

Wrongful Convictions and Restoring the Rights of the Innocent

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Chapter 1: Introduction

Imagine coming home from work or grocery shopping, you step into your home, you do not have time to sit on the couch, because the police is behind you and wants to arrest you. The police says that you are being arrested based on the grounds of murder, manslaughter and homicide. You are 21 years old and approximately six months pregnant. While you are walking outside handcuffed, your neighbours are watching you while you take a seat in the police car. You arrive at the police station; detectives are questioning you because you are a suspect for murdering a 3-year-old girl. You are innocent, but the detectives do not believe you and you have to stay at a penitentiary institution without any family contact for 103 days; this is the story of Marjan Gorissen.

Wrongful convictions are not something that is highlighted in the everyday news, at least not in the Netherlands. However, since 1992, wrongful convictions have achieved more attention and gained expanded knowledge in the legal field due to the article written by Radelet, Bedau & Putnam.¹ Nevertheless, miscarriages of justice continue to exist despite the horrendous effects it can bring to the victims of wrongful convictions. Cases like the Birmingham Six, Guilford Four, Central Park Five or Lucia de Berk give an impression of what it entails to be wrongly convicted. Regarding literature of wrongful convictions, there is a good quantity that reviews the definition and causes but there is a scarcity in the effects or impact of miscarriages of justice.² In 1996, Marjan Gorissen became a victim of wrongful accusation. Her autobiography ‘De verdwijning van Robin en de dwaling die daarop volgde’ (‘The disappearance of Robin and the miscarriage of justice it caused’) gave inspiration for this thesis. To contribute to the existing literature regarding wrongful convictions, the causes and effects, the research question for this thesis is as follows:

What are the causes and impact of wrongful convictions on the individual and his immediate and societal surroundings?

For the methodology of this thesis, to understand the causes and impact on the individual and his surroundings, its primary focus lies on the qualitative and normative legal research in forms of primary legislation, a wrongful accusation explained through an

¹ Radelet, Bedau & Putnam 1992.

² Grounds, Crime and Justice 2005/32, p. 2.

interview, and existing literature. To answer the research question efficiently, the thesis will go through descriptive and explanatory analysis to get an understanding of the definition, causes and effect of wrongful convictions.

This thesis is structured as follows: Chapter 2 will focus on the explanation of the term 'wrongful conviction', the criminal process models of Herbert Packer, the Dutch criminal process and the case of Marjan Gorissen to present a better understanding of the concept. Chapter 3 will provide the causes of wrongful convictions, an explanation about the origin and flaws within the criminal process is given as well. Chapter 4 is going to portray a variety of harms as a result of a wrongful conviction. Thereafter, it will touch on the rehabilitation provided to a wrongly convicted. To finish this thesis, a conclusion with an answer to the research question will be given.

Chapter 2: A wrongful conviction

The word ‘wrongful conviction’ sounds straightforward, it is a ‘wrong-person’ case where the innocent was convicted of a criminal offence committed by someone else.³ To gain a better understanding of the meaning behind a wrongful conviction, the definition will be explained in this chapter. Furthermore, this chapter will explain the criminal process models set by Herbert Packer and the Dutch criminal process. Lastly, the case of Marjan Gorissen will be explained in this chapter. She was wrongly accused in 1996 for a crime she did not commit.

2.1 Definition

Throughout this thesis, different terms will be used to express the meaning of the injustice done to the innocent person. Wrongful conviction, wrongful accusation, wrongful imprisonment, wrongful incarceration, wrongly accused, wrongly convicted, wrongly incarcerated and miscarriages of justice are terms that will be used interchangeably throughout this thesis; however, it is worthy to note the differences between the terms. ‘Wrongful imprisonment’ or ‘wrongful incarceration’ are the terms used to indicate the imprisonment that was followed by the wrongful conviction of the innocent. ‘Miscarriages of justice’ extend further than only the criminal cases, wrongful imprisonment (without trial) does not always arise from a wrongful conviction and a wrongful conviction does not always follow into imprisonment.⁴

Gross gave a good implication as to why wrongful convictions exist, “[B]y definition we do not know when [false convictions] occur. If we did, innocent defendants would not be convicted in the first place.”⁵ Exoneration due to ‘factual innocence’ means a defendant was convicted for a crime and later was relieved of the verdict through a decision by prosecution or court when new evidence explained the innocence of the wrongly convicted defendant.⁶ New evidence can show the person’s innocence, through i.e. forensic evidence, another person has confessed the crime, or no crime had taken place at all. It results in the

³ Norris et al., *Criminology & Public Policy* 2019/19, No. 2, p. 368.

⁴ Grounds, *Crime and Justice* 2005/32, p. 2.

⁵ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1070.

⁶ Gross & Shaffer, *National Registry of Exoneration* 2012/1, p. 6.

government, specifically the judiciary, admitting the wrong made.⁷ It can be interpreted as a narrow and strict sense of successfully reviewed innocence or in a more extensive sense of a conviction that has been wrongly achieved or reversed for any reason.⁸ Exoneration due to ‘legal innocence’ is based on the evidence revealed by the review commission that the trial contradicted the fair trial prerequisite. In this type of exoneration, the guilt or innocence of the defendant has not been confirmed. The defendant has been released due to the error made by the criminal adjudication process.⁹

2.2 Criminal Process Models

Is it reasonable to protect the innocent by failing to capture the guilty? Both Voltaire and Blackstone agreed with the question being reasonable through their quotations, “*It is better to risk saving a guilty person than to condemn an innocent one*” and “*It is better that ten guilty persons escape than one innocent suffer*”.¹⁰ Preventing wrongful convictions should embrace both of Packer’s Crime Control and Due Process Models. In order to manage these complicated issues, decision-makers should at least be mindful that, as criminals stay at liberty after the wrongful conviction of an innocent person, the negative effects outweigh the problems faced by innocent.¹¹ The negative effects would include a perpetrator exercising his ability to walk freely and possibly committing more criminal offences.

The Crime Control Model is based on the premise that its most important function is to repress criminal conduct in the public through the criminal process. Law enforcement should control the criminal conduct and bring this to a minimum, for the public order and to preserve human freedom. When laws are not obeyed, i.e. offences are committed, the security of the people and their liberty are gravely diminished.¹² Law enforcement that perceives the values of the Crime Control Model as primary will take action to improve the security and freedom of the society. People who are assumed to have disobeyed the law will be arrested, questioned, condemned guilty or innocent and, if guilty, they are convicted.¹³ “*The Model, in order to operate successfully, must produce a high rate of apprehension and conviction and*

⁷ Semmelroth 2014, p. 4-5.

⁸ Grounds, Crime and Justice 2005/32, p. 2.

⁹ Semmelroth 2014, p. 5.

¹⁰ Christianson 2004, p. 17.

¹¹ Norris et al., Criminology & Public Police 2019/19, No. 2, p. 379.

¹² Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 9-10.

¹³ Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 11.

must do so in a context where the magnitudes being dealt with are very large, and the resources for dealing with them are very limited."¹⁴ The preference on how to advance the progress of a case lays with interrogations in police stations.¹⁵ The resources, i.e. the detectives, go through cases more quickly to decrease the number of criminal offences. To handle the cases quicker the detectives may deviate from the strict rules about interrogations. This way the facts are established more quickly than through extensive and proper examination during interrogations and cross-examination in court. To handle the large numbers, law enforcement follows the presumption of guilt.¹⁶ As opposed to the presumption of innocence, the presumption of guilt focuses on it being a prediction of outcome.¹⁷ The presumption of innocence lays the responsibility with the state to prove the guilt of the defendant, the state's 'burden of proof' must be beyond reasonable doubt to find the defendant guilty.¹⁸ Whereas the presumption of guilt imposes the responsibility with the defendant to prove his innocence, the 'burden of proof' of the defendant will need to be filled with extensive evidence to convince of his innocence.

The Due Process Model does not disagree with the public need to diminish crime. In each stage, it presents barriers to continue with the process for the protection of the accused. People in stressful situations have less well-performing memory, resulting in the recollection being incorrect when questioned. Because human error is inevitable, further scrutiny is provided. The law enforcement acts through a formal, adjudicative, adversary fact-finding process with an impartial court open for public and the accused has the opportunity to be defended and to disagree with the case against him.¹⁹

2.3 Dutch Criminal Process

There is a lack of study and no formal reports on the number of wrongful convictions in the Netherlands; it prevents the public from having any idea of how many wrongful convictions have occurred.²⁰ There is not a clear picture of the number of wrongly convicted, accused or incarcerated people in the Netherlands. Examples of known wrongful conviction cases are

¹⁴ Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 11.

¹⁵ Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 11.

¹⁶ Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 11.

¹⁷ Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 12.

¹⁸ 'The Presumption of Innocence', fairtrials.org.

¹⁹ Packer, University of Pennsylvania Law Review 1964/113, No. 1, p. 14.

²⁰ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1072.

those of Lucia de Berk, Ina Post, the Schiedam Park Murder, and the Putten Murder Case. The Dutch criminal process, with its low number of wrongful convictions, has been praised by other countries; law professors see the Dutch system as an example or improvement from their adversarial system.²¹ The inquisitorial system has been praised as more sensible, effective, and cautious to avoid wrongful convictions.²² The Dutch criminal process includes both inquisitorial and adversarial aspects in its process. Nonetheless, the Netherlands has been very hesitant to accept that the Dutch criminal process may be vulnerable to wrongful convictions, despite growing indications that it has structural vulnerabilities in practice.²³ There is an increase of acceptance towards the weaknesses of the Dutch criminal process and its potential consequences is a relatively recent phenomenon. It certainly explains the lack of research but also that very few cases in which the defendants were wrongly found guilty to long prison terms (or indefinite detention in a state psychiatric hospital) have come to light.²⁴ When the research of Radelet, Bedau & Putnam was published in 1992, it was more or less dismissed by the entire legal community as unscientific and unconvincing.²⁵ Almost three decades later, Marjan Gorissen came out with her story in 2019, within less than two years she has gained more awareness through her lectures and book.

The Dutch criminal process has elements of both inquisitorial and adversarial process.²⁶ In the inquisitorial process, partisanship is only meant for the defence lawyer, when applied to anyone else it is a foreign concept. There are no parties and therefore, no witnesses or experts sided with the prosecution or defence.²⁷ Instead, there are witnesses and experts appointed by the court, often from state laboratories or forensic institutions. Appointment by the court has the strong benefit of releasing an expert from any unconscious obligation they could experience towards the party they assist. The main danger here is not that they are inherently biased, although that is always possible, but it is because they are regarded (and considered by themselves) as non-partisan professionals.²⁸ The court may focus primarily on their findings without an automatic response from the expert of the other side to contradict them.²⁹ The adversarial process is less dominated by the representatives of

²¹ Dr Stephen Heaton and Dr Ian Edwards from the University of East-Anglia have stated this belief during my semester abroad.

²² Lynch, *Fordham Law Review* 2015/83, No. 4, p. 1673.

²³ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1072.

²⁴ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1072.

²⁵ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1072.

²⁶ Corstens, Borgers, & Kooijmans 2018, p. 10.

²⁷ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1080.

²⁸ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1080.

²⁹ Brants, *University of Cincinnati Law Review* 2012/80, No. 4, p. 1080.

the state. Furthermore, there is an equality between the defendant and prosecution and/or government representatives with an impartiality of the judiciary.³⁰ The passive judge plays as a referee to ensure that both parties follow the rules of the court.³¹ The Dutch criminal process could be characterised as moderate adversarial. During the investigation, the suspect is mostly an object of the investigation regarding the research for evidence. This resembles the inquisitorial process. Further in the process, the trial gives the defendant an equal ground with the prosecution and/or government.³² During the trial, the adversarial process acts through parties examining their own and the other party's witnesses and searching for evidence to lead their arguments in an attempt to establish the truth of the events.³³ The truth can be drawn more easily from the viewpoints of the litigants.³⁴ The public interest sees the adversarial process in a criminal process as an interest for the security of the citizens and the crime control.³⁵ The relationship between the individuals and the rule of law is seen as "*a set of concrete rights and freedoms from particular forms of state intrusion, which they themselves can assert.*"³⁶ The individuals have the autonomy and it forms the basis of the adversarial process. The adversarial process can be present in the common law states. In common law, there is no monitoring of the executive criminal justice organs. Adversarial prosecutors do not control the investigation process. In court, there is a two-sided interpretation of evidence and efforts by each party to falsify the arguments of the other in the presence of an unbiased tribunal.³⁷

In the 'International Perspectives on Wrongful Convictions: Workshop Report' written by Jolicoeur, she talks about the Dutch criminal justice system's attempt to reduce wrongful convictions.³⁸ The Dutch criminal process has tried to build antagonism in its partly inquisitorial process within its police force and its public prosecutor's office. One new measure used was the testing of different theories and hypotheses. All levels of police and prosecutors, including managers, are now used to having their opinions challenged by these alternative theories and hypotheses. This has never been achieved in the Netherlands before and they believe that it makes their cases better.³⁹ The Netherlands already gave the defence

³⁰ Lynch, Fordham Law Review 2015/83, No. 4, p. 1673.

³¹ Corstens, Borgers, & Kooijmans 2018, p. 10.

³² Corstens, Borgers, & Kooijmans 2018, p. 10.

³³ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1078.

³⁴ Corstens, Borgers, & Kooijmans 2018, p. 11.

³⁵ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1076.

³⁶ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1077.

³⁷ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1077.

³⁸ Jolicoeur, National Institute of Justice 2010, p. 13.

³⁹ Jolicoeur, National Institute of Justice 2010, p. 13.

counsel access to open court files and interrogatories, as well as access to the prosecutor's case before the trial, to ensure fairness of prosecution and police procedures of inquiry and questioning.⁴⁰ The prosecution is the one in charge in the Dutch criminal justice system, the police carry out investigations. A third significant step was the establishment of a service-level agreement between the prosecutors and the police to conform with such requirements and expectations.⁴¹ This establishment allows both sides to review their performances. Lastly, in the Dutch police department, it has more qualified specialists operating in teams with the police. These trained criminal investigators collaborate with the police to establish case hypotheses rather than simply test police evidence. The third important measure was to develop a service-level agreement between prosecution and police so that they will abide by certain criteria and standards.⁴²

2.4 Marjan Gorissen

In 1996, Marjan Gorissen was wrongly accused of the murder of a 3-year-old girl named Robin. To understand more of this case, it must be mentioned that Marjan Gorissen was wrongly accused and incarcerated but never convicted. Due to Marjan Gorissen being wrongly accused, she was wrongly incarcerated as well because it should not have happened in the first place. However, within the normal measures taken for the severity of such a case, the incarceration at the time of the case may be justified even though an innocent person should not experience such a situation and/or environment; however, it can be debatable. Marjan Gorissen is by no means the norm of a wrongful conviction, she is one person who experienced a miscarriage of justice. Marjan Gorissen is merely an example. The made-up story behind the disappearance and murder of the girl, was that Robin had lunch with her neighbour Trudy Jansen at Trudy Jansen's house and Robin wanted to go home to retrieve some money, however Robin never returned and people started searching. Apparently, the little girl had said something that maddened Trudy Jansen which caused Trudy Jansen to murder Robin. During the investigation, Marjan Gorissen was held at the house of detention, which is a part of the Penitentiary Institution Maastricht (the Netherlands), with complete isolation due to the severity of the case. Marjan Gorissen was not allowed to have any contact with the outside world besides her lawyer and the detectives.

⁴⁰ Article 30 of Book 1 of the Dutch Criminal Code.

⁴¹ Jolicoeur, National Institute of Justice 2010, p. 13.

⁴² Jolicoeur, National Institute of Justice 2010, p. 13.

Marjan Gorissen became a suspect because she was befriended with Trudy Jansen, and Trudy Jansen told the detectives that Marjan Gorissen was an accomplice in the murder. Marjan Gorissen's detention had been extended three times. Marjan Gorissen was incarcerated for 103 days, which resulted in it being the maximum number of days to be held at house of detention before they had to start the trial. Trudy Jansen confessed around day 103 to being the offender and murderer of the 3-year-old. At the time of the arrest, Marjan Gorissen was 21 years old and approximately six months pregnant. During this time, Marjan Gorissen had given birth to her son Jesse. The trauma caused by giving labour in a hospital with a detective next to her is one of the greatest impacts the wrongful accusation had on her life.⁴³

⁴³ See Appendix 1; See Appendix 2.

Chapter 3: Causes

To prevent convicting innocent persons, criminal trials contain an elaborate set of safeguards. Checking the admissibility of evidence, institutional arrangements for the defendant to be legally represented, and for the guilt to be proven beyond reasonable doubt are examples of these safeguards set by a country's criminal process. A miscarriage of justice may occur when these safeguards fail, an error was made or it was deficient in some features. Errors are involved at two stages: a wrongful accusation of person during the investigation of the offence; during the trial, multiple protections fail to rectify errors made in the investigation.⁴⁴ This chapter will mention how through the characteristics of a criminal process wrongful convictions can occur. Furthermore, it will look at how Herbert Packer's models could be related to wrongful convictions. Lastly, the contributing factors to wrongful conviction will be mentioned in this chapter.

3.1 Concept of the criminal process

To have a better understanding of the impact of a wrongful conviction, there must be looked at the causes of wrongful convictions. The errors occur during the investigation and trial of the case. The idea is that during this time, there should be handled with knowledge and impartiality. During the investigation, the defendant is dependent on the integrity and competence of the police, prosecutor, and judge to comply with the inquisitorial elements of the process.⁴⁵ These parties are not inherently biased but this can become a danger because they are viewed as professional who will remain impartial and too much reliance is put on their findings in court.⁴⁶ This should be a strength of the inquisitorial characteristics of the Dutch criminal process, to feel secure at the hands of the representative of State's institutions who handle with integrity and non-partisanship. The need to trust the legal guarantees of the process at each stage from going off the rails can be brought into question after multiple wrongful convictions, even though the number of cases may seem small.⁴⁷ Brants mentioned that self-repeating errors and confirmation bias can occur in the Dutch criminal process.

⁴⁴ Semmelroth 2014, p. 12.

⁴⁵ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1079.

⁴⁶ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1080.

⁴⁷ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1080-1081.

Moreover, flawed or partisan police investigations, tunnel vision, and the dubious role of forensic experts are factors that these errors have in common.⁴⁸

3.2 Herbert Packer's models related to wrongful convictions

The values of the Crime Control Model and Due Process Model influence the representatives of the State's institutions. The preference of which model is up to the representatives, it leads them to handle cases in a certain manner. Colvin says "*wrongful accusations do not necessarily lead to wrongful convictions. They lead to wrongful convictions when the safeguards of the criminal justice system fail*".⁴⁹ He disagrees with the Crime Control Model, his preference lays with the Due Process Model. According to the Due Process Model, its values are to find the truth and justice for each individual that enters the criminal justice system. It is the opposite of the Crime Control value, which has a 'guilty until proven innocent' assumption.⁵⁰ As said in chapter 2.2, the burden of proof lays with government, when it follows the 'innocent until proven guilty' statement. The assumption of 'guilty until proven innocent' puts the responsibility on the defendant to prove his own innocence.⁵¹ With the idea of following the ideals of the Crime Control Model, the representatives would like to capture and convict the criminal offenders. This will be easier when the accused or defendant is perceived as being guilty before he can prove his innocence. If a case is led by the Crime Control Model, the focus is laid on being efficient and quickly getting criminals off the street. It essentially assumes that if someone has entered the adjudication stage, he must be guilty.⁵² It should not go unnoticed that it might happen in every legal system, even in the Netherlands. Marjan Gorissen believed "*Crime Control certainly occurs among detectives, a preconceived idea that they think you should be behind bars because it looks good on their resume. But, the group that is more Due Process-focused, they look at what can exonerate you.*"⁵³

⁴⁸ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1099.

⁴⁹ Semmelroth 2014, p. 12.

⁵⁰ Semmelroth 2014, p. 12.

⁵¹ 'The Presumption of Innocence', fairtrials.org.

⁵² Semmelroth 2014, p. 11.

⁵³ See Appendix 2.

3.3 Contributing factors

In Semmelroth's article, it was argued that a focus on the interaction between two things is needed. One, that errors occur during the investigation of offences and wrongful accusations are being made. Two, errors in the impartiality of a third party, i.e. a judge, that is supposed to improve errors and prevent convicting the innocent.⁵⁴ There are six categories of contributing factors that occur in the process of a wrongful conviction. These are eyewitness misidentification, false confessions, false accusations and perjury, false evidence, official misconduct, and inadequate legal defence.⁵⁵ Brants mentions other contributing factors such as overambitious police or prosecutors, pressure from the media, concentration on a suspect who is innocent but becomes the main suspect, confirmation bias, and the magistrates monitoring each other.⁵⁶ These overlap within parts of the big six contributing factors, however they are worth to be mentioned. In this part, the focus will be laid on the six categories as the most common throughout wrongful conviction cases.

3.3.1 Eyewitness misidentification

Eyewitness identification needs to be handled with the utmost caution because an innocent person can become the main suspect within a second. Because, when an eyewitness identifies a person as the offender, while he is in fact innocent, that person will be wrongly accused of a criminal offence. At the time of being the eyewitness, people go through an event that can reduce the accuracy of their memory.⁵⁷ The police, prosecutor, judge and jury need to remember that these 'estimator variables' come with being a human in a situation of distress.⁵⁸ *"It bears repeating that no police procedure can improve the inherent failings of a witness's ability to recall the face of a stranger observed under difficult circumstances."*⁵⁹ To add, people want someone to be found guilty, the media and the police can force a highly requested importance on finding a suspect even though the accused and the actual culprit look nothing alike.⁶⁰ Due to the high amount of pressure put onto the eyewitness, he might

⁵⁴ Semmelroth 2014, p. 11.

⁵⁵ Semmelroth 2014, p. 10.

⁵⁶ Brants, University of Cincinnati Law Review 2012/80, No. 4, p. 1079.

⁵⁷ Thompson, Marquette Law Review 2009/93, No. 2, p. 643.

⁵⁸ Thompson, Marquette Law Review 2009/93, No. 2, p. 643.

⁵⁹ Thompson, Marquette Law Review 2009/93, No. 2, p. 644.

⁶⁰ Semmelroth 2014, p. 14.

randomly pick someone out to remove himself from that situation.⁶¹ The thought that it is important for the eyewitness to pick a person because it would mean that there is one criminal offender less.

The police should be unbiased during an eyewitness identification, both during a line-up and singular photo presentation. Police and prosecutors should avoid giving the witness feedback on whether he selected the 'right man'.⁶² The American Bar Association stated that officers suggest, knowingly or unknowingly, to the witness which person is believed to be the suspect.⁶³ By asking questions that are deceitful and given post-event knowledge to the eyewitness, the latter can reshape his memory and report accordingly to the police.⁶⁴ Subconsciously witnesses believe the offender is in the line-up or photo spread, the person that looks mostly like the offender or the portrayal made by the police is picked out.⁶⁵

3.3.2 False confession

When a suspect confesses, this usually has a dramatic domino effect. Representatives of the State will report to the prosecuting attorney's office, even if there is no corroborating evidence.⁶⁶ In some states there is no need for another piece of evidence to corroborate with the first one, but other states might want more than one piece of evidence.⁶⁷ In a common law states, jurors will likely be biased when the confession is brought to court as evidence and they will try to convict the defendant. The review commission will focus on the (actually false) confession and the errors made during the process will be put to the side.⁶⁸ Borchard argues that confessions are often viewed as the truth. However, an inspection must take place to prevent false confessions from being brought to the trial.⁶⁹ People can confess a crime they did not commit due to the high pressure during investigation or trial. The inspections are important for people with low mental capacities, because they tend to agree with the prosecution.⁷⁰ Gross et al. stated that the most vulnerable groups of innocent defendants, i.e.

⁶¹ American Bar Association, *Southwestern University Law Review* 2008/37, No. 4, p. 816.

⁶² American Bar Association, *Southwestern University Law Review* 2008/37, No. 4, p. 813.

⁶³ Semmelroth 2014, p. 15.

⁶⁴ Acker & Redlich 2001, p. 112.

⁶⁵ American Bar Association, *Southwestern University Law Review* 2008/37, No. 4, p. 811.

⁶⁶ Semmelroth 2014, p. 16.

⁶⁷ Article 341 subsection 4 of Book 2 of the Dutch Criminal Procedure Code.

⁶⁸ Semmelroth 2014, p. 16.

⁶⁹ Borchard 1932.

⁷⁰ Semmelroth 2014, p. 16.

juveniles, the mentally unstable and intellectually disabled people, are the ones most likely to falsely confess.⁷¹

Kassin distinguished three types of false confessions: ‘voluntary,’ ‘compliant,’ and ‘internalized’ false confessions.” Voluntary confessions occur when a suspect claims a crime he did not commit, however the police did not use any methods of coercion. Several reasons can be given as to why a person would falsely confess, e.g. the need for attention or self-punishment, protecting another person, or feeling as if they should be the culprit. Compliant false confessions happen when the suspect is in a stressful situation, he is promised a reward or a way to avert punishment.⁷² This confession is an act of public compliance by a suspect who perceives that the short-term benefits of a confession outweigh the long-term costs.⁷³ The idea to comply with the police comes from the belief that the truth will eventually come out and the questioned person can go home. In sad and extreme cases, after the confession, the suspect actually never goes home again.⁷⁴ Lastly, internalized false confessions occur when a vulnerable suspect is exposed to coercion, not only does he confess but believes that he committed the crime in question.⁷⁵

3.3.3 False accusation and perjury

A false accusation occurs when a person is identified as the culprit to the police and involving him into the criminal justice system.⁷⁶ A suspect can give a false allegation to get attention or to protect himself; the accuser creates a crime in his head with even possible evidence. A jailhouse snitch or criminal informant gives a (false) accusation for him to receive a reward or benefit.⁷⁷ *“I really tried my best to tell everything and the detectives eventually told me the reason why I had been arrested. It was because Trudy had accused me. She was my best friend, hence why I was in a bit of a shock because you start doubting yourself. What had I done wrong to her for her to do something so ugly to me? Because you think you know someone.”*⁷⁸ People who lie under oath take part in perjury, a government official can be deceitful too. It will most likely be a forensic analyst or law enforcement

⁷¹ Gross et al., the Journal of Criminal Law & Criminology 2005/95, No. 2, p. 545.

⁷² Kassin Current Directions in Psychological Science 2008/17, No. 4, p. 249.

⁷³ Semmelroth 2014, p. 17.

⁷⁴ Semmelroth 2014, p. 17.

⁷⁵ Kassin Current Directions in Psychological Science 2008/17, No. 4, p. 249.

⁷⁶ Semmelroth 2014, p. 17.

⁷⁷ Semmelroth 2014, p. 18.

⁷⁸ See Appendix 1.

officer.⁷⁹ Marjan Gorissen believed that an official can perjure “*detectives also suffer from tunnel vision, they only see one possible solution, they dismiss everything that does not fit within that solution.*”⁸⁰

3.3.4 False forensic evidence

In 1992, Radelet, Bedau & Putnam wrote ‘In Spite of Innocence’ which covered 350 wrongful conviction cases. Their article caused more writing about the causes of wrongful convictions in the legal field. The availability and popularity of DNA testing started to increase greatly. According to the article, police and prosecutors started to focus mostly on DNA testing during cases, forgetting wrongful convictions can occur due to other causes or even with the option of DNA testing. DNA testing did become a great tool in the exoneration of the wrongly incarcerated.⁸¹ Due to the increase in the availability and popularity of DNA testing, people started to realize miscarriages of justice were occurring in the criminal justice system. The culprit would be verified through DNA and wrongly convicted would prove their innocence. People who fought for their freedom, because they were wrongly convicted, were finally heard. It advocated for more research on wrongful convictions, without the increased attention, the research on wrongful convictions and its advocacy would not be as it was today.⁸²

Moreover, DNA can ambiguously exclude a person as a suspect or it can confirm their guilt. Yet, other forensic evidence does not have this genetic makeup that fits only one person.⁸³ Investigators rely too strictly on forensic evidence that could either come from the victim or the offender. Furthermore, tunnel vision causes the investigators not to look at all aspects of the evidence.⁸⁴

3.3.5 Official misconduct

Official misconduct presents itself combined with another contributing factor during the case. When a representative of the State behaves in an unethical manner, it could result in a

⁷⁹ Semmelroth 2014, p. 18.

⁸⁰ See Appendix 2.

⁸¹ Semmelroth 2014, p. 19.

⁸² Semmelroth 2014, p. 19.

⁸³ Semmelroth 2014, p. 20.

⁸⁴ Semmelroth 2014, p. 21.

miscarriage of justice. It does not exist solely based on the behaviour of the official, it could be combined with e.g. a false confession, false forensic evidence or another contributing factor. Borchard says that *“the prosecuting attorney was obliged to take the evidence as presented to him, including the uncontrollable perjury of vengeful witnesses, and lay it before the jury without realization of its worthlessness.”*⁸⁵ In only a few cases, the police or prosecution can be charged with no fault, carelessness or overzealousness.⁸⁶ This charge would include the police or prosecutors being negligent by overlooking or suppressing evidence, the police or private detectives being too zealous with the given evidence, or the prosecution heavily focuses on the presented evidence that caused the erroneous conviction.⁸⁷ *“Such lapses from the impartial enforcement of the law are hardly excusable.”*⁸⁸ A conviction is regarded as a personal victory for the police or prosecutor to enhance his reputation.⁸⁹ In a limited number of cases where evidence is intentionally suppressed or manufactured, bad faith cannot be identified as due to the police or prosecution. It is due to the environment in which they operate, there is a public uproar to root out crime and to get rid of the criminals that cause the police and prosecutors to pin a crime to the accused and not to the offender.⁹⁰ *“they just want a scapegoat, they do not necessarily care who it is. District attorneys can feel this pressure and merely just want these cases closed.”*⁹¹

Another issue is tunnel vision that is combined with official misconduct. Another word for tunnel vision is confirmation bias.⁹² An official has formed an idea or conclusion about evidence or a person, he will not look at other aspects or indicators that could prove his idea or conclusion to be false and finds other evidence or data that supports his belief. For interrogations or false confessions, the official is convinced his suspicion of the accused is right, he will ignore other evidence or data.⁹³

⁸⁵ Borchard 1932, p. 369.

⁸⁶ Borchard 1932, p. 369.

⁸⁷ Semmelroth 2014, p. 21.

⁸⁸ Borchard 1932, p. 369.

⁸⁹ Borchard 1932.

⁹⁰ Borchard 1932, p. 369.

⁹¹ Semmelroth 2014, p. 22.

⁹² Rassin, *Journal of Investigative Psychology and Offender Profiling* 2010/7, No. 2, p. 154.

⁹³ Semmelroth 2014, p. 22.

3.3.6 Inadequate legal defence

The right to a fair trial and the right to an attorney are set by article 6 of the European Convention on Human Rights and Fundamental Freedoms. It is assumed this is provided; however it is underestimated that ineffectiveness of inadequate assistance of counsel is an issue, especially by the world outside of the criminal justice system.⁹⁴ It arises more frequently than pleased, the fault lays with the public and private defenders and the criminal justice system. A public defender is appointed by the court to a defendant when he cannot afford legal assistance himself. A private defender or attorney gives legal assistance to a defendant and the defendant can afford the legal assistance himself. Nevertheless, the assertion of inadequate legal defence, in particular with the review commissions, continues to gain credibility in and out of the criminal justice field.⁹⁵

⁹⁴ Semmelroth 2014, p. 23

⁹⁵ Semmelroth 2014, p. 23.

Chapter 4: Consequences of wrongful convictions

After the release of a wrongly convicted, he is sent back into the civilized world. It may have been months or years since he has stepped foot outside of the prison and/or interrogation rooms. The effect of being imprisoned wrongfully should not be taken lightly; not only for the individual who suffered during the incarceration, but the partners, family, and friends can be affected by a miscarriage of justice as well. Furthermore, the society can suffer too, because another innocent person could possibly suffer from a miscarriage of justice in the future.⁹⁶ The consequences of a wrongful conviction begin to play out during the incarceration period, the consequences will be mentioned in this chapter. When a successful review has been made by the review commission, the effects the case and imprisonment have on the wrongly convicted are expressed. This chapter focuses on the consequences of wrongful convictions. Firstly, the physical, financial, social, and psychological harmful consequences of wrongful convictions will be explained. Throughout this chapter, the connection will be made with the experiences of Marjan Gorissen. Lastly, the rehabilitation that is given to wrongly convicted will be explained. The rehabilitation process after a wrongful conviction may differ from the rehabilitation process of a criminal offender.

4.1 The harmful consequences of wrongful convictions

The harm or damage left behind by the wrongful convictions affects the direct victims but indirect victims such as partners, family, friends and society are affected too. Harm can be divided into four forms of consequences. The physical and financial harm can be more easily explained than social and psychological harm. For example, physical harm could include the harm done to one's body and financial harm could consist of the loss of public money because it has been invested in the wrongful conviction.⁹⁷ Whereas, social and psychological harms are complex because not all wrongful conviction victims experience the same.⁹⁸

*“Wrongful convictions are qualitatively and quantitatively different, as are the social circumstances and psychological dispositions of wrongful conviction victims.”*⁹⁹ A bachelor experiences harm differently compared to a person who is married and has children. Their

⁹⁶ Naughton 2003, p. 219-220.

⁹⁷ Naughton 2003, p. 223.

⁹⁸ Naughton 2003, p. 223.

⁹⁹ Naughton 2003, p. 223.

partner and family will experience social, psychological and/or financial harms as well. Furthermore, a difference in the alleged committed offence can contribute to how harmful it is to return to society as it can damage a person's reputation.¹⁰⁰ Naughton argues that there needs to be acknowledgement for the social and psychological harms experienced by victims of miscarriages of justice, even if it may differ from person to person.¹⁰¹

4.1.1 Physical harm

Hillyard and Tombs define physical harm that includes the torture and brutality by State officials.¹⁰² Multiple examples of such physical harm were mentioned in Naughton's article. For example, Keith Twitchell was tortured into signing a confession for his 'alleged' part of a criminal offence. His wrists were handcuffed to back legs of a chair, a plastic bag was placed over his head and pressed against his mouth and nose. The suffocation continued until he agreed to signing the confession. He served thirteen years of his twenty year conviction. He received no compensation and the involved police officers did not face any charges for torturing Keith Twitchell.¹⁰³ For a woman who was six months pregnant, they did not give Marjan Gorissen enough care: "*[The care was] not so good at first, because they assumed that the baby would grow by itself. Only when they did a check in the hospital, it revealed that the baby had a slight delay in growth.*"¹⁰⁴ It is not per se a physical harm, however if the inadequate care had continued it could have led to more harm for the baby.

4.1.2 Financial harm

The government takes responsibility for the performance of the criminal justice system, any public money that has been spent as a consequence of wrongful conviction or imprisonment is seen as 'misappropriated' money.¹⁰⁵ In a sense, it would be using money from the funds of the government to correct a wrong made in the criminal process. Direct and indirect costs spent on the aftermath of miscarriages of justice are significant and substantial. Direct costs relate to expenditures such as compensation, judicial costs for hearings and the review

¹⁰⁰ Naughton 2003, p. 223-224.

¹⁰¹ Naughton 2003, p.224.

¹⁰² Naughton 2003, p. 235.

¹⁰³ Naughton 2003, p. 236-237.

¹⁰⁴ See Appendix 1.

¹⁰⁵ Naughton 2003, p. 239.

commission, and the costs for lawyers and barristers. Indirect costs consider the expenses for expert psychological or social services' assessments, report for probation, costs spend on the penal system for housing the convicted in prison, and the help from socio-psychological counselling.¹⁰⁶ When asked how the government could help by investing more money into rehabilitation and aftercare, the response was quite complex. *"It is a very difficult but a very important addition. Since the book, my mailbox has been full of fellow sufferers, people who are afraid to talk and afraid of judging. But what is necessary for such a law? It is difficult because it is different for everyone. One may find himself belittled at work by what has happened to him but he is allowed to stay at work, while another loses his job or his life is being monitored by always having his whereabouts written down. The law must consist of resilience and regaining confidence. How people should deal with these kinds of things? Because of what you have experienced, because you have been improperly detained. How do you deal with judging and how do you deal with actually wanting to lock yourself up? Everyone reacts differently, no one is the same or has experienced the same. The safety net looks different for each individual."*¹⁰⁷

The existence of the financial costs of wrongful convictions can be best explained through four areas of the costs: the compensation, legal fees, penal costs and the review commission.¹⁰⁸ Compensation given to the victims of miscarriages of justice is a routine feature of the criminal justice system to correct the 'judicial error'.¹⁰⁹ Their 'attempt' to right this wrong is set to a minimum amount of effort. *"There is almost nothing, rehabilitation takes 5 minutes, you get a handshake from the public prosecutor as a kind of 'we are sorry what happened to you', the public prosecutor gives you some money and wishes you a good life. Because it was set out this way, I thought it would be easy to rebuild my life."*¹¹⁰ All wrongful conviction victims should be paid compensation, even though it is generally believed that only high profile wrongful conviction victims receive compensation from the criminal justice system.¹¹¹ An example for the United Kingdom, the legal fees for legal aid on defence work are connected to the Publicly Funded Legal Services. Applications for publicly funded defence representation are made and granted, which resulted in over one million spent on criminal legal aid.¹¹² The costs further increase when the penal costs are included.

¹⁰⁶ Naughton 2003, p. 239-240.

¹⁰⁷ See Appendix 1.

¹⁰⁸ Naughton 2003, p. 242-243.

¹⁰⁹ Naughton 2003, p.243.

¹¹⁰ See Appendix 1.

¹¹¹ Naughton 2003, p. 243.

¹¹² Naughton 2003, p. 245.

Naughton give the example that between 1998 and 1999 the average cost per prisoner place in the United Kingdom was £22,649.¹¹³ The review commission is created because a wrongful conviction can and does occur. Without a review commission, a successful review for wrongful convicted cases would be impossible.¹¹⁴ It is unavoidable that wrongful convictions will occur because the criminal justice system is human-made. However, there must be a financial cost when safeguards of the criminal justice system fail and a need to remedy the wrongful convictions is required.¹¹⁵

4.1.3 Social harm

After a successful appeal, the direct victim of the wrongful conviction sets foot into the ‘real’ world. The wrongly convicted will be reintroduced to the societal norms and values after he has experienced the environment in prison.¹¹⁶ Social harm, that arises previous to the successful review, is the failure to convict the criminal offender guilty of serious offences. The perpetrator of a serious crime remains at liberty, there is the probability for them to commit more crimes and cause more harm.¹¹⁷

4.1.3.1 Direct victims of wrongful convictions

Married victims with children experience intense social harm because the relationship between a parent and a child and/or partner has been deprived.¹¹⁸ The parent’s absence during a child’s life can impact both parent and child gravely. For Marjan Gorissen it had been the other way around, she was the ‘child’ missing the connection with her parents. *“I come from a very close family with a very sweet father, very caring mother and a very sweet brother, just a very warm family. So when the cell door closed, I started to wonder if my parents had been informed, what would they think. They must be shocked and I wanted to hug them because they must be sad because we belong together.”*¹¹⁹ This immediate social familial loss is one of the forms of social harm.

¹¹³ Naughton 2003, p. 245-246.

¹¹⁴ Naughton 2003, p. 246.

¹¹⁵ Naughton 2003, p. 248.

¹¹⁶

¹¹⁷ Naughton 2003, p. 228.

¹¹⁸ Naughton 2003, p. 228-229.; Naughton 2003, p. 226.

¹¹⁹ See Appendix 1.

However, the stain that is left behind by the wrongful conviction is deeply felt in social situations. Even trying to explain how it feels is quite difficult, *“they are afraid, they feel a dread. I have no idea how I give you a current situation with your age. I am trying to think of something that you can experience now or have experienced. You really do not want it to come out, because it does not look good on you. It affects the perfect picture. Those judgments are very bad, people can judge others through the internet.”*¹²⁰ It has ruined their reputation; outsiders remain thinking or seeing them as the culprit.¹²¹ Because there is no smoke without fire. Prejudice in society is a problem that is not easily altered. *“You lose friends because they judge you, I left my partner who started doubting me during the investigation and I did not want to be with him anymore. I lost my house and my job at ABN AMRO bank because you have that disgrace or stain. I even took the two detectives to the bank so they could tell the bank I had the highest degree of acquittal. But the bank nevertheless puts you out on the street. At a certain point you get so many judgments that you just make yourself small because you do not want to face that confrontation anymore. You get scared, you continue to bring yourself down.”*¹²² Getting a job or friends are heavily influenced by this stain, even though the wrongly convicted had a successful review.

4.1.3.2 Indirect victims of wrongful convictions

Wrongful convictions or imprisonment can have a profound impact on the families and friends of the wrongly convicted. A general ‘fear of crime’ and re-emergence of social harm to the families and friends of the victims remain due to the public knowing about the wrongful conviction of their family member or friend.¹²³ The harm can cause anger, anguish, pain, suffering and sheer frustration by the family and friends and have far-reaching effects upon their lives.¹²⁴ Another indirect victim is society. The public perceives the criminal justice system as a system that works justly, fairly and efficiently, yet when multiple wrongs have been made the citizens may bring its legitimacy into questioning. Simon Regan stated the following: *“If a person is wrongly convicted it not only strikes at his or her personal liberty – serious enough by any standards - but at every last one of us. For, ultimately, it is*

¹²⁰ See Appendix 2.

¹²¹ Naughton 2003, p. 229.

¹²² See Appendix 1.

¹²³ Naughton 2003, p. 228.

¹²⁴ Naughton 2003, p. 230.

we who have created the system and we who must live or die by it."¹²⁵ Furthermore, the perpetrator that remains at liberty causes danger for the society, more crimes can be committed and more people can fall victim.¹²⁶ As a result of being the indirect victim, people changed their identity, humiliated, disowned and isolated by family, children can change schools and homes multiple times, children were rejected by schools.¹²⁷

4.1.4 Psychological harm

During the imprisonment and years after the successful review, wrongly convicted suffer from psychological harm. Examples are being generally traumatized, getting dreadful flashbacks, mental health problems, having lost a family member during incarceration, and being called names due to the earlier mentioned 'stain' that lingers.¹²⁸ Psychological harm can be considered as the most complex and profound consequence to the wrongly convicted. Adrian Grounds, a psychiatrist at the Institute of Criminology at Cambridge, performed a clinical case study where he examined multiple wrongful conviction cases and he found that the victims were suffering from irreversible, persistent and/or disabling post-traumatic stress syndrome. The mental state of the wrongly convicted was compared with those who have brain damage due to an accident and/or people who had suffered war crimes. His overall conclusion was their mental state often made it impossible to live with.¹²⁹

4.1.4.1 Grounds' clinical case study

Even though wrongful convictions have become more known, little is known about the psychological effect of such convictions. Systematic research on the psychological harm of wrongly convicted and/or imprisonment is scarce.¹³⁰ Like Marjan Gorissen, others have written biographical or autobiographical accounts to describe their wrongful conviction combined with the psychological effects of it. These are predominantly the available description on the psychological effects.¹³¹ In the cases Grounds examined: "*Substantial*

¹²⁵ Naughton 2003, p. 232.

¹²⁶ Naughton 2003, p. 228.

¹²⁷ Grounds, *Crime and Justice* 2005/32, p. 37.

¹²⁸ Naughton 2003, p. 233-234.

¹²⁹ Naughton 2003, p. 233.

¹³⁰ Grounds, *Crime and Justice* 2005/32, p. 2.

¹³¹ Grounds, *Crime and Justice* 2005/32, p. 11.

psychiatric morbidity and problems of psychological and social adjustment were evident in most cases.”¹³² The similarity between the wrongly convicted, war veterans and people who were brain damaged by an accident regarding difficulties experienced were evident.¹³³

Severe mental health and adjustment problems were prevailing in the clinical study. Families and others described the victims with a change in personality and depressive disorders and post-traumatic stress disorder (hereinafter ‘PTSD’) aspects were not uncommon. The victims said to have problems with psychological and social adjustment, especially regarding close relationships. Estrangement, complex experiences of loss and struggle in healing intimate and family relationships.¹³⁴ During the investigation of Robin’s murder Marjan Gorissen’s ex-husband was questioned as well. Things said by the detectives made her ex-husband question her innocence.¹³⁵

The case study only reflects a small sample of wrongful convictions, it is not the embodiment of psychological effect, however it gives some explanation to a few difficulties experienced due to long-term imprisonment. Missing out on life opportunities, the effect of being separated from family, and the evolvement of the world outside the prison were consequences due to the long-term imprisonment. The adaptation process post-release values and norms inside the prison environment are out of the ordinary for the societal world with families and friends.¹³⁶ Furthermore, the outside world can change tremendously especially during years of custody.¹³⁷

The consequences of wrongful conviction should be put into perspective with the victim’s social life and future ideas pre-incarceration.¹³⁸ Marjan Gorissen told her pre-imprisonment ideas of the future: *“I was of course pregnant at the time I always wanted a large family with six children. That seemed fantastic to me. There was a mom – me – a dad, six children, those six children would grow up, have a partner and we would sit at the table with fourteen adults. That was my image, it should have been like that. I knew in which house I wanted to live in, I had that in mind. And with work, I still wanted to study in the meantime. I did not want a top-level job, because I never had that ambition. I did not want to study until I was 30 years old, I wanted to become a young mom, work and have a beautiful family.”*¹³⁹

¹³² Grounds, Crime and Justice 2005/32, p. 1.

¹³³ Grounds, Crime and Justice 2005/32, p. 1.

¹³⁴ Grounds, Crime and Justice 2005/32, p. 2.

¹³⁵ See Appendix 1.

¹³⁶ Grounds, Crime and Justice 2005/32, p. 3.

¹³⁷ Grounds, Crime and Justice 2005/32, p. 4.

¹³⁸ Grounds, Crime and Justice 2005/32, p. 4.

¹³⁹ See Appendix 2.

She had it all planned out, unfortunately, after her wrongful incarceration she had one word that would describe her life now: survive. The idea of a big family had fallen to pieces due to the trauma she suffered from when she had given birth to her first child.¹⁴⁰

The conceptualization of PTSD was a significant move forward, but it is often understood that the diagnostic definition of PTSD does not accurately explain the entire spectrum of severe psychological symptoms that can occur from a traumatic experience.¹⁴¹ In Grounds study, he mentions that Van der Kolk argued that traumatic stress can lead to deeply rooted, irrecoverable conditions with complicated features. Post-incarceration, the individual has a personality change with features that were not present pre-incarceration, i.e. hostility or a sceptical attitude towards the world, withdrawal from society and estrangement from others. This change can either be a reaction to the previous trauma or the prolonged traumatic experience.¹⁴² The results of the clinical case study were “*complex, the events contributing to them had occurred over many years, and, over time, problems had compounded one another. The extent of the suffering was profound.*”¹⁴³ A brief explanation of what Marjan Gorissen felt after her incarceration regarding the psychological effects: “*I have felt so miserable for a few years, wanted to put a blanket over my head and that was it. Who is coming to save me? But nobody comes because I have to do it myself.*”¹⁴⁴ And others who reached out to her have an alike feeling combined with the medical help that fails them: “*They get stuck in the past and cannot close that chapter of their life properly. They do have help from a psychologist or a psychiatrist, often in combination with medication and EMDR therapy, but they still get stuck. This is because the psychologist or psychiatrist has knowledge from a book and not from practice, they do not know the tricks of the trade. They cannot empathize with the feelings of those people.*”¹⁴⁵

To have a better understanding, Saporta and Van der Kolk suggested that traumatic events have four common features. Firstly, a wrongly convicted questions basic values about himself and his world. Secondly, he destroys bonds with other people resulting in difficulties establishing relationships. Third, the stressful condition is imminent and overwhelming. Lastly, intense physiological arousal leading to chronic alertness and sense of threat.¹⁴⁶ Marjan Gorissen luckily does not feel this alertness and sense of threat anymore. However

¹⁴⁰ See Appendix 2.

¹⁴¹ Grounds, Crime and Justice 2005/32, p. 14.

¹⁴² Grounds, Crime and Justice 2005/32, p. 14.

¹⁴³ Grounds, Crime and Justice 2005/32, p. 15.

¹⁴⁴ See Appendix 1.

¹⁴⁵ See Appendix 2.

¹⁴⁶ Grounds, Crime and Justice 2005/32, p. 41.

she used to, “five years ago, when I came to the gym, I was aware of my surroundings. Who are there, what do they look like, what are they doing, where is the emergency exit, things like that.”¹⁴⁷

4.2 Rehabilitation after a wrongful conviction

Unfortunately, there is a difference in treatment between a wrongly convicted and a criminal offender post successful review. There is no notice given and no preparation, support or supervision is provided by statutory services. Furthermore, there is no aftercare by an agency. They are released with a small amount of money and their possession to go to their families and friends.¹⁴⁸ According to article 89 of the Dutch Criminal Procedure Code, a wrongly convicted can receive compensation.¹⁴⁹ Moreover, the adaptation from prison to civilization may be difficult for some. They are used to a controlled environment that it changed their way of living so drastically, victims like to remain living according to the prison environment or setup.¹⁵⁰

Help for the victims of wrongful convictions or imprisonment is highly needed and demanded. Assisting in finding ways to live with their past, coping with the grief and to gain a better level of understanding of their difficulties. Three forms should be put in place for the victims and their families. Firstly, the ex-prisoner and his family and friends should be informed about the problems that are likely to arise post-release and a residential facility that can provide advice and support right after the release. The information about the problems can be given to the family and friends by an expert. Secondly, psychological and psychiatric assistance should be made available. Preferably in two kinds: special treatment for specific conditions like PTSD and depression, and long-term counselling to help cope with the problems that they face. Thirdly, counselling with the family to improve and build mutual understanding and coping strategies.¹⁵¹ At the time of the interview, Marjan Gorissen planned to start a coaching practice in December 2020. “Someone who wrote me a message asked me if I wanted to coach. At first, I rejected this idea because I did not think I could do it, because I can only tell from my own experience how I got back in the saddle. Still, that person wanted

¹⁴⁷ See Appendix 2.

¹⁴⁸ Grounds, Crime and Justice 2005/32, p. 28.

¹⁴⁹ Article 89 of Book 1 of the Dutch Criminal Procedure Code.

¹⁵⁰ Grounds, Crime and Justice 2005/32, p. 30.

¹⁵¹ Grounds, Crime and Justice 2005/32, p. 44.

to try. I started working with her last year, I saw her once a week. I was amazed at how quickly she progressed through the conversations we had.”¹⁵²

¹⁵² See Appendix 2.

Chapter 5: Conclusion

By analysing the impact on the wrongly convicted concerning wrongful convictions, the primary and secondary legislation, and the literature on the subject, this thesis tried to answer to the research question: “*What are the causes and impact of wrongful convictions on individuals and its immediate and societal surroundings?*” It has become clear throughout this thesis that the aftermath of wrongful convictions is extensive. After the definition of wrongful conviction and introduction of criminal process models, the Dutch criminal process, and Marjan Gorissen’s case, the focus was brought to the causes. The explanation of the causes gave a good insight as to how legal representatives of the State can proceed to do such wrongdoing to the individuals.

The criminal process models do play a role in influencing law enforcement on how to operate the investigations and trials. The values of the Crime Control Model can manipulate the judiciary to have more convictions. The 6 contributing factors become functional depending on the case.

Furthermore, it became clear what effect from the miscarriages of justice were. The severity of the misery brought onto these innocent individuals is largely indescribable. The large-scale harm received has an impact on their life for the following years. The physical, social and especially psychological harm developed due to the months or years being imprisoned is overbearing. Unfortunately, the guidance and cooperation given by the government after the successful review are at its absolute minimum. Criminal offenders will receive better rehabilitation after their release, however wrongly convicted receive a compensation and no further rehabilitation process to help them get back into society.

In conclusion, the impact on the individuals after a wrongful conviction is profound. The continuum of causes through the criminal process and imprisonment only add to the snowball effect of stress put on the individuals.

Bibliography

Legislation

Dutch Criminal Procedure Code

Article 30 of Book 1 of the Dutch Criminal Code.

Article 89 of Book 1 of the Dutch Criminal Procedure Code.

Article 341 subsection 4 of Book 2 of the Dutch Criminal Procedure Code.

References

American Bar Association Southwestern University Law Review 2008/37, No. 4

American Bar Association, 'Achieving Justice: Freeing the Innocent, Convicting the Guilty', Southwestern University Law Review 2008/37, No. 4, p. 763-916.

Borchard 1932

E.M. Borchard, Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice, Garden City, New Jersey: Doubleday.

Brants, University of Cincinnati Law Review 2012/80, issue 4

C. Brants, 'Wrongful Convictions and Inquisitorial Process: The Case of the Netherlands', University of Cincinnati Law Review 2012/80, No. 4, p. 1069-1114.

Christianson 2004

S. Christianson, Innocent: Inside Wrongful Conviction Cases, New York: New York University Press 2004.

Corstens, Borgers, & Kooijmans 2018

G.J.M. Corstens, M.J. Borgers & T. Kooijmans, 'Het Nederlandse Strafrecht', Deventer: Wolters Kluwer 2018.

Gross et al., the Journal of Criminal Law & Criminology 2005/95, No. 2

S.R. Gross et al., 'Exonerations in the United States: 1989 Through 2003', the Journal of Criminal Law & Criminology 2005/95, No. 2, p. 523-560.

Gross & Shaffer, National Registry of Exoneration 2012/1

S.R. Gross & M. Shaffer, 'Exonerations in the United States: 1989-2012', National Registry of Exonerations 2012/1, p.

Grounds, Crime and Justice 2005/32

A.T. Grounds, 'Understanding the Effects of Wrongful Imprisonment', Crime and Justice 2005/32, p. 1-58.

Jolicoeur, National Institute of Justice 2010

M. Jolicoeur, 'International Perspectives on Wrongful Convictions: Workshop Report National Institute of Justice 2010.

Kassin Current Directions in Psychological Science 2008/17, No. 4

S.M. Kassin, 'False Confessions: Causes, Consequences, and Implications for Reform', *Current Directions in Psychological Science* 2008/17, No. 4, p. 249-253.

Lynch, Fordham Law Review 2015/83, No. 4

G.E. Lynch, 'Our Administrative System of Criminal Justice', *Fordham Law Review* 2015/83, No. 4, p. 1673-1708.

Naughton 2003

M. Naughton, *Miscarriages of Justice: Exception to the Rule?*, Bristol: The University of Bristol 2003.

Norris et al., Criminology & Public Policy 2019/19, No. 2

R.J. Norris et al., 'The Criminal Costs of Wrongful Convictions: Can We Reduce Crime by Protecting the Innocent?', *Criminology & Public Policy* 2019/19, No. 2, p. 367-388.

Packer, University of Pennsylvania Law Review 1964/113, No. 1

H.L. Packer, 'Two Models of the Criminal Process', *University of Pennsylvania Law Review* 1964/113, No. 1, p. 1-68.

Radelet, Bedau & Putnam 1992.

M.L. Radelet, H.A. Bedau & C.E. Putnam, *In Spite of Innocence*, Boston: Northeastern University Press 1992.

Rassin, Journal of Investigative Psychology and Offender Profiling 2010/7, No. 2

E. Rassin, 'Blindness to Alternative Scenarios in Evidence Evaluation', *Journal of Investigative Psychology and Offender Profiling* 2010/7, No 2, p. 153-163.

Semmelroth 2014

M.A. Semmelroth, *A Quantitative Examination of Known Exonerations and the Factors that Have Contributed to the Wrongful Convictions of Innocents*, Normal, Illinois: Illinois State University 2014.

'The Presumption of Innocence', fairtrials.org

Case Study: 'The Presumption of Innocence', fairtrials.org.

Thompson, Marquette Law Review 2009/93, No. 2

S.G. Thompson, 'Judicial Blindness to Eyewitness Misidentification', *Marquette Law Review* 2009/93, No. 2, p. 639-670.

Appendices

Appendix 1

Marjan Gorissen Interview 12-02-2020

Interviewer Marjan Gorissen has agreed that I can record the interview for the purpose of this thesis.

Interviewer Could you tell me something about yourself?

Interviewee My name is Marjan Gorissen, I am 44 – almost 45 – years old. I have lived in Rijen, in the Netherlands, for fourteen years but I was born in Breda.

Interviewer How did you come into contact with the criminal justice system?

Interviewee We have to go back in time to April 24, 1996. I was six months pregnant, 21 years old at the time. I drove from Breda, I lived in the Haagse Beemden, to Heusdenhout to go grocery shopping that day with my friend Trudy. We would only go grocery shopping, we often used to do this together. Just like that afternoon. I arrived there, I drive into the residential courtyard and park the car in front of her house. At that moment she comes out, completely in panic and she shouts to me “Robin is missing, something has happened and Robin is missing”. Robin was a little girl that lived next door, she played regularly with Trudy. Robin was 3 years old and she had played with Trudy that morning too. They had eaten pancakes together, and at a certain moment Robin had asked if she could go home to get her wallet. Trudy agreed, the door was ajar, Robin walked home, which was at a distance of about twenty meters. So when I arrived and stand at her door wondering how such a child can disappear at such a small distance.

It all happened very quickly, people are worried and there is panic. A search is being organized by the local residents, I am also helping. Anyone would do this even if you do not know the child, so I also went looking. The girl was not found and the authorities subsequently took it over. A large-scale search had been set up, even with helicopters, psychics, etc., there was an extensive search. However, Robin was not found.

10 days after the disappearance on May 3, 1996, my friend Trudy was arrested on suspicion of involvement in the disappearance. Robin was still missing. It was not yet known what had happened to her. But on May 5, I myself was arrested on suspicion of involvement in Robin's murder. In the morning of 5 May, I only heard this afterwards, a shoe and part of the girl's foot was found at the dumping ground in Zevenbergen. Based on this, it was determined that the girl died as a result of a crime. When I was arrested in my own home, I was also arrested on charges of murder, manslaughter and a long list of ugly charges. Before you know it you are in a police car and you have no idea where you are going. I was eventually taken to the police station in Tilburg, where my fingerprints were taken and I was thrown into jail.

Interviewer What did you feel when you were arrested?

Interviewee It is difficult to explain because so much goes through you. The first thing I wondered was "is Robin dead?" We felt like she was still missing. We had no idea what had happened to her or where she would be. When I was arrested on charges of murder, you ask yourself "is she dead? What happened?". You want to know what happened. Then it goes very quickly, handcuffs are put on you, you are taken outside by the police officers to the car, but all local residents are standing outside. So the safe place where you live is suddenly no longer safe, because you really feel yourself walking there. I thought that was really terrible.

And the uncertainty of where am I going. I come from a very close family with a very sweet father, very caring mother and a very sweet brother, just a very warm family. So when the cell door closed, I started to wonder if my parents had been informed, what would they think. They must be shocked and I wanted to hug them because they must be sad because we belong together. Also my brother, a policeman who normally caught ugly crooks, now has his sister being accused of being such an ugly crook who was able to kill a child. Those are things that really go through your mind. Fear but also trust, because I had not done it so I could go home. In the first days, when the interrogations start and I met the detectives. I was told I had complete restriction, that is one way of confinement. It means that you can have contact with your lawyer and the judiciary, but nobody else. So I was not allowed to have contact with home, I was not allowed to call my mother and I was heavily pregnant so I wanted to call my mother. That was very painful and I found it difficult. But still I had the confidence that they made a mistake and it would all be fine.

So during the first days of the interrogation, you really have to explain everything you did in the four to six weeks prior to your arrest. Minute by minute and it comes really needed to be precise. Under the pressure of those interviews, without the assistance of someone you love, you have to be able to provide all the information because you want to go home. I really tried my best to tell everything and the detectives eventually told me the reason why I had been arrested. It was because Trudy had accused me. She was my best friend, hence why I was in a bit of a shock because you start doubting yourself. What had I done wrong to her for her to do something so ugly to me? Because you think you know someone. I started to doubt whether I had been too naive, I trusted her too much, but she was my friend and I did everything for her. Trudy had lost her own child six months earlier due to a congenital anomaly and I wanted to take care of her. That is why I went to do the weekly grocery shopping with her, I tried something help in the

household, but I was only 21 myself. So I tried to be there for her, but then she acted like this. I did not get it, but it was because she had something to hide, she had a secret. That was clearly the reason else you do not do something like that, but I did not understand why she wanted to harm me so much.

Interviewer How old was Trudy at that time?

Interviewee Trudy was six years older, so 27. It was difficult for her to lose her own child, but the murder of Robin raised doubts about the death of her own child. Considering he had died in a special way. But the baby was never examined, but I question everything that happened around her during that time.

Interviewer Has Trudy been convicted?

Interviewee She was the one who ultimately killed Robin. I think she sentenced for seven years in prison, of which she spent five and a half years in prison and then was released.

Interviewer Did you know about your rights when you got arrested?

Interviewee I think I have been told the rights. An officer told me the grounds on which I was arrested, but at that point the sound went off for a moment. Then you have an overload of emotions, you see someone talking but you do not know what is being said at all. But I assume they told me because they are obliged to.

Interviewer What memories do you have of your time in detention? Good and bad?

Interviewee Lots of bad ones, of course. When I think of good memories, I immediately see Yvonne. She was one of the wards from the prison in Maastricht that I met there. I have had many emotional conversations

with her, not only about myself but also about her. She showed me a part of herself during that time. I cherish those memories I even went back to the prison once ten years after my release. I saw everyone again and that was very nice. In the prison itself, the guards, the social workers, the psychologists, etc., I really only have good memories. Because those people were really there for me, I had a lot of conversations with them after my interrogations. Since I had complete restriction, they still tried to do things for me that were within their control. An older male keeper, Jo, came to pick me up to watch the Tour de France together, while I did not like the Tour de France. Yet we went to watch Tour de France together and then he took me into the living room where there were no other prisoners. Just so I was out of my cell for an afternoon. You had nice conversations together, you could express your thoughts with a cup of coffee. Then it was kind of homey. Yvonne sometimes took me to the flower garden in prison, just to get away from it all for a while. The ladies who were also detained in the prison organized a church service for me. While we were not actually allowed to have contact, they had organized it for me and my son because I had already given birth. Then I was taken by Jo to go to that church service and then I was surprised by a poem that the ladies had written. I was not allowed to speak to those women for 103 days. The moment I was told I was being released, the first thing I wanted to do was call my mom. I wanted to do it quickly, suppose my release would suddenly be revoked, at least I would have spoken to her. I had not heard her voice for 103 days, so I got a phone card and made a call. When I came back the women of the women's wing had packed all the stuff for me and dressed my son Jesse. They lined up to say goodbye. So those were special moments. I found it difficult, because I had to leave them when I know they might have done something wrong. Just because you have done something bad does not necessarily mean you are a bad person.

Interviewer How was your care, especially considering you were pregnant at the time?

Interviewee Not so good at first, because they assumed that the baby would grow by itself. Only when they did a check in the hospital, it revealed that the baby had a slight delay in growth. They have tightened up the checks in the hospital, but I still gave birth in a hospital with a detective next to my bed. The nurses were clearly speculating that I was in prison for murder, so that is not a nice way to give birth. I was in a room full of prejudices and there I had to give birth to my child. And the aftercare was bad, there was no maternity help.

Interviewer Since you were released, have you found yourself sometimes being judged or people being biased?

Interviewee No, precisely because there is no safety net for people like me. There is almost nothing, rehabilitation takes five minutes, you get a handshake from the public prosecutor as a kind of ‘we are sorry what happened to you’, the public prosecutor gives you some money and wishes you a good life. Because it was set out this way, I thought it would be easy to rebuild my life. Afterwards you do notice how troublesome it really is. You lose friends because they judge you, I left my partner who started doubting me during the investigation and I did not want to be with him anymore. I lost my house and my job at ABN AMRO bank because you have that disgrace or stain. I even took the two detectives to the bank so they could tell the bank I had the highest degree of acquittal. But the bank nevertheless puts you out on the street. At a certain point you get so many judgments that you just make yourself small because you do not want to face that confrontation anymore. You get scared, you continue to bring yourself down. But now with the book being released and promoted, I can be there for other people who have been through the same thing. Because I am solid as a rock, I have no one who is going to judge me. You may or may not like me but I have claimed my

constitutional right. But this took a long time before I stopped letting people walk all over me. It changed since the birth of my daughter, because the only one who keeps me imprisoned is myself and I only have one life so I want to make something very nice out of that.

Interviewer After your release, did you receive a parole or anything to that effect?

Interviewee No nothing, there is just nothing. And now, twenty-three years later, still nothing. There are foundations that deal with aftercare, but that is why the book is here too. I have not written an angry book I have tried to write as objectively as possible. The book is written from the scar and not from the wound. But I want to tell my story to the public prosecution service, the police, the relief work in the Netherlands. As an experienced expert I can indicate the long and short term consequences for wrongly accused. I want to tell my story and that they are open to my dialogue. I am not angry but we can learn from each other. Because I also include the other side of the story, what about tunnel vision, innocence-guilt statements, when does justice stop finding the truth and the idea that you want to attach someone's name to the crime. Getting a house was pushed off the table as if it were invisible. It is important that young lawyers or agents in training hear my story and everyone can get his or her own from it. That everyone can learn a lesson from it without actually having to learn it.

Interviewer Would you like wrongly detained or accused persons to be given better rehabilitation and aftercare?

Interviewee It is a very difficult but a very important addition. Since the book, my mailbox has been full of fellow sufferers, people who are afraid to talk and afraid of judging. But what is necessary for such a law? It is difficult because it is different for everyone. One may find himself belittled at work by what has happened to him but he is allowed to stay at work, while another loses his job or his life is being monitored by

always having his whereabouts written down. The law must consist of resilience and regaining confidence. How people should deal with these kinds of things? Because of what you have experienced, because you have been improperly detained. How do you deal with judging and how do you deal with actually wanting to lock yourself up? Everyone reacts differently, no one is the same or has experienced the same. The safety net looks different for each individual.

Interviewer You have been to a psychologist yourself, has this helped you?

Interviewee He tried to help me by "reactivating myself" and he made me see that if I wanted to get better, I have to do it myself. He could not take that first step for me because he could not know what I wanted and needed. If I wanted to make something of my life then I had to put my best foot forward and afterwards I could continue with him step by step. I have felt so miserable for a few years, wanted to put a blanket over my head and that was it. Who is coming to save me? But nobody comes because I have to do it myself, he really showed me that. I have always had a choice and I have always had to do it myself no matter what. But you also have people who think differently in a certain situation, just like I had when I wanted to kill myself by riding against a bridge on the way from Tilburg to Breda. In the present, that thought is very crazy to me when I say this because I wake up in the morning ready to start my day. I can imagine that there are people who prefer the first best railway station instead of the road to the emergency services, because that is very complex. You have to find the switch to help yourself and that road to help is not that easy. So I can imagine that if you are so deep that you can really think that the train is the best outcome. That is a shame because the road to aid should be much easier.

Interviewer Your son Jesse has given you a lot of support, is that right?

Interviewee Yes, while you should not really expect that. He was born there, so to what extent could he be the support he was. Jesse has always been there, but he also let me be in what I wanted to do myself. He recently attended a lecture and was asked how it has been like for him. He responded that he has the best mother he could wish for, because I am both his mom and dad. But he does have two mothers, one is struggling terribly to get her life in order who has a lot of grief and pain but always sees a way out to continue and the other is solid as rock.

Interviewer How did the interrogations go?

Interviewee The interviews are long and intensive. Twelve to thirteen hours a day. They were asked about things you could not remember, like the phone call I had at a certain time or time that I was at the supermarket. They will play good cop-bad cop with you and lie to rattle you. They showed me pictures of Robin's foot and shoe, but I wish I had not seen those pictures. Twenty-three years later I still see those pictures, it still has an effect on me.

Interviewer In the book you mentioned that you thought one of the detectives saw you as the murderer / suspect, have you had this thought for a long time?

Interviewee I felt this the strongest with the two detectives, with one more than with the other because a detective usually took the lead during the interrogations. But just before Jesse was born, they suddenly became more flexible. I worked it on little things, they brought pudding rolls because I longed for that when I was pregnant. And one of the two detectives has been my best friend for twenty-three years. When other people disappeared, he was there for me. We are truly inseparable. Afterwards he said that he believed in my innocence. It is a completely different picture because he was my detective first and my best friend afterwards, but I spent those twelve to thirteen hours with him and that

is also a lesson to look beyond the judgment you want to make about a person. It is a special and valuable friendship.

Interviewer How often has your detention been extended?

Interviewee It has been extended to a maximum. First three days, then ten and then three times thirty days. 103 days because the criminal trial should begin on 104 days. They released me because they had no evidence to hold me.

Interviewer What did you think about each extension of your detention?

Interviewee At three days I thought okay I can manage for that amount. But when I was actually taken to prison after thirteen days, you also think this is not good. Then you really lose confidence in the legal system. And then you think this is not going to work out. Those last thirty days were my final blow because that would mean that I would be a mom in prison.

Interviewer Can you tell me about the childbirth, because you had a detective next to your bed during the childbirth?

Interviewee Yes, a detective should not sit next to your bed when you go into labor, my mother should have been there. My father should have paced the hall and my mother should have supported me. The nurses in that delivery room treated me awfully, I was not given pain medication, they made know-it-all comments, the detective is sitting next to my bed and on the other side is my doubting husband. Fortunately, I was then able to switch my mind and only focus on my child that I had to bring into the world.

Interviewer What did you miss most during your time in prison in Maastricht?

Interviewee Contact with my parents. That family connection. We were used to see each other a lot and we cannot live without each other.

Interviewer How did the truth eventually emerge?

Interviewee There was no evidence against me anyway, but in the end, Trudy herself confessed that she killed Robin. They made her do a reconstruction of the crime and Trudy confessed.

Interviewer Do you know how Trudy is doing now?

Interviewee She passed away. I thought it was weird when I heard that, but I have always seen her as a potential threat. I have a daughter about the same age as Robin then, the book is out, and I just thought she was a very bad person. It took some time getting comfortable with the idea that she is gone.

Interviewer Are you still in contact with her second child, your godson?

Interviewee No and I do not have the desire to be either.

Interviewer How did you pick up your life again?

Interviewee Through the conversations with my psychologist, step by step, through trial and error. I have had a baby. Make good choices step by step. Make my story known and stop being afraid. I went on living with my children. So, the psychologist really helped me to take that first step in the right direction.

Interviewer Thank you! That were all the questions I had for today.

Appendix 2

Marjan Gorissen Interview 07-10-2020

Interviewer How are you doing during this time with Covid-19?

Interviewee I am doing fine, but Covid-19 has changed a lot. I had booked quite a few lectures and suddenly it stops, so that was really unpleasant. I had found my way and I enjoyed doing everything. Suddenly it was gone and then I had to switch what I was going to do. So, I am writing my second book, a picture book, and I have my own coaching practice that I will open December 1. I hope that we can start the lectures again next year.

Interviewer What are you going to do with your coaching practice?

Interviewee From the moment the book came out, I have received so many messages from people who get stuck because of what they have experienced. They get stuck in the past and cannot close that chapter of their life properly. They do have help from a psychologist or a psychiatrist, often in combination with medication and EMDR therapy, but they still get stuck. This is because the psychologist or psychiatrist has knowledge from a book and not from practice, they do not know the tricks of the trade. They cannot empathize with the feelings of those people. Someone who wrote me a message asked me if I wanted to coach. At first, I rejected this idea because I did not think I could do it, because I can only tell from my own experience how I got back in the saddle. Still, that person wanted to try. I started working with her last year, I saw her once a week. I was amazed at how quickly she progressed through the conversations we had. Because of what I have experienced, I am sharp-cut, and I put people to work. I dared to take a second “client”, but suddenly there were so many that I thought I should

do something with it. But I did not have time for this because of the lectures and now because of Covid I have been given more space.

Interviewer Has the situation with Covid helped you to develop this more?

Interviewee Covid gave me the space to do things that I had planned but that I did not have time for. When I open my practice and the lectures start again, it will also be nice to combine those things. It only makes more spectacular and fun for me to put my story out to the world in this way and really to do something with it. It was just a shock because you lose part of your income through Covid. People wanted to give webinars, but that was done for free. I am not going to give my knowledge away for free, because it is my income. After writing my first book, I also decided that I do not want to do anything else. I am a full-time writer, speaker and soon also a coach.

Interviewer Would you also like to give more educational talks in addition to the lectures you give about your book?

Interviewee More people ask that, because in the end everyone will know the story. But we are in the Netherlands with seventeen million people anyway, so that will take a while. What I like so much about giving lectures is that the client gives me a theme. Themes such as trust, dealing with change or use of mental survivability. I have a lot of connections in my book that I can link to those themes, that is what makes it so diverse and different every time.

Interviewer During your lectures, do you discuss how the government can better tackle or change improper detention?

Interviewee If it is specifically asked about it, for example, about how I view it or what I think the government can change. Then, I will go into it in more detail, but it really depends on my audience and the theme I am getting.

Interviewer How did it feel to bring your story to the Netherlands?

Interviewee I do not think I have ever cried as much as I did while writing the book. I wanted a book that was as open as possible and as honest as possible, even with the things that are not so beautiful of myself. For example, the drug use etc. but then you have to confess and pay up. You have to relive all the emotions it brought you.

Interviewer Are you glad you released the book?

Interviewee Certainly! Also for myself, I look at it differently. Sometimes I am busy with the story during a lecture and it no longer seems as if it is my story. It seems like I am looking at someone else's life, because it does not hurt anymore either.

Interviewer Have you regained confidence in the legal system?

Interviewee No, I do not think so... no. During my incarceration, I really lost confidence. I would recommend anyone who gets in such a situation that he really has to keep up with the detectives. You have to be very active yourself and fight for yourself. I would not advise anyone to lean back and think it will be fine. If you did not commit the crime, then you will be fine. For the first few days I had the idea that it would be fine. I was totally convinced, precisely because my brother is a police officer, that all police officers are good.

Interviewer You have two methods of thinking, Crime Control and Due Process, do you think this also occurs in the Netherlands? (I explained what the two models were)

Interviewee Yes, you also have this in the Netherlands. Crime Control certainly occurs among detectives, a preconceived idea that they think you should

be behind bars because it looks good on their resume. But, the group that is more Due Process-focused, they look at what can exonerate you. However, detectives also suffer from tunnel vision, they only see one possible solution, they dismiss everything that does not fit within that solution.

Interviewer Are there other people who want to come out with their story?

Interviewee To me yes, but not further. I promised them that I will not tell because they are afraid their story being known. I have only persuaded a person to come forward with the truth. It is very difficult for them, they do not want to be recognized. Some people give themselves a completely different identity in order not to be recognized.

Interviewer What do those people feel?

Interviewee They are afraid, they feel a dread. I have no idea how I give you a current situation with your age. I am trying to think of something that you can experience now or have experienced. You really do not want it to come out, because it does not look good on you. It affects the perfect picture. Those judgments are very bad, people can judge others through the internet.

Interviewer Have you regained confidence in humans?

Interviewee Yes, certainly, maybe sometimes too much. I am literally an open book. But I like it, it is nice to let people in and to trust people. It has been a conscious choice, I love life. I have made something nice out of it, I am doing really nice work now. It really was a choice to let go of all the mistrust, I do not want to be like that. I do not want to be locked up in my house because I am afraid of people.

Interviewer After you were exonerated, have you been on the lookout for justice?

Interviewee Still. Meanwhile, the uniforms have already changed over time, but I was recently in Breda and I like to deliver ordered books, which are ordered through my own website. It makes for really nice conversations because people are surprised that I will bring it myself. It was at a workshop in Breda, I walk in there and the boss thought it was nice that I came to bring it. Then two officers come into the workshop and one comes right up to me. He says “Hi Marjan”, I asked if he did not want to do that. Even though it has been so long, it still makes me feel awful when it comes to me so directly. The uniforms may have changed, but this continues to shock me. I doubt it will ever go away completely. Finally he asked if I was the one who wrote the book and wanted to say that it was received well within the organization. That was really nice to hear.

Interviewer Have you been wary of other people like Trudy?

Interviewee I have been wary of Trudy for a long time. But not for other people. Five years ago, when I came to the gym, I was aware of my surroundings. Who are there, what do they look like, what are they doing, where is the emergency exit, things like that. I noticed a month ago that I do not do that anymore, really crazy because I have been scanning the room for twenty years. I think it is a good sign, I am completely unaware of my surroundings, the people, what they think of me. I think this is due to the book. The book has only brought good consequences, there is no negative effect of the book.

Interviewer What image did you have of your future before you were arrested?

Interviewee I was of course pregnant at the time I always wanted a large family with six children. That seemed fantastic to me. There was a mom – me – , a dad, six children, those six children would grow up, have a partner and we would sit at the table with fourteen adults. That was my image, it

should have been like that. I knew in which house I wanted to live in, I had that in mind. And with work, I still wanted to study in the meantime. I did not want a top-level job, because I never had that ambition. I did not want to study until I was 30 years old, I wanted to become a young mom, work and have a beautiful family.

Interviewer What did your image of the future become after your exoneration?

Interviewee Survive. I think the dream of the big family is the worst thing that has fallen to pieces. I have always wanted to have a large family and that did not happen. After my imprisonment I did not dare to become a mother again, to relive the trauma. I knew I could not handle the emotion, going to the hospital and giving birth with flashbacks to the first delivery, I did not dare. It took me nineteen years to finally take that step, thinking I have to do this, I want to become a mom one more time. I was 39 years old at the time.

Interviewer Do you have an idea what your future will look like?

Interviewee I have no idea where I will be in ten years. I know what I like what I am doing now and that it all works out. If I can choose, I like to keep doing what I am doing now. So the coaching, writing books and giving lectures.

Interviewer If you look back at your incarceration, how do you think the judiciary could have handled your cases or other cases differently?

Interviewee They could have shown more compassion, that was no empathy at all. If I shouted that I had not done it then I would have needed them to say that they believed me, it would all be fine and I should not worry. They could also have involved me more in researching, what I can do to help them find the truth sooner. I understand that it is not possible because Trudy was also saying that she was innocent. I understand that

sympathy cannot be there because they have to be very objective. I understand it all, but that is what upset me most about being alone. You are in an environment where no one is there for you. And the people who are there for you, the justice department cuts off the contact with them. My parents, my brother, my friends have been kept away as far as possible. I have been in complete restriction for 103 days. They got the information about me through the lawyer. My father sometimes called the women's ward in Maastricht, I had to be on the doorstep of the keeper's room office and I heard my father calling "Hey baby we love you". No more than that, but we were very grateful for that. On the other hand, those were the moments where I completely broke down. Hearing my father's voice, I still notice the effect of it, and then walk back alone to your cell. You continue your journey alone while you were so in need of the people who love you. That remains a thing, even the things I got from home for Jesse and my father uses the scent Kouros and they sprinkled all the things with that scent. But that scent was so strong when I opened that bag and I smelled my father. I am very happy with it, but it was also very intense.

Interviewer Did justice allow you to help?

Interviewee Well, at one point I was typing my own interrogations. The detective did not feel like typing anymore and the keyboard was moved towards me. They sat back and rolled a cigarette. Ask questions and I had to type in the answer myself. That is actually quite vulgar when you think about it. You sit there with your pregnant buttocks on a chair, confined to a murder you did not commit, and the two detectives sit back, roll a cigarette and let you type your own word. They looked along, they are smart enough for that, but the idea alone. I thought it was nice because they give me the confidence to type, afterwards I thought I let myself be used. I was not paid for typing and questioning and they were, I was there because they have to investigate. But you only think about that

afterwards and only then you realize how damaged you have been by them.

Interviewer Have you held a grudge against them?

Interviewee No, they became incredibly flexible towards the end. They knew they were wrong, dared to admit it and indicated that they were getting orders from a higher up. It was their job to return the truth to higher up, and they did that bit by bit. Then, Trudy finally made that confession and it was okay, but as stupid as it sounds, they also suffered.

Interviewer What has been the biggest impact for you because you were imprisoned unfairly?

Interviewee The birth of Jesse of course, and especially becoming a mom that way. It is a combination of everything I think, becoming a mom in a very cold, loveless environment. Jordan's delivery was kind of traumatic. It is tough to become a mom anyway, but in such an environment it is simply inhumane. To be treated like this is inhumane, there is no one who was there for you, I was treated gruesome by the nurses. After the delivery I was alone in the delivery room for a while and the nurses came to say that they would help me change later. But I did not want them to touch me after how they treated me. I dressed myself, I have no idea how, but I did. When she came in for nursing, I was dressed and already on bed, I was scolded at by the nurses for this. I was taken back to prison. I can still hear the door closing and there I was sitting with the little one. Congratulations mom, this is it. I think the whole detention, those feelings, all come together at the time of delivery.

Interviewer For how many days after childbirth have you been detained?

Interviewee The childbirth took place between the 85th and 90th day, so I spent about two to three weeks more there. You still have a lot of pressure on

you because they are still doing the investigation and you now have a child. You have different variations of loneliness, for me it felt loneliness to the maximum.

Interviewer What was it like when you were exonerated and you saw your parents and brother again?

Interviewee I cannot remember when I saw my parents for the first time, it is all a blur. I know that after my imprisonment we went to the CenterParcs and I must have seen my parents there, but I do not remember. I cannot recall what that first hug was like, I really do not remember. I cannot recall seeing my brother either. I have no idea how we got home. So I have no memory what it felt like to sleep in my own bed for the first time, drove my own car the first time or the first time I saw my dogs again. I cannot remember anything all that. The light switches on again when I was with my then employer in human resources to discuss when I could return to work. That was when I worked at the Makro, later I went to the ABN Amro, but I was fired there. But I received warm welcome at the Makro. I have no idea when exactly the light went on, whether this was a week or six months after my release, I have no idea. I have completely lost the sense of time in between. My brain completely blocked that. When I saw my friends as well, nothing. Pretty scary, right? That I had to go to a children's healthcare centre with Jesse, to the doctor or that I myself went to see a doctor or psychologist? I just do not know. My parents did tell me what we did at CenterParcs but there is not one thing I can remember. I feel as if it never happened. Actually strange that you forget that piece of emotion when those were beautiful emotions and memories. I would rather block the memory and emotion of the arrest or delivery, that would have been so nice. It is how it is I just do not remember.

Interviewer Thank you for sharing your story with me. You have answered all of my questions.