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Slip-up or Systemic Failure:

A Systematic Literature Review of Wrongful Convictions

in the United States and the Netherlands

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Abstract

This systematic research aims to examine the sources of wrongful conviction that may be present in the Dutch criminal justice system. It achieves this through identifying contributing factors to wrongful convictions in the United States, and assessing to what extent these could pose a risk of wrongful conviction in the Netherlands. A comparison of the inquisitorial and adversarial structures of the American and Dutch criminal justice systems facilitate this assessment. A systematic literature review of wrongful conviction literature within the United States was conducted, and results indicate that a variety of factors, including guilty pleas, erroneous eyewitness identification, false confessions, official misconduct and faulty forensic science, are of influence on American wrongful convictions. A comparison and assessment of the Dutch judicial system demonstrates that most of the identified factors are of influence within the Netherlands as well. It is important that this research be continued to increase awareness of wrongful convictions within the Netherlands.

Keywords: wrongful convictions, innocent, causes, inquisitorial, adversarial

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Introduction

In an ideal world, no innocent person would suffer the consequences of mistakes that are made by actors involved in the criminal justice system. As Blackstone's ratio goes; "It is better that ten guilty persons escape than that one innocent suffers" (Blackstone, 1765). However, the fact that there are indeed cases in which innocent defendants are convicted was already established in 1923 (Gould & Leo, 2010). A wrongful conviction occurs when a person that did not commit the crime is convicted for said crime, deeming them factually innocent (Leverick & Chalmers, 2014). Wrongful conviction data expose systemic flaws in criminal justice systems worldwide. Over the last decades, many cases have come to light in which miscarriages of justice led to persons being wrongfully convicted, especially within the United States. However, these kinds of systematic errors are certainly not limited to adversarial criminal justice systems. Internationally, the Dutch criminal justice system is considered the fifth most efficient and well-functioning system in existence today (World Justice Project, 2020). According to the World Justice Project, it adheres to the values inherent to democratic systems under the rule of law, ensuring fundamental human rights, limiting government power and resisting corruption. Its inquisitorial nature is thought to produce fewer miscarriages of justice than its party-driven, adversarial counterpart (Brants, 2012). In reality, however, no criminal justice system can completely avoid miscarriages of justice.

Both the Dutch and American criminal justice systems function on the presumption that a person is innocent until proven guilty. However, the systems differ significantly. Due to its adversarial nature, the United States' criminal justice system is highly competitive, aimed at resolving conflict and not primarily driven by an alternative state agenda (van Koppen, 2007; Strier, 1992). The Dutch criminal justice system, on the other hand, being one of the most inquisitorial in the Western world (van Koppen & Penrod, 2003), relies heavily on the state for resolutions to social problems and much more than the adversarial system serves as a vehicle

for the enforcement of state policies (Brants, 2012; van Koppen, 2007). Employing a state-driven system that is based on hierarchical control, which means the different state participants within the criminal justice system monitor each other, should, in theory, shield actors in the inquisitorial system from making certain irredeemable mistakes, such as misconduct or faulty handling of evidence, that may lead to wrongful convictions (Brants, 2012). Inherent to the inquisitorial Dutch criminal justice system is thus the assumption that wrongful convictions are infrequent in the Netherlands (Brants, 2012).

To identify and reduce the incidence of wrongful convictions, it is important to gain an understanding of its prevalence and causes. Most of the research surrounding wrongful convictions is set in the United States, which has been criticised for being prone to wrongful convictions. The United States has produced an extensive amount of scholarly literature regarding both the frequency and causes of wrongful convictions within its jurisdiction (Armbrust & Friedman, 2014; Gould & Leo, 2010; Gross & O'Brien, 2008). One of the reasons why the United States has done a lot of research on this subject is because modern examinations of wrongful convictions have often been prompted by cases that have generated a lot of media attention (Leverick & Chalmers, 2014). Over the last decades, initiatives such as the United States' Innocence Project, which were founded because of the interest in wrongful convictions, have made efforts towards exonerating wrongfully convicted individuals (Innocence Project, 2020). These exonerations provide some insights from which wrongful conviction research can derive. Within the United States a relatively large amount of wrongful homicide and rape convictions, which are the main cases eligible for exoneration, have been discovered and those kinds of high-profile cases inevitably cause such problems to become of interest to the academic world.

In contrast, only a small number of Dutch studies have been dedicated to the incidence of and underlying causes contributing to wrongful convictions, including van Koppen (2007),

Brants (2012) & Derksen (2016). This disinterest in examining the prevalence and causes of wrongful convictions is perhaps partly explained by the lack of known wrongful conviction cases. Over the last 10 years, the Dutch courts have convicted over 23,000 people, but less than 10 cases were revised by the Supreme Court due to miscarriages of justice (Brants, 2012; Derksen, 2016). Perhaps this low number of cases is partly explained by the fact that in smaller jurisdictions, such as the Netherlands, high-profile cases that draw attention are less likely to occur as often as in large jurisdictions such as the United States (Leverick & Chalmers, 2014). However, that does not necessarily mean that wrongful convictions do not occur frequently within the Netherlands, it may simply mean that many have not come to our attention. Consequently, the illusion that certain systems are more resistant to miscarriages of justice than others is perpetuated, even though in reality this is not necessarily the case (Brants, 2012; Leverick & Chalmers, 2014). Even if these numbers do turn out to be representative of the number of wrongful convictions that the Dutch criminal justice system produces, false convictions still result in distress, the abrupt intervention of one's life and possible imprisonment of innocent individuals. In addition to this, the real perpetrators are not discovered. Therefore, the problem of wrongful convictions is of direct and drastic influence on the lives of Dutch citizens.

Due to the limited amount of research into wrongful convictions in the Netherlands, it is difficult to reduce the incidence of wrongful convictions. Research from other countries could perhaps offer some insight into which factors are potential contributors. Studies from the United States suggest that wrongful convictions occur due to a variety of factors, including eyewitness misidentification, false confessions, informant testimonies, mishandling of forensic evidence, official misconduct, inadequate defence representation, tunnel vision and confirmation bias (Gould & Leo, 2010; Armbrust & Friedman, 2014). Since the adversarial criminal justice system that the United States employs is so inherently different from the Dutch

criminal justice system, the results from American studies regarding prevalence and causation are not necessarily generalizable to a country such as the Netherlands, however. In order to establish to what extent they are generalizable, a thorough comparison of the two systems is necessary. Additionally, a systematic analysis of the causes of wrongful convictions that are identified by literature from the United States is warranted.

It is instrumental to the functioning of a democratic society to ascertain that its criminal justice system is operating properly and fairly. In order to gain knowledge to critically assess and improve its functionality insight into the sources of wrongful convictions within its jurisdiction is highly valuable. Despite the significant differences between the criminal justice systems that the United States and the Netherlands employ, the comprehensive body of transatlantic research into the factors involved in miscarriages of justice could provide a basis on which to identify the sources of wrongful convictions in the Netherlands. Therefore, this thesis explores the following research question:

To what extent do the sources of wrongful convictions that are identified within the United States' criminal justice system apply to wrongful convictions within the Dutch inquisitorial system?

To be able to answer this complex question several sub-questions have been formulated, which are discussed in separate sections:

1. Are wrongful convictions an equally significant problem within the United States and the Netherlands?

2. What key differences are there between the inquisitorial and adversarial criminal justice systems?

3. What main factors contributing to wrongful convictions have been identified in the U.S. literature?

4. To what extent are the identified causes of influence within the Netherlands?

To answer the main research question, it is necessary to gain some background on the issue at hand. Firstly, it is important to develop an understanding of the magnitude of the problem that wrongful convictions pose, and to what extent it is an equally problematic phenomenon within the United States and the Netherlands. The first section of this research thus defines what a wrongful conviction entails and discusses its prevalence within both jurisdictions. This was established through a critical analysis of several estimates by studies conducted in the United States and the Netherlands, respectively. Additionally, limitations to wrongful conviction research are explicated in this section. Consecutively, in the second section, the differences between adversarial and inquisitorial systems are delineated in order to formulate a framework from which the identified sources of wrongful convictions can be analysed. Features of the Dutch and American criminal justice systems are compared and particular emphasis is placed on differences in interrogation methods, presenting of evidence and the role of criminal justice officials in court cases. The third section consists of a systematic literature review, providing a comprehensive account of the contributing factors to wrongful convictions within the United States. This systematic review entailed a systematic search of several databases, the results of which are carefully considered and reviewed. Afterwards, findings which thoroughly delineate the identified sources of wrongful convictions are presented. Subsequently, the discussion assesses to what extent these same contributing factors are present within the Dutch criminal justice system. Limitations of the current research, practical implications and future research directions are presented. Lastly, an answer is formulated to the main research question, establishing whether or not the sources of wrongful convictions in the Netherlands are similar to those identified as contributors to wrongful convictions in the United States.

Chapter 1. The Problem of Wrongful Convictions

To identify and reduce the incidence of wrongful convictions, it is crucial to gain an understanding of the extent of the problem. After all, it is impossible to identify the causes of wrongful conviction cases that have not been uncovered. Once the amount of cases that are known is clearly delineated and available for analysis, sources of wrongful convictions within those cases can be identified, results of which may ultimately contribute to more wrongful conviction cases being uncovered. Additionally, to facilitate a legitimate comparison of wrongful conviction causes between the Netherlands and the United States it is important to estimate to what extent wrongful convictions are a frequently occurring problem within both jurisdictions. The first step is thus identifying which cases are wrongful convictions, or at what rate they occur. However, certain obstacles prevent any airtight conclusions from being drawn, both about prevalence and subsequent causation of wrongful convictions. The existing wrongful convictions literature within both countries and their limitations are, therefore, presented in this chapter. Research discussing specific causation is further elaborated on in chapter 3.

1.1 Defining Wrongful Convictions

To determine to what extent wrongful convictions are a significant problem within contemporary criminal justice systems, it is crucial to define what exactly is meant by the term 'wrongful conviction'. In essence, a wrongful conviction occurs when a defendant is convicted of a crime they did not commit, making them 'factually innocent'. A conviction is thus deemed wrongful in cases where the individual in question was convicted of a crime that another perpetrator committed. However, there are also instances in which a person is convicted of a crime that never actually took place, or that should have never been classified as a crime (Norris et al, 2019). Additionally, courts can fall victim to procedural errors that negate fair trial

prerequisites (Zalman, Smith & Kriger, 2008). In the absence of a way to ascertain beyond any degree of doubt whether defendants are guilty of alleged crimes, simply because no actor within the criminal justice system has the ability to see into the past, the courts have to rely on an elaborate system of rules and procedures to ensure every alleged perpetrator receives a 'fair hearing' (Naughton, 2007). It is thus not uncommon that perpetrators be released from prison, or that the charges are dismissed, based on procedural error. It is therefore of importance to distinguish between 'legal innocence', which occurs when a court or state is penalized for violating the fundamental rights of a defendant, or 'factual innocence' (Gould & Leo, 2010). In cases where there is reasonable cause to suspect criminal involvement of the defendant in question, despite the case having been dismissed, the term 'factual innocence' does not apply. This, however, presents a problem in and of itself, since it is impossible to know for a fact that a person is innocent and the burden of proving guilt is on the prosecuting entity, not the plaintiff.

The term 'wrongful conviction' is at times used interchangeably with 'miscarriage of justice', but this typically encompasses a much broader context, which includes those cases where perpetrators are acquitted or charges are dropped due to 'legal technicalities' or procedural errors (Naughton, 2007). From such a perspective, a miscarriage of justice, as interpreted by the criminal justice system, is not so much defined as the unjust conviction of an alleged criminal offender, but, rather, as a failure to ensure their right to a fair trial. Convictions that are overturned because of procedural errors are not necessarily wrongful convictions of innocent defendants, in the sense that said individual could still technically have committed a crime, despite their acquittal (Gould & Leo, 2010). This distinction sometimes presents difficulties in estimating or empirically studying the prevalence of wrongful convictions, since wrongful convictions are only established as false after exoneration. This

research will thus assume that a wrongful conviction constitutes the false conviction of a defendant for a crime that they did not commit.

1.2 Prevalence Compared

Despite the abundance of American research into wrongful convictions, there remains considerable debate regarding its prevalence (Gould & Leo, 2010). Contrarily, within the Netherlands, it's nearly impossible to determine a reliable prevalence rate due to the limited attention the issue has had (Brants, 2012). The consensus among scholars is that identifying exact wrongful conviction rates is a difficult task, primarily because it can be hard to obtain reliable data (Gould & Leo, 2010; Gross & O'Brien, 2008; Leo, 2005). By definition, wrongful convictions are hidden from view, which presents one of the main reasons why so little is known about the frequency in which they occur. The only thing that is certain, is that they do occur, and probably at a much higher rate than criminal justice officials tend to think (Gross & O'Brien, 2008).

In the United States, estimates of prevalence rates range from 0.5% to 10% (Gross & O'Brien, 2008). This disparity in estimates can be attributed to a number of factors, including the research method that was used. Huff, Rattner & Sagarin (1996) were one of the first to attempt inferring the prevalence rate of wrongful convictions. This research was conducted long ago, so data on exonerations were not readily available. Nonetheless, the authors used literature, a survey and a database with information about approximately 500 wrongful conviction cases to come to their conclusion. Their estimate was a conservative 0.5%, which appears relatively low. However, when applied to the United States prison population - which consists of 5% of the general population - 0.5% translates to over 10,000 individual wrongful convictions each year (Huff et al, 1996). So, even the most conservative estimate establishes that an alarmingly high number of people are wrongfully convicted annually.

The majority of recent research limits itself to drawing conclusions about specific crime categories since it was established that wrongful conviction rates likely differ for different kinds of crimes (Brants, 2012). For example, rates appear to be higher for homicides as opposed to property crimes (Gross, 2008; van Koppen, 2011). On the one hand, judges are expected to review these kinds of cases more carefully, because wrongfully convicting somebody to death row or a life sentence has very serious consequences (Gross & O'Brien, 2008). On the other hand, there is an extraordinary external pressure to convict defendants for heinous crimes such as murder and rape, because acquitting a potentially guilty defendant could result in reoffending (Gross & O'Brien, 2008). A handful of the studies taking this into account, using specifically designed statistical models to analyse cases on which judges and juries disagreed, found a prevalence rate of up to 10% for all crime categories (Gross & O' Brien, 2008), which is significantly higher than the conservative 0.5% established by Huff et al (1996). Most contemporary research carefully concludes wrongful conviction rates to be less than 5%, however. After conducting a thorough analysis of exoneration data, including all defendants that were sentenced to death row, Gross et al (2014) concluded that this rate is accurately represented by 4,1%. Moreover, Gould & Leo (2010) draws similar conclusions by analysing a variety of studies. For example, Risinger (2007) compared the DNA exonerations database of the Innocence Project at Cardozo Law School to rape-murder cases from the 80s. This study established a minimum false convictions rate of 3.3% and a maximum rate of 5%. Zalman, Smith & Kiger (2008) chose a different strategy and approached the problem by holding interviews with actors from different components of the criminal justice system, most of which estimated a rate that was between 1-3%. It could be argued that these numbers aren't scientifically substantiated, and this method borders collective guesswork. However, all of these percentages taken together do paint a darker picture than the 0.5% first established by Huff and colleagues.

Within the Netherlands, the few wrongful convictions that were revised by the Supreme Court were all homicide cases (Brants, 2012). When compared to the total amount of convictions for murder in the Netherlands, this leads to the seemingly logical conclusion that false convictions occur at a rate of about 0.1% (Derksen, 2016). However, many Dutch criminologists feel this statistic is very optimistic (Brants, 2012; van Koppen, 2011). Derksen (2016) is one of the first to attempt to establish an empirically substantiated prevalence rate, by combining a variety of methods. Through examining case-files of convicts that received life sentences, Derksen (2016) determined a minimum wrongful convictions rate of 11.1% for homicide convictions. Additionally, frequent offenders of all crime categories were asked about the times in which their convictions were wrongful as opposed to the times that they were not, and this occurred at a rate of 10.5% (Derksen, 2016). This statistic would translate to at least 2100 innocent people that falsely receive prison sentences annually in the Netherlands (Derksen, 2016). The overall conclusion of this study, which represents a small amount of Dutch research into the incidence of false convictions, is that the most probable prevalence rate of wrongful convictions within the Netherlands is 10% for serious crimes and 5% for frequent offenders (Derksen, 2016). However, the relatively small samples used by Derksen (2016) present possible reliability and generalizability difficulties, so its results should be critically interpreted (Merckelbach & Otgaar, 2017).

The prevalence rates exposed by Derksen (2016) are shockingly high compared to the 0.1% that was assumed before and, if future research comes to the same conclusions, this has detrimental consequences to the institutional trust that the Netherlands prides itself with (Brants, 2012; Derksen, 2016). Although the Netherlands annually convicts fewer people than the United States does, and wrongful convictions thus affect fewer people in absolute numbers, percentage-wise the Netherlands may not produce significantly less wrongful convictions than the United States. Irrespective of precise prevalence rates, this section demonstrated that a

significant amount of defendants are falsely convicted within the Netherlands and that false convictions are thus a major problem in both jurisdictions. Wrongful convictions are thus a systemic problem and not an occasional slip-up, both within the United States and the Netherlands.

1.3 Limitations of Wrongful Conviction Research

What many of the previously discussed studies have in common, is the fact that their conclusions only give limited information concerning wrongful convictions. None of them succeeds at establishing a false conviction rate that can be generalized to all crime categories within a jurisdiction. This has a variety of reasons, some of which have been touched upon briefly in the previous sections. The following section will elaborate on the limitations that surface when studying wrongful convictions.

To establish the prevalence and underlying causes of any phenomenon, empirical research is warranted. However, gathering primary data proves difficult when it comes to wrongful convictions. There is no systematic method through which wrongful convictions can be identified or to prove or disprove the guilt of a convicted criminal (Gross & O'Brien, 2008). Doing their own DNA analysis to establish that a past conviction was wrongful takes a lot of resources that most researchers do not have and that, quite frankly, would still exclude the majority of convictions in which no DNA evidence was involved. In the absence of primary data, studies have attempted to infer the rate and substance of false convictions in other ways. A well-known method to research wrongful convictions is through analysing exoneration data or data on documented court appeals (Gross, 2008). However, it is deemed highly probable that only a small part of false convictions come to light in these ways and an even smaller part of those convictions result in documented exonerations (Gross, 2008; van Koppen, 2011).

In the United States, those false convictions that are exposed and do lead to exonerations are mostly convictions for serious crimes such as rape or homicide (Gross & O'Brien, 2008). Almost everything that is known about wrongful convictions is based on these serious crimes, which barely account for 2% of felony convictions (Gross, 2008; van Koppen, 2011). The vast majority of felony convictions are for property crimes. Even within the specific violent crime categories of rape and murder, not all wrongful convictions are discovered. For example, in the United States, the overwhelming majority of rape convictions are obtained by guilty pleas and generate virtually no records that can be retrieved (Gross & O'Brien, 2008). However paradoxical it may appear, guilty pleas constitute an alarming amount of false convictions (Gould & Leo, 2010). The contributing factors that led to a wrongful conviction in those cases thus offer only limited information relating to homicide cases. Therefore, the identified exonerations within a country are not necessarily representative of all wrongful convictions.

To understand why such a small segment of wrongful convictions result in exonerations, it is important to consider the extensive requirements that one needs to adhere to in order to invalidate a conviction. Both within the United States and the Netherlands, it is difficult, in some cases impossible, to reopen a case unless there is new evidence involved (Brants, 2012; Derksen, 2016; Gross, 2008). Within the United States, most exonerations are therefore the result of the discovery of new DNA evidence or re-analysis of existing DNA evidence through novel scientific methods. In rare cases, the initial perpetrator is discovered because he is charged with a different crime (Gross, 2008). In the Netherlands, a new piece of evidence (*novum*), which could, for example, constitute the conviction of the original perpetrator, the discovery of new DNA evidence or the discovery of false witness testimony, is required to appeal to the Supreme Court for a full retrial (Brants, 2012). It is thus not easy to achieve exoneration within both jurisdictions.

The severity of the punishment that an innocent individual is sentenced to is of influence on their motivation to exonerate themselves. In the United States, a disproportionate amount of false convictions that do result in exonerations are concentrated among the minority of cases that end in a death sentence (Gross et al, 2014). Those defendants facing capital punishment have a high motivation to get their conviction overturned. The majority of verdicts on less serious crimes, however, are rarely challenged, especially when these result in misdemeanours and there is no prison time involved (Gross, 2008). Crimes such as rape and homicide incur severe penalties, attracting a lot of public interest. Therefore, it is not surprising that these cases are often covered by investigative journalists, making it much more likely that effort will be put towards achieving an exoneration. Those defendants who are wrongfully convicted for minor offences are not interesting from a media perspective, nor are they likely to put their efforts towards having their verdict overturned (Brants, 2012). Although these convictions may have less serious practical consequences than a false homicide conviction, they still constitute the conviction of an innocent defendant. The majority of wrongful convictions probably lies in these categories - innocent defendants who decided to plead guilty rather than try their chances at trial, those who receive relatively light sentences and those who were convicted of crimes that never took place and are thus difficult to disprove (Gross, 2008, van Koppen, 2011).

Researching wrongful convictions thus remains a difficult task and the information that is known about wrongful convictions, therefore, has its limitations. There are clear obstacles to wrongful conviction research that have been identified in this chapter. Certain differences and similarities in the handling of wrongful conviction cases and exonerations within both criminal justice systems have been identified. The next section will delineate key differences between the two criminal justice systems and their ways of processing an alleged offender.

Chapter 2. Adversarial and Inquisitorial Systems

Minimizing the number of wrongful convictions is a difficult task, and often regarded as more important than the overall accuracy of the criminal justice system. Rules and regulations that guarantee a fair trial for all defendants may sometimes result in guilty perpetrators being acquitted, but they protect the innocent. This Blackstonian Principle lies at the foundation of both the American and Dutch criminal justice systems. However, in reality, these rules and regulations don't always achieve their purpose. The extent to which certain causes contribute to wrongful convictions differs per legal system. The United States, owing its constitutional origins to Anglo-American common law, adopts a more adversarial approach toward the criminal justice process (Roach, 2010). The Dutch criminal justice system, on the other hand, is typically seen as very inquisitorial, derivative of Roman influences (Brants, 2012; van Koppen & Penrod, 2003). However, in reality, both countries aren't one or the other, functioning instead as a hybrid or multi-faceted system (van Koppen & Penrod, 2003). Rather than referring to modern jurisdictions as either inquisitorial or adversarial systems, it is more accurate to position them somewhere on a continuum influenced by the inquisitorial or adversarial tradition (Brants, 2012). The adversarial system that the United States' criminal justice system employs is characterized as being aimed at resolving a conflict between two parties, making trial a competitive enterprise, and allowing little state-involvement (Brants, 2012; Strier, 1992). Its main goal is ensuring a defendant gets a fair trial (van Koppen, 2007). The inquisitorial structure that the Dutch government incorporates, on the other hand, emphasizes non-partisanship and, much more than the adversarial system, relies on the state to resolve social problems and enforce state policies (Brants, 2012). Although guaranteeing a fair trial is important within the Dutch criminal justice system as well, its primary aim is establishing the truest version of events (van Koppen, 2007).

With this in mind, this chapter investigates to what extent the Dutch and United States' judicial systems are comparable and to what extent they are vastly different. It does so by comparing specifically the phases that are involved in the prosecution of a suspected criminal, including investigation, trial and conviction. Interrogation techniques, the role of the prosecution, responsibilities and rights of the defence, the roles of judges and juries, methods of evidence presentation and the value of testimonies are examined and compared. Evaluating both criminal justice systems at specific stages within the criminal justice process facilitates the identification of areas which are perhaps vulnerable to wrongful convictions. This structure forms the framework through which the discussion is formulated within this research.

2.1 Investigation

After a crime is committed and identified as such, the criminal conviction process starts with an official police investigation in which evidence is collected, witnesses are questioned and suspects are identified and interrogated. During interrogation, the suspect has the right to remain silent, which is secured in article 29 of the Code of Criminal Procedure (Wetboek van Strafvordering) in the Netherlands and through the Fifth Amendment of the United States Constitution (U.S. Const. amend. V), one of the infamous Miranda Rights that were established in *Miranda v. Arizona* (Miranda v. Arizona, 1966). Suspects also have the right to have a lawyer present to protect their right against self-incrimination within both jurisdictions. In the United States, the right to counsel during interrogations is secured in the Miranda Rights as well, through the Sixth amendment (U.S. Const. amend. VI), but in the Netherlands, this law was only introduced in 2016 into the Code of Criminal Procedure, stated in article 28 to 28e (Mevis & Verbaan, 2016). Many innocent individuals could have already been implicated by the absence of a lawyer in the years before. The presence of an attorney enables clients to be advised amid the interrogation process, which offers safeguards against coercive interrogation tactics (Kassin, 2014). In the United States, some states require video and audio recording of

interrogations, and some don't. Within the Netherlands, interrogations are currently always recorded on paper, because written record is of such importance throughout the investigation and trial process (van Koppen & Penrod, 2003). In some cases, actual video or audio recordings of interrogations provide additional protection for vulnerable populations, such as youth, elderly and the mentally ill, a directive that was implemented not long ago by the Public Prosecution Service (het Openbaar Ministerie) (Procureurs-Generaal, 2018). Interrogation techniques that are used by the police, which are commonly divided into 'accusatorial' and 'information-gathering', or somewhere in-between, differ evidently between adversarial and inquisitorial systems.

2.1.1 Interrogation techniques

Interrogations within the American criminal justice system, being notoriously accusatorial, are by definition guilt-presumptive social interactions, often led by a single authority figure (Kassin, 2014; Miller, Redlich & Kelly, 2018). Many law-enforcement agencies within the United States make use of a specific interrogation strategy called the Reid technique (Miller, Redlich & Kelly, 2018). Usually, suspects are first subjected to a pre-interrogation interview, which is aimed at establishing whether a suspect is guilty or not (Meissner et al, 2014). Although this phase of the interrogation process is supposed to be more information-gathering than accusatorial, the guilt-presumption that is often already present during this pre-interrogation phase makes law enforcement prone to subconscious behavioural and cognitive biases, such as confirmation bias and tunnel vision (Kassin, 2014). Confirmation bias refers to an officer only paying attention to those details that confirm their belief, strengthening their conviction that their version of events is true (Meissner et al, 2014). Tunnel vision occurs when an investigator is so convinced that a perpetrator is guilty that they fail to explore alternative suspect or scenarios, which poses a risk when said suspect is innocent (Meissner et al, 2014). After the pre-interrogation interview, the suspect enters the official

interrogation-phase. During this interview, police using accusatorial interrogation methods traditionally pursue a degree of control over suspects through the use of close-ended, confirmatory questioning and psychological manipulation (Meissner et al, 2014). Tactics that are used include *isolation* or being locked in a room for extended periods, *confrontation*, in which police tries to convince the suspect of the strength of the case against them, and *minimization*, which occurs when an officer feigns sympathy to gain the suspect's trust (Meissner et al 2014; Miller, Redlich & Kelly, 2018). Fabricating evidence or soliciting the suspect to corroborate non-existent evidence, known as the bluff tactic, is not uncommon either (Miller, Redlich & Kelly, 2018). The primary intended outcome of such methods is to elicit a confession, practices which could lead to false confessions that contribute to potential wrongful convictions.

In contrast, the Dutch criminal justice system mainly employs an information-gathering interview style during interrogations, which is aimed at 'truth-finding' (Roach, 2010). Information-gathering interview methods are aimed at establishing rapport and by relying on open-ended, exploratory questioning interrogators make use of positive confrontation to gather details and potential self-incriminating statements from a suspect (Meissner et al, 2014). Ideally, the primary focus within an information-gathering interrogation is to obtain all information that is relevant to the investigation. The use of excessive pressure during interrogation is prohibited by Article 29 of the Dutch Code of Criminal Procedure (art. 29, WvSv). However, the Netherlands does employ interrogation methods that might be characterized as more accusatorial, or aimed at obtaining confessions. After the initial first stage of interviewing, which is aimed at getting acquainted with the suspect and is information-gathering in nature, the standard method of interrogation that is used by police is the Standaard Verhoor Strategie (SVS) (Stevens & Verhoeven, 2011). This strategy is typically used when it becomes apparent to the interrogators that the suspect won't confess or disclose information

without being pressured to do so, and its methods include various tactics - such as sympathising with the suspect, intimidation and manipulation (Stevens & Verhoeven, 2011) - which are similar to those used in the Reid technique. Therefore, although the Netherlands has a more inquisitorial structure, its investigation methods cannot be characterized as strictly information-gathering either and do not differ as much from those used in the United States as one might suspect.

2.2 Trial

The structure of trial proceedings and the roles that actors within the criminal justice system take on vastly differ between the Netherlands and the United States. In the Netherlands, a culture of institutional trust dominates the judicial process, which is reflected in the way its trial proceedings are set up (Brants, 2012; van Koppen, 2007). It is characterized by hierarchical control and places high importance on written documentation throughout the entire process of criminal prosecution (Brants, 2012; van Koppen & Penrod, 2003). Both during the investigation and the trial phase, the prosecution has a lot of power compared to the defence, and the judge plays a defining role when it comes to truth-finding (van Koppen, 2007). In this regard, the United States is completely contradictory since trials consist of a dispute between two opposing parties that are - theoretically - on equal footing and judges function more as a referee between the two parties than as an active participant (Jackson, 2014). These differences will be further explicated in this sub-chapter.

2.2.1 Prosecutors and Plea Deals

Within the United States criminal justice system, the prosecution holds a powerful position since they solely decide whether or not the state charges a suspect and what charges they bring to the judge. Supposedly, they play no role in the investigation or identification of suspects, since the separation of authority is important to the adversarial process (Brants, 2012).

However, in practice, District Attorneys, which are the main prosecutors in the United States, have the ability to influence police investigations, since they often have access to investigative teams who can carry out special investigations (Pakes, 2019). After receiving the evidence from the police, prosecutors are responsible for presenting the evidence and arguing their case against the defendant (Jackson, 2014). They are often framed as being a 'crime-fighter' and being concerned with establishing guilt rather than finding out the truth, an attitude which may contribute to the wrongful conviction of innocent defendants (Brants, 2012). However, most cases don't ever actually make it to trial. In the United States, more than 9 out of every 10 felony convictions and over 99% of misdemeanour convictions are the result of guilty pleas, in which a defendant admits guilt and relinquishes their right to a trial (Wright, 2014). The overwhelming majority of guilty pleas occur after plea negotiations with the prosecutor, in which they promise sentence or charge reduction in turn for a defendant wavering prosecutorial duties such as the duty to disclose all exculpatory evidence in their possession (Wright, 2014). The dominance of plea bargaining within the United States criminal justice system increases the power of the prosecution, reducing the influence of trial judges and juries, posing a risk for wrongful convictions.

Within the Dutch criminal justice system, the prosecution holds a lot of power and is expected to be more non-partisan than in the adversarial system, open to finding out the truth instead of merely arguing guilt. The Dutch prosecutor is part of the judiciary, which answers to the government (Pakes, 2019). In a way, the position of the prosecution is more advantageous than that of the defence as the prosecution holds an active role in compiling a case file during the investigation phase (van Koppen, 2007). The Public Prosecutor (Officier van Justitie), who is a highly trained lawyer, guides the investigation, which in practice means that officers who wish to make decisions regarding the investigative process require the permission of the Public Prosecutor before any investigative action can be taken, but also that the prosecutor monitors

the police and is expected to protect the rights of suspects (Pakes, 2019). The prosecution also has the power and responsibility to decide whether a defendant will be charged and prosecuted. Article 167 of the Code of Criminal Procedure allows the public prosecutor to abstain from prosecuting an alleged offender based on it being disadvantageous to the common interest, which is called 'het opportuniteitsbeginsel' or discretionary principle (art. 167, WvSv). They thus are of great influence on which defendants are charged and processed, meaning they play an important role in wrongfully convicting an individual. If the prosecuting entity decides to prosecute, trial proceedings are predominantly dictated by the trial "dossier" or case-file (Brants, 2012). The central role of the dossier determines that the factors which the court considers and the decisions judges make are highly influenced by the prosecution's version of events (van Koppen, 2007). Safeguards against abuse of power and the protection of the defendant's interest lie in the integrity of prosecutors and their presumed commitment to "non-partisan truth-finding" (Brants, 2012, p. 1076). Because within the Netherlands it is not necessary to enter a formal plea, there is no system of plea-bargaining, so the prosecution always has to prove guilt in a full trial, which protects again wrongful convictions through plea deals.

2.2.2 Role of the Defence

The defence team has a very distinct role within the adversarial American criminal justice system. The defence lawyer speaks at trial on behalf of the accused, providing a fierce defence of their clients' interests, which in the adversarial system typically means the strategic pursuit of either acquittal or the minimal punishment (Worden & Davies, 2014). They do so through arranging plea deals that are beneficial to their client or by cross-examining witnesses and casting doubt on the prosecutor's story. Additionally, if a defendant wants to recant a confession statement, the defence can request the judge to evaluate whether said confession was obtained through coercion, which was established to be illegitimate in *Brown v. Mississippi*

(Brown v. Mississippi, 1936). A defence attorney is also never obliged to turn over evidence to the prosecution that might implicate their client. Since the burden of proof is on the state, the defence does not have to prove innocence by collecting exculpatory evidence but merely needs to show potential alternatives to the prosecution's story (Grunewald, 2013). To assure that both parties play by the rules, there is a complex system of regulations which ensures that all of the relevant evidence is disclosed to the defence team before the trial and that this evidence is only admissible to the court if it has significant value (Jackson, 2014). Many defendants are assigned a public defence lawyer because they lack the financial funds to hire a private defence lawyer. Public defence offices in the United States are notoriously underpaid and understaffed, which means they often don't have the resources to conduct their own investigations (Pakes, 2019; Roach, 2010). Inadequate representation by defence lawyers could contribute to a wrongful conviction verdict.

Within the Dutch system, the defence team plays an even more inactive role in the evidence-gathering process. Defence lawyers do not hold the same legal position, often have not enjoyed the same extensive legal training, and do not get paid the same amount as prosecutors (Pakes, 2019). Since there is no direct contest between the parties, the defence attorney usually does not conduct their own investigation. However, during the compilation of the dossier, the defence may point the prosecutor towards certain scenarios of investigation that may be favourable to the defendant, avenues which the prosecution has a duty to explore (Brants, 2012). A defence attorney could, for example, request additional investigation by the prosecution if they feel the prosecution has not properly looked into alternative scenarios to the one presented by the State (van Koppen, 2007). Additionally, they can file for the retraction of a confession statement by their client, provided that the interrogation which led to that confession is established by the court to be in violation of article 29 of the Code of Criminal Procedure because of excessive pressure. In some cases, they also have the possibility to ask

the prosecutor to summon defence witnesses, if deemed of probative value. However, these actions need to be approved by the prosecuting entity (van Koppen, 2007). Once the case is presented to the court, the role of the defence attorney becomes mostly reactive, characterized mostly by prompting the judge to ask the right questions through submission (Brants, 2012). The defence thus does not have a lot of power within the inquisitorial criminal justice system, which could result in the failure to appropriately challenge a wrongful convictions verdict.

2.2.3 Judges and Juries

The Netherlands and the United States use a different adjudication model, represented through decision-making by either judges or juries. Traditionally, common law adversarial trials use juries as independent decision-makers, whereas professionally trained judges are the fact-finders and decision-makers within civil law inquisitorial trials (Brants, 2012; Goldbach & Hans, 2014). Within the United States, it is very common to be judged by a jury consisting of laypersons. A judge is present at trial as well, but their primary function is to preserve order and serve as a referee between the two contested parties. Additionally, the trial judge determines which evidence is admissible at trial, having some influence over which facts are presented to the jury (van Koppen & Penrod, 2003). Although 97% of cases do not make it to trial, American citizens have a constitutional right to be tried in front of a jury of their peers (Wright, 2014). These individuals are selected in deliberation with the defence, the prosecution and sometimes the judge from a pool of persons that are summoned by the court. This selection process may be the most important stage of the trial because the democratic legitimacy of a jury depends largely on its composition (Goldbach & Hans, 2014). A jury that is sampled from representative segments of the population has a better ability to take into account the full range of views that is present within the community. Often, however, the more privileged sections of communities are overrepresented in juries (Goldbach & Hans, 2014). This could result in possible biases influencing verdicts, which subsequently poses a risk for wrongful convictions.

Once the trial commences, the jury considers all the evidence presented to them by the parties and attempts to make a unanimous decision about whether they are convinced of the defendant's guilt (Goldbach & Hans, 2014). The subsequent sentencing is often the responsibility of the trial judge, who considers statutory ranges, sentencing guidelines, and typical sentences in similar cases.

Contrarily, the Netherlands operates without the use of a jury at trial, in criminal cases or otherwise, and rather opts for a professional judge to make the decisions at trial. The Dutch consider criminal justice a matter which requires its actors to be professionally and legally educated in order to be able to make well-informed and non-partisan judgements (Van Koppen, 2007). Therefore, considerable faith is placed in the state-employed judge's ability to "bring a criminal investigation and trial to a truthful conclusion" (Brants, 2012, p. 1086). The independence of the judiciary is secured through various safeguards such as appointment for life, a high salary, and limited government involvement in everyday matters (Brants, 2012). The trial judge has an active investigative function, meaning they assess the evidence assembled within the dossier. The judge's primary function is thus finding the truth (Jackson, 2014). In minor cases, Dutch trial judges operate alone, in more serious cases they often assemble in panels of three, and in appellate courts, they sit in panels of five (Brants, 2012). After the trial nears its end, which often does not take long since judges already acquaint themselves with the dossier before the trial, judges deliberate in their chambers to decide whether to convict or acquit the accused and which sentence to impose, which is guided by documented policies (van Koppen, 2007). A written declaration in which is explained specifically what evidence was considered in making that decision is required (van Koppen, 2003). Within the Netherlands, all decisions made by judges can be appealed at an appellate court, which is a potential safeguard against wrongful convictions.

2.2.4 Evidence Presentation and Witnesses

Each system has its own way of evidence handling in court cases. In an American trial, both the prosecution and the defence select evidence that they want to present to the jury. The system exhibits great reliance on specific rules concerning evidence admissibility, which the judge presides over (van Koppen & Penrod, 2003). Both parties are allowed to call eyewitnesses, informants and scientific experts to be questioned in front of the judge and jury, and both are allowed to subsequently cross-examine each other's witnesses. Cross-examination is said to contribute to truth-finding because lying witnesses can be discovered (Roach, 2010). At the foundation of this adversarial model lies an attitude of institutionalized mistrust. Expert witnesses are called by one of the two contesting parties, therefore inevitably supporting only one side of the story, which means the evidence that they present will not be accepted as the objective truth unless it has been challenged by the other side (Roberts, 2014). Failure by either the defence or the prosecution to challenge the conclusion of such an expert indicates reliability. Within the adversarial system, witness testimonies under oath are interpreted as the "paradigm of judicial evidence" (Roberts, 2014, p. 1485). Even if later retracted, a testimony or confession will be highly effective in convincing a jury of a defendant's guilt and is sometimes enough to convict, given it corroborates the prosecution's version of events (Roberts, 2014). False confessions thus pose a significant risk for wrongful conviction within the adversarial criminal justice system.

In the Netherlands, the evidence-gathering and presentation process is not dependent on the efforts of two parties. Within the inquisitorial tradition, handling evidence is generally the responsibility of the court, facilitating a more impartial and reliable report. Court officials gather, test and evaluate the evidence, and the prosecution puts all the resulting information in the dossier (Jackson, 2014). Once the dossier includes all the information that is relevant to the case, it is freely available to the defence and the court, pre-empting problems of disclosure.

Expert witnesses are appointed by an impartial court and are usually employed by a forensic institute which is only allowed to test evidence when requested to do so by either the police or the court (Brants, 2012; Jackson, 2014). This way, expert testimony about the results of their findings are safeguarded against partisanship, and it is therefore assumed that expert witnesses are competent and neutral. If the defence wishes to challenge the findings of the judicially appointed expert they often encounter difficulties finding a willing and able expert (Jackson, 2014). Judges that are part of an inquisitorial trial place a lot of trust in expert evidence that is in the dossier and the trial judge, in turn, is trusted to evaluate the reliability of the evidence appropriately (van Koppen & Penrod, 2003; Roberts, 2014). The strong emphasis on written documentation that is present in the Dutch trial means that cross-examination of witnesses in the traditional is not part of the inquisitorial process since witnesses don't often appear at trial and when they do it is mainly to clarify details for the judge (Brants, 2012). The defence is allowed to submit questions for witnesses, which the judge takes into consideration (Pakes, 2019). Additionally, the evidence of each case is always reviewed by the court, even when a defendant has confessed (van Koppen & Penrod, 2003). In the Netherlands, the court always needs two pieces of evidence that corroborate each other to reach a conviction - stated in Art. 338 of the Code of Criminal Procedure (art. 338, WvSv) - so a defendant's confession is, in theory, not of sufficient probative value that the prosecution is exempt from presenting a full and compelling case against the accused (Jackson, 2014; van Koppen & Penrod, 2003).

Chapter 3. Causes of Wrongful Convictions

Many different factors contribute to the occurrence of wrongful convictions. Although some miscarriages of justice are the result of corruption or misconduct, such as perjury by witnesses or forensic experts, the vast majority stems from human error (Zalman, Smith & Kiger, 2008). The last comprehensive literature review concerning wrongful convictions, Gould & Leo (2010), encompassed 100 years of descriptive and empirical research into wrongful convictions in the United States. This research identified seven main contributing factors or sources of wrongful convictions, including "(1) mistaken eyewitness identification; (2) false confessions; (3) tunnel vision; (4) informant testimony; (5) imperfect forensic science; (6) prosecutorial misconduct; and (7) inadequate defence representation" (Gould & Leo, 2010). These causal relationships comprise the "familiar plot" of wrongful conviction research and might, depending on which factor, present correlates instead (Leo, 2005, p. 207). Additionally, this research was conducted 10 years ago and consisted of an in-depth search rather than a systematic analysis of all existing literature. Much of this "innocence paradigm" was constructed through legal case studies, lacking experimental studies using comparison groups (Leo, 2005; Gould & Leo, 2010). To compare to what extent the sources of wrongful convictions that were found within the United States jurisdiction are also of influence within the Dutch criminal justice system, it is essential that all the contributing factors, whether correlational or causational, be identified. Additionally, since wrongful convictions are an interdisciplinary issue, combining research from a variety of fields is instrumental to cover all aspects of it. This study facilitated these objectives by conducting a systematic literature review. A systematic search of specified search terms yielded a wide number of results, of which a limited number of papers were selected for further analysis.

3.1 Method

3.1.1 Search terms

To identify all sources of wrongful convictions, a systematic literature review was conducted. The purpose of this choice of method was to answer the research question by identifying, assessing and synthesizing all of the research that complies with the inclusion criteria. To accomplish this, a strategy was identified that included both electronic database searches and 'snowballing', or gathering literature by going through the reference lists of relevant articles. For the primary part of this strategy, 9 databases were selected, including JSTOR, Wiley, SAGE Journals, ProQuest, Taylor and Francis Online, PsycArticles, PsycINFO, Psychological and Behavioural Sciences Collection and Wolters Kluwer. A Dutch database was included to assure that potentially available research from the Netherlands was included in the systematic review as well. In June 2020, the first 8 databases were systematically researched by entering the search terms *(wrongful* OR unjust*) AND convict* AND cause* AND (Innocen* OR "not guilty") AND ("the United States" OR "the Netherlands")*. Since Wolters Kluwer is a Dutch database, it required Dutch search terms, which were *(rechterlijk* OF justiti*) AND dwaling* AND oorza* AND onschuld* AND Nederland.*

3.1.2 Inclusion and exclusion

Several inclusion and exclusion criteria were formulated in order to specify the search further. Firstly, the timeframe that was set for the database search was June 2010 to June 2020. June 2010 was selected as a starting point because that is when the latest relevant in-depth literature review, Gould & Leo (2010), was published. Additionally, this ensures the inclusion of contemporary research and the exclusion of findings that are outdated or irrelevant to the current functioning of criminal justice systems. Secondly, only articles that were published in

English and Dutch were included, thereby excluding all other languages. Moreover, to enable in-depth reading and ensure the accuracy of the findings, those publications that were not available in full-text were excluded as well. Thirdly, the search was limited to just include peer-reviewed journal articles, excluding all sources without a quality assessment. Single-case studies, editorials, letters, books, commentaries, unpublished articles and dissertations and theses were excluded. Although different kinds of study designs were included, of importance to the research was the exclusion of articles that merely presented policy recommendations for governments, since this article's main concern is causation or correlation of factors contributing to wrongful convictions and not solutions in and of itself. Lastly, to facilitate a subsequent comparison, only articles that specifically addressed wrongful convictions within the United States or the Netherlands were included, automatically excluding those studies that focussed on other criminal justice systems.

3.1.3 Study Selection

After determining the inclusion and exclusion criteria, the search was conducted. Applying the aforementioned parameters and searching the electronic databases with the pre-set search terms resulted in a total of 3478 hits. Subsequently, the titles and abstracts were scanned to critically assess which articles complied with this study's inclusion criteria. After excluding 3418 articles and removing 36 duplicates, there were 24 relevant unique publications left. These remaining publications were subjected to a full-length in-depth reading. During this process, 15 additional articles were excluded. 5 of those were deemed irrelevant to the causation or contributing sources of wrongful convictions, and 4 were concerned with the wrong geographical location, e.g. Canada and the United Kingdom. In addition to this, 2 of the articles suggested policy recommendations for governments and 1 mainly focussed on developing future research recommendations, making them irrelevant to the current research. Another was excluded due to it being a single-case study, which will have produced non-

generalizable results, and another because it turned out to be a commentary. An additional paper was excluded because the author updated its research at a later point and this updated article was already included. Eventually, there were 9 studies left that met the inclusion criteria.

Through using the so-called 'snowball-method' on these 9 selected papers, an additional 3 papers were identified that met the inclusion and exclusion criteria. The reference lists of the 9 pre-selected papers were only scanned through once, meaning the reference lists of the resulting 3 articles were not used for further identification of relevant research articles. In the end, a total of 12 relevant papers were considered eligible to be included in the systematic review. **Figure 1** depicts this selection process in detail.
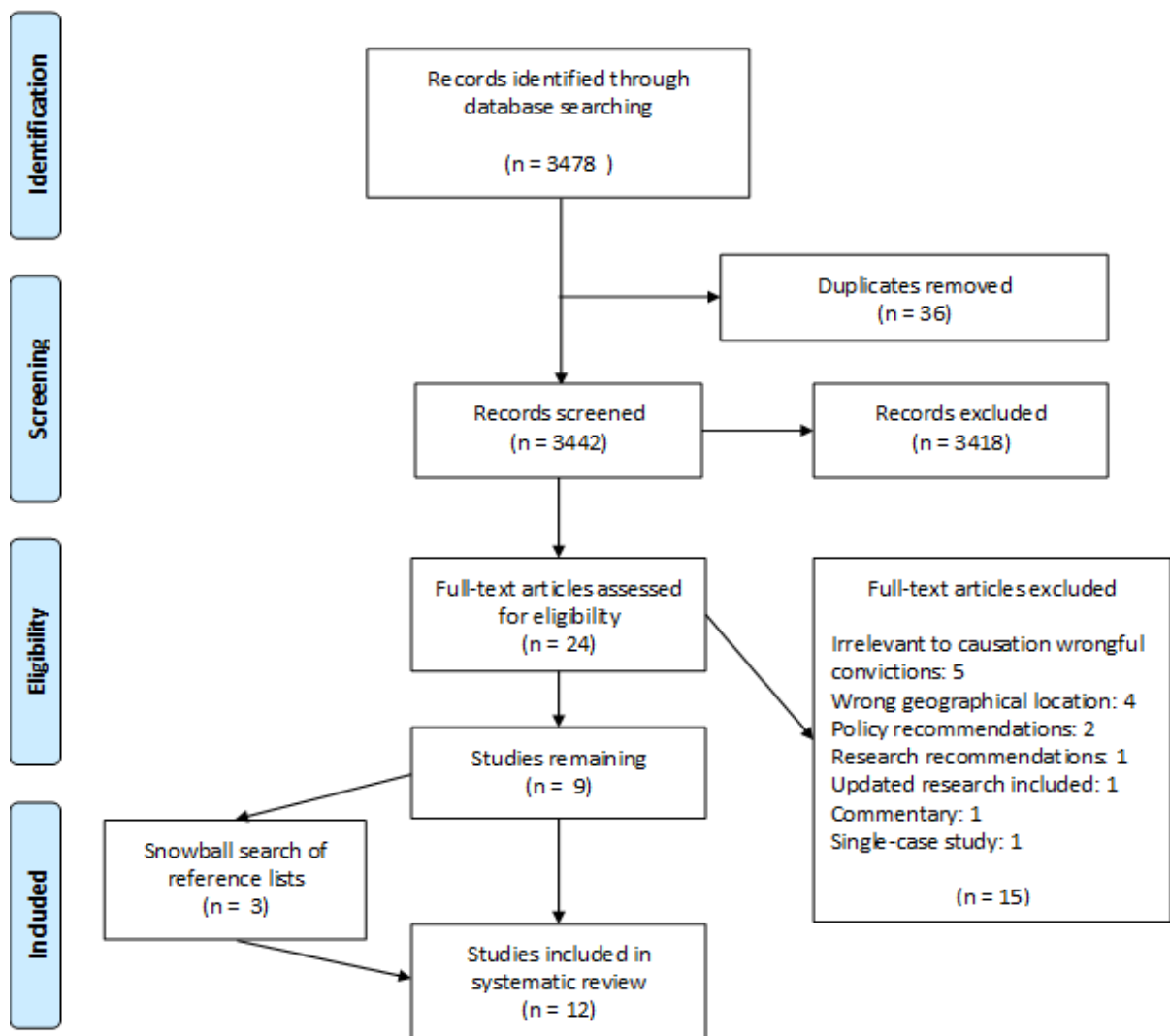

Figure 1. Study Selection process expressed in numbers

3.2 Results

Table 1 depicts the 12 studies that met the inclusion criteria and were thus included in the systematic review. Included were the names of the authors and the year that the article was published. It shows the study design and sampling methods as well as the original findings of the study. In-depth reading of these papers produced various causes of wrongful convictions.

Table 1
Included studies that examined causes of wrongful convictions

Authors and publishing year	Study Design (and sampling characteristics)	Findings (Original Quote)
Dervan & Edkins (2013)	Experimental design in which 76 college students were randomly selected into two groups. Data was collected through interviews and surveys after the experimental group was subjected to the condition.	"When study participants are placed in real, rather than hypothetical, bargaining situations and are presented with accurate information regarding their statistical probability of success, just as they might be so informed by their attorneys or the government during criminal plea negotiations, innocent individuals are actually highly risk averse … [and] **willing to falsify admit guilt in return for a reduced punishment**."
Free & Ruesink (2018)	Multiple case-study. A sample of wrongful conviction cases of 37 Black women was identified through databases from the Center on Wrongful Convictions, the Innocence Project, the National Registry of Exonerations, forejustice.org, and the Death Penalty Information Center.	"The two most important factors leading to the false conviction of Black women were **prosecutorial misconduct and perjury by criminal justice officials**. These two factors were observed in 64.9% and 45.9% of the wrongful convictions … **Police misconduct** was present in 35.1% of the cases … **Ineffective assistance of counsel** was present in 21.6% of the wrongful conviction cases … The use of informants, false confessions, witness errors, and

		forensic errors were among the least common contributors"
Gould et al (2014)	A mixed-methods approach that involved both quantitative and qualitative analyses of wrongful convictions cases. Data on erroneous convictions and near-misses were assembled, coded and analysed using bivariate and logistic regression, after which the cases were subjected to qualitative analysis by an expert panel.	"Ten factors - **the age and criminal history of the defendant, punitiveness of the state, Brady violations, forensic error, weak defense, weak prosecution case, the existence of a family defense witness, non-intentional misidentification, and lying by a non eyewitness** - help statistically account for why an innocent defendant, once indicted, may be erroneously convicted rather than released."
Kassin (2014)	Literature review	"At present, nearly 30% of more than 300 DNA exonerations have involved a **false confession** … false confession risk increases for susceptible suspects (e.g., juveniles, people with cognitive impairments or mental health problems) through the use of certain **interrogation tactics**— even if lawful (e.g., lengthy isolation, lies about evidence, minimization tactics that imply leniency)."
Kassin, Bogart & Kerner (2012)	Data were derived from case files on 241 DNA exonerations established by the Innocence Project and digitized by Winston & Strawn LLP for this study, after which the dataset was coded by independent coders.	"a comparison of the confession and non-confession sets revealed that **multiple types of errors** were present in 46 of the 59 confession cases (77.97%) … **confessions** were accompanied by invalid or **improper forensic science, eyewitness misidentifications**, and **informant errors**."
Krieger (2012)	Literature Review	1. "The most common cause of wrongful convictions is **erroneous eyewitness identification** testimony."

		2. "**Informant perjury** is the leading cause of wrongful convictions in capital cases"
		3. "Approximately 20 - 25 percent of [these] DNA exonerations resulted in whole or in part from **false confessions** induced by **police misconduct**"
LaPorte (2018)	Multiple-case study based on 133 cases of wrongful conviction listed by the National Registry of Exonerations from 1974-2016.	"Of the 133 DNA exonerations, 98 percent also involved two to five additional contributing factors. Only 2 percent cited forensic science as the sole contributing factor. The largest number, 36 percent, included **forensic science and two additional factors**."
Lowrey-Kinberg et al (2019)	Multivariate statistical analysis of multiple cases using the Preventing Wrongful Convictions Project (PWCP) dataset.	"**Victim or eyewitness identification** was the most prevalent form of identification (24.24%), followed by **intentional misidentification of the defendant** (21.72%), **citizen identification** (13.13%), and **officer identification** (11.11%). The remaining defendants were implicated by physical (6.82%) or social proximity (8.84%) to the crime or victim, evidence linking the defendant to the crime or victim (7.32%), or criminal activity of the defendant (6.31%) … [these] categories explained how more than 60% of innocent defendants in our dataset were initially implicated"
Perillo & Kassin (2011)	Randomized experimental design involving a control condition. 3 experiments were conducted involving samples of,	"use of the **bluff tactic** and …. [other] coercive tactics in an interrogation can induce compliant false confessions from innocent people".

	respectively, 71, 44 and 72 introductory psychology students at a large urban research university. These students had to do certain assignments with a confederate present, after which they were subjected to a variety of interrogation tactics, depending on the group they were assigned to.	
Scherr, Redlich & Kassin (2020)	Literature review	Demonstrates "the existence of a **multistage set of processes** wherein innocent individuals – once mistakenly identified for suspicion – suffer **cumulative disadvantages** starting during police interviews and custodial interrogations; continuing into the investigation of witnesses, alibis, and forensic evidence and through guilty-plea negotiations with prosecutors and/or a courtroom trial before a judge and jury … persisting into post-conviction appeal efforts at exoneration."
Smith & Hattery (2011)	Data were drawn from 250 exoneration cases stemming from the Innocence Project database.	1. "The rate of exoneration for African Americans (70%) is clearly and statistically significantly greater than the overall rate of incarceration for this same population (40-50%)."
		2. "In 70% of the 250 wrongful convictions, the conviction hinged on **eye-witness testimony** that was later documented to be faulty. The vast majority of the exoneration cases involve a White victim who mis-identifies an African American man."

Vick, Cook & Rogers (2020)	Multivariate statistical analysis of 787 cases of exoneration in homicide convictions that were identified through the use of the National Registry of Exonerations (NRE) in 2017.	1. "African Americans wrongly accused of homicide in known wrongful conviction cases, … where **false and misleading forensic evidence** and **official misconduct** were present, are statistically most likely to have **falsely confessed**."
		2. "**False guilty pleas** were mostly likely produced in death-eligible jurisdictions … the probability of an innocent person accepting a plea agreement increases 588% if the case is in a death-eligible jurisdiction."
		3. "Death sentences were most likely to have been imposed on exonerees who were male, in homicide cases where the victims were mostly female, where **official misconduct** was present, and who had **falsely confessed**."

3.3 Discussion of results

3.3.1 Study Designs

Wrongful conviction research is limited to a small variety of study designs. This review included 2 studies that employed experimental designs, 3 literature reviews and 7 papers that made use of databases to perform a multiple-case study. The experimental designs attempted to create a clinical environment to estimate to what extent certain aspects of the criminal justice process are problematic. Experimental studies such as these are of value because they evaluate the cognitive processes of potential defendants. However, their results are limited in the sense that they can not recreate the real situations and stakes that are attached to a criminal interrogation. These studies were included because their conclusions demonstrate the high probability of wrongful convictions to be due to inherent flaws of the system. Literature

reviews were included because, even though they may not offer new findings, they provide the results of several relevant studies at once. Most of the multiple-case studies used multivariate statistical analyses of existing datasets to establish contributing factors, and some elaborated by going through in-depth case files. One of the studies created their own dataset. This study design has limitations because it can never be determined with absolute certainty whether a convicted defendant is actually guilty or innocent, which is a problem within wrongful conviction research in general. Regardless, these studies were included because they show directly which sources of wrongful convictions were present within specific cases. No studies were identified that specifically addressed sources of wrongful convictions within the Netherlands, so all of the identified studies were situated within the United States. Detailed information on the designs and findings of these studies is provided below.

3.3.2 Experimental Studies

Two of the identified studies used an experimental design to examine to what extent false confessions and plea deals are of possible influence on wrongful convictions (Dervan & Edkins, 2013; Perillo & Kassin, 2011). Both studies randomly assigned participants into two groups, one of which was subjected to an experimental condition, and the other functioned as a control group. The experimental condition was asked to solve various problems with a confederate of the researchers, who induced them to cheat. Perillo & Kassin (2011) conducted three subsequent experiments, each with different samples from the same population, after which they conducted interviews with said participants. The study found that coercive interrogation tactics such as the bluff tactic, that is often employed by police, are highly effective at inducing false confessions from innocent people. Participants of Dervan & Edkins (2013) were subjected to one experimental condition or control condition and afterwards, interviews were conducted as well. The findings of this study suggest that plea deals form an attractive option for innocent people to escape potential harsh punishment, especially when the

proposed sentence is significantly lower, presenting a strong argument against plea bargaining for risk of wrongful conviction. As much as 56.4 % of innocent participants signed a guilty plea. These studies emphasize the possible harms of both coercive interrogation tactics and attractive plea deals and the danger they may pose to wrongfully convicting innocent individuals.

3.3.3 Literature Reviews

Three of the studies that were included in the systematic review opted for a literature review (Kassin, 2014; Krieger, 2012; Scherr, Redlich & Kassin, 2020). Kassin (2014) and Krieger (2012) both included studies that evaluated DNA exoneration cases and found false confessions, induced both by police misconduct and lawful interrogation tactics, to be one of the main contributors to wrongful convictions, suggesting it played a role in 25% (Krieger, 2012) to 30% (Kassin, 2014) of cases. Additionally, Krieger (2012) states that erroneous eyewitness identification was the leading cause of wrongful convictions and perjury by an informant, which constitutes intentional misidentification, was the most common contributor in capital cases. Scherr, Redlich & Kassin (2020) constructed a multistage framework of transition within the criminal justice system through integration of an array of psychological research, observational and experimental studies and case information from the Innocence Project and the National Registry of Exonerations. The study demonstrates that wrongful convictions occur due to innocent individuals being subjected to cumulative disadvantages throughout the investigation and adjudication process, ranging from guilt-presumptive interrogation to prejudice and bias at trial, results of inherent systemic failure of the adversarial process.

3.3.4 Multiple-Case Studies

The remaining seven studies used a multiple-case study design which analysed wrongful conviction cases from the United States (Free & Ruesink, 2018; Gould et al, 2014; Kassin, Bogart & Kerner, 2012; LaPorte, 2018; Lowrey-Kinberg, 2019; Smith & Hattery, 2011; Vick, Cook & Rogers, 2020). Six of these applied a bivariate or multivariate statistical analysis to existing datasets in which case-files of wrongful conviction cases were digitized to come to their findings. One study, Gould et al (2014), created their own dataset with the help of the National Institute of Justice. The researchers employed a mixed-methods approach that involved both quantitative and qualitative analysis of wrongful convictions cases. Bivariate and logistic regression was applied, after which the cases were subjected to qualitative analysis by an expert panel. The remaining studies used various datasets, retrieved from the National Registry of Exonerations (NRE) (LaPorte, 2018; Vick, Cook & Rogers, 2020), the Innocence Project (Smith & Hattery, 2011; Kassin, Bogart & Kerner, 2012), Preventing Wrongful Convictions Project (PWCP) (Lowrey-Kinberg et al, 2019) or from several databases (Free & Ruesink, 2018).

The studies consistently reported intentional and non-intentional misidentification by witnesses to be the leading cause of wrongful convictions, ranging from 45.96% (Lowrey-Kinberg et al, 2019) to 70 or 82% of cases, depending on the dataset that was used (Smith & Hattery, 2011; Gould et al, 2014). False confessions were demonstrated to be an important contributor as well (Kassin, Bogart & Kerner, 2012). Additionally, studies revealed that African Americans are disproportionately affected by wrongful convictions, accounting for 70% of exoneration cases as opposed to a 40% incarceration rate (Smith & Hattery, 2011), being more likely to falsely confess (Vick, Cook & Rogers, 2020) and falling victim to misconduct by prosecutors, police and other criminal justice officials more often (Free & Ruesink, 2018). Moreover, Vick, Cook & Rogers (2020) found that the probability of an

innocent person accepting a plea agreement increases 588% within death-eligible jurisdiction. Other identified sources of wrongful conviction that played a significant role were forensic errors (Gould et al, 2014, LaPorte, 2018), ineffective defence counsel (Free & Ruesink, 2018), informant perjury (Kassin, Bogart & Kerner, 2012) and state punitiveness (Gould et al, 2014). Most studies found that in the majority of exoneration cases, multiple types of error were present (Gould et al, 2014, Kassin, Bogart & Kerner, 2012; LaPorte, 2018; Smith & Hattery, 2011, Vick, Cook & Rogers, 2020).

Chapter 4. Discussion

In conducting this systematic literature review, this research aimed to identify the factors that contribute to wrongful convictions in the United States, after which subsequently can be assessed to what extent these same factors may contribute to wrongful convictions in the Netherlands. Included in the final review were 12 peer-reviewed journal articles, which were written in English and published from June 2010 to June 2020. A diverse set of causes and indirect factors that are of influence on wrongful convictions were identified, which give a comprehensive understanding of wrongful conviction causes within the United States. These results, in combination with the framework through which the adversarial and inquisitorial criminal justice systems were compared, facilitate an assessment of wrongful convictions causes within the Netherlands. The relevance of this assessment is supported by the data that were presented in the first section of this research, which established the magnitude of the problem that wrongful convictions present to be of significant impact within both jurisdictions. The findings that are presented here contribute to a clearer understanding of possible contributors to wrongful convictions in the Netherlands and should be taken into account when considering areas of the Dutch criminal justice system that are vulnerable to wrongful convictions.

4.1 Wrongful Convictions Compared

One of the objectives of this research was identifying which problems present itself in the United States regarding wrongful convictions. The results that were presented in the previous chapter suggest there are a multitude of factors involved in the wrongful conviction of innocents by the United States criminal justice system. In line with Gould & Leo (2010), eyewitness misidentification, false confessions, false testimonies, official misconduct, imperfect forensic science and inadequate defence representation were all identified as

contributing factors to wrongful convictions. Additionally, the current analysis showed that coercive interrogation methods and guilty pleas may pose a significant risk for wrongful convictions within the adversarial criminal justice system (Dervan & Edkins, 2013; Perillo & Kassin, 2011). Race was found to have played a significant role in wrongful convictions cases by multiple studies as well, which demonstrated that African Americans face disadvantages within the American criminal justice system, often resulting in being falsely convicted (Free & Ruesink, 2018; Smith & Hattery, 2011; Vick, Cook & Rogers, 2020). The identified sources of wrongful conviction play a significant role throughout each stage of the investigation into and the criminal adjudication of innocent individuals. To establish the degree to which Dutch wrongful convictions might owe their origin to the same contributing factors as American wrongful convictions, the factors are applied to the stages of investigation and trial, and the extent to which those actors which are involved in each stage are of influence within the wrongful conviction process is assessed. Identifying at which stage problems arise is instrumental to start fixing those problems that contribute to wrongful convictions, and to enable the discovery of wrongful convictions, which inherently contributes to accurate estimates of the incidence of and the prevention or reduction of wrongful convictions.

4.2.1 Problematic factors during Investigation

During the initial investigation phase, innocent individuals are first implicated in a crime and become suspects. Therefore, this stage is where problems leading to wrongful convictions first arise. Several sources of wrongful conviction are of influence in the investigation and interrogation phase, including eyewitness misidentification, false confessions, police misconduct, indirectly also involving coercive interrogation tactics and cognitive biases.

Eyewitness misidentification, identified as the main source of wrongful conviction within American wrongful conviction cases ($46 - 82\%$), can be attributed to a variety of factors,

including the interviewing strategy that is employed by the police and intentional misidentification by lying witnesses, but also to cognitive biases of witnesses themselves (Gould et al, 2014; Krieger, 2012; Lowrey-Kinberg et al, 2019; Smith & Hattery, 2011). Witnesses that are questioned by the police are not supposed to be pressured by said police to corroborate their version of events. It was demonstrated that both within the United States and the Netherlands an information-gathering style of interviewing is supposed to be applied to all non-interrogation interviews. In practice, however, police officers can be influenced by confirmation bias and tunnel vision (Lowrey-Kinberg et al, 2019; Meissner et al, 2014), which may consequently influence witnesses' answers to questions posed by the police. Additionally, eyewitnesses are subject to the cognitive biases that all humans fall victim to. Perhaps the guilt-presumptive approach (Kassin, 2014) towards interviewing of the police within the adversarial system increases the incidence of false eyewitness statements. However, both the adversarial and inquisitorial system cannot claim to sufficiently be protected against eyewitness misidentification. A safeguard to misidentification that is in place in the adversarial system, which is the cross-examination of witnesses at trial, is lacking in the inquisitorial system. Additionally, in the Netherlands, a false eyewitness statement that is believed by the police and included in the dossier has the potential to travel through the criminal justice system unchallenged. Therefore, eyewitness misidentification should be regarded as a source of wrongful conviction that is potentially overlooked by the Dutch criminal justice system.

False confessions, which were largely identified as a contributing factor to wrongful convictions, are often a direct result of coercive interrogation tactics (Kassin, 2014; Kassin, Bogart & Kerner, 2012; Scherr, Redlich & Kassin, 2020). Innocent individuals were pressured into confessing to crimes they did not commit through use of isolation, minimization and confrontation. These are part of the Reid Technique that is commonly used in the United States (Miller, Redlich & Kelly, 2018). Fabricating evidence or use of the bluff tactic (Perillo &

Kassin, 2012) by police officers in order to get the suspect to corroborate their story causes pressure to confess, resulting in the fact that 25 to 30% (Krieger, 2012; Kassin, 2014) of wrongful conviction cases used in studies included in the systematic review were, at least partly, due to an innocent defendant falsely confessing. In the Netherlands, interrogation methods are theoretically more information-gathering than accusatorial, presumably leading to less coercive interrogation tactics. Article 29 of the Code of Criminal Procedure prohibits excessive force during interrogations, which functions as a safeguard against involuntary confession. Lying or bluffing about evidence is not a common practice by police officers, since all evidence is documented in the dossier, which is accessible to the defence. However, in practice the SVS, or standard interrogation strategy, was demonstrated to have accusatorial aspects to it, such as intimidation and sympathising with the accused (Stevens & Verhoeven, 2011), forming a risk of coercive interrogation. Interrogation tactics of a coercive nature are thus involved in Dutch interrogations, possibly pressuring innocent defendants to confess. Therefore, the possibility that false confessions by innocent defendants are a contributing factor to wrongful convictions within the Dutch criminal justice system cannot be discarded.

Police misconduct is another contributor to wrongful convictions in the United States, identified by Free & Ruesink (2011) to be of influence in 35% of the wrongful conviction cases they analysed, and an additional contributing factor in 20-25% of the false confession cases discussed by Krieger (2012). Misconduct by police officers is regarded as intentionally implicating a suspect. Police officers may be driven by tunnel vision (Meissner et al, 2014) to engage in unprofessional behaviour as to assure that the accused, of whom they are certain they are guilty, is charged. In the United States, the District Attorney has some ability to exert influence over the police investigation, but officially the investigative power is strictly limited to the police. Therefore, police misconduct may go unnoticed. In the Netherlands, police investigations are actively guided and controlled by the Public Prosecutor. This hierarchical

structure poses as a safeguard against misconduct by an investigative officer, protecting against the wrongful implication of an innocent defendant. However, the amount of trust between state participants that is inherent to the Dutch criminal justice system could present an obstacle to intervene in an investigation, leaving a significant amount of room for police officers to misuse their position. This could turn out to be problematic, especially since most interrogations are not audio or video recorded. In theory, police misconduct should thus occur less in the Netherlands than in the United States, provided that the Public Prosecutor executes their job effectively, but in practice, this is not guaranteed.

4.2.2 Problematic factors during Trial

At trial, the case against an innocent suspect is presented and it is judged by the court. This is when flaws in the initial investigation should be exposed and innocent defendants should be acquitted, making it the most important step in the criminal justice process. Factors that are of influence on wrongful convictions during this phase are guilty pleas, prosecutorial misconduct, inadequate assistance of counsel, false testimonies and imperfect forensic science, indirectly also influenced by cognitive biases.

Guilty pleas present a significant risk for wrongful convictions within the United States since the majority of cases are resolved through plea deals and pleading guilty may be an attractive option for those innocent defendants who fear being convicted at trial (Perillo & Kassin, 2011). In the Netherlands, prosecutors do not bargain with charges or sentences and defendants do not have to enter a formal plea. Guilty pleas thus present no risk of wrongful conviction within the Dutch criminal justice system.

Prosecutorial misconduct was identified to be a factor in several wrongful conviction cases in the United States (Free & Ruesink, 2013; Gould et al, 2014; Vick, Cook & Rogers, 2020). Free & Ruesink (2013) demonstrated prosecutorial misconduct to be present in 64.9% of the wrongful convictions cases that they studied. Although the goal is never to convict

innocent people, within the contesting environment of the adversarial system, prosecutors are expected to achieve convictions. American prosecutors might thus be especially motivated to commit perjury or misuse their power in other ways to assure a defendant whom they believe to be guilty is convicted. Here, too, tunnel vision may play a significant role in the prosecutor's decision-making. In cases where prosecutorial misconduct is present, the power of prosecutors to decide which charges to bring to court poses a significant danger for wrongful convictions. In Dutch trials, the Public Prosecutor has even more of an influential role than the American prosecutor, which poses a risk for wrongful convictions in case a prosecutor decides to misuse their power. Where in adversarial trials the significant part that the defence plays could offer a safeguard against prosecutorial misconduct, the Dutch defence lawyer has no such position. However, the lack of competition within the inquisitorial system does mean there is less pressure to pursue conviction than in the United States, possibly indicating that the Dutch prosecutor is less biased. The public prosecutor has a lot of opportunities to abuse their position, which is strengthened by the discretionary principle that states prosecutors decides which cases that the police investigates are brought to court. However, the prosecution is part of the judiciary and therefore monitored by the court, which should offer protection against prosecutorial misconduct. Additionally, the position of non-partisanship that the prosecution is expected to take is not taken lightly, as public prosecutors are highly trained justice official, whose extensive training should, in theory, keep them from committing perjury or otherwise abusing their position. The extent to which prosecutorial misconduct is of influence on wrongful convictions within the Netherlands is thus difficult to determine and depends solely on the judiciary carrying out their duties properly. Blind trust in prosecutors could be a risk for wrongful convictions.

Inadequate assistance of counsel or defence representation contributed to American wrongful convictions discussed by Gould et al (2014), Krieger (2012) and LaPorte (2018).

Within the United States, the defence team is on equal footing with the prosecution, exerting considerable power over the trial proceedings, which puts them in an important position to prevent wrongful conviction. They are expected to inform their client of their rights and duties, report misconduct, offer alternative scenarios to the prosecutor's version of events, attempt to discredit false confessions and cross-examine witnesses. However, the public defence office is underfunded and often does not have the resources that the prosecution has, which could result in a failure to properly challenge the prosecution's version of events and lead to wrongful convictions. In the Netherlands, the defence lawyer has a less influential position than the prosecutor, but they are still expected to intervene where necessary and pose the right critical questions. Additionally, during the interrogation of their client, they can shield innocent defendants from making self-incriminating statements or making other mistakes that may lead to wrongful conviction. They are thus an important factor standing between their innocent client and wrongful conviction. As Pakes (2019) has stated, public defence lawyers in the Netherlands do not enjoy the same financial compensation or extensive legal training as prosecutors, so some might be less motivated than others, depending perhaps as well on whether or not they believe their client to be innocent. However, all lawyers in the Netherlands are trained professionals, in whom a significant amount of trust is put, making it is difficult to assess to what extent this source of wrongful conviction is present within the Dutch criminal justice system. In combination with other sources of wrongful conviction, the relatively weak position of the defence could present a risk for wrongful convictions.

Faulty forensic science and false testimonies both contributed in a lesser degree to the wrongful convictions that were examined by the studies included in the systematic review. However, these findings are still significant, since they can support or discredit other factors that may contribute to wrongful convictions (Gould et al, 2014; Kassin, Bogart & Kerner, 2012; Scherr, Redlich & Kassin, 2020). The finding by LaPorte (2018) that 92% of the wrongful

convictions they analysed could be attributed to faulty forensic science and 1-3 additional factors is worrisome in itself. A false confession, for example, that is supported by forensic science may be enough to convict an innocent defendant, both within the United States and the Netherlands. In the adversarial system, where both parties are expected to call their own witnesses and experts, the partisanship that is involved in that position could result in wrong interpretations of forensic science, which poses a risk for wrongful conviction. Additionally, juries may be vulnerable to misinterpretations, since they are not necessarily knowledgeable about forensics and are subject to cognitive biases, such as confirmation bias. A potential safeguard against lying witnesses and faulty explanations of forensic science, and thus wrongful conviction, is cross-examination of witnesses by the contesting party, which the inquisitorial system lacks. In the Netherlands, where all forensic investigations are the responsibility of the court, conducted by a forensic institute, is protected from such partisanship. Expert testimonies are thus assumed to be neutral and experts from the forensic institute are considered competent enough not to make mistakes leading to wrongful implication or conviction of a defendant. Additionally, the fact that a conviction can only be achieved through multiple evidentiary pieces that corroborate each other means a conviction will never be just due to a false confession, a false testimony or incompetent forensic experts, posing as a safeguard against wrongful conviction on the basis of these factors. The professionalism of a judge instead of a jury interpreting evidence that is presented may also contribute to less bias, which may present safeguards against wrongful conviction. However, the one-sided nature of this investigation does pose potential risks to be a source of wrongful conviction. Additionally, the fact that testimonies by witnesses and experts are recorded in the dossier and they are often not subjected to cross-examination, apart from a possible inquiry by a professional judge, could be problematic. Adding to that the fact that faulty forensic science was demonstrably linked to several other sources of wrongful convictions within the United

States, considerable thought should be put towards this source wrongful conviction. The Dutch inquisitorial system is thus not exempt from acknowledging the potential harm that inadequate forensic science and false testimonies could do for wrongful convictions.

4.2 Limitations and Future Research Recommendations

Even though the findings presented here contribute to a larger understanding of wrongful convictions within the Netherlands, there are some limitations to the current research that need to be taken into consideration when interpreting the results. First of all, the choice to include only full-text peer-reviewed articles that were published in English excluded all articles published in other languages and all documents that were published by government institutes or Non-governmental organisations. Additionally, no single-case studies, editorials, letters, books, commentaries, unpublished articles and dissertations and theses were included, thereby excluding the information that these could have provided from the analysis. However, this decision was made both for quality assurance and because it was assumed that the academic articles would include all reliable and relevant data. The second limitation lies in the lack of diversity of the included research designs. The difficulty in conducting wrongful conviction research lies in the fact that no experimental study can ever recreate the actual conditions and stakes that are present in an actual interrogation or trial and that it remains impossible for multiple-case studies to identify which defendants are guilty and which defendants are factually innocent. Additionally, multiple-case studies such as those that were identified by this research use exoneration data. Since there are not a lot of different datasets available, many studies used the same databases, which consisted mostly of wrongful conviction cases digitized by the Innocence Project and the National Registry of Exonerations. Therefore, the results of the systematic review that was part of this research largely provide limited information on exoneration cases, which means the results might not be representative for all wrongful convictions. Thirdly, it is important to consider that many of the identified causes could be

correlational instead. With the exception of Gould et al (2014), the included studies did not use a comparison or a control group of cases, thus claims of causality should be evaluated carefully. Additionally, some of the included articles investigated separate causes, neglecting to see wrongful convictions as a systemic problem and ignoring possible interaction effects of different factors. Lastly, the systematic review found no studies into Dutch wrongful conviction cases of the last decade. This could perhaps be because only one Dutch database was used or that books by Dutch criminologists were excluded. Due to the lack of available data from the Netherlands, this review cannot draw its conclusions with absolute certainty, it can only express the high probability that these sources of wrongful conviction are present in the Dutch criminal justice system. Hence, a more complete systematic review including Dutch studies, provided these are available, is warranted in the future. Despite these limitations, the contributing factors that were identified through this systematic review are of value to the larger understanding of wrongful convictions within the Netherlands, since the application of a systematic review of wrongful conviction causes in the United States to the Dutch criminal justice system has not been done before. Therefore, the research objectives were achieved.

The conclusions of this study offer new possible avenues for future research. First of all, besides the recommendation to replicate this study and include more databases, primarily Dutch ones, to establish additional sources of wrongful conviction, further research is needed to identify wrongful convictions causes in the Netherlands. Additionally, efforts should be put towards identifying wrongful conviction cases that have thus far been overlooked and remain undiscovered and unrevised. Secondly, further research into the specific contributing factors that were identified in this research, such as eyewitness misidentification, and the cognitive processes which underlie those sources of wrongful conviction, is warranted. Inter-disciplinary studies that combine the fields of sociology, law, psychology and criminology could facilitate this. Thirdly, future studies should take into account that many wrongful conviction cases

cannot be attributed to one factor, but rather the interaction effects of several factors. Finally, attention should be put towards those areas of the Dutch criminal justice process that are particularly susceptible for mistakes leading to wrongful conviction, which were presented in this research. This could be achieved through a systematic analysis of the process through which innocent individuals are identified as suspects, how the belief in their guilt is perpetuated and how they are eventually wrongfully convicted, e.g. modelled after Scherr, Redlich and Kassin (2020). Important to note as well is that several studies concluded that race was of significance within wrongful convictions in the United States. The extent to which racism affects the Dutch criminal justice process is beyond the scope of this research and warrants further research.

Conclusion

Wrongful convictions have a big impact on modern society and the way in which the criminal justice system is evaluated. This research showed that the Dutch criminal justice system, too, may be vulnerable to the sources of wrongful convictions that are identified within the United States' criminal justice system. It demonstrated this through conducting a systematic literature review which identified several causes of and factors involved in American wrongful convictions, which were applied to the Dutch inquisitorial structure. The results indicate that specific areas of the criminal justice system may be contributing to wrongful convictions, but also that the larger story may be one of system failure in which the safeguards of the criminal justice system operate in a counterintuitive manner. Except for guilty pleas, a multitude of factors could be of influence on wrongful convictions within the Netherlands, including eyewitness misidentification, false confessions, tunnel vision, confirmation bias, police misconduct, prosecutorial misconduct, inadequate defence, faulty forensic science and false testimonies. In theory, the hierarchical nature of the Dutch criminal justice system, in which different state participants hold each other accountable to achieve truth-finding, protects against many of the identified sources of wrongful conviction. However, the effective functioning of this system is entirely dependent on both the police, all members of the judiciary, including judges, prosecutors and court officials, and the defence executing their duties and responsibilities effectively. Its dedication to non-partisanship and professionalism are highly valued within the Dutch criminal justice system, but blind trust in state participants poses a high risk for wrongful convictions.

This research has contributed to the overall knowledge of wrongful convictions and may be a step towards an increased awareness of the causes of wrongful conviction in the Netherlands. In order to study the incidence and causation of wrongful convictions, the constituents of the Dutch criminal justice system have to start taking into consideration the

possibility that wrongful convictions may be a much more significant problem which affects the lives of Dutch citizens and should, therefore, be taken seriously. Even if all the rules and regulations within the Dutch legal system are adhered to, the Netherlands still runs the risk of wrongfully convicting innocent individuals. Whether or not wrongful convictions are symptoms of systemic error, or merely the inevitable result of any process that is run by fallible humans, the Netherlands should strive towards minimizing wrongful convictions. The Dutch criminal justice system functions on a presumption of institutional trust, but it needs to ensure that trust is earned.

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