator to "help" the docile suspect through the use of plea bargains, as seen in the case of Marcellius Bradford (IL), who 17 at the time, and with

the help of the Cook County State's Attorney's office, pled guilty and implicated three other innocent men in the rape and murder of Lori Roscetti. The Foucauldian framework of isolation/solitude creates a pressure, "with maximum intensity...that provides an intimate exchange between the convict and the power that is exercised over him." (p.237). In using isolation as a pressure tactic by which to observe/control the suspect, the state also provides the one option by which to relieve that pressure, in which the suspect is "trained" to comply - via a plea bargain.

There have been many cases of juveniles; the mentally disabled, etc. confessing to crimes, however, for those outside this category, isolation must be augmented by: (1) a distortion of knowledge and (2) an introduction of new knowledge to explain the suspect's claims of innocence. These two augmentations give the suspect a means by which to acquiesce to the demands of the state, a prime example of the Foucauldian diversification and infiltration of power in which the state works with the body of the suspect, not against it, as seen in the case of Danial Williams (VA),

"Williams, who was exhausted and had not eaten since breakfast at around 9am, maintained his innocence for the first ten hours as he was interrogated by three different detectives. He agreed to take a polygraph, and was falsely told that he failed." (Leo & Davis, 1999)

The "knowledge" given to Williams was not the misconduct by the detectives, but rather that some machine, controlled by agents of the state, had ascertained that his body...had failed his soul. In essence, his body, under the disciplinary forces of the state, could not contain his guilt any longer. Now, with confession in hand, the state institutes as variety of disciplinary forces that ensure that the confessor will be treated harshly at every stage of the investigative and trial process (Leo, 1996). The confessor is more likely to be incarcerated prior to trial, charged, and most importantly, pressured to plead guilty in the

courtroom. Confessions are so prized by the state because, in the words of former U.S. Supreme Court Justice William Brennan, "no other class of evidence is so profoundly prejudicial" (*Colorado v. Connelly*, 1986:182). The power-knowledge granted by confession permeates every aspect of the case. Poor witness identification, which would never be admitted, becomes corroborating evidence (Castelle & Loftus, 2001), police close the investigation and make no effort to pursue exculpatory evidence (Leo & Ofshe, 1998), prosecutors charge the highest number/types of offenses available (Cassell & Hayman, 1996), defense attorneys pressure clients to accept lesser charges to avoid a jury trial (Nardulli, Eisenstein & Fleming, 1988), it establishes an irrefutable presumption of guilt among justice officials, the media, the public and jurors (Leo & Ofshe, 1998) and judges are less likely to suppress even highly questionable confessions (Givelber, 2000). Foucault's conceptualization of the state power manifested through juridico-economic means is also evident as judges tend to punish defendants more harshly for their claims of innocence, viewing it as a cost to the state in time, effort and resources (Leo, 2008). The coerced-compliant confession calls us back to the "public spectacle" of torture, as all parts of the carceral system - prosecutors, defense attorneys and judges play a role in marking and investing the body of the confessor so that it may emit the signs of deviance, and reaffirm the power of the state, when brought before a jury. Confessions are overwhelming in their disciplinary power, especially coerced ones, which are extracted by the most intimate forms of discipline on the body (i.e. stress, fear, deprivation, threat, etc.). The coerced-compliant confession is a judicial broadsword, yet there is also a scalpel, to cut around the edges, that the state wields with equal effectiveness.

Coerced-Internalized Confessions

While coerced-compliant confessions run parallel with the "public spectacle" of torture, coerced-internalized confessions are more punishment-oriented, in which the

confessor is removed from the exposed, physical/psychological deprivations of forced compliance and is tucked away - psychologically placed within the walls of a carceral system. In the same manner that 18th century penal reforms focused more on controlling time and isolation as means to invest "the incarcerated soul" with an understanding of the proper means and modes of being a productive citizen for the state, coerced-internalized confessions also focuses on the soul of the confessor.

A coerced-internalized confession is one in which the confessor, having been subjected to highly suggestive methods of interrogation, comes to believe that they committed the crime (Kassin & Sukel, 1997; Kassin & Kiechel, 1996). The starting point for coerced-internalized confessions is the internal conception of the confessor in regarding the very nature of the judicial system. A carceral society must exercise a very specific power-knowledge across the social body: there is an inherent "rightness" to the justice system, so the innocent need not fear it. The state has a vested interest in social inoculation against judicial cynicism. This reaches back to a Foucauldian framework, in which the diversification of the state power serves to make the social body pliable and productive. In coerced-internalized confessions, it is a micro-physical relationship, the power-knowledge of the state against the social body writ small.

One of the results of the normalization of the carceral society is reflected in research by Kassin and Norwick (2004), using 72 participants in a study on theft and investigation; found that the innocent participants were significantly more likely to waive their *Miranda* rights than those who were guilty. Further research supported the idea that naïve belief in the "power of their innocence" to set them free was the major impetus for waiver. Whether guilty or innocent, any day an interrogator can get a suspect to waive their *Miranda* rights is a good one. Peter Reilly, an 18 year old who confessed to killing his mother after several hours of interrogation, provides tangible support for the "innocence mythos" that has been cultivated by the state as a disciplinary force. When asked why he waived his rights, Reilly said, "My state of mind was that I hadn't done anything wrong and I felt that only a criminal

really needed an attorney, and this was all going to come out in a wash" (Connery, 1996, p.63).

The idea that innocence will clear matters up, is power-knowledge construction that specifically targets the innocent, as previous research (Softley, 1980; Leo, 1996) has found that those with no prior felony record are far more likely to waive their rights than those with criminal justice "experience." The carceral justice system has individuated certain bodies (i.e. former felons), "trained" them (i.e. incarceration) and made them "capable" (i.e. power-knowledge) of exerting their *Miranda* rights, thereby reducing their visibility as they fall silent - withdraw from the carceral system - and await their attorney. However, for the innocent, they are in a micro-physical Panopticon, induced into a conscious visibility by consistent interactions with interrogators in the attempt to prove their innocence, complying with every request and answering every question, erroneously waiting for the "innocence mythos" to take effect. This is a power-knowledge dynamic with the scales tipped firmly in favor of state power, for the innocent have no knowledge/experience on how to exert their power (i.e. avoid false confession). Once again, as seen with the eyewitness, once the innocent have entered the carceral system of the interrogation room, they become docile and completely reactive to the state. The reactivity and the limitations of power-knowledge are the proverbial final nails in the coffin. A false confession is only hours, maybe minutes away. However, with coerced-internalized confessions, the state must make the suspect truly believe they committed the crime. The creation of belief comes from the state reframing the suspect's body and mind. They must find a way to puncture the suspect's belief in agency, free will and any lingering sense that they are in control of their body. The interrogation breaks down the suspect's knowledge of their selves and institutes, through discipline, a new form of knowledge: a knowledge that gives the suspect a chance for absolution. While a coerced-compliant confession offers a plea bargain to help the suspect protect their body (i.e. no death penalty), a coerced-internalized one offers the suspect way

to protect their mind (i.e. why did I do this?). It provides a means for the innocent to explain why they find themselves in the carceral mechanisms of the state,

“as Williams continued to deny involvement, the interrogators began to suggest that he could have ‘repressed’ his memories of the crime – that he could have blacked out, or been sleepwalking, that he could have amnesia...at about 5:50 a.m., after almost 12 hours in the police station, Williams gave in, and began to concoct a story of his involvement.” (Leo & Davis, 1999)

Creating an internalization that causes a suspect to believe they committed the crime is much more powerful than a coerced one, for the suspect is far less likely to retract the confession or fight its validity in the courtroom. So, while coercion is the quickest means, internalization is the more substantive of the two.

Equilibrium and the Judicial State

While Foucault provides a structural framework that elucidates power dynamics within the specific spheres that make up wrongful incarceration, the ways in which they combine to create a broad, socially accepted power dynamic is not adequately encompassed by Foucault’s theory, especially in light of our modern, instant-messaged, media-saturated culture. In order for wrongful incarceration to remain uninvestigated by a docile culture, a disciplinary “text” must be created, and furthermore, the state must ensure that members of society are literate in this text. The state must ensure that the legitimatizing and reification of wrongful incarceration is absolute, thereby giving it a hegemonic buttress, whereby it becomes social currency that there are no innocents in jail. Therefore the disciplinary texts that must be imposed throughout the social body are as follows:

1. The justice system is fair
2. No innocents appear in a courtroom
3. The state has no agenda/ulterior motives

4. A true jury of "peers" exists and have the power.

It is here where we must remain aware that judges, jurors, prosecutors, police officers and defense attorneys live outside the carceral system in some sense. They are managers and producers of the disciplinary texts of the carceral system, yet they also live among those who receive these texts. It is here where I propose, perhaps a new conceptualization of the carceral system, in the sense that there is a semi-permeable social membrane between those "within" the carceral system (i.e. judges, police) and those "outside" (i.e. the butcher, the baker). Yet, those outside are integral to the carceral system, for they are the ones brought into it to pass judgment, they are the ones that must believe that the death penalty is a deterrent and there are no innocents in prison. More importantly, that no innocents ever appear in a courtroom, for arrival in front of the twelve who have passed through, must be the last step in a foregone conclusion of guilt.

The state must maintain this semi-permeable social membrane by allowing those outside the system to only pass through via specifically regulated times, places and means (i.e. testifying in court, working with a sketch artist, depositions, etc.). This semi-permeable social membrane, in letting the "good jurors through" – shapes and reifies the carceral system, even though they don't "work" within it. Those outside are coming in to create, shape and produce "justice", therefore the state must ensure that only those "bringing justice" interact only with specific members of the state, as opposed to others in the carceral system (i.e. the defendant, meeting the victim's family, defense attorney, witnesses, setc.). The discourse between those outside and inside is tightly controlled, for jurors only "speak" with the defendant and witnesses or "meet" the family in a courtroom, a place controlled by specific disciplinary rules. Foremost among some of the disciplinary forces exerted on jurors stepping into the carceral system are *voire dire*, changes of venue and preemptory challenges, whereby those outside are not allowed to pass through into the carceral system, unless they have been properly "trained" and "disciplined" in order to provide "utility" to the state by performing their "task".

The above conceptualization begs the two questions: how can the state ensure those who have just passed through and stepped into the carceral system perform their task? How can those who pass through be convinced that they are the arbiters of justice in control? It is here where a type of social pressure must be managed by the state, whereby there must remain equilibrium between both sides. The messages, ideas, concepts and presentations of incarceration must be balanced, and often, counteracted from the state. If the arbiters of justice are pulled from society, then it behooves the state to continually perpetuate cultural ideas that increase the odds that jurors will self-generate the narrative frame for the prosecution's artful displays. If those outside become too aware of the problem of wrongful incarceration, their complaints and dissolution expand their worldview, putting more pressure on the social membrane – which will quickly burst, obliterating the barrier between the carceral and the non-carceral, which results in jurors no longer being as amendable to the state's version of events. In short, every story about an exonerated prisoner must be balanced by a story about a captured one. Every lawsuit won by prisoner advocates must be balanced by a story on Natalie Holloway. Every documentary about exoneration must be balanced by a story on an abducted child. Exoneration via DNA evidence must be balanced by a DNA conviction of a cold case. Legalization of X must be balance by a "War on X". It is well understood the influence that various media has in increasing anxiety about the world as well as promoting the notion that there is one means to mitigate these feelings (i.e. courtroom justice). These social narratives and cultural machinations create the disciplinary texts that ensures those who are passing through into the carceral system are properly trained to perform their function. For we must legitimately asks, how long would the justice system operate as a form of state control if more people became aware of the fact that it might not be the shining beacon of truth it claims to be?

Conclusion: A Social Requirement

The debate regarding the utility or morality of the death penalty is not likely to abate any time soon, as impassioned advocates on both sides have produced arguments that spring from base, economic principles to more philosophical and religious views. Many of these arguments are well-known and oft repeated, however, in keeping with the goals of this paper, we would do well to try and synthesize some of the structural power dynamics that allow the issue of wrongful incarceration, and the real possibility of wrongful execution, to remain unexamined by a largely unperturbed public. In this sense, the state has a vested interest in creating values/norms that not only support their actions, but create a cultural ethos that is understanding, and often openly dismissive, of the "mistakes" of wrongful incarceration, etc. Foucauldian power-dynamics, discipline and the carceral society are quite evident within the justice system, but this cannot exist without the larger, outside society also being part of the system. In short, there should be a real consideration that this is the epitome of the internal/external dynamic of Foucault's use of the Panopticon. In elaborating on these intricacies, we should embrace a new conceptualization of Panoptic equilibrium, whereby the internal, physically carceral disciplines "inside" the justice system (i.e. criminals, police, attorneys, judges, etc.) must equally match the external, mentally carceral disciplines of the "outside" members of society. In short, Foucauldian discipline controls what happens behind the prison walls by ensuring those outside the walls, that everything is operating at maximum utility and justice.

It should be understood that the acceptance of wrongful incarceration is the first step in the paved road to accepting the notion of wrongful execution, in the same manner as the child takes their first steps before learning to walk. Arguments for the death penalty, when peeled back, reveal a core acceptance of state power/control over the body, not just the body of the criminal, but the bodies of the free. The free bodies of society have been trained, observed and put to a very specific utility by the state: support the death penalty.

This training, and the carceral disciplines that guide it, operate on all aspects of the individual – mind, body and soul. All three of these aspects rely on the power-knowledge, for in the same manner that the defense attorney is isolated from the intricacies of a case; the public is isolated from the intricacies of issues of wrongful incarceration/execution.

In order for the state to maintain/exert power across the social body, it must first have a firm grasp on controlling the agency of individuals that make up society. Having the option to incarcerate, punish and execute are prerequisites for the state to impose other forms of carceral disciplines. Therefore, this begs question of whether wrongful incarceration serves a social purpose, whether it is a juridico-economic framework that the state is willing to overlook, and more importantly, maintain through disciplinary forces. The structural power-knowledge frameworks run throughout the issue of wrongful incarceration, the question to be answered in the future is: why have they not gone away? There may never be a solid answer, as we are so ingrained in the system that to question it seems pointless, ineffective and without reward. This, in a Foucauldian world, is exactly what the state wants.

References

- Armstrong, K & Possley, M. "The Verdict: Dishonor." *The Chicago Tribune*. March, 2001
- Bedau, H. A., & Radelet, M. L. (1987). Miscarriages of justice in potentially capital cases. *Stanford Law Review*, 40, 21-179.
- Berlow, A. "The Wrong Man." *The Atlantic Monthly*, November, 1999
- Blankenship, M. & Blevins, K. (2000). Inequalities in capital punishment in Tennessee based on race: an analytical study of aggravating and mitigating factors in death penalty cases. *University of Memphis Law Review*, 31, 823-860
- Borchard, E. (1932). *Convicting the innocent*, New York: Garden City Publishing
- Bresler, K. (1996). Seeking justice, seeking election, and seeking the death penalty: the ethics of prosecutorial candidates' campaigning on capital convictions. *Georgetown*

Journal of Legal Ethics, 7, 941-958

Brigham, J. & Bothwell, K. (1983). The ability of prospective jurors to estimate the accuracy of eyewitness identifications. *Law and Human Behavior*, 7(1), 19-30

Buckley v. Fitzsimmons 509 U.S. 259 (1993)

Cassel, E. (2004). "Prosecutor Misconduct in Two Recent High-Profile Cases." Findwrit.law: <http://writ.news.findlaw.com/cassel/20040212.html>

Cassell, P. & Hayman, B. (1996). Police interrogations in the 1990s: an empirical study of the effects of Miranda. *UCLA Law Review*, 43, 839-931

Castelle, George and Loftus, Elizabeth (2001) Misinformation and wrongful convictions. In S.D. Westervelt & J.A. Humphrey (Eds). *Wrongly convicted: Perspectives on failed justice*. Newark: Rutgers University Press.

The Center for Public Integrity. www.publicintegrity.org

Chapman v. California, 386 U.S. 18 (1967)

Colorado v. Connelly, 479 U.S. 157 (1986)

Connery, D. S. (Ed.). (1996). *Convicting the innocent*: Cambridge, MA: Brookline. Dickerson v. United States, 120 S. Ct. 2326 (2000).

Conti, R. (1999). The Psychology of False Confessions. *The Journal of Credibility Assessment and Witness Psychology*, 2(1), 14-36

Cohen, S. (2003). *The Wrong Men*, New York: De Capo Press

Deffenbacher, K & Loftus, E. (1982). Do jurors have a common understanding concerning eyewitness behavior? *Law and Human Behavior*, 6(1), 15-30

Driver, E. D. (1968). Confessions and the social psychology of coercion, *Harvard Law Review*, 82(42), 42-61.

Engelhardt, L. (1999). The problem with eyewitness testimony. *Stanford Journal of Legal Studies*, 1(1) 25-30

Forrester v. White, 484 U.S. 219 (1988)

Foucault, M. (1975). *Discipline and Punish: the Birth of the Prison*, New York: Random House

Givelber, Daniel (2000). Punishing protestations of innocence: Denying responsibility and its consequences. *American Criminal Law Review*, 37, 1363-1408.

Gudjonsson, G. H. (1992). *The psychology of interrogations, confessions, and testimony*. New York: Wiley.

Imbler v. Pachtman, 424 US 409 (1976)

The Innocence Project. www.innocenceproject.org

Kalina v. Fletcher 522 U.S. 118 (1997)

Kassin, S. M. (1997). The psychology of confession evidence. *American Psychologist*, 52, 221-233.

Kassin, S. M., & Kiechel, K. L. (1996). The social psychology of false confessions: Compliance, internalization, and confabulation. *Psychological Science*, 7, 125-128.

Kassin, Saul and Sukel, Holly (1997). Coerced confessions and the jury. *Law and Human Behavior*, 21, 27-46.

Leo, R.A. (1996). *Miranda's revenge: Police interrogation as a confidence game. Law and Society Review*, 30, 259-288.

Leo, R. A., & Ofshe, R. J. (1998). The consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation. *Journal of Criminal Law and Criminology*, 88, 429-496.

Margulies, J. (1989). Resource deprivation and the right to council. *The Journal of Criminal Law and Criminology*, 80(3), 673-725

Mecklenburg, S., Bailey, P, Larson, M (2008). The Illinois field study: a significant contribution to understanding real world eyewitness identification issues. *Law and Human Behavior*, 32(1), 22-27

Medwed, D.(2004). The Zeal Deal: prosecutorial resistance to post-conviction claims of innocence. *Brooklyn University of Law Review*, 84, 125-184

McQuiston-Surrett, D., Malpass, R.; Tredoux, C. (2006). Sequential vs. Simultaneous Lineups: A review of methods, data, and theory. *Psychology, Public Policy, and Law*, 12(2), 137-169

Munsterberg, H. (1908) *On the witness stand*. New York: Doubleday.

Nardulli, P., Eisenstein, J, Fleming, R. *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*. Urbana: Univ. of Illinois Press

Platania, J. & Moran, G. (1999). Due process and the death penalty: the role of prosecutorial misconduct in closing argument in capital trials. *Law and Human Behavior*, 23(4), 471-485

Ramsey, R. & Frank, J. (2007). Wrongful conviction: perceptions of criminal justice professionals regarding the frequency of wrongful conviction and the extent of system error. *Crime Delinquency*, 53, 436-470

Rattner, A. (1988). Convicted but innocent: wrongful conviction and the criminal justice system. *Law and Human Behavior*, 12(13), 283-293

Reik, T. (1959). *The compulsion to confess*. New York: Farrar, Straus, and Cudahy.

- Schafer III, W. J. (1968). *Confessions and statements*. Springfield, IL: Charles C. Thomas.
- Smith, A. (2001). Can you be a good person and a good prosecutor? *Georgetown Journal of Legal Ethics*, 14, 355-400
- Softley, P. (1980). *Police interrogation: An observational study in four police stations*. London: Home Office Research Study, Royal Commission on Criminal Procedure Research Study.
- Stebly, N. (1997). Maintaining the reliability of eyewitness evidence: after the lineup. *Creighton Law Review*, 42, 643- 654
- Tversky, B. & Marsh, E. (2000). Biased retellings of events yield biased memories. *Cognitive Psychology*, 40(1), 1-38
- Underwager, R., & Wakefield, H. (1992). False confessions and police deception. *American Journal of Forensic Psychology*, 10(3), 163-174.
- Wells, G. (2006). The psychology of lineup identifications. *Journal of Applied Social Psychology*, 14(2), 89-103
- Wells, G. & Seelau, E. (1995). Eyewitness identification: Psychological research and legal policy on lineups. *Psychology, Public Policy, and Law*. Vol 1(4), 765-791
- Wrightsmann, L. S., & Kassin, S. M. (1993). *Confessions in the courtroom*. Newbury Park, CA: Sage.
- Zimbardo, P. G. (1967). The psychology of police confessions. *Psychology Today*, 1(2), 17-20, 25-27.