

# The Investigation and Suggestions on Improving the Psychological Pressure of Judicial Personnel in Criminal Misjudged Cases in China

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## Abstract

In China, the reform of the system of lifelong responsibility for the quality of handling cases and the system of accountability for wrongful cases, which requires “whoever handles cases shall be responsible and whoever breaks the law shall bear the responsibility”, has been highly expected by all sectors of society. Misjudged criminal cases are the psychological “high-tension line” and “primary source of pressure” of many prosecutors and judges. In the investigation of wrongful cases, some prosecutors and judges exposed serious psychological problems and did not get professional and standard psychological counseling and correction. At present, we should perfect the Chinese wrongful case accountability model with the concept of due process, construct the psychological support and service system, and make clear the characteristic principle and application system of psychological counseling.

## Keywords

Misjudged Criminal Cases, Responsibility Investigation, Psychological Pressure, Mode

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## 1. Introduction

In recent years, China’s judicial practice departments have been intensively reflecting on misjudged cases. Former vice President of the Supreme People’s Court Deyong Shen pointed out that criminal unjust, false and erroneous cases have brought unprecedented challenges to people’s courts. If there is a wrongful, false or erroneous case, fairness and justice will disappear and the impartiality and authority of the judiciary will be lost. Therefore, preventing the occurrence

of unjust, false and wrong cases is the end of protecting the bottom line of judicial fairness and justice (Shen, 2013). Judicial organs at all levels, from the central to the local level, have issued a series of normative documents in the hope of effectively preventing and timely correcting misjudgements. With the frequent disclosure of misjudged cases and related accountability, many judicial personnel admitted that the psychological pressure is increasing. For example, Pan Yujun committed suicide in the process of pursuing the She Xianglin Case (Jia, 2005). In China, the investigation of wrongful cases has become the “first source of pressure” and the psychological “high-tension line” of many judicial personnel. Does this problem really exist in China? If so, how to solve the problem?

In order to solve the above problems, the research group set the investigation samples as judicial personnel directly related to the investigation of misjudged cases, and specifically limited them to front-line judicial personnel in procuratorial organs and people’s courts. Specifically, in addition to 80 random interviews, a total of 519 valid questionnaires were collected for judges and prosecutors. The questionnaire was written by Lei Xiaozheng and distributed to 21 provinces that were randomly selected, regions and municipalities directly under the central government, covering the diversity of eastern and western China. Random interview took place in a national judicial personnel training course. The questionnaires were distributed by the criminal public prosecution and criminal justice departments and mailed to the project team. The content of the questionnaire mainly includes four aspects: daily psychological pressure, psychological pressure in misjudged cases, views on the accountability mechanism of misjudged cases, and suggestions for reform. In terms of gender, 59.6% were female and 40.4% were male. In terms of age, among them, those aged from 20 to 30 (inclusive) take a proportion of 6.5%; those aged from 30 to 40 (inclusive) take a proportion of 62%; those aged from 40 to 50 (inclusive) take a proportion of 27%; and those aged over 50 take a proportion of 4.5%. In terms of educational background, 9% of them are junior college or below; 52.3% are bachelor’s degree; 38.7% are graduate degree or above. In terms of working years, those with 3 years or less account for 5%; those with 3 to 10 years account for 66.7% and those with 10 years or more account for 28.3%. The research group believes that from the general rule of sampling, in terms of gender, the proportion of male and female tends to be basically coordinated. In terms of age, most of them are young and middle-aged. In terms of educational background, it is mainly undergraduates and postgraduates who have higher educational background. In the years of employment, most have relatively rich practical work experience. Among the interviewees, 42 judges and 38 prosecutors were selected from random questions and answers during the questionnaire filling process. Currently, these two types of subjects are the “main driving force” of supervision, prevention and timely correction of misjudged cases in the reform of China’s trial centered litigation system, as well as the occupational groups with relatively weak psychological help and service system. What is their subjective evaluation of the relationship between the wrongful case and psychological pressure?

## 2. Theoretical Dispute on the Correlation between Wrongful Case Investigation and Psychological Pressure of Judicial Personnel

The English expression is “misjudged criminal case”. In the academia of Anglo-American law system, many people define misjudgment as innocent people who have not committed a crime being wrongly accused or convicted. For example, the legal Thesaurus dictionary interpret misjudge as: judge erroneously, judge inaccurately, judge wrongly (Burton, 1980). After misjudged cases, there are many disputes in academic circles about whether the judicial personnel, such as judges, should be held strictly accountable and whether they should bear psychological pressure.

### 1) *Limitation of Accountability under Due Process Theory*

In China, since the reform and opening up in the 1970s and 1980s, there has been a heated discussion on the accountability of wrongful cases in academic circles. The focuses of the dispute are: whether there is a wrong case or not. There are two opposing academic views, the “negative” theory and the “positive” theory; whether “subjective fault” and “procedural violation” should be included in the criterion of judging misjudged cases; the misjudged case is investigated based on the entity result or the legitimacy of the procedure. Behind these debates, the core dispute is how to define the relationship between due process and accountability.

From the perspective of comparative law, we believe that, compared with the severity of China’s judicial personnel’s liability investigation, the two legal systems outside China are increasingly convergent in principle in upholding the life tenure system of judges and not arbitrarily facing the threat of dismissal. For example, in the common law tradition, as long as the cognizant of facts makes a judgment strictly based on due process of law, his judgment is presumed to be justified, and he shall not be held liable for misjudgment based on new evidence, unless serious intentional violation of law is found and substantial liability is required. The theoretical basis is that judges have strong autonomy and independence. According to the concept of due process and the doctrine of free evidence, it is not appropriate to influence or interfere too much, unless there is extremely serious misconduct in the occurrence of misjudged cases. For example, John Rawls, an American philosopher and ethicist, once pointed out that even if the law is carefully followed and the process is justly and properly guided, it is still possible to achieve the wrong result. Injustice comes not from the fault of man, but from the accidental combination of circumstances which frustrate the purpose of the rule of law (Rawls, 1988). For example, American experts on wrongful convictions, Jim Petro and Nancy Petro, have added from another perspective that, under the influence of objective conditions, such as the restriction of subject’s cognition condition, the restriction of evidence collection ability and the value selection of legal system, the misjudged cases that appear after the trial by legal procedure should be understood and tolerated by the society. If

these factors are not taken into account and all the blame is placed on the judges, it is bound to lead to the imbalance of power and responsibility (Peters & Peters, 2012).

The goal of judicial punishment and impeachment in many countries embodies the value proposition: it is necessary not only to maintain the behavior of judges at a high level, but also to protect the entire judicial system from unwarranted attacks (Yan, 2004). In this accountability model, the applied mechanism of psychological help mechanism presents a state of absence. The psychological pressure of judicial personnel is generally attributed to the category of individual privacy or the ontological factor of responsibility. For example, in the United States, a judge should meet the minimum requirement of “misdemeanor” in order to conduct impeachment. On the subject of disciplinary punishment, the judge should base on his improper behavior. In many civil law countries, the judges include the judgment power of the confirmation of facts and the application of law.

### **2) Researches on Related Psychological Stressors and Indirect Trauma**

However, this does not mean that judges and other judicial personnel outside the region lack psychological pressure, or that they have “bullet-proof jackets” in front of misjudged cases. In fact, in misjudged cases, many of the stressors for judges in many countries and regions in the two legal systems are somewhere else. In addition to the actual responsibility of impeachment and punishment, the Anglo-American law system’s exclusion rules on illegal evidence and the continental law system’s prohibition on evidence may lead to the acquittal of the guilty and other procedural sanctions, which are not easy to face the pressure from the legal profession, victims, media and related groups. For example, in misjudged cases, the “lengthy” and “innuendo” reports of some news media also make judges feel headache, and the psychological pressure even exceeds the general punishment.

In addition, in psychological research, a theoretical hypothesis that has been verified by multiple data is due to factors such as the disconnection between prevention strategies and judicial culture. The judges and other judicial personnel who face criminal suspects, defendants and victims for a long time will also produce some indirect trauma symptoms from time to time. An extraterritorial survey of 105 judges showed that many had the following short-term symptoms of indirect trauma: sleep disorders (17%), intolerance (11%), and physical discomfort (8%); and even long-term symptoms: sleep disorders (7%), depression (5%) and loneliness (5%) (Zimmerman Isaiah, 2006). After the occurrence of misjudged cases, this indirect trauma will appear serious trend.

## **3. Verification of Distribution and Correlation of Psychological Stressors among Chinese Judicial Personnel**

China’s current wrongful case accountability model can be summarized as “results-oriented upper and lower discipline model”. How about the psychological pressure and degree of judicial personnel in the specific responsibility among

them? Is there effective psychological help?

### 1) *The Status of Psychological Help in “Results-Oriented Upper and Lower Discipline Model”*

According to the opinions of the Supreme People’s Court and the Supreme People’s Procuratorate on the implementation of the judicial punishment committee, it does strengthen the principle of “procedural participation”, in which the judicial personnel involved are granted the right of presentation, the right of proof and the right of defense, and the right of objection, reconsideration and appeal after refusing to accept the punishment decision. Even so, many judicial personnel believe in interviews that the accountability model with the characteristics of efficiency brings them great pressure. For example, after a number of misjudged cases, some local judicial organs will immediately start internal discipline inspection departments to intervene in the investigation, and completely stop the relevant judicial personnel’s duties and related honor, treatment and so on. Before the judicial decision formally confirms the misjudged case, the liability investigation may be “settled in advance” according to the probable entity error. The procedure of liability identification is still the top-down line and vertical configuration within the judicial organs. The procedural elements related to reconsideration and appeal also basically operate in accordance with internal administrative procedures rather than judicial relief or third-party evaluation (see **Table 1**).

From the perspective of psychological identity, what is the subjective evaluation of the investigated judicial personnel on the mode of pursuing responsibility on appeal? If there is a “wrongful criminal case” around, the dissatisfaction rate of the investigated is high (87.5%, 85.5% and 66.6% respectively), and the recognition rate is low (see **Table 2**).

### 2) *Investigation on the State and Degree of Psychological Pressure in the Pursuit of Responsibility for Wrongful Cases*

The sources of pressure of judicial personnel should not be ignored, such as judicial system, litigation system, and social structure in the transitional period, media supervision, interpersonal relationship and other comprehensive factors. But what the team found was that the top four factors were as follows: the pressure of error-type business evaluation (95.5%), the pressure of misjudged case liability investigation (90.5%), the contradiction between salary and remuneration paid by all parties (88.5%), the pressure of parties and public opinion (78.2%) (see **Table 3**). The error-type business evaluation related to misjudged cases mainly involves the negative evaluation indicators such as appeal rate, development and reform rate, and acquittal rate and so on, which have a cross relationship or inheritance relationship with the misjudged cases liability investigation in practice. Therefore, the combination of these two indicators can show that in fact, misjudged criminal cases have become the psychological “high-tension line” and “primary source of pressure” for many front-line prosecutors and judges in China.

**Table 1.** Procedural characteristics of criminal misjudged cases in China.

“Results-oriented upper and lower discipline model”		
1	Basis of liability	Sanctions derive from material errors
2	Certification process	The discipline inspection department of the judicial organ is involved in the investigation; The disciplinary committee advises and the judiciary decides
3	Remedy procedure	It is allowed to raise objections, apply for reconsideration to judicial organs and appeal to judicial organs at the next higher level
4	Psychological help	Emphasis on the judicial personnel’s ontological responsibility and psychological literacy, and psychological problems should be privatized
5	Social insurance	Honor, treatment and other often “one line in the end”, comprehensive separation

**Table 2.** If there are “wrong cases” around you, the factors that you are not satisfied with when investigating the responsibility include (indefinite choice).

Rank	Options	Rate
1	Accountability mechanism	87.5%
2	Accountability for the program	85.5%
4	Accountability for efficiency	30.5%
3	Accountability for results	66.6%
5	None of the above is true	39.5%

Data source: National Social Science Fund Project “Research on the Correlation between the Accountability of Misjudged Cases and the Judicial Stress of Judicial Personnel” (Xi & Lei, 2019).

**Table 3.** What do you think are the main factors that lead to the psychological pressure of some judicial personnel? (Indefinite choice).

Rank	Option	Rate
3	The contradiction that pay treatment and each party pay	88.5%
4	The parties concerned and the pressure of public opinion	78.2%
7	The pressure of Relationship case	30.7%
1	The pressure of error type service evaluation	95.5%
6	Food, clothing, housing, transportation and other social survival pressure	30.8%
2	Wrong case liability investigation	90.5%
5	The pressure of various bans	50.6%
9	Sexual harassment	0.1%
8	Too many meetings and other formalistic issues	0.2%

Data source: National Social Science Fund Project “Research on the Correlation between the Accountability of Misjudged Cases and the Judicial Stress of Judicial Personnel” (Xi & Lei, 2019).

In order to further evaluate the impact of wrongful case accountability on psychological pressure, the research group conducted a questionnaire according to the concept of “neighborhood observation”. The results showed that 55.4% of the respondents believed that judicial personnel who are directly responsible for

wrongful cases have psychological problems.”Non-existent” and “Hard to say” were chosen by 30.30% and 14.30% respectively (see **Figure 1**).

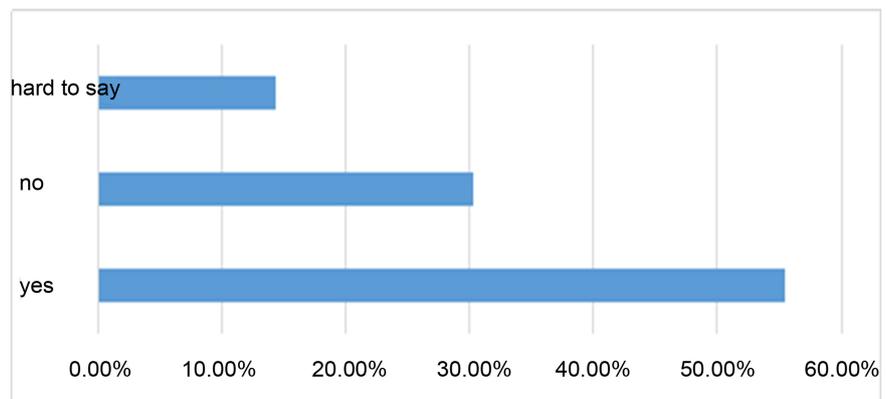
Under the wrong case responsibility investigation, what kind of psychological pressure does the judicial personnel have generally?

According to the interview, the main types include panic, sadness, depression, hatred, inferiority, pessimism and antisocial psychology. To sum up, the most common types of problems are: first, emotional deficit. Subjectively, leaders, colleagues, relatives and friends are far away, and there are few factors of sympathy, support and understanding. Second, there is persecution. Some victims of the petition, petition and some media supervision easy to personal attacks, think that someone deliberately persecutes and torment them. Third, there is the sense of deprivation. That is, they think their professional honor and treatment will be mercilessly deprived, worried about their own units, families to bring shame. Some judicial personnel cannot deal with the psychological pressure rationally, fearing the expansion of the responsibility investigation or unfair treatment, and thus hindering the correction of misjudged cases.

### 3) *Further Exploration of Psychological Help*

Under the circumstance that misjudged cases have actually become the psychological “high-tension line” and “primary source of pressure” for many judicial personnel, the imperfect psychological support and service system is a dangerous signal to the construction of political and legal teams. But the real question is, do they have access to a high level of quality psychological help? According to the questionnaire, 77.7% of respondents “did not” participate in specialized psychological counseling or training on occupational stress. Up to 95% of those surveyed believe their work units “do not have” professional psychological counseling personnel for judicial personnel.

In the analysis of related factors, we also noticed the reasons from litigation culture and individual cognition. For example, 82.4% of those surveyed believe that “having psychological problems such as depression is a private matter that



**Figure 1.** In the misjudged cases you know, do the judicial personnel directly responsible for them have psychological problems? (Data source: National Social Science Fund Project “Research on the Correlation between the Accountability of Misjudged Cases and the Judicial Stress of Judicial Personnel”) (Xi Wei & Lei Xiaozheng, 2019).

should not be disclosed to colleagues at work”. As a result, once they encounter psychological problems, they may rely more on the individual’s natural ability to heal themselves, or they may seek help from commercial psychological counseling companies at their own expense. In interviews, some judges said it was difficult to get professional help by telling colleagues that they were depressed, and that it hurt their image in a culture of gossiping.

#### **4. Suggestions on Relieving the Psychological Pressure in the Investigation of Wrongful Cases**

The above questionnaire survey and interview show that the psychological pressure faced by Chinese judicial personnel due to wrong cases is relatively common, which needs active counseling. Happily, after the misjudged case, 95.6% of the respondents believed that the judicial personnel involved should be comprehensively screened for psychological crisis and intervened if necessary. This shows that the traditional concept of privacy is changing quietly. However, are our institutional arrangements ready?

##### **1) *Improve the Accountability Model for Misjudged Cases Based on the Concept of Due Process***

In the investigation of misjudged cases, some scholars pointed out that if the scope of accountability is too wide, it would not only be unfair to pursue those who have no fault or slight negligence, but also do more harm than good (Fan & Liu, 2015). We believe that only by taking due process as the key point and perfecting the procedural elements based on procedural participation and job security, can the rate of psychological recognition and satisfaction be improved. Therefore, the principle of “major subjective fault” should be further clarified when investigating the liability of wrongful cases, so as to realize the equivalence of fault and liability. First, to prevent and control the “rough pursuit of responsibility”, “expanding the pursuit of responsibility” and “fuzzy pursuit of responsibility” due to the “severe punishment doctrine”, “the victim’s pestering and making trouble”. Second, we should limit the scope of judicial qualification and loss of ability, to avoid “one to the low”, “comprehensive separation”, “after death to pursue responsibility” and other practices. The core goal of wrongful case liability investigation is to “force strict law enforcement”, which cannot induce judicial personnel to “self-danger” and frequent psychological crisis. Otherwise, it will hinder the wrong case identification and correction.

##### **2) *Construct Psychological Support and Service System***

At present, it is necessary to establish an internal judicial personnel mental health and psychological crisis intervention agency under the disciplinary committee of judicial personnel, and set up a hotline and a unified platform to provide universal, convenient and free psychological counseling and correction services. It is suggested that the government should purchase psychological counseling services to solve this problem. According to the questionnaire, assuming there is a psychological counseling hotline or a platform system, 55.80% of respondents choose “yes” in terms of whether they are willing to consult.

Considering the special psychological characteristics of judicial personnel, it is necessary to establish special psychological test scale and special psychological counseling and correction programs for serious psychological problems and mental diseases. To this end, it is suggested that our country stipulate in the Criminal Procedure Law, Police Law, Public Prosecutor Law and Judge Law: In the investigation of misjudged cases, psychological science and technology can be used to guide and correct judicial personnel in combination with the causes of misjudged cases and psychological investigation.

### ***3) Define the Characteristic Principles and Application System of Psychological Counseling***

In daily judicial activities, psychological counseling hotline or platform system should adhere to the principles of “confidentiality”, “voluntary”, “targeted” and “free”. However, in the investigation of misjudged cases, the application system should be specialized: It is necessary to predict the psychological state of judicial personnel before the investigation of misjudged cases. When pursuing misjudged cases, a general risk prevention plan should be prepared. This may include but is not limited to provide necessary resting places, preparation and provision of drugs against specific mental disorders, and psychological counseling institutions to achieve information, mechanism docking. If serious psychological problems are found, intervention programs should be run in a timely manner. When necessary, the procedure can be suspended, waiting for the results of psychological intervention. For those who are screened out to be suicidal, special personnel should be organized to make an appraisal and submit their opinions to the judicial punishment committee. When necessary, relevant experts and psychological counselors should be organized for consultation or referred to specific hospitals for diagnosis and treatment.

## **5. Conclusion**

In addition to 80 random interviews, a total of 519 valid questionnaires were collected for judges and prosecutors. Misjudged criminal cases have become the psychological “high-tension line” and “primary source of pressure” for many front-line prosecutors and judges in China. Some judicial personnel in the wrongful case responsibility investigation psychological pressure is too large, or psychological problems worsened, cannot be simply attributed to “personal psychological quality problems”. Some judicial officials held accountable for wrongful convictions declined to be interviewed, citing privacy concerns. We should perfect the Chinese wrongful case accountability model and construct a psychological support and service system which provides universal, convenient and free psychological counselling and correction services. At present, it is necessary to establish an internal judicial personnel mental health and psychological crisis intervention agency under the disciplinary committee of judicial personnel. Only by further digging into the source of pressure, supported by a sound psychological support and service system, can we solve the problem of

psychological pressure in the investigation of wrongful cases.

### Contribution

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The author declares no conflicts of interest regarding the publication of this paper.

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