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EMPIRICAL STUDIES OF WRONGFUL CONVICTIONS IN MAINLAND CHINA

HE Jiahong & HE Ran**†*

At all times and in all lands, wrongful convictions are like a spirit that haunts the castle of criminal justice. Wrongful convictions are certainly unexpected disasters to the wrongfully convicted and their families, but hopefully examining the errors that caused those disasters can push the criminal justice system towards civilized progress and productive development. In recent years, as the media has disclosed the wrongful convictions of Shi Dongyu, Du Peiwu, Li Jiuming, She Xianglin, and Zhao Zuohai, wrongful convictions have become a grim and sad topic for the general public in Mainland China (China).¹ Why do wrongful convictions come fast and furious in current China? How can China build up a prevention system and a remedy mechanism for wrongful convictions? With these questions, the authors set up a research project in 2006 and have carried out empirical studies on wrongful convictions ever since.² We conducted the research at multiple levels with multiple methods, such as holding seminars and conferences, distributing questionnaire surveys, and analyzing typical cases. This Essay discusses the research results that are related to evidential rules and shares the authors' analysis with the readers.

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1. As for definitions, wrongful cases shall include two basic types: one is convicting the innocent, which is wrongful conviction; the other is acquitting the true criminal, which is wrongful acquittal. Both are making erroneous judgments on criminal cases. This Essay focuses on the first type.

2. The project of "Empirical Studies on Wrongful Convictions" has been undertaken by the Institute of Evidence, School of Law, Renmin University of China. We hereby express our thanks to the Ford Foundation for their financial assistance to this program.

I. TWO INFAMOUS WRONGFUL CONVICTIONS

A. The Murder Conviction of Zhao Zuohai³

On February 15, 1998, in Zhaolou Village of Zhecheng County of Henan Province, a villager reported to the public security department that his uncle had disappeared. The uncle, Zhao Zhenshang, was suspected of being murdered and had not been seen since October 30, 1997. Investigators arrested Zhao Zuohai after they learned about a fight shortly before Zhenshang's disappearance where Zhenshang slashed Zuohai. After more than twenty days, Zuohai was released due to lack of evidence.

On May 8, 1999, a local villager found a decomposed corpse with no head and no limbs in a defunct well. Villagers all believed that it was the disappeared Zhenshang. Public security officers again arrested Zuohai as a suspect on May 9. From May 10 to June 18, Zuohai was interrogated continuously and admitted nine times that he had committed the murder. The police, however, were unable to find the missing parts of the corpse. Zuohai once confessed that he had buried the head in his family's graveyard, but the police found nothing after excavating the graveyard. Additionally, the identity of the corpse was still in question. The police had invited experts to conduct DNA tests on four occasions, but they still could not confirm that the corpse was Zhenshang.

On October 22, 2002, the People's Procuratorate of Shangqiu City filed for the prosecution of Zuohai for intentional murder in the Intermediate People's Court of Shangqiu City. On December 5, the Intermediate Court of Shangqiu convicted Zuohai of intentional murder and sentenced him to death. Zuohai did not appeal. On February 13, 2003, the High People's Court of Henan Province confirmed the conviction after reviewing the death sentence.

On April 30, 2010, the "victim," Zhenshang, surprisingly reappeared in Zhaolou Village, which shocked every villager. Zhenshang explained that he ran away after the fight with Zuohai and led a vagabond life in big cities by collecting scraps and running several small businesses. Around that time, he started feeling ill and could hardly maintain his outside life, so he returned to the village to spend the rest of his life there. On May 5, after hearing the report of Intermediate Court of Shangqiu about the case, the High Court of Henan ordered a retrial of the case. On May 7, the Intermediate Court submitted the identification evidence of Zhenshang. On May 8, the retrial commission organized by

3. Discovered and corrected in 2010.

the High Court formally reconsidered the case, agreed it was an obviously wrongful conviction, overruled the conviction, and released Zuohai. On May 9, Zuohai walked out of prison after eleven years of imprisonment. On May 13, Zuohai received a state compensation of RMB 650,000.⁴

B. The Murder Conviction of Shi Dongyu⁵

Late at night on April 5, 1989, a murder occurred in the Youyi Forest Farm of Yichun City in the Heilongjiang Province. Someone killed Guan Chuansheng, a forest fire ranger, on a dirt road north of the farm office by repeatedly stabbing him with a knife. The crime scene investigation revealed a cut in the back center of the victim's overcoat and a corresponding wound in the body with corner angles. Investigators inferred this wound was inflicted by a military bayonet while a single-edge cutting tool made other cuts in the body. The victim had left the farm office for home after 11:00 p.m., when the electricity at the farm had just gone off. Chuansheng was killed around midnight. That night, the oldest son of a neighboring family, Shi Dongyu, who was demobilized from the army nine days earlier, went missing. Investigators soon listed Dongyu as a suspect.

On the afternoon of April 6, after learning that Dongyu had returned home, investigators took him away for interrogation. Dongyu said that on the afternoon of April 5, a friend in the mountains invited him for a drink. He got back after 8:00 p.m. and first went to his fiancée's home for some wedding planning. Dongyu returned home to get some money and then went to the boiler plant after 10:00 p.m. to drink water, smoke, and chat. He went to the railway station in the mountains after 11:00 p.m. and took the 2:00 a.m. train down the mountain. On the morning of April 6, Dongyu went to the county government for his demobilization procedures and finally back to the farm in the afternoon.

Investigators found witnesses to corroborate Dongyu's alibi in that he drank wine, chatted with a friend, and later drank water. According to the owners of the boiler plant, Dongyu left the plant after the electricity went off. Investigation on site clarified that the boiler plant was on the

4. This summary of Zhao Zuohai's case is based on dozens of reports in newspapers and on the internet in China between May and October of 2010. A search for ZHAO Zuohai in www.baidu.com and www.google.com.hk will get the information. See e.g., Wang Jingquiong & Li Yuefeng, *Murder convict set free after 'victim' turns up*, CHINA DAILY (May 10, 2010), http://www.chinadaily.com.cn/china/2010-05/10/content_9826537.htm; Clifford Coonan, *Zhao Zuohai: Beaten, framed and jailed for a murder that never happened*, INDEPENDENT, (May 14, 2010), <http://www.independent.co.uk/news/world/asia/zhao-zuohai-beaten-framed-and-jailed-for-a-murder-that-never-happened-1973042.html>.

5. Discovered and corrected in 1995.

roadside between the office and the living area and was not far from the site of the murder. Therefore, investigators believed Dongyu, and the victim walked on the same road at the same time. Additionally, investigators proved by experiment that it would take only twenty minutes to walk from the farm to the railway station. In other words, investigators believed Dongyu had time to commit the murder.

On the night of April 6, investigators searched Dongyu's home and found a bloodied military coat and a single-edge fruit knife with a black plastic grip. The front collar of the coat was torn and was missing three buttons which were found in the pocket. The blood on the coat had O and A blood types and police believed the victim's blood was type A. The knife did not have blood on it, but the blade matched the cut in the corpse. Investigators immediately interrogated Dongyu. At the beginning, Dongyu insisted that he did not kill the victim and explained that the blood on his coat was from his father and his brother when he fought with his brother on April 4. Finally, after continuous interrogations for more than thirty hours, Dongyu admitted he committed the murder of Guan Chuansheng.

On April 18, 1989, the People's Procuratorate of Yichun City approved Dongyu's arrest and charged him with murder. In court, Dongyu recanted his confession and insisted on his innocence. On April 5, 1991, the Intermediate People's Court of Yichun City convicted Dongyu of murder and sentenced him to death with immediate execution. Dongyu appealed, claiming that he did not commit the murder. On May 13, after reviewing the case, the High People's Court of Heilongjiang Province found that some of the facts were unclear and that there was a lack of evidence. The court then overruled the judgment, remanded the case for retrial, and listed several issues for further investigation. These issues included the incomplete match of the killing tool and the cut in the body, the existence of two types of blood in the coat, and the reason for the buttons being in the pocket.

On September 19, 1991, the Intermediate People's Court of Yichun City reopened the session to discuss Dongyu's murder prosecution. Although the prosecutor was unable to provide additional evidence, the court held that the evidence presented satisfied the two basics of the standard of proof—(1) the facts of the case were basically clear and (2) the evidence was basically reliable and sufficient. On December 2, the court convicted Dongyu and sentenced him to death. On January 7, 1992, the Intermediate Court transferred the case to the High Court for review. On February 26, the High Court confirmed the judgment. On August 31, Dongyu was placed in the Beian Prison to serve his sentence.

In April 1994, a burglar, Ma Yunjie, in the custody of the public security bureau of Yichun City, revealed in his written statements that

he wanted to “survive by making contributions.” The murder on April 5, 1989 was not committed by Shi Dongyu. The true criminal was Liang Baoyou. In the early morning of April 6, 1989, Yunjie was doing morning exercises near the rail tracks when he saw Baoyou running down the mountain with much blood on his coat. Yunjie asked what happened. Baoyou said that nothing happened and that the blood was from killing a pig. Two days later, Baoyou invited Yunjie for a drink. At the table, Baoyou said that on the night when the electricity went out at the farm, he was waiting at the gate of the farm office to attack Xia Baoxi. After 11:00 p.m., a person of similar height and build walked out of the office. Baoyou followed him and strongly stabbed a spear into the back of his waist. The man turned around, grabbed the dart, and shouted. At that moment, Baoyou saw that the man was not Baoxi but was actually Chuansheng. However, because Chuansheng already recognized Baoyou, Baoyou had no option but to kill him. He took out a knife and stabbed Chuansheng’s chest, back, and shoulder blades over ten times. He then ran to Honglin Station and climbed into the Forest Train headed down the mountain.

The High Court of Heilongjiang, the Intermediate Court of Yichun, and the Public Security Bureau of Yichun paid great attention to Yunjie’s statement and formed a special reinvestigation team of the “89/4/5” case. The investigators quickly learned that Baoyou was stabbed to death in a fight on October 26, 1990 but that his mother could prove that what Yunjie said was true. The investigators also found some contradictions and gaps in the case file. However, these findings were not enough to overturn the original judgment. If the DNA from the blood on Dongyu’s coat was not the victim’s blood, however, that would be very persuasive. Through great effort, the investigators finally obtained permission from the victim’s family to open Chuansheng’s grave and collect the skull and hairs of the victim.

On October 25, 1994, investigators brought the posthumous collections and Dongyu’s bloodied coat to Beijing. The Forensic Medical Examination Center of Beijing Public Security Bureau resolved the issue by mere blood type testing—the victim’s blood type was AB, but Dongyu’s coat had types A and O blood, which were the same types as his father’s and his brother’s, respectively. Therefore, Dongyu’s coat did not have the victim’s blood at all. It is a ridiculous and unfortunate example of the Chinese justice system that the medical examiner could not properly identify the victim’s blood type as type AB!

On April 12, 1995, the High Court of Heilongjiang Province acquitted Shi Dongyu. On April 22, Dongyu was released and walked out of Beian Prison. The local government finally settled with Dongyu for

RMB 60,000 as compensation and assistance.⁶

II. THE SURVEY OF CAUSES OF WRONGFUL CONVICTIONS

A. Brief Introduction of the Survey

From August 2006 to March 2007, the authors disseminated 2,500 copies of questionnaires in 19 regions, including Heilongjiang province, Liaoning province, Henan province, Hebei province, Shandong province, Sichuan province, Hunan province, Zhejiang province, Jiangxi province, Jiangsu province, Anhui province, Fujian province, Guangdong province, Hainan province, Tibetan Autonomous Region, Uygur Autonomous Region, Beijing, Shanghai, and Tianjin. The authors and assistant researchers received 1,715 valid copies in return. The questionnaires were sent to legal professionals in public security bureaus, people's procuratorates, people's courts, law firms, and justice departments in those areas.

Among the 1,715 respondents, 1,199 were males, 467 were females, and forty-nine were unknown. Of these, 1,659 were of the Han nationality, one of the Dong, seven of the Hui, six of the Manchu, one of the Zhuang, and 41 unknown. Fifty-six had an educational background of high school or below, 356 went to junior college, 1,094 had bachelor's degrees, 120 had master's degrees, one had a doctorate degree, and eighty-eight were unknown. For their majors, 854 had their first major in law, 669 did not, and 194 were unknown; 1,195 had their highest majors in law, 218 did not, and 304 were unknown.

The survey asked twenty-one questions, including: (1) what do you think of wrongful convictions; (2) what type of situations constitute wrongful convictions; (3) what are the main causes of wrongful conviction; (4) at which stages of the criminal process are wrongful convictions likely to occur; (5) what is the relationship between wrongful evidence and wrongful convictions; (6) what do you think about the wrongful convictions accountability system; (7) how can parties avoid wrongful convictions; (8) and how best can wrongful conviction victims be compensated. In the following Part, this essay focuses on results of the two questions that addressed the causes of wrongful convictions and wrongful evidence.

6. GUO XINYANG, HOW CRIMINAL WRONGFUL CONVICTIONS WERE CORRECTED 213–17 (Publishing House of the People's University of Public Security of China 2010). This summary of SHI Dongyu's case is based on the case files of the court. The files have not been published. The reference to the case is in Guo Xinyang's book, COMMENTS AND ANALYSIS OF WRONGFUL CONVICTIONS 213–17, (Publishing House of the People's University of Public Security of China 2011).

B. Causes of Wrongful Convictions

The questionnaire asked a multiple choice question: “According to your work experience, what do you think are the main causes of wrongful convictions?” The possible answers were: (A) unclear laws or rules; (B) fault of the parties; (C) interference by other administrative agencies; (D) public pressure; (E) interference by high-level agencies or superiors; (F) backwardness of current investigative facilities and techniques; (G) insufficient professional qualities of legal officers; (H) investigators bending law for personal interest and extorting confession by torture; or (I) work pressure from the requirement to solve 100% of cases in a timely manner.

In the answers to the question, the respondents, to different degrees, selected all the choices listed above. Among them, 1,074 (63%) picked “insufficient professional qualities of legal officers,” 951 (55%) picked “unclear laws or rules,” 866 (50%) picked “interference by higher agencies or superiors,” 771 (45%) picked “investigators bend law for personal interest and extort confession by torture,” 716 (42%) picked “backwardness of current investigative facilities and techniques,” 405 (24%) picked “fault of the parties,” and only 373 (22%) picked “public pressure.”^{7,8}

C. Relationship Between Wrongful Evidence and Wrongful Convictions

In the questionnaire, the authors especially designed a question to analyze the relation between evidential mistakes and wrongful convictions. Specifically, the questionnaire asked: “How much influence do you think mistakes in evidence would have in the formation of wrongful convictions in real investigations?” The respondents could pick only one answer, and the selections were: very big, a bit big, a bit small, very small, or none. The answers showed that many of the respondents think evidential mistakes have important effects on wrongful convictions: 1,031 (60.1%) picked “very big,” and 538 (31.4%) picked “a bit big,” which combined for a total of 91.5%. However, the questionnaire also had four people pick “no effect” and eleven people did not answer this question.

7. The low selection of “public pressure” was unexpected considering how important public pressure has been for wrongful convictions in the past.

8. The authors did not expect this choice to be so highly selected among those questioned.

III. THE SURVEY OF THE RELATIONSHIP BETWEEN SEVEN TYPES OF EVIDENCE AND WRONGFUL CONVICTIONS

A. Brief Introduction of the Survey

From January to March, 2007, seven graduate students of the law school of Renmin University of China went respectively to Beijing, Hebei province, Henan province, Shandong province, and Tibetan Autonomous Region for research. The graduate students combined the questionnaire with interviews and hence increased the reliability of the survey results. The graduate students sent out 140 copies of questionnaires and received 139 back. Among the 139 questioned, thirty-three (24%) were judges, sixty-six (48%) were prosecutors, twenty (14%) were lawyers, and twenty (14%) were policemen. The ages of the respondents were as follows: 45 (32%) were ages 20–29, 69 (50%) were ages 30–39, and 25 (18%) were older than 40. As for gender, 44 (32%) were females and 95 (68%) were males. Besides general questions, the authors also prepared special questions on each of seven types of evidence. Due to page limits, we will discuss the research results regarding two types of evidence that affect wrongful convictions the most: witness testimony and confessions of the accused.

B. Results of the Survey

The survey asked: How much influence do you think mistakes in evidence would have in the formation of wrongful convictions in judiciary practice? Respondents could pick only one of the following choices: (A) very big, (B) a bit big, (C) a bit small, (D) very small, and (E) none. Among the respondents, 66 (47.48%) chose “very big,” 55 (39.57%) chose “a bit big,” 12 (8.63%) chose “a bit small,” 4 (2.88%) chose “very small,” no one chose “none,” and two respondents did not answer the question.

Legal professionals of different occupations displayed a discrepancy on this question. Although most of those questioned agreed that evidentiary problems are important in the formation of wrongful convictions, judges, prosecutors, and lawyers were more in agreement than the police about its impact. For example, among the 20 police officers questioned, 6 (30%) picked “very big,” 6 (30%) picked “a bit big,” 7 (35%) picked “a bit small,” no one picked “very small,” or “none,” and one respondent did not answer. Among the 20 lawyers questioned, 6 (30%) picked “very big,” 11 (55%) picked “a bit big,” one person (5%) picked “a bit small,” 1 (5%) picked “very small,” nobody picked “none,” and one did not answer.

The survey also asked: Which one of the following pieces of evidence do you think is most likely to cause wrongful convictions? Answers included: (A) physical evidence, (B) witness testimony, (C) audiovisuals, (D) testimony of the accused, (E) statement of the victim, (F) expert conclusions, or (G) inspection or examination record. It was a single answer multiple choice question. Among the respondents, 6 (4%) picked “physical evidence,” 53 (38%) picked “witness testimony,” 7 (5%) picked “audiovisuals,” 52 (37%) picked “testimony of the accused,” 15 (11%) picked “statement of the victim,” 25 (18%) picked “expert conclusions,” and no one picked “inspection or examination record.” Again, there was a discrepancy in legal professionals of different occupations. More judges, prosecutors, and lawyers deemed witness testimony and testimony of the accused to be the main sources of evidence that cause wrongful convictions, while police showed no preference to the first six types of evidence. Additionally, quite a few judges believe the statement of the victim is most likely to cause wrongful convictions.

The questionnaire also inquired: Which one in the following situations do you think is most likely to cause wrongful convictions? Answer choices included: (A) witness fails to appear in court, (B) perjury, (C) obtain witness testimony unlawfully, (D) witness mistakes in cognition, or (E) judge’s mistakes in using testimonies.⁹ Among the questioned, 15 (11%) picked “witness fails to appear in court,” 87 (63%) picked “perjury,” 26 (19%) picked “obtain testimony unlawfully,” 23 (17%) picked “witness mistakes,” and 24 (17%) picked “judge’s mistakes.” Judges, prosecutors, police and lawyers hold similar answers to this question, except only that judges and prosecutors concentrated on “perjury,” while police preferred “judge’s mistakes.”

Our survey further asked of respondents: Which of the following do you think can improve the rules of testimony and inhibit the formation of wrongful convictions? Respondents were allowed to give multiple answers. Among the questioned, 69 (50%) chose (A) “strengthen mutual restraint among police, prosecutors, and judges, and keep judges neutral,” 52 (37%) chose (B) “reinforce the right to defense and increase the rate of lawyers’ participation,” 77 (55%) chose (C) “establish the protection system of witness and ensure the rate of witness appearance in court,” 45 (32%) chose (D) “improve the discovery system, the cross-examination system, and supporting rules,” 21 (15%) chose (E) “adopt the judge controlled free testifying model,” 61 (44%) chose (F) “insist on the principle of evidentiary adjudication and the court shall examine

9. The five choices of this question intersect; but it can reflect cognitive attitude of the questioned to these common problems in witness testimony.

all evidence submitted by prosecutors and defenders,” and 15 (11%) chose (G) “design reasonable scientific exclusionary rules of illegally obtained evidence, and suppress its negative effect.” Judges, prosecutors and lawyers, attached much importance to three choices: (C) “establish the protection system of witness and ensure the rate of witness appearance in court,” (F) “insist on the principle of evidentiary adjudication and the court shall examine all evidence submitted by prosecutors and defenders,” and (G) “design reasonable scientific exclusionary rules of illegally obtained evidence, and suppress its negative effect.” On the other hand, the police did not pay much attention to those three and collectively ignored the “establish the protection system of witness and ensure the rate of witness appearance in court” choice.

Respondents also answered the question: Which one of the following do you think is most likely to cause false testimony of the accused? Of the 139 respondents, 83 (60%) chose (A) “extort a confession by torture,” 48 (35%) chose (B) “voluntarily take the rap for others for certain purposes,” 10 (7%) chose (C) “the accused is confused,” and 16 (12%) chose (D) “the accused wants to be released.”

Survey participants also dared to opine on that most unanswerable of questions: Which one of the following do you think is the most serious problem now regarding the confessions of the accused? Surprisingly, 45 (32%) chose (A) “the confession is obtained illegally,” 65 (47%) chose (B) “investigators attach too much value to the confessions and despise other evidence,” 18 (13%) chose (C) “the accused intentionally conceal true fact in voluntary confessions,” and 28 (20%) chose (D) “the accused refuse to admit guilt and the confession is difficult to obtain.”

IV. EMPIRICAL ANALYSIS OF FIFTY WRONGFUL CONVICTIONS

A. Brief Introduction of the Case Studies

During the research of the project, the authors of this Essay collected data on roughly one hundred wrongful convictions that occurred in China since the 1980s and analyzed the cause of those cases. Now we will introduce 50 murder convictions selected from them.^{10,11}

10. Including the murder conviction of Shi Dongyu in Heilongjiang province, the murder conviction of Ren Zhong in Jilin province, the murder conviction of Li Huawei in Liaoning province, the murder conviction of Li Jiuming in Hebei province, the rape–murder conviction of Qin Yanhong in Henan province, the murder conviction of Chen Shijiang in Shandong province, the murder conviction of Liu Minghe in Anhui province, the murder conviction of She Xianglin in Hubei province, the murder conviction of Teng Xingshan in Hunan province, the murder conviction of Liu Ritai in Fujian province, the murder conviction of Deng Liqiang in Guangxi Zhuang Autonomous Region, the murder conviction of Du Peiwu in Yunan province, the murder conviction of Tong Limin in Chongqing City, the murder

Through analysis, the authors found that almost every wrongful conviction was caused by the intersection of many reasons. Among them, those relating to evidence include the following: false witness testimony, false victim statement, false co-defendant testimony, false confession of the accused, mistaken expert conclusion, misfeasance of investigators,¹² misfeasance of judicial officers,¹³ ignorance of evidence of innocence, deficient expert conclusion,¹⁴ and unclear legal provision. Regarding “judge’s mistakes in examining and evaluating evidence,” it happens in almost every wrongful conviction case, so the authors did not list it as a cause to analyze.

B. Analysis of the Causes

Among the 50 wrongful convictions, 10 (20%) have “false witness testimony,” 1 (2%) has “false victim statement,” 1 (2%) has “false co-defendant testimony,” 47 (94%) have “false confession,” 4 (8%) have “mistaken expert conclusion,” 48 (96%) have “misfeasance of investigators,” 9 (18%) have “misfeasance of judicial officers,” 10 (20%) have “ignorance of innocent evidence,”¹⁵ 10 (20%) have “deficient expert conclusion,” and 1 (2%) has “unclear legal provision.”¹⁶

C. Problem of Extortion of Confession by Torture

The extraction of confession by torture is closely related to wrongful convictions. Adopting the confession extorted by torture as a basis to decide a case is usually a main cause of wrongful convictions. Of the 50 wrongful convictions, in 4 cases (8%), a court or procuratorate has

conviction of Wang Xueyi in Gansu province, the murder conviction of Li Julan in Shaanxi province, the murder conviction of Hujijiletu in Inner Mongolia Autonomous Region, the murder conviction of Tan Fuyi in Beijing City, and others.

11. XINYANG, *supra* note 6. The information and materials of those cases are found in news reports and case files. Those files have not been published. The reference to those cases are in Guo Xinyang’s book, *COMMENTS AND ANALYSIS OF WRONGFUL CONVICTIONS*, Publishing House of the People’s University of Public Security of China (2011). Guo’s book is one of the achievements of our empirical studies.

12. “Misfeasance of investigators” includes extorting confessions by torture, fabricating evidence, and so on.

13. “Misfeasance of judicial officers” includes the prohibition of cross examination in session by judges, the failure to arrange for witnesses to appear before the court, and other similar acts.

14. “Deficient expert conclusion” refers to illegalities in the procedure or form of the conclusion.

15. In fact, almost every wrongful conviction has some kind of ignorance of evidence that may prove the suspect innocent. Here what we especially marked as cases of ignorance of innocent evidence are cases where the defendant’s counsel had clearly pointed out to the evidence.

16. The murder conviction of FAN Chengkai in Jilin was caused by an unclear provision in the law on the issue of proper or improper self-defense at that time.

formally concluded that a confession was extorted by torture, 43 (86%) have not been concluded formally by court or procuratorate but conclusions that a confession was extorted by torture is possible, and 3 (6%) do not have the extortion of confession by torture problem. In the first category, investigators in 3 cases have been convicted of the crime of extorting confession by torture. Investigators of the remaining case were held to have extorted confession by torture, but the procuratorate decided not to prosecute. In the second category, the suspects in 21 cases claimed they were tortured until confession during the investigation process, but had no evidence to support the claim. The accused in 7 cases had certain evidence to prove torture, such as scars on their bodies or witness testimony, but the court did not accept the evidence. In one case the prosecutor examined the accused and concluded there were slight wounds caused by torture on his body, but the court did not adopt the conclusion. In 14 cases, the accused confessed during the investigation stage, later recanted the confession, and were finally proven innocent because new evidence of innocence was discovered. Considering the frequent use of torture in investigation of those kinds of crimes, we can infer that previous confessions of the accused were extorted by torture.

V. CONCLUSIONS AND SUGGESTIONS

Wrongful convictions severely impair society. They not only hurt personal interest and cause injustice, but they also damage the public interest, destroy judicial justice, and harm public order. Moreover, wrongful convictions make the public lose faith in the judiciary and even the government! How can China prevent wrongful convictions in criminal justice proceedings? The above empirical research and analysis offer the following suggestions.

A. Evidence Problems Are Main Causes of Wrongful Convictions

In the survey, for the question “Which do you think are main causes for wrongful convictions?” 63% picked “insufficient professional qualities of investigators,” 45% picked “investigators bend the law for self-interest and extort confession by torture,” and 42% picked “backwardness of current investigative facilities and techniques.” The three choices all imply evidential problems. For another question, “How much influence do you think mistakes in evidence could have in the formation of wrongful convictions in real investigation?” a total of 91.5% picked either “very big” or “a bit big.” In the 50 analyzed

wrongful convictions, only 2 lacked any evidential problems;¹⁷ all other 48 cases have at least two kinds of evidential problems.

Certainly, there are many causes for wrongful convictions, and some causes seem to have more impact, such as public pressure, interference by higher agencies or superiors, interference by other administrative agencies, and work pressure from the requirement to solve 100% of the cases in a timely manner, etc. But these factors usually operate through evidential problems. For example, the named causes have to manifest themselves through or translate into evidential problems, including extortion of confession by torture and fabrication of evidence. Additionally, the backwardness of current investigative facilities and techniques and the insufficient professional qualities of investigators are also causes for wrongful convictions, but are also manifested by evidential problems. In other words, evidential problems are direct causes for wrongful convictions, while other factors are usually indirect causes.

B. Improving the Exclusionary Rules Is a Top Priority

In the 50 analyzed wrongful convictions, 47 cases have both “false confession of the accused” and torture or possible torture, comprising 94% of the cases. Therefore, of all kinds of evidence, false confession is the primary cause for wrongful convictions, and torture is a main cause of false confession. There is a causal relationship between wrongful convictions and illegal evidence collection represented by the extortion of confession by torture. Hence, it is very important for the prevention of wrongful convictions to reinforce the legal acquisition of evidence and to establish reasonable, effective exclusionary rules against illegally obtained evidence.

Illegally obtained evidence means that the evidence is collected or obtained in violation of law. Current Chinese criminal procedure law does not have clear exclusionary rules; however, Article 43 of the Criminal Procedure law says that “[i]t shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means.” The Supreme People’s Court and the Supreme People’s Procuratorate also made some supplemental rules regarding the exclusion of illegally obtained evidence in their judicial interpretations of the Criminal Procedure Law. However, those rules are too general, lack clearly specified provisions,

17. Besides the murder conviction of Fan Chengkai in Jilin province (see footnote 16), in the murder conviction of Ren Zhong in Jilin province, the accused was convicted because of a voluntary confession; but was proved not responsible for the crimes by subsequent forensic psychiatry conclusions.

and lack practical, effective enforcement measures.

Influenced by the wrongful conviction of Zhao Zuohai, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice jointly issued on June 13, 2010, "the Provisions on Issues Concerning the Examination and Evaluation of Evidence in Death Sentence Cases" and "the Provisions on Issues Concerning the Exclusion of Illegally Obtained Evidence in Criminal Cases," effective as of July 1, 2010. The enforcement of the two provisions on criminal evidence was a huge improvement in the Chinese criminal evidence system. For example, the two provisions clarified the procedures required for a court to hold evidence illegal, the assignment of the burden of proof, and the corresponding standard of proof, making operable the exclusionary rules of illegally obtained evidence.

C. Improving the System of Witness Appearance at Court Is Also an Important Measure to Prevent Wrongful Convictions

As set forth above, false witness testimony is also a main cause for wrongful convictions, second only to the extortion of confession by torture and false confessions of the accused. False witness testimony that could cause wrongful convictions usually slips through because there is no effective impeachment of the witness. Therefore, in order to prevent wrongful convictions, it is necessary to emphasize the impeachment of witnesses, which requires the appearance of key witnesses at court.

The appearance of witnesses at court is very important for judicial judgment. In legal proceedings, the trial is the most crucial part, and the judge is the decider of the case. Therefore, it is necessary for the judge to directly examine the evidence at trial. Only through such examinations can the judge form intimate conviction regarding the truthfulness and probative value of the evidence, and accordingly find the real facts and make a fair judgment. If the judge can only indirectly examine the witness testimony of record, it is very hard to make objective and accurate judgments.

Moreover, if witnesses appear at court, the opposing party will have the opportunity to impeach them directly. Such appearances, therefore, will not only prevent preconceptions and prejudice of judicial professionals in examining and evaluating the evidence, but increase the transparency of the trial. It will also protect the legal rights of the parties, especially the right to have the availability of direct impeachment and a fair trial.

Vague and self-contradictory provisions in Chinese procedural laws

related to the appearance of witnesses in court are the main obstacles to current reforms of the witness system. For example, in the Criminal Procedure Law of China, Article 48 provides that “all those who have information about a case shall have the duty to testify.” Article 47 provides the following:

[T]he testimony of a witness may be used as a basis in deciding a case only after the witness has been questioned and impeached in the courtroom by both sides, that is, the public prosecutor and victim as well as the defendant and defenders, and after the testimonies of the witnesses on all sides have been heard and verified.

Thus, it seems that witnesses are required to testify at court. However, Article 157 provides that “the records of interview of witnesses who are not present in court, the conclusions of expert witnesses who are not present in court, the records of inquests and other documents serving as evidence shall be read out in court.” This obviously authorizes the non-appearance of witness. In reality, most of the witnesses do not appear in trial, so the law makers have to make the rules flexible. However, these rules then give excuses for the prosecutors and judges to not require witnesses to appear.

This shows that it is urgent to amend procedure law to decrease the non-appearance of witnesses. Specifically, such amendments should include three parts: first, to institute the principle of actual presence and oral testimony in procedure law and clarify which witnesses are required to appear in court; second, to design enforcement measures for the court to compel those witnesses who should appear in court but are not willing; and third, to specify the consequences of a witness who refuses to appear in court, including penalties against the witness and exclusion of his or her pretrial statement. Meanwhile, we should also improve the witness protection system and the witness compensation system.¹⁸

D. It Is of Crucial Importance to Enhance the Ability of Legal Officers to Collect and to Use Evidence

In our survey of causes for wrongful convictions, 1074 (63%) ranked “insufficient professional qualities of legal officers,” first of all causes. It was unexpected that the respondents (judges, prosecutors, lawyers, and police) made such a choice, but it is representative and persuasive. Therefore, it is very important for the prevention of wrongful

18. The Amendment to the Criminal Procedure Law of PRC, which was promulgated in 1979 and revised in 1996, was being deliberated by the Standing Committee of the National People’s Congress of PRC as of the writing of this paper. It was passed by the National People’s Congress in March of 2012. In the Amendment, those issues of the exclusionary rules against illegally obtained evidence and the non-appearance of witness are addressed.

convictions to improve the skills and abilities of investigators in obtaining and applying evidence.

First, it is necessary to improve the evidence collection ability of investigators. Evidential problems are mainly caused by illegal collection and no corresponding evidential rules. Investigators are not good at collecting indirect evidence such as physical evidence. Second, it is necessary to improve the evidence examination and evaluation abilities of judicial officers. We should improve the relevant rules on evidence verification and strengthen the ability to analyze the probative value of evidence. Last, it is necessary for scholars to continue to research on and share principles and rules of examination and evaluation of evidence so as to increase such skills of legal officers.

The Chinese criminal justice system has a good slogan: “to make no innocent person convicted and to let no guilty person escape.” However, such a dream is impossible to realize. In the criminal justice system of any country, wrongful convictions cannot be avoided absolutely. Investigators, prosecutors, and judges can never have direct perception of the facts in any case. The facts all happened in the past, just like the moon in the water and the flower in the mirror—to the legal officers, the evidence serves as the water and the mirror. Legal officers are not gods or omniscient beings. They cannot know everything or go back in time. They can find facts only on limited and insufficient evidence, and they unavoidably make mistakes. We are not exculpating legal officers, but recognizing the inevitability of wrongful convictions and analyzing their causes, so as to minimize the rate of mistakes. We are not making excuses for wrongful convictions, but letting people know the facts of wrongful convictions.