

Book Review: Justin Brooks, *You Might Go to Prison, Even Though You're Innocent*. Oakland, CA: University of California Press. 2023. ISBN 978-0-520-38683-9 (Hardcover). 232 pages, \$25.99.

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Sometimes, the title of a book can disguise what the author's message is, or what the content may be about. However, in the case of Justin Brooks's *You Might Go to Prison, Even Though You're Innocent* (2023), the title of the book very plainly and clearly spells out what readers will find on its pages, and what Brooks is trying to communicate to readers. Drawing on his experience as the co-founder and director of the California Innocence Project (CIP), the author guides readers through a variety of case studies showing the numerous ways innocent people are wrongfully convicted and imprisoned, such as having inadequate legal representation or falsely confessing. Using the examples of innocent people that he and his team have helped exonerate, he explains the connections between demographics, socioeconomic status, associations, policing standards, evidentiary issues and reliability, and prosecutorial misconduct and politics, and how these factors combine to contribute to wrongful convictions. Perhaps most impactful among his case studies are the stories of those persons, who despite having evidence supporting their innocence, were forced to spend further time incarcerated because of prosecutors insistent on combatting efforts to overturn convictions, and courts that were not receptive to their legal appeals. Some of these people, in what are bittersweet conclusions, are left with the choice of pleading no contest to a crime they did not commit, so that they can assure they will be spend no further time in prison, rather than risk a retrial with an uncertain outcome.

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Justin Brooks co-founded the CIP in 1999, and was director of the program until his departure in June 2023 (Figueroa, 2023). During that time, the program was successful in exonerating thirty-seven people who were wrongly convicted (Figueroa, 2023). Owing to his role in the program, the author is able to offer readers firsthand knowledge and experience from working to right these miscarriages of justice. He does so by dividing the book into different chapters, each entitled with a reason why an innocent person may be wrongfully convicted - for example, “You (Kind of) Look like Other People in the World” or “Someone Lies about You.” Within each of these chapters is found stories about wrongfully convicted people that Brooks has helped to free, as well as other examples (such as the Amanda Knox case from Italy). In addition to these case studies, the author examines the causes and effects of the various factors contributing to wrongful convictions, and offers suggestions - typically changes in procedure, policy, and law - to help reduce the chances of an innocent person being found guilty of a crime they did not commit.

An understanding of the scope of the issue of wrongful convictions is necessary to appreciate both this book and the work done by Brooks and others to try and exonerate innocent inmates. Per the National Registry of Exonerations (NRE), there have been 3,345 people exonerated nationwide since 1989, equating to over 29,500 years wrongfully incarcerated. This number represents a tiny fraction of the total U.S. prison population, estimated to currently be about 1.9 million people (Sawyer and Wagner, 2023). The thousands of people successfully exonerated may also represent only a minute percentage of the actual number of innocent people incarcerated. Some studies have estimated the rate to be about 4%, while others have estimated it to be closer to 11% (Gross, Hu, Kennedy, and O’Brien, 2014; Walsh, Hussemann, Flynn, Yahner, and Holden, 2017). It must be stressed, though, that studies attempting to calculate the rate of innocent people incarcerated can be limited in their scope. For example, Walsh et al (2017) estimated that approximately 11% of incarcerated people were wrongly convicted. However, this study only examined murder and sexual assault cases from several decades ago, and only in one state, Virginia (Walsh et al, 2017). Even using the more conservative estimate of 4% by Gross et al (2014), this could mean that approximately 76,000 people nationwide are presently incarcerated as the result of a wrongful conviction. This figure is many times the number of people who have been exonerated per the NRE.

From the thousands of people who have been exonerated, the author provides readers with stories from his own career of representing the wrongfully convicted. The author begins with the case of Marilyn Mulero, a woman awaiting execution in Illinois. In what might seem incomprehensible, she had arrived on death row as the result of a plea bargain. While a plea bargain typically involves a lesser or reduced sentence in exchange for pleading guilty, Marilyn's agreement did not contain any such provision, and she was sentenced to death. Brooks explains that Marilyn was initially represented by a public defender, but on the advice of her friends, had fired that lawyer and instead hired a private attorney. Brooks asserts that Marilyn's case would have had a better outcome had she retained her public defender, stating that many public defenders have experience and training beyond private attorneys, and also have more resources available to them, such as investigators. While it is reasonable to assume that Marilyn's result would have been more favorable had she kept her public defender - after all, there is no outcome worse than being sentenced to death - there is mixed evidence to support the idea that service provided by public defenders exceeds that of private attorneys. Bailey (2021) did find that clients represented by public defenders often had more favorable outcomes than clients represented by court-appointed attorneys. This could be as a result of public defenders having more training and specialized skills, or a lack of incentive for court-appointed attorneys operating on a "flat fee" basis. But outcomes between indigent defendants (represented by public defenders or assigned attorneys) and defendants utilizing private counsel are similar, and the type of attorney used seems to hold less significance on the case outcome than the type of offense and the criminal record of the defendant (Sharma, Stolzenberg, and D'Alessio, 2022). On the topic of public defenders, the author also states that they are typically paid less than their prosecutor counterparts, and notes a federal bill (the EQUAL Defense Act) that had been introduced to provide parity in pay between prosecutors and public defenders. The EQUAL Defense Act has been introduced several times in Congress in recent sessions. The most current version of the bill, brought forth in May 2023, would establish a \$250 million dollar grant program to address compensation for public defenders. The author claims that the presence of this bill is proof enough that prosecutor's offices have a clear advantage in hiring and retaining first-rate attorneys. However, this statement is not true in all locations. For example, Florida has for the last several years been struggling with pay for both prosecutors and public defenders, and difficulties in retaining attorneys. In 2018, an analysis found that for the prior fiscal

year, approximately 20% of prosecutors and public defenders statewide had left their positions (Pantazi, 2018). In Escambia County (located on Florida's Gulf Coast), the prosecutor's office lost twelve felony attorneys in as many months, while the public defender's office had four vacant attorney positions (and received only two applications in a year) (Johnson, 2023a). After salary increases funded by the Florida Legislature, the minimum starting pay for prosecutors in 2023 will be \$59,850, while newly-hired public defenders in Escambia will be paid \$60,574 (Johnson, 2023b). In these jurisdictions, there is little-to-no pay difference between prosecutors and public defenders, and each is struggling with hiring and keeping attorneys.

Much of the book reads like a true crime story, and in a chapter about false confessions, the author uses the case of Amanda Knox to illustrate his point. One of the well-known true crime cases from the mid-2000s, Knox was initially convicted of murdering her roommate while she was living in Italy. During the investigation, under interrogation by Italian police, Knox falsely confessed to having killed her roommate with the help of her employer. Brooks (p. 74) states that one of the "fundamental truths about police interrogations" is that the goal of interrogations is not to seek the truth; rather, their purpose is to elicit information from a suspect that conforms to investigators' preconceived theory of the crime. There is evidence to support the notion that innocent people do falsely confess, and that those confessions are subsequently used to convict them. Of the first 325 exonerations made through the use of DNA testing in the U.S., 27% involved defendants who made false confessions (West and Meterko, 2016). Although protections exist for those subject to custodial interrogations thanks in part to cases like *Miranda v. Arizona* (1966), the author reasons that subsequent court decisions have weakened *Miranda* and that police have developed methods to circumvent the protections in place. An example the author cites is *Oregon v. Elstad* (1985). In *Elstad*, police questioned a suspect without providing *Miranda* warnings and obtained a confession. The police then advised the suspect of his *Miranda* rights and subsequently obtained another confession. While the first confession was suppressed by the court, the second post-*Miranda* confession was allowed, and the suspect was found guilty. In ruling for the state, the Court condoned this practice. The author uses this case to support his claim that the protections afforded to accused persons by *Miranda* have been weakened, and that questionable police practices have been endorsed by the courts. However, the author makes no mention of a later and relevant case, *Missouri v. Seibert* (2004). Here, the Court ruled against the practice of

obtaining a confession pre-*Miranda* and following it by obtaining a second confession post-*Miranda*. Although *Seibert* was a split decision which produced two different tests to determine whether a subsequent post-*Miranda* confession should be admissible, it is necessary to include when discussing *Elstad* and pre- and post-*Miranda* confessions.

The author notes that law enforcement in the U.S. are able to utilize techniques, such as lying to defendants, that are not permitted in other countries like the United Kingdom (Gee, 2020). Using lies, or false-evidence ploys (FEPs), can increase the rate of false confessions (Stewart, Woody, and Pulos, 2018). Brooks notes that a widespread technique for interviewing and interrogations has been the Reid technique, developed by a former police officer and psychologist in the 1950s. Although Reid discourages lying to suspects about incriminating evidence during interrogations, they do endorse using the bait question - a non-accusatory question designed to make suspects consider the plausibility of evidence implicating them in a crime (Reid and associates, 2020). For example, rather than accuse a burglar of having left fingerprints on a particular piece of property in a store, an investigator may ask if there is any reason why police would find the subject's fingerprints inside the business. The stated purpose of the bait question is to measure the response of the subject, as an innocent person should deny any possibility of the evidence existing, while a guilty person would need time to consider the plausibility of the question (Reid and associates, 2020). However, the use of such bait questions during interrogations can alter and distort a person's memory of a case, and cause them to perceive a defendant as more likely to be guilty (Crozier, Luke, and Strange, 2020). Brooks also uses another widely known case to support his claims about false confessions - the case of Brendan Dassey, featured in the popular Netflix series *Making a Murderer*. Dassey, then a juvenile, was interrogated by police four times over the course of forty-eight hours. Dassey eventually produced a confession that was a combination of information provided to him by police and material from a movie he had watched. In the U.S., owing in part to the multi-level (local, state, and federal) setup of the criminal justice system, each agency and jurisdiction has its own standards and rules for interrogations of adults and minors. California, for example, requires all juveniles under the age of sixteen to have the opportunity to consult with an attorney (whether in-person or electronically) prior to custodial questioning by police (Gee, 2020). Other states have passed laws that forbid the use of police deception during the interrogations of juveniles. The protections for juveniles under interrogation vary greatly, though, from state-to-state,

and some jurisdictions offer no further protections than those afforded to adults. This is especially concerning considering younger juveniles may be more likely to falsely confess when being interrogated (Haney-Caron, Goldstein, and Mesiarik, 2018). The author suggests that all practices used by police during interrogations that could lead to false confessions, including deception, should be stopped.

Despite several positives, like readability and the assortment of wrongful conviction issues covered, there are some limitations of the book. One such limitation is that while readers are presented numerous cases to support Brooks's arguments, these cases are often limited in length to several paragraphs or a few pages. Although this contributes to a brisk reading experience, it does serve to limit the detail that can be provided on each case. Another limitation is the lack of perspective from other participants. Although the reader is treated to Brooks's firsthand account of many cases (or close knowledge of a case by virtue of his team having worked on it), there is limited input from others involved in the case. Perspectives from law enforcement, prosecutors, and original defense attorneys would have allowed for a more balanced view of a case, and perhaps further understanding of how these wrongful convictions occurred. It might be naive to think that police or prosecutors involved in a wrongful conviction would be willing to speak about it, but even the account of a few such willing individuals could make a meaningful contribution. Further perspective from the wrongfully convicted and their families would have also provided an additional layer to many of these stories - for example, did their families believe in their innocence? How did the personal lives of those wrongfully convicted suffer while they were imprisoned (for example, failed marriages or loss of relationship with children), and did they recover when they were released? Did the exonerated person find themselves able to try and resume their former life and career? Those who have suffered from wrongful accusations have reported negative impacts to their mental and physical health, relationships with friends and families, and self-identity, and wrongful convictions only worsened these effects (Brooks and Greenberg, 2020). Additionally, wrongful accusations can negatively affect the families of those people, causing social stigma, mental health effects, and a financial burden (Brooks and Greenberg, 2020). Accounts from the wrongfully convicted and their families about their experiences during and post-incarceration could provide more insight and further humanize those who have been subject to these nightmares.

In *You Might Go to Prison, Even Though You're Innocent* (2023), Justin Brooks presents true and startling ways that innocent people have

become ensnared in the criminal justice system and sent to prison. From his time as director of the California Innocence Project, he is able to provide firsthand accounts of the efforts and challenges of exonerating the innocent. Much of the book reads like a series of true crime stories, which are bolstered by Brooks's explanation of the legal histories and police practices involved in the various cases. Furthermore, Brooks's passion for the plight of the incarcerated innocent is evident on each page, and his energy and devotion to the cause help add more urgency to the book. Rather than simply being a series of case studies on the topic, Brooks's zeal and enthusiasm bring the stories alive, highlighting the misfortune of the defendants and drawing attention to the forces at work that contributed to their wrongful conviction. There are limitations, as mentioned above, but these do not detract significantly from what is otherwise an impactful narrative. This book is recommended for both criminal justice practitioners, as a reminder of how the system they work within is capable of such tragic failure and their responsibility to keep these life-altering wrongs from occurring, and for anyone with an interest in ensuring that justice is carried out fairly and equitably, and that their name or the name of a loved one never becomes another entry on a list of the wrongfully convicted.

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