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Wrongful Convictions: The Literature, the Issues, and the Unheard Voices

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THE LITERATURE, THE ISSUES, AND THE UNHEARD VOICES

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Wrongful Convictions: The Literature, the Issues, and the Unheard Voices

Introduction

The strength of our criminal justice system depends on its accuracy — its ability to convict those who have committed crimes and to clear those who are innocent. We have been refining our justice system for more than 200 years, and we continue to have dedicated public servants who help keep us safe, bring justice and a sense of closure to victims, and defend the rights of individuals accused of crimes.

But we know that innocent people are sometimes wrongfully convicted. Although the exact number of wrongful convictions is unknown, research commonly places the prevalence of wrongful conviction at under 5% of all convictions. The latest rigorous NIJ-funded estimate supports this rate; however, variations in the rate of error by crime type and other factors may exist.¹ Research on the topic acknowledges that *known* wrongful convictions are likely only a fraction of the true number of erroneous convictions that have occurred.

Every wrongful conviction is a miscarriage of justice that affects all levels of our society. Their outcomes have life-long impacts on the people who have been wrongfully convicted, the original victims of crime, and the families of both parties. Wrongful convictions undermine the confidence our nation has in the criminal justice system, often leading to questions about its fairness. In addition, wrongful convictions result in “wrongful liberty,” where the individuals who truly committed the crimes are free to victimize others.

As the research, development, and evaluation agency of the U.S. Department of Justice, NIJ is dedicated to

using science to learn more about wrongful convictions. Understanding the causes and consequences can help us identify ways to prevent these types of errors in the future and to address the needs of those who have been affected by erroneous convictions. Doing so is an important step in ensuring public confidence in the justice system.

In February 2016, NIJ — along with the Bureau of Justice Assistance, the Office for Victims of Crime, and external organizations — hosted listening sessions for victims or survivors of crimes that had resulted in wrongful convictions and for individuals who have been exonerated. The three-day meeting allowed NIJ and its federal partners to hear directly from participants who had been victimized and revictimized due to errors of justice. On the third day, the federal observers met to discuss possible actions to be taken for research and practice.

This report, which builds on the listening sessions, takes a closer look at the complex issue of wrongful convictions. The report contains three chapters:

- Chapter 1 reviews 100 years of scholarship on wrongful convictions, ranging from early case studies of exonerations to more recent scientific analyses of wrongful convictions. The review finds that knowledge about the prevalence and causes of these serious miscarriages of justice remains limited and mixed at best.
- Chapter 2 focuses on several “elephants in the courtroom” that have not garnered significant attention among wrongful conviction scholars, practitioners, policymakers, and activists. This

section examines the deep linkages between race, society, the administration of justice, and wrongful convictions.

- Chapter 3 discusses the major themes that emerged during the listening sessions in an effort to better understand the problems victims and those who have been exonerated face during the review of post-conviction innocence claims and after the exoneration. It concludes with policy recommendations to help address the most pressing issues.

The listening sessions and this report are initial steps in a much longer process. A multidisciplinary approach is necessary to truly eliminate error from criminal proceedings. Additional research is needed to fully understand what is not working in our criminal justice system — or in our society — when it comes to

preventing and identifying wrongful convictions and supporting the victims of these tragedies of justice.

This report complements the documentary “Just Wrong: The Aftermath of Wrongful Convictions from Crime Victims to Exonerees,”² which conveys the experiences of victims and individuals who have been exonerated in their own words. The video gives viewers a sense of the real people who are impacted by wrongful convictions, beyond the research contained in this report and the themes summarized from the listening sessions.

NIJ is committed to moving forward with our partners to better understand the impact of wrongful conviction, develop methods for preventing wrongful conviction, and ensure that the needs of all involved — original crime victims, their families, and those who have been wrongfully convicted — are holistically met.

Notes

1. John Roman et al., *Post-Conviction DNA Testing and Wrongful Conviction* (Washington DC: The Urban Institute, 2012). See also, Kelly Walsh et al., *Estimating the Prevalence of Wrongful Conviction* (Washington DC: The Urban Institute, 2017). This study found a much higher rate when just looking at sexual assault cases with a determinate DNA sample.
2. The documentary is available at <https://nij.gov/multimedia/pages/video-just-wrong.aspx>.

Chapter 1.

Advancing the Scholarship on Wrongful Convictions

BY ERIC MARTIN AND ANGELA MOORE

America has been refining its criminal justice system for more than 200 years. Dedicated public servants help keep us safe, bring justice and a sense of closure to victims, and defend the rights of those accused of crimes.

Even so, criminal justice errors happen; innocent individuals are tried and erroneously convicted of crimes. Often, these mistakes are dismissed as random occurrences, the result of malicious manipulation by unethical detectives, prosecutors, or deceitful witnesses. The system is designed to glean fact and truth from imperfect and fallible human beings — and people believe that indisputable, objective facts will always prevail. Discovering truth from a collection of statements that may be biased, exaggerated, misleading, or inaccurate is difficult. In theory, the biases cancel each other out, almost like the concept that two negatives equal a positive. Two opposing arguments — if made logically and grounded in rigorous discovery — are supposed to uncover the truth about the culpability of someone accused of a crime.

This faith in the system has, at times, prompted a rejection of scientific inquiry into the system's limitations, which may include the possibility of error, the difficulty of finding absolute fact, and bureaucracies that may unduly burden the person accused of a crime or inhibit the administration of justice.¹ These are primarily organizational issues of large and complex systems that are filled with well-meaning and purposeful individuals.

But thanks to the efforts of the individuals and organizations who seek to address the needs of those who

have been wrongly convicted, it has become increasingly difficult to maintain the belief that the criminal justice system, by virtue of its adversarial construction, can catch *every* falsely accused person being tried. At the time of publication, the Innocence Project had documented 575 exonerations (using the strictest definition of a wrongful conviction).²

Yet an aura of infallibility continues to surround the U.S. justice system, even at the highest levels. In *Kansas v. Marsh* (2006), U.S. Supreme Court justices were divided over the state's evidence requirement for capital sentences because of perceptions about the likelihood of executing an innocent person. In the proceedings, former Justice Antonin Scalia refuted much of the research on wrongful convictions and cited an Oregon district attorney who calculated an estimate of wrongful conviction at around 0.027%.³ This would mean that the criminal justice system rightly convicts individuals who are guilty 99.973% of the time.⁴ Seventy-four years after the publication of some of the earliest research on wrongful conviction, the late Justice Scalia still believed that the threat of a miscarriage of justice was so small that policy questions about the appropriateness of capital punishment were moot.

As the debate has shown, knowledge about the prevalence and causes of such serious miscarriages of justice remains limited and mixed, at best. Furthermore, even 100 years of scholarship — which has evolved from case studies of exonerations to more rigorous scientific analyses of wrongful convictions — has done little to curb the perception of judicial infallibility.

Evolution of Wrongful Conviction Literature

The Exposés

Modern scholarship on wrongful convictions has its roots in psychology. In the early 1900s, psychologist Hugo Munsterberg studied errors in witness testimony.⁵ Although Munsterberg's work received much notoriety and brought the idea of miscarriages of justice into the public discourse, it took another 30 years to develop a larger research agenda on wrongful convictions.

In 1932, Edwin Borchard published *Convicting the Innocent*, which included vignettes of 65 cases involving 82 people who had been wrongfully convicted.⁶ Inspired by a debate that Borchard had with a prosecuting attorney about the possibility of miscarriages of justice, this seminal work established a style for scholarship about wrongful convictions that would be used for the rest of the century: journalistic qualitative exposés. This type of research sought to uncover common errors from miscarriages of justice and propose policies to correct them.⁷

Borchard's research and other exposés highlighting specific wrongful conviction cases showed policymakers and the public that the justice system is fallible. Written primarily by journalists and legal scholars,⁸ the exposés were designed to shock the sensibilities of policymakers who remained steadfast in their belief that the adversarial process was the best way to find truth. This body of literature uncovered common trends and errors but analyzed them only in the context of the specific cases illustrated.

In the latter half of the 20th century, wrongful conviction research became issue oriented. For example, capital punishment — with its inherent risk that an innocent person might be executed — drove much of the attention on wrongful convictions and led to another major publication, "Miscarriages of Justice in Potentially Capital Cases," by Hugo Adam Bedau and Michael L. Radelet, in 1987.⁹ Like Borchard and others before them, Bedau and Radelet published 365 exposés to uncover common sources of error, most notably witness error and false confessions. However, the authors were more systematic in how they derived their sample and analyzed root causes.¹⁰ For instance, they documented how these wrongful convictions were discovered to help chart a path for finding

sources of error in other cases. Interestingly, they found that the defense bar was responsible for exposing the most wrongful convictions, followed by confessions from the individuals who had really committed the crimes.¹¹

Bedau and Radelet also made the first inroads toward estimating the rate of wrongful conviction by showing the annual number of cases. They found that at least one innocent person charged with a crime was convicted per year in the United States and argued that the likelihood of executing an individual who was wrongly convicted was high.¹²

Another innovation in Bedau and Radelet's work was their concept of "factually innocent," meaning that the individual charged with the crime did not physically commit the crime in question. This contrasts with "legally innocent," meaning that a lack of criminal intent or procedural errors result in the charges being dismissed.¹³ This important distinction would guide future scholarship by pointing to the strongest case of an erroneous conviction: a criminal sentence against an individual for an act they did not commit.

At the time of Bedau and Radelet's writing, there was still no way to definitively prove that someone was factually innocent, although there was strong evidence of innocence in the cases they studied.¹⁴ The criminal justice system had only just begun to use DNA analysis; bio-laboratories that tested for paternity were performing most of the DNA analysis at the time. After "Miscarriages of Justice" was published, DNA — or, more specifically, the analysis of an individual's unique DNA marker — emerged as the most objective standard of exculpability. The first exoneration from DNA analysis occurred in 1989.¹⁵

NIJ Enters the Debate

DNA testing moved the wrongful convictions debate from competing interpretations of case outcomes to near-definitive and objective evidence that an innocent person had been erroneously convicted.¹⁶ By 1996, there were 28 exonerations as a result of DNA testing. The growing number of exonerations prompted former Attorney General Janet Reno to direct the National Institute of Justice (NIJ), as the research and development agency for the U.S. Department of Justice, to conduct an objective and scientifically rigorous study of this phenomenon.

NIJ commissioned the Institute for Law and Justice to study DNA exonerations. The resulting report, *Convicted by Juries, Exonerated by Science* (also known as “the green book” because of its cover), detailed 28 case studies of exonerations resulting from DNA evidence from 1989 to 1996. To identify the rate at which DNA evidence was used to exclude individuals suspected of committing a crime, the researchers surveyed 40 laboratories that conducted DNA analysis.¹⁷ The authors found that 19 of the crime laboratories reported an exclusion rate of 23% in 21,621 cases for which there had been DNA analysis of a specimen from a person suspected of perpetrating a crime. The researchers separated out the FBI’s laboratory, which at the time handled the majority of DNA testing for criminal cases; in 10,060 cases, they found a 20% exclusion rate for individuals suspected of committing a crime. In addition, the results showed that eyewitness testimony; imprecise forensic analysis (particularly an issue with serology, or blood type testing¹⁸); and government misconduct, including the withholding of exculpatory evidence (that is, *Brady* violations), were the most prevalent causes of erroneous convictions.¹⁹

The green book “quickly became one of the most talked about works in the criminal justice system.”²⁰ Its popularity was largely due to its extensive case summaries of the 28 exonerations, including the factors that led law enforcement and prosecutors to pursue an innocent person.²¹ By surveying crime laboratories’ exclusion rates of potential suspects, the report also demonstrated a much larger risk of wrongful convictions resulting from ineffective policies for identifying and correcting errors, not just cases of inappropriate actions by the criminal justice system.

The publication of the green book — and the heightened attention DNA received during the O.J. Simpson trial²² — coincided with a shift in the criminal justice community, which moved away from discussions over the *possibility* of a wrongful conviction to the *probability* of one.

A Shift in Scholarship

After they established that wrongful convictions do happen, social scientists began calling for literature to transform from journalistic exposés to rigorous and systematic approaches on the causes and prevalence of the problem.

In 2005, law professor Richard Leo recommended moving away from qualitatively identifying common causes of wrongful conviction toward building social science theory around why and how these convictions occur.²³ He advocated for researchers to use psychological and sociological theories. Studies based on psychological theories examine how problems with memory, judgment, and bias create errors that can lead to miscarriages of justice. Sociological scholarship focuses on how criminal justice systems handle psychological errors and how these errors — in combination with culture, stakeholders, and the politics of systems — either lead to truth or produce miscarriages of justice.²⁴ All of these factors may combine to provide sources of error in a wrongful conviction case. In fact, multiple errors are often present.²⁵

The criminal justice system has not been immune to systematic error and has struggled to understand what reforms would be necessary and effective for correcting erroneous convictions. Building on Leo’s work, in 2015 Robert Norris and Catherine Bonventre contended that most scholarship on wrongful conviction lacks a theoretical basis. They also argued that adhering to a strong cultural tradition that would rather see individuals who are guilty go free than those who are innocent be incarcerated (also known as the “Blackstone ratio”) limits the rigor of scholarship and the range of possible policy recommendations.²⁶

Wrongful conviction literature has identified both psychological and sociological theories that can explain errors in all stages of the criminal justice process, including investigative errors, issues with eyewitness testimony, forensic errors, and prosecutorial concerns. This growth in scholarship has led to more robust estimates of wrongful convictions and rates of actual suspect guilt.

Investigative Errors

At the time of Leo’s writing, Talia Harmon was the only researcher who had conducted a controlled study that compared individuals who were convicted and executed with individuals who were convicted and released. Building on the original sample from Bedau and Radelet, she found that perjury from others charged in the same case who feared the death penalty and a lack of different types of

evidence (for example, witness, forensic) were predictive of reversals.²⁷

A 2012 NIJ-funded study on wrongful convictions supported Harmon's results. Researchers at American University conducted the first controlled case comparison of wrongful convictions and rightful acquittals. They compared cases in which criminal justice systems correctly acquitted an innocent person charged with perpetrating a crime with cases in which the systems did not discover the individual's innocence until after conviction.²⁸ The researchers found that a number of factors play critical roles in producing a wrongful conviction, including the strength of evidence, the effectiveness of legal representation, and how punitive the environment was. These contributed to "tunnel vision" — an inability to see and consider contradictory information, thus biasing the system against individuals who are wrongly accused. Cases in which the prosecutor's case was weak, the defense counsel was ineffective, and the state had a more punitive culture (measured by the number of executions per capita, for example) tended to produce more wrongful convictions.²⁹ Therefore, instead of focusing strictly on eyewitness testimony and false confessions, the field should examine other factors that may influence the likelihood of a wrongful conviction.

A study conducted by Barbara O'Brien and colleagues supports the results of Harmon and the researchers at American University. Their study of the National Registry of Exonerations suggests that the same factors that led to wrongful convictions of other ethnic groups — including mistaken eyewitness identification, false confessions, perjury, misconduct by police and prosecutors, and forensic error — were present in cases involving Latino people.³⁰ However, these individuals may be particularly vulnerable to wrongful convictions when language barriers are present and immigration concerns are exploited. For example, more than 40% of the exonerated Latino individuals who falsely confessed did not fully understand spoken English. Several Latino individuals who were exonerated had unknowingly signed confessions provided to them in English, which they did not comprehend. In addition, when police agencies used officers who spoke Spanish during interrogations, the

translations were not always accurate. This was also the case with some court proceedings' translations.³¹

The vast majority of Latino people in the United States are citizens; for them, immigration issues are not a particular concern. But Latino individuals charged with crimes who do face such concerns, or whose cases involve witnesses dealing with potential immigration consequences, may be at particular risk for wrongful convictions. Immigration challenges can provide law enforcement with leverage to pressure false confessions and can lead to threats of deportation post-conviction. Immigration problems may also make exoneration post-release much more tenuous for Latino individuals who are wrongly convicted.³²

Another NIJ-funded study largely replicated the findings of the American University study. Kim Rossmo and Jocelyn Pollock examined investigative failures using a root cause analysis common to NIJ's Sentinel Events Initiative³³ to identify common errors and the likely path from one type of initial error to additional errors later in the investigation. They separated sources of errors into personal, organizational, and situational causes and found that particular combinations of errors in all three appeared with regularity in their sample. The pressure exuded on investigators from a high-profile crime with a lot of media attention may inhibit a full challenge of their theory of the crime. This often leads to tunnel vision early in the investigation, which causes an investigator to narrow in on an individual suspected of committing the crime, and confirmation bias, which causes an investigator to continue to pursue an individual in light of contrary information.³⁴

Eyewitness Testimony

Eyewitness testimony is often central to an investigator's case and is likely the starting point for narrowing in on a person suspected of perpetrating a crime. The potential limitations of eyewitness testimony have received special attention from researchers. Thirty years before Borchard's documentation of exonerations, Munsterberg's work on errors in witness testimony was the first major breakthrough research about wrongful convictions. Over the years, others built upon his research, exploring the

problems of recall and witness testimony.³⁵ Gary Wells published his first article on eyewitness testimony in 1976 — 20 years before the green book — and quickly became a leader in the field. He explored what he termed “system variables,” or factors such as the structure of a lineup that could be modified to reduce inaccuracies within criminal cases.³⁶

The processes by which a witness recalls information from a traumatic event are not well understood, but there are practices that criminal justice systems could implement to elicit the most accurate information possible from witnesses. Wells’ concept of “relative judgments” indicates that a witness will survey a lineup — often made up of one individual suspected of committing the crime and five foils (individuals who did not commit the crime) — and choose the person who is *most* like the actual person they saw commit the crime.³⁷ Presenting lineups sequentially (showing one picture at a time) instead of simultaneously (showing all six pictures at once) forces the witness to make a judgment — positive, negative, or unsure — on each person, separate from influence of any of the other individuals in the lineup.³⁸

As a result of Wells’ research and the publication of the green book, momentum to study errors in eyewitness testimony grew. In 1999, NIJ convened a working group to look at these issues and, based on the group’s recommendations, disseminated reforms for collecting witness testimony. Among the recommended reforms was to conduct lineups sequentially, per Wells’ concept of relative judgment.³⁹ A suggested practice — also widely attributed to Wells — was to have law enforcement detectives unfamiliar with the case administer the lineup to help prevent any influence from the detective (even unintentional, subconscious cues, such as a smile when an individual identifies the person suspected of perpetrating the crime).⁴⁰ Although research suggests this would be a good practice, NIJ stopped short of recommending it as a policy because of the impracticality of finding detectives within an agency who are “blind” to the identity of the individual suspected of committing the crime.⁴¹

Sequential lineups and double-blind administration (that is, neither the detective nor the witness knows the identity of the individual suspected of committing the crime) were promising advances, but at the time they had been tested only in laboratories and not on actual witnesses of real crimes. One study, led by the Chicago Police Department with assistance from the Joliet and Evanston Police Departments, sought to research double-blind versus non-blind lineups in the field, but the research design had serious issues. For example, the non-blind lineups were simultaneous, and the double-blind lineups were sequential.⁴² Although the results, unexpectedly, showed no difference between sequential and simultaneous lineups, these findings lacked credibility because of the limitations of the research design.

To help advance knowledge on the structure of lineups, NIJ partnered with the American Judicature Society (AJS) and three other private foundations to conduct a robust and rigorous test of lineup procedures.⁴³ The study field-tested sequential and simultaneous lineups in four police departments: Charlotte-Mecklenburg, North Carolina; Tucson, Arizona; San Diego, California; and Austin, Texas. The researchers ensured that all treatment (sequential) and control (simultaneous) lineups were double-blind to provide an accurate test of the impact of sequential lineups. The study found no difference in the rate of identifying individuals suspected of committing the crimes between simultaneous (26%) and sequential (27%) lineups. However, there was a statistically significant reduction in the choice of foils between simultaneous (18%) and sequential (12%) lineups.⁴⁴

Although the AJS-NIJ study provides strong evidence that sequential lineups help reduce false positives,⁴⁵ controversy remains. For instance, psychology professor Steven Clark emphasizes that sequential lineups do not increase positive identifications; rather, they reduce negative identifications (or false positives). He argues that Wells and colleagues are misleading practitioners and policymakers by claiming that sequential lineups reduce foil identifications with “little or no cost.”⁴⁶ Clark contends that sequential lineups reduce both correct and incorrect identifications.

Clark argues that Wells and colleagues view identifications as either based on accurate recall of events or constructed from the influence of the lineup procedure. Instead, Clark says, witness memory interacts with the lineup procedure, which causes the witness to identify someone based on the strength of the similarity between the witness's memory and the individuals in the lineup. He argues that the similarity should be viewed on a continuum, not as either a correct memory or a false one influenced by the lineup procedure. Clark also asserts that some of NIJ's published recommendations on administering lineups may, in fact, influence the witness to not pick anyone.⁴⁷ This may also be the case in a double-blind lineup, where law enforcement officers inform the witness that the person who is suspected of committing the crime may not be present.⁴⁸

John Wixted and Laura Mickes took a different approach to assessing the likelihood that a lineup procedure would lead a witness to identify the individual suspected of perpetrating the crime. They tested both simultaneous and sequential lineups and varied the lineup composition (that is, how distinctive the person suspected of committing the crime was from the foils) and the instructions given to the witness (that is, acknowledging that the individual suspected of perpetrating the crime might not be present). The researchers then illustrated the full range of ratios of true to false picks in these different lineup scenarios.⁴⁹ They contend that Wells' logic relies on "probative value," or the proportion of true positives (hits of individuals suspected of perpetrating the crimes) over false positives (picks of foils, or individuals who did not commit the crimes). However, according to Wixted and Mickes, a sequential lineup that reduces both hits of individuals suspected of committing the crime and foil picks will have a higher probative value — but may not be superior. Instead of calculating one probative value ratio, they plotted the hits of individuals thought to have committed the crimes and false positives resulting from different police instructions and lineup compositions on a receiver operating characteristic curve. They found that the simultaneous lineup under neutral conditions (that is, the lineup composition and the instructions given to the witness neither encourage nor discourage a pick) is the lineup that is optimally designed to identify the individual suspected of perpetrating the crime.⁵⁰

The problem with the Wells/Clark debate is the inability to know whether the person suspected of committing the crime is truly guilty. The AJS-NIJ study did not consider the individual's innocence or guilt; it focused on the hit rates of each lineup. Wixted and Mickes used a number of hypothetical models to show the limitations of Wells' argument, yet the validity of their argument is unknown because much of it hinges on the proportion of individuals believed to be innocent or guilty (what Clark terms the "guilty base rate"⁵¹). For example, there is no information about the proportion of individuals in a given lineup who are actually guilty and those who are innocent. Because we do not know, on average, how many individuals suspected of committing crimes are guilty, it is difficult to judge the relative utility of a particular lineup procedure.

It is not possible to assess the fallibility of any lineup procedure because we do not know the likelihood that the person suspected of committing the crime is innocent. If the guilty base rate is low enough that it would be rare to have an innocent individual suspected of committing a crime, a lineup procedure that increases overall hits would be more beneficial. If the guilty base rate is high, any lineup procedure that lowers false positives would be beneficial.⁵² Because the guilty base rate is unknown, it is hard to judge whether Wells' or Clark's policy would be most effective.

When considering which eyewitness identification procedure to use — one that may facilitate more identifications but runs a higher risk of false positives, or one that depresses all identifications — it is important to recognize that criminal justice proceedings already place a high burden of proof on the state when prosecuting individuals suspected of engaging in crimes.⁵³ In other words, a false identification does not necessarily mean a wrongful conviction is inevitable; the justice system has built in other safeguards to prevent these errors.

But until we identify which type of lineup is most effective, law enforcement agencies that administer lineups should treat eyewitness identification evidence to be as fragile as trace evidence.⁵⁴ Wixted detailed how research shows that the more an eyewitness is questioned and shown various lineups, the greater the risk that the memory of the witness becomes contaminated or their evidence becomes

degraded.⁵⁵ In other words, repeatedly administering witness identification procedures diminishes the quality of the memory that witness holds and may actually diminish the accuracy of their memory of the incident.⁵⁶ This is similar to how crime scene investigators may inadvertently contaminate evidence at the scene if they do not take precautions to limit interference with physical evidence.⁵⁷

Instead of repeatedly testing an eyewitness with various lineups, it is critical to document the confidence of the witness at the initial lineup to establish the credibility of the eyewitness's evidence. Psychological research shows that witness confidence is a reliable measure of how positive a witness is about an identification; to Wixted's point, their expressed confidence after the initial identification is the most reliable measure of accuracy. Although certain factors may diminish the ability of the witness to recall the event and identify the individual suspected of committing the crime, these factors do not increase confidence in an erroneous identification.⁵⁸ While the debate about the benefits of sequential versus simultaneous lineups continues in academic and practitioner circles, law enforcement agencies can improve their certainty in eyewitness testimony by capturing the eyewitness's confidence at the initial identification and avoiding repeated measures when possible.

Research conducted by David Bjerk and Eric Helland further demonstrates the need to enhance eyewitness identification procedures. In their examination of DNA exonerations, Bjerk and Helland found that wrongful conviction rates for Black individuals convicted of rape were 2.5 times higher than they were for white individuals. However, the wrongful conviction rates for murder were roughly the same across races.⁵⁹ Bjerk and Helland discuss plausible but unlikely factors to explain the racial differences for the two crimes, such as bias in the DNA exoneration process that favors Black people. Their study of the exoneration data shows that witness identification played a much greater role in wrongful rape convictions for Black individuals (83%) and white individuals (72%) than in wrongful murder convictions (25% for both races). Given the body of research that indicates that eyewitness identification is prone to error — especially cross-racial identification — Bjerk and Helland suggest that errors in

eyewitness identification is a more feasible explanation for the higher wrongful conviction rates for Black individuals compared with white individuals in rape and murder cases than bias in the DNA exoneration process.⁶⁰

Forensic Errors

Forensic errors have also contributed to wrongful convictions. The Innocence Project indicates that faulty forensic science or improper testimony from forensic scientists was the second-leading contributor to wrongful convictions in about half of cases.⁶¹ However, the American University study did not find that forensic error played a major role in wrongful convictions; rather, it found that forensic evidence was often used to accurately exclude individuals who had been wrongly accused.⁶² The researchers noted that deliberate perjurious testimony by forensic analysts is rare. Unclear or imprecise testimony about a forensic technique's power to confirm a person suspected of committing a crime and poor and untimely communication between forensic analysts, investigators, and prosecutors were more likely to contribute to wrongful convictions than deliberate perjurious testimony.⁶³

Similarly, Gerald LaPorte, former director of NIJ's Office of Forensic and Investigative Sciences, points out that all forensic science techniques are often lumped together under the umbrella of forensic science; yet particular techniques have much better reliability than others. He notes that particular disciplines, such as bite-mark analysis and serology, were more susceptible to incorrect interpretation or description in testimony, and therefore misled jurors about their evidentiary nature.⁶⁴ The precise language that forensic technicians use is particularly important when considering the NIJ-funded research on how jurors weigh forensic evidence at trial. Researchers at Arizona State University found that jurors consider the experience of the forensic technician as critical when weighing testimony; this experience is even more influential than testimony regarding the accuracy or scientific validity of the methods.⁶⁵ The concern over how forensic evidence is portrayed in court has prompted NIJ to fund ongoing research at Florida International University to examine the implementation of uniform language for forensic analysis testimony.⁶⁶

As discussed previously, DNA has proven to be a more powerful technique to uncover and correct erroneous convictions than all other forensic methods in use today. But DNA is not infallible. As collection methods and analytical techniques become more advanced, its power to detect minute traces of DNA may actually introduce more opportunity for error. Peter Gill discusses more recent case studies in which DNA analysis led to wrongful convictions, either through laboratory errors, DNA transference, or highly unlikely (but still occurring) random chance.⁶⁷ Gill's article highlights the need to build strong theories of the case, investigate all possible leads, and corroborate even the strongest evidence — and not to rely solely on forensic or eyewitness evidence to bring a case.

The Prosecution

In their study of wrongful convictions, researchers at American University found that a prosecutor's weak case was associated more with a wrongful conviction than a dismissal of charges or an acquittal. Their results suggest that a prosecutor may be susceptible to confirmation bias and not even recognize potentially exonerating evidence, thus making them open to a *Brady* violation.⁶⁸ As Rossmo and Pollock noted, early homing in on a person suspected of committing the crime, tunnel vision, and confirmation bias can interact and lead from a wrongful arrest to prosecution and then wrongful conviction.⁶⁹

Recent research provides further credence that prosecutors' weak cases can lead to wrongful convictions. In the Urban Institute's exploration of prosecutorial decision-making in plea bargaining in Philadelphia, prosecutors indicated that they would try to plead weak cases rather than go to trial and not secure a conviction. Plea offers would also be more lenient in weaker cases.⁷⁰ Weak cases might signify that the individuals are innocent of the charges. Wrongful convictions can result from plea deals, especially lenient ones, in which innocent people accept criminal convictions.⁷¹

In their study of 37 wrongly convicted Black women, Marvin Free and Mitch Ruesink found that prosecutorial misconduct and perjury by criminal justice representatives

were the two most critical factors leading to wrongful conviction. The third most important factor was police misconduct. Ineffective counsel assistance and insufficient evidence to support a conviction also contributed to the wrongful convictions of these women.⁷²

In examining gender and racial differences, Free and Ruesink found that Black women were more likely than Black men to be wrongly convicted for drug offenses. Close to 40% of wrongful convictions for Black women were for drug offenses as compared with less than 12% for Black men. The most common offenses in wrongful conviction cases for Black men were murder and rape and sexual assault. Drug offenses followed by murder/manslaughter were the two most common offenses present in wrongful convictions of Black women, while murder/manslaughter and child abuse were more prevalent in wrongful convictions of white women.⁷³

Given the exploratory nature of this study, more research is needed to confirm the findings. Yet, the results still shed light on an often-overlooked population in the wrongful conviction literature. Furthermore, the factors contributing to the wrongful conviction of Black women mirror those documented in the extant literature. The findings also suggest gender and racial differences in wrongful convictions of Black women. The number of women who are incarcerated increased by 475% between 1980 and 2020.⁷⁴ As such, we would expect more cases of female wrongful conviction generally — and particularly among Black women — lending further credibility to this line of inquiry.

The continuation of the same cognitive errors from the initial police investigation to the prosecution is likely to occur and undermine some of the protections built into the criminal justice system that are afforded to those accused of crimes. Formal bodies are now proliferating to ensure the accuracy of a conviction. As conviction integrity units expand, prosecutors are now regularly challenging the assumptions underlying an arrest and the theory of the crime when making charging decisions, and many prosecutors now investigate convictions that are questionable.⁷⁵

Research on the decision to assist or overtly investigate the validity of a prior conviction has given greater insight into the structural pressures on prosecutors that may lead to errors. NIJ funded Elizabeth Webster to study the factors that affect whether a prosecutor will aid in addressing an innocence claim post-conviction. She found that prosecutors were less likely to help in post-conviction innocence claims when the case asserts misconduct by the police or forensic technicians.⁷⁶ Rachel Bowman and Jon Gould investigated this issue and produced similar findings. They pointed to organizational cultures that reward aggressive prosecution and high conviction rates — along with close working relationships between police and prosecutors — as barriers to prosecutors assisting with innocence claims post-conviction. Bowman and Gould stated that these relationships may lessen the willingness or even likelihood that prosecutors will question the detectives' investigation.⁷⁷ Both studies highlight the lack of a legal mandate to investigate claims of a wrongful conviction and the ambiguous guidance prosecutors rely on to handle these post-conviction claims.⁷⁸

Estimating a Wrongful Conviction Rate and a Guilty Base Rate

Judging different policy solutions and the theories that underlie them is difficult without a strong estimate of the likelihood of a wrongful conviction. This is the case for two important reasons. First, it is challenging to assess the validity of research findings on the causes of wrongful conviction because the full extent of the problem is unknown. In other words, we have to speculate about likely sources of bias and hope that we are not overlooking major sources that would skew our estimates. Second, much of the debate around policies to help curb erroneous convictions, such as different witness identification procedures, centers on competing (and hypothetical) estimates of the rate of wrongful conviction that have not yet been verified.

Despite substantial advances in research to identify erroneous convictions, not much has changed from Bedau and Radelet's 1987 assertion that the "risk of executing the innocent is largely unknown."⁷⁹ Some researchers even go so far as to claim that the rate of wrongful convictions is not merely unknown but is unknowable.⁸⁰

Samuel Gross and Barbara O'Brien argue that cases that produce exonerations — such as cases with DNA evidence and a committed advocate to push for exculpatory evidence to come to light — are so rare that the prevalence of wrongful convictions and the major factors that produce them may never be known.⁸¹ Gross and colleagues tried to model the amount of attention needed to produce an exoneration.⁸² Limiting their analysis to the current population on death row (because death row cases have the greatest amount of resources brought to them), they used a survival analysis that compared the likelihood that a death row case will result in an execution or an exoneration and found a wrongful conviction estimate of 4%.⁸³

Factors from the American University study could help; they provide a framework to evaluate cases that do not have probative DNA evidence or support from the Innocence Project. Yet before we can apply this framework to other cases, we need a rough estimate of likely failure rates from criminal justice systems. Gross and colleagues' analysis is novel, but it is based on a select minority of cases (death row).

NIJ has attempted to develop a more robust estimate using state data collected under the 2004 Justice for All Act.⁸⁴ Specifically, when Virginia began testing retained DNA evidence of individuals who had been convicted (largely based on serology analysis), the state found that one serologist, Mary Jane Burton, had kept all physical evidence from her cases — 634 homicides and sexual assaults — from 1973 to 1987. NIJ commissioned the Urban Institute to develop a wrongful conviction estimate based on the retesting of this physical evidence with DNA analyses.⁸⁵ John Roman and his colleagues found that in about 5% of the cases overall, DNA analysis excluded the individual who had been convicted and supported exoneration. For cases involving sexual assaults alone, this number increased to 8% and was as high as 18% for sexual assaults in which a DNA determination could be made.⁸⁶

NIJ supported the Urban Institute to retrieve the court cases corresponding with the forensic data files in the sample to determine if a DNA exclusion might indicate a wrongful conviction based on the case information. This

would refine the original estimate by taking into account all of the culpatory facts used to convict the individual. The Urban Institute focused on the 430 sexual assault cases in the original dataset — which were more likely to yield a determinate DNA sample — and found that the prevalence of a wrongful conviction may be as high as 11.6% for these cases.⁸⁷ To confirm these estimates, more research is needed using cases from other jurisdictions and for other types of crime.

We now have several estimates of wrongful conviction to consider. The Urban Institute’s conservative estimate of 5% substantiates Gross’ 4%. We also have the Urban Institute study’s 18% estimate derived from sexual assault cases with determinative DNA evidence, which although high, is in line with the green book’s estimate of a 23% DNA exclusion rate. In addition, American University’s framework shows when a wrongful conviction may be likely, especially due to tunnel vision. We could use the framework to develop a risk assessment tool for criminal justice systems. During its National Summit on Wrongful Convictions,⁸⁸ the International Association of Chiefs of Police (IACP) recommended the creation of such an evidence-based risk assessment tool that state-level independent bodies could use to assess cases for likely erroneous conviction.⁸⁹

As noted, it is difficult to assess the overall advantage of one lineup procedure over the other because the average likelihood that a person suspected of a crime is actually guilty is unknown. Research either assumes that individuals suspected of committing a crime are guilty (for the purpose of a particular study) or adjusts the actual hypothetical guilt (in simulations) to test different study scenarios. Given that false eyewitness identification is a strong predictor of a false arrest that may lead to a wrongful conviction,⁹⁰ it is critical that policymakers know the type of procedure that is most effective at identifying a person suspected of engaging in a crime who is actually guilty. To uncover this underlying average of guilt — or the hidden guilty base rate — researchers could partner with criminal justice agencies and randomly sample a percentage of cases to assess them with an evidence-based tool. Another recommendation from the IACP Summit was to randomly assign cases to oversight by an outside panel of law

enforcement, judicial, prosecutorial, and defense experts and assess the strength and validity of the probative evidence. Because tunnel vision plays such a significant role in advancing weak cases that may result in wrongful convictions, the randomized study could determine whether the panel’s additional oversight and advice help uncover errors.

Because more than 90% of convictions come from plea agreements and the vast majority of cases do not have DNA evidence, we could use the American University framework to oversample cases (or geographic areas) that are more likely to involve erroneous arrests. We could then collect data on the criminal justice process (or the plea negotiation) to try to identify likely erroneous convictions. This analysis could help the research community identify the guilty base rate and help identify those who are falsely accused as well.

A Call for More Research

The research on wrongful convictions has evolved from establishing that wrongful convictions occur to systematically trying to use both psychological and sociological frameworks to uncover the factors that lead to them. Recent analyses have focused on estimating the rate of wrongful conviction to help us better understand the full extent of the problem and allow us to offer sound policy recommendations.

This research is difficult to conduct not only because of a lack of available data but also because of a culture that continues to downplay the threat and possibility of wrongful convictions. This culture existed when researchers began looking at the possibility that an innocent person might be convicted, and it persists to a certain extent today.

Criminal justice systems have been slow in responding to the empirical evidence on error. This is not intended to place blame or lay responsibility at the feet of any single actor; instead, it is a call to action for criminal justice officials to eliminate error from criminal proceedings. It also illustrates the need for society as a whole to ameliorate the plight of those who have been affected by wrongful convictions. As the literature has evolved, the need for greater attention to original crime victims and individuals who are exonerated has become clear.

Notes

1. James Doyle, *True Witness: Cops, Courts, Science, and the Battle Against Misidentification* (New York: Palgrave, 2005).
2. The Innocence Project uses the strictest definition of “wrongful convictions” developed: verification of exculpability through the testing of DNA evidence. See Innocence Project, “DNA and Wrongful Conviction: Five Facts You Should Know,” <https://innocenceproject.org/news/dna-and-wrongful-conviction-five-facts-you-should-know/>, accessed November 30, 2023. At the time of publication, the National Registry of Exonerations maintained by the University of Michigan Law School had recorded 3,423 exonerations. See the National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>, accessed November 30, 2023.
3. *Kansas v. Marsh*, 548 U.S. 198 (2006). Justice Scalia arrived at the calculation of the wrongful conviction error rate by taking the number of known exonerations and dividing it by the number of convictions. Samuel R. Gross, Barbara O’Brien, Chen Hu, and Edward H. Kennedy, “Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death,” *Proceedings of the National Academy of Sciences* 111 no. 20 (2014): 7230-7235.
4. Gross et al., “Rate of False Conviction.”
5. Doyle, *True Witness*.
6. Robert Ramsey and James Frank, “Wrongful Conviction: Perceptions of Criminal Justice Professionals Regarding the Frequency of Wrongful Conviction and the Extent of System Errors,” *Crime and Delinquency* 53 no. 3 (2007): 436-470.
7. Jon Gould and Richard Leo, “One Hundred Years Late: Wrongful Convictions, After a Century of Research,” *Journal of Criminal Law and Criminology* 100 no. 3 (2010): 825-868.
8. Richard Leo, “Rethinking the Study of Miscarriages of Justice: Developing a Criminology of Wrongful Conviction,” *Journal of Contemporary Criminal Justice* 21 no. 3 (2005): 201-223.
9. Hugo Adam Bedau and Michael L. Radelet, “Miscarriages of Justice in Potentially Capital Cases,” *Stanford Law Review* 40 no. 1 (1987): 21-179.
10. Gould and Leo, “One Hundred Years Late.”
11. Bedau and Radelet, “Miscarriages of Justice.”
12. Bedau and Radelet, “Miscarriages of Justice.”
13. Bedau and Radelet, “Miscarriages of Justice.”
14. Although there is no reason to doubt the wrongful conviction cases that Bedau and Radelet uncovered, some of the factors that led to the erroneous conviction could affect the evidence of inculpability. Gross and colleagues (2014) discuss the possibility of erroneous exonerations. However, the same factors described in Bedau and Radelet’s work have been presented in analyses in the post-DNA era.
15. Biological evidence (blood, semen) was collected and retained prior to the advent of DNA testing. It was mostly collected for serological testing to determine the gender and blood type of the subject who left the evidence. John Roman, Kelly Walsh, Pamela Lachman, and Jennifer Yahner, “Post-Conviction DNA Testing and Wrongful Conviction,” Final report to the National Institute of Justice, grant number 2008F-08165, June 2012, NCJ 238816, <https://www.ncjrs.gov/pdffiles1/nij/grants/238816>.

pdf; and Edward Connors, Thomas Lundregan, Neal Miller, and Tom McEwen, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, Washington, DC: U.S. Department of Justice, National Institute of Justice, June 1996, NCJ 161258.

16. A DNA confirmation or exclusion does not always, by itself, provide definitive culpatory or exculpatory evidence. In some cases, especially those involving multiple individuals suspected of committing the crime, a culpable person may not have a DNA confirmation. This situation would be most likely to occur in sexual assaults involving multiple individuals. See Roman et al., *Post-Conviction DNA Testing*.

17. Connors et al., *Convicted by Juries, Exonerated by Science*.

18. Roman et al., *Post-Conviction DNA Testing*.

19. Connors et al., *Convicted by Juries, Exonerated by Science*, 15-19.

20. Doyle, *True Witness*.

21. Doyle, *True Witness*.

22. Doyle, *True Witness*.

23. Leo, "Rethinking the Study of Miscarriages of Justice."

24. Leo, "Rethinking the Study of Miscarriages of Justice."

25. D. Kim Rossmo and Joycelyn M. Pollock, "Confirmation Bias and Other Systemic Causes of Wrongful Convictions: A Sentinel Events Perspective," *Northeastern University Law Review* 11 no. 2 (2020): 790-835.

26. Robert Norris and Catherine Bonventre, "Advancing Wrongful Conviction Scholarship: Toward New Conceptual Frameworks," *Justice Quarterly* 32 no. 6 (2015): 929-949.

27. Talia Roitberg Harmon, "Predictors of Miscarriages of Justice in Capital Cases," *Justice Quarterly* 18 no. 4 (2001): 949-968.

28. Jon B. Gould, Julia Carrano, Richard Leo, and Joseph Young, "Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice," Final report to the National Institute of Justice, grant number 2009-IJ-CX-4110, February 2013, NCJ 241389, <https://www.ncjrs.gov/pdffiles1/nij/grants/241389.pdf>.

29. Gould et al., "Predicting Erroneous Convictions."

30. Barbara O'Brien, Klara Stephens, Maurice Possley, and Catherine M. Grosso, "Latinx Defendants, False Convictions, and the Difficult Road to Exoneration," *UCLA Law Review* no. 66 (2019): 1682-1715.

31. O'Brien et al., "Latinx Defendants, False Convictions, and the Difficult Road to Exoneration."

32. O'Brien et al., "Latinx Defendants, False Convictions, and the Difficult Road to Exoneration."

33. To learn more, go to <https://nij.ojp.gov/topics/articles/sentinel-events-initiative>.

34. Rossmo and Pollock, "Confirmation Bias and Other Systemic Causes of Wrongful Convictions."
35. Gary Wells, "Applied Eyewitness-Testimony Research: System Variables and Estimator Variables," *Journal of Personality and Social Psychology* 36 no. 12 (1978): 1546.
36. Gary Wells, "What Do We Know About Eyewitness Identification?" *American Psychologist* 48 no. 5 (1993): 553-571; Doyle, *True Witness*; and Gary Wells, Nancy Steblay, and Jennifer Dysart, *A Test of the Simultaneous vs. Sequential Lineup Methods: An Initial Report of the AJS National Eyewitness Identification Field Studies* (Des Moines, IA: The American Judicature Society, 2011).
37. Wells, "What Do We Know About Eyewitness Identification?"
38. Wells, Steblay, and Dysart, *A Test of the Simultaneous vs. Sequential Lineup Methods*.
39. A lineup, in which the witness is presented a page with the pictures of several individuals (usually six: one suspected of committing the crime and five foils), is not the only method of identifying the individual suspected of committing the crime. Another common method is a "show up," in which law enforcement may bring in a single person suspected of perpetrating the crime for immediate identification. NIJ notes that this method has the greatest possibility for influencing the witness and recommends that the officer caution the witness that the person in custody may not be guilty. NIJ also recommends that, if multiple witnesses are available, other procedures (for example, lineups) be used for the other witness identifications once a positive identification is made from the initial show up. Jeremy Travis and Richard M. Rau, *Eyewitness Evidence: A Guide for Law Enforcement, Research Report*, Washington, DC: U.S. Department of Justice, National Institute of Justice, October 1999, NCJ 178240.
40. Gary Wells, Nancy Steblay, and Jennifer Dysart, "Eyewitness Identification Reforms: Are Suggestiveness-Induced Hits and Guesses True Hits?" *Perspectives on Psychological Science* 7 no. 3 (2012): 264-271.
41. Travis and Rau, *Eyewitness Evidence*.
42. There were other issues with the research design. At the Evanston site, for example, the lineups were not made equally challenging; the double-blind lineup had more cross-racial comparisons. Wells, Steblay, and Dysart, *A Test of the Simultaneous vs. Sequential Lineup Methods*.
43. These foundations were the Open Society Foundation, the Laura and John Arnold Foundation, and the JEHT Foundation.
44. Wells, Steblay, and Dysart, *A Test of the Simultaneous vs. Sequential Lineup Methods*.
45. False positives from a lineup result when the witness picks a foil, or someone who did not commit the crime. The witness is then considered "burned," meaning they are no longer viable to provide testimony in court, since the defense attorney will likely base a cross-examination on the initial false identification. False positives can also result from showing the witness a mug book. Law enforcement officers use mug books when they do not have a person suspected of committing the crime. NIJ recommends that, in mug books, all of the photos be grouped by the same format (for example, 35 mm versus Polaroid), by the same crime, and so that all identifying information is present in all photos. Travis and Rau, *Eyewitness Evidence*.
46. Steven Clark, "Eyewitness Identification Reform: Data, Theory, and Due Process," *Perspectives on Psychological Science* 7 no. 3 (2012): 279-283.

47. Travis and Rau, *Eyewitness Evidence*.
48. Clark, "Eyewitness Identification Reform."
49. John Wixted and Laura Mickes, "The Field of Eyewitness Memory Should Abandon Probative Value and Embrace Receiver Operating Characteristic Analysis," *Perspectives on Psychological Science* 7 no. 3 (2012): 275-278.
50. Wixted and Mickes, "The Field of Eyewitness Memory."
51. Steven Clark, "Costs and Benefits of Eyewitness Identification Reform: Psychological Science and Public Policy," *Perspectives on Psychological Science* 7 no. 3 (2012): 238-259.
52. See Larry Laudan, "Eyewitness Identifications: One More Lesson on the Costs of Excluding Relevant Evidence," *Perspectives on Psychological Science* 7 no. 3 (2012): 272-274.
53. Lawrence Rosenthal, "Eyewitness Identification and the Problematics of Blackstonian Reform of the Criminal Law," *Journal of Criminal Law & Criminology* 110 no. 2 (2020): 181-243.
54. Gary Wells, "Psychological Science on Eyewitness Identification and Its Impact on Police Practices and Policies," *American Psychologist* 75, no. 9 (2020): 1316-1329.
55. John Wixted, "Time to Exonerate Eyewitness Memory," *Forensic Science International* 292 (2018): 13-15.
56. Wixted, "Time to Exonerate Eyewitness Memory."
57. Wells, "Psychological Science on Eyewitness Identification."
58. Wixted, "Time to Exonerate Eyewitness Memory."
59. David Bjerk and Eric Helland, "What Can DNA Exonerations Tell Us About Racial Differences in Wrongful Conviction Rates?" *IZA Institute of Labor Economics Discussion Paper* No. 11837 (2018): 1-34.
60. Bjerk and Helland, "What Can DNA Exonerations Tell Us?"
61. Bjerk and Helland, "What Can DNA Exonerations Tell Us?"
62. Bjerk and Helland, "What Can DNA Exonerations Tell Us?"
63. Bjerk and Helland, "What Can DNA Exonerations Tell Us?"
64. Gerald LaPorte, "Wrongful Convictions and DNA Exonerations: Understanding the Role of Forensic Science," *NIJ Journal* 279 (April 2018).
65. Nicholas J. Schweitzer, "Communicating Forensic Science," Washington, DC: U.S. Department of Justice, National Institute of Justice (May 2016).
66. National Institute of Justice funding award description, "Improving Juror Comprehension of Forensic Testimony and Its Effects on Decision-Making and Evidence Evaluation," at Florida International University, award number 2019-75-CX-0010, <https://nij.ojp.gov/funding/awards/2019-75-cx-0010>.

67. Peter Gill, "DNA Evidence and Miscarriages of Justice," *Forensic Science International* 294 (2019): E1-E3.
68. Gould et al., *Predicting Erroneous Convictions*.
69. Rossmo and Pollock, "Confirmation Bias and Other Systemic Causes of Wrongful Convictions."
70. Andrea Matei, Lily Robin, Kelly Roberts Freeman, and Leigh Courtney, *An Exploration of Prosecutorial Discretion in Plea Bargaining in Philadelphia* (Washington, DC: Urban Institute, 2022).
71. Matei et al., *An Exploration of Prosecutorial Discretion*.
72. Marvin D. Free Jr. and Mitch Ruesink, "Flawed Justice: A Study of Wrongly Convicted African American Women," *Journal of Ethnicity in Criminal Justice* 16 no. 4 (2018): 333-347.
73. Free and Ruesink, "Flawed Justice."
74. The Sentencing Project, *"Incarcerated Women and Girls"* Fact Sheet (Washington, DC: The Sentencing Project, updated May 2022).
75. See John Hollway, *Conviction Integrity Units: A National Perspective* (Philadelphia: Quattrone Center for the Fair Administration of Justice, 2016).
76. Elizabeth Webster, "A Postconviction Mentality: Prosecutorial Assistance in Exoneration Cases," *Justice Quarterly* 36 no. 2 (2019): 323-349.
77. Rachel Bowman and Jon Gould, "Prosecutorial Involvement in Exoneration: An Exploratory Analysis of Individual, Organizational, and Environmental Factors," *Wrongful Conviction Law Review* 1 no. 1 (2020): 74-100.
78. Bowman and Gould, "Prosecutorial Involvement in Exoneration"; and Webster, "A Post-Conviction Mentality."
79. Bedau and Radelet, "Miscarriages of Justice," 23.
80. Gross et al., "Rate of False Conviction."
81. Samuel Gross and Barbara O'Brien, "Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases," *Journal of Empirical Legal Studies* 5 no. 4 (2008): 927-962.
82. Gross et al., "Rate of False Conviction."
83. Gross and colleagues (2014) say that this is a conservative estimate, since most cases on death row are commuted to life in prison (7,234).
84. Ramsey and Frank, "Wrongful Conviction."
85. Roman et al., *Post-Conviction DNA Testing*.

86. In 2013, to refine their estimate, NIJ recommissioned the Urban Institute to examine the court case files associated with the DNA evidence they tested. See Kelly Walsh, Jeanette Hussemann, Abigail Flynn, Jennifer Yahner, and Laura Golian, *Estimating the Prevalence of Wrongful Conviction* (Washington, DC: Urban Institute, 2017).

87. Walsh et al., *Estimating the Prevalence of Wrongful Conviction*.

88. International Association of Chiefs of Police and U.S. Department of Justice, Bureau of Justice Assistance, *National Summit on Wrongful Convictions: Building a Systematic Approach to Prevent Wrongful Convictions*, August 2013. This report was supported by grant number 2012-MU-MU-K070 from the Bureau of Justice Assistance. (Alexandria, VA: IACP, 2013).

89. Interestingly, this is one of Borchard's early recommendations from the outset of the literature. See Bedau and Radelet, "Miscarriages of Justice."

90. Gould et al., "Predicting Erroneous Convictions."

Chapter 2.

Investigating Overlooked Issues in Wrongful Convictions

BY ALLISON D. REDLICH, JAMES R. ACKER, CATHERINE L. BONVENTRE, AND ROBERT J. NORRIS

When Yale Law School Professor Edwin Borchard published his pioneering book *Convicting the Innocent* in 1932, he encountered tremendous skepticism that wrongful convictions plagued justice systems. As one district attorney of that era proclaimed, “Innocent men are never convicted. Don’t worry about it, it never happens in the world. It is a physical impossibility.”¹ Borchard refuted that claim by describing 65 cases involving 82 people who had been erroneously convicted. In doing so, he identified the most typical sources of error. They included:²

- Mistaken eyewitness identification.
- Reliance on circumstantial evidence (frequently accompanied by perjury).
- “Carelessness or overzealousness” by the prosecutors.
- “Zealousness” or gross negligence by the police.
- Prejudicial inferences drawn from the prior record of the person accused of the crime.
- False confessions.
- Unreliable “expert” evidence.
- Inadequate defense because “the accused were poor persons.”

Over time, a wealth of sobering miscarriages of justice compels us to move beyond the debate about whether wrongful convictions happen. We know that they do. People who are factually innocent are sometimes convicted of

crimes committed by others (“wrong person” cases) or are found guilty even though a crime was not committed (“no-crime” cases), such as when a fire with natural or accidental origins leads to an erroneous conviction for arson. The use of DNA analysis — first employed in the United States in 1989 to reveal an erroneous criminal conviction³ — definitively settled any lingering controversy about whether innocent people are at risk of conviction. The post-DNA era has refocused attention on the important questions of how often wrongful convictions happen, why they happen, and how we can identify and correct them when they happen.

Although we know that innocent people are convicted of crimes, we do not know how often it happens. Surveys of defense attorneys, prosecutors, judges, and other participants in the criminal justice process have speculated that, on average, between 0.5% and 3.0% of guilty verdicts are erroneous.⁴ Higher percentages of individuals incarcerated have self-reported that they are innocent of the crimes for which they were convicted.⁵ (Research studies place the rate of wrongful conviction between 4% and 18%. See chapter 1 for more discussion of research-based estimates of wrongful conviction.) State and federal courts generate more than one million felony convictions each year.⁶ If these estimates are even close to being accurate, then justice systems convict eye-opening numbers of people who are innocent — between 5,000 and 30,000 or more annually in felony cases alone.⁷

Over the years, scholars have devoted considerable attention to explaining why wrongful convictions occur. Much of recent scholarship has focused on the “canonical

list⁸ of factors contributing to wrongful convictions identified by the Innocence Project, scholars, and activists. The remarkable similarity of these contributing factors to those identified by Borchard is readily apparent.⁹

- Eyewitness misidentification.
- People who have incentives to provide information.
- Government misconduct.
- False confessions.
- Unvalidated or improper forensic science.
- Inadequate assistance of counsel.

Much of what we know about wrongful convictions in the United States comes from databases of known cases made available by the Innocence Project and the National Registry of Exonerations (NRE). Each organization provides information about individuals who were convicted of crimes and later formally exonerated, meaning their convictions were invalidated and official action indicated their innocence (for example, the charges were dismissed, they were acquitted on retrial, or they received an executive pardon).¹⁰ The Innocence Project cases consist exclusively of exonerations based on DNA evidence.¹¹ The NRE is more comprehensive and includes all known exonerations since 1989, whether supported by DNA evidence or other grounds.¹² At the time of publication, the Innocence Project had reported 575 DNA-based exonerations.¹³ The NRE had identified a total of 3,423 exonerations, including those based on DNA evidence.¹⁴

As useful as these sources are, they nevertheless offer an incomplete picture of the wrongful convictions produced by our nation's courts. The crux of the problem is the imperfect fit between a formal exoneration and actual innocence. One concern is that some individuals who are exonerated may be factually guilty. For example, problems with evidence, rather than actual innocence, can explain why a prosecutor dismisses charges after a conviction is vacated or why a retrial results in a not guilty verdict.¹⁵ Another concern is the likelihood that

exonerations significantly undercount the true incidence of wrongful convictions.¹⁶ Exonerations represent only the wrongful convictions that we know about and that officials have acknowledged and addressed. The number of innocent people convicted of crimes whose cases have not been identified and remain uncorrected likely dwarfs official numbers.¹⁷

Miscarriages of justice have served as a clarion call for justice system reforms¹⁸ and have stimulated important research. Yet researchers and reformists are mindful of our limited knowledge base and continue to probe for greater understanding about what causes innocent people to be convicted of crimes. In addition, they increasingly caution that prevailing theory and criminal justice policies remain underdeveloped.¹⁹

It is especially hazardous to use the DNA-based exonerations tracked by the Innocence Project to generalize the scope and sources of wrongful convictions. The Innocence Project cases overwhelmingly involve wrongful convictions for sex offenses and, to a lesser extent, homicide — crimes considerably more likely than most others to yield biological evidence that lends itself to DNA analysis. Prosecutions for sexual assault typically depend on victims' eyewitness identification; this dependency in convictions for rape and related offenses elevated eyewitness misidentification to what commonly became regarded as the leading cause of wrongful convictions. But the database is heavily skewed toward sex offense cases, so "how could that [commonality of eyewitness misidentifications] be otherwise?"²⁰ Notably, although eyewitness misidentification is earmarked as contributing to 68% of the wrongful convictions identified by the Innocence Project, it is listed as a contributing factor in just over 28% of the NRE cases, which are not exclusive to DNA-based exonerations.²¹

The NRE's more comprehensive set of exoneration cases also provides an imperfect starting point for establishing the causes of wrongful convictions. The NRE cases do not capture the universe of wrongful convictions. Most wrongful convictions almost certainly have not been — and may never be — discovered. It takes years, extensive resources, dogged determination, and often just plain luck

to investigate and overturn a criminal conviction. As such, most erroneous convictions for relatively minor crimes will likely not be exposed because scarce resources are often directed to capital cases and convictions that evoke lengthy prison sentences.²² Convictions based on guilty pleas may also be especially difficult to detect and challenge, even if the person charged with the crime is innocent. Many people who are convicted simply lack the champions and support needed to establish their innocence.

Putting aside these problems with the available samples and simply cataloguing the errors in known cases, researchers still cannot pinpoint what *causes* wrongful convictions. How can we disentangle causation and correlation? For example, while 28.6% of the Innocence Project cases and 12.2% of the NRE cases involved false confessions,²³ social scientists cannot conclude that false confessions “cause” wrongful convictions.²⁴ Absent a control or comparison group, it is difficult to know whether false confessions are equally prevalent in cases that result in acquittals, or whether false confessions are detected much earlier in most cases and thus prosecutors dismiss the cases.²⁵

Recent studies use increasingly sophisticated methodologies to try to isolate the factors that recur in known wrongful conviction cases and help distinguish them from similar cases that do not result in wrongful convictions. Some have compared known wrongful convictions with matched cases of presumptively valid convictions.²⁶ Others have compared wrongful convictions and “near misses” — cases in which innocent people were indicted or stood trial but avoided conviction — to identify important distinguishing characteristics and make inferences about causation.²⁷

Elephants in the Courtroom

In October 2015, the National Science Foundation (NSF) and the National Institute of Justice (NIJ) cosponsored a workshop to further advance our understanding of wrongful convictions by examining issues that had received inadequate attention despite the considerable progress made in other areas. The workshop assembled leading academics, emerging scholars, criminal justice

practitioners, policymakers, and representatives from organizations that investigate and seek to overturn wrongful convictions. It focused on four important issues, or “elephants in the courtroom”:

- The relationship between race and the production of wrongful convictions.
- Guilty pleas.
- Wrongful convictions in misdemeanor cases.
- Data needs and methodological constraints that impede wrongful conviction research and the dissemination of research findings to policymakers and practitioners.

The resulting discussions made clear that much work remains in these areas to help avert wrongful convictions and to identify and correct miscarriages of justice when they occur. A special issue of the *Albany Law Review* featured scholarship that stemmed from the workshop.²⁸ The workshop also spawned the Innocence Research website,²⁹ which aims to stimulate and disseminate scholarship and provide information about resources on wrongful convictions.

Below we elaborate on the challenges associated with the four focal issues explored in the workshop. We also identify and briefly discuss other emergent “elephants in the courtroom” — that is, additional issues that merit increased attention from researchers and policymakers who are concerned about wrongful convictions.

Race and Wrongful Convictions

Race affects virtually every aspect of criminal justice in the United States. Approximately 13% of the U.S. population identifies as Black or African American, yet Black people account for more than a quarter of arrests and more than a third of state and federal correctional populations.³⁰ Disparities exist among known exonerations as well. Nearly 50% of known individuals who have been exonerated to date are Black.³¹ Important differences exist within crime types. For example, approximately 21% of individuals incarcerated in state prisons for sexual assaults

are Black,³² but nearly 60% of individuals who have been exonerated in such cases are Black.³³ An NRE report on race and wrongful convictions concluded that “[j]udging from exonerations, innocent [B]lack people are about seven times more likely to be convicted of murder than innocent white people” and “12 times more likely to be convicted of drug crimes.”³⁴

Although it is clear that racial disparities exist among known exonerations, understanding the relationship between race and wrongful convictions presents more difficult empirical challenges. To some degree, the disparities among those who have been exonerated are likely the result of broader patterns evident in criminal legal contact and experiences. If, as research has found, Black people in the United States are more likely to be stopped, searched, and arrested by law enforcement,³⁵ and face harsher courtroom outcomes than white people,³⁶ then they are also more likely to experience wrongful arrest, conviction, and incarceration. Yet this still leaves us searching for a deeper understanding of how race contributes to factually inaccurate outcomes.

One approach is to examine how race influences the already-identified factors that contribute to wrongful convictions. Take eyewitness misidentification, for example. Psychologists have found that eyewitness errors are more likely to occur in cross-racial identifications.³⁷ Why this happens is somewhat uncertain, but the explanation may lie, in part, in how eyewitness identification procedures and implicit biases combine to trigger unconscious associations that affect how a person perceives other people and events.³⁸ Implicit biases can influence a range of behaviors, perceptions, and judgments. For example, they can lead people to more quickly identify objects as dangerous weapons when associated with a Black person than with a white person.³⁹ Implicit biases can affect law enforcement officers’ decisions to shoot⁴⁰ and can influence prosecutors’ use of discretion.⁴¹ It would not be surprising if implicit biases play a role in eyewitness identifications (particularly cross-racial ones) as well.

Another area of psychological research that may help explain wrongful convictions is stereotype threat, or how people’s belief that they are being viewed through a stereotypical lens influences their behavior in ways that are

interpreted as confirming the stereotype.⁴² For example, the historical stereotype of Black people, particularly Black men, as aggressive and violent has persisted in American culture. In the context of criminal justice contact, a Black individual may experience stereotype threat and thus behave in ways that police perceive as suspicious or indicative of guilt (for example, they may appear nervous or have disturbances in their speech).⁴³ Researchers should continue to explore how and why stereotype threat affects encounters between legal actors and individuals who are suspected of committing a crime and identify potential ways to reduce stereotype threat and its negative outcomes.

In addition to examining how race and other factors influence the traditional contributors to wrongful convictions, researchers must think more broadly and draw on a wider array of theoretical perspectives to develop a deeper understanding of why innocent people are convicted of crimes. Sociologist William Lofquist has suggested searching for the “causes in the contexts” — viewing wrongful convictions not as simple anomalies or attributable to individual actors, but as systemic outcomes that have roots in broad sociocultural forces.⁴⁴ Rather than focusing only on the typical sources of error, like eyewitness mistakes and false confessions, Lofquist points to the political and cultural underpinnings of mass incarceration as fueling wrongful convictions. Such a macro-level view may help us more completely understand wrongful convictions and other dynamics of criminal justice.

In a related vein, Michelle Alexander has analyzed modern justice systems in light of historical forms of race discrimination.⁴⁵ She argues that current criminal legal systems target Black people and create a type of modern caste system, which serves to promote social and racial control. Such a broad perspective can help expose some of the root causes of racialized patterns of miscarriages of justice. For instance, the cases of the Scottsboro Boys⁴⁶ and the Central Park Five⁴⁷ — separated by a half-century that included the American Civil Rights Movement — look eerily similar: a group of men belonging to racial/ethnic minority groups accused of sexual crimes against white women, highly racialized public outcry, questionable decisions by system actors, and, ultimately,

erroneous convictions. Professor N. Jeremi Duru has suggested that an underlying current seen in both of these cases — “the myth of the Bestial Black Man” — has influenced the criminal legal process throughout the country’s history and is a cultural factor that continues to generate racial disparities in wrongful convictions.⁴⁸ Such historical analyses — drawing on various perspectives from sociology, political science, psychology, and cultural studies — might help us unpack the root causes of this continuing pattern of racialized errors.

Finally, broader research perspectives may not only help us understand the sources of wrongful convictions, but also lead to reform efforts. We must bear in mind that individual errors in the criminal legal process do not exclusively explain wrongful convictions. They also result from broad social and cultural factors, including race, class, politics, the distribution of social capital, and more. These factors have played a significant role in the creation and implementation of criminal justice policy throughout history, including key “crime control” practices that have led to the country’s modern system of mass incarceration.⁴⁹ They have also helped shape public opinion about criminal justice and other important social and political issues.⁵⁰ Thus, examining wrongful convictions through an appropriately broad lens may help us understand the forces that shape policy reforms and public attitudes about them.

For example, studies have found that ideology and partisanship influence the likelihood that states pass reform legislation related to wrongful convictions.⁵¹ Researchers should explore innocence-related reforms at multiple levels (for example, individual jurisdictions or organizations, state policies, and federal legislation) and should also consider the racial politics of reform efforts. Because public opinion may influence the adoption of new policies in interesting and dynamic ways,⁵² it is equally important to understand what influences public support for innocence reforms and how wrongful convictions — which are increasingly visible in the media and popular culture — affect public opinion generally. Several studies have examined the relationship between wrongful convictions and public support for the death penalty, an area in which race plays an important role in people’s opinions.⁵³ But only recently has this research begun to examine other outcomes, such as trust in the justice system and support for police reform.

Whatever form it takes, research on wrongful convictions must consider race and other important social, cultural, and political matters more prominently. Scholars can develop a much deeper understanding of miscarriages of justice — one that is grounded in various social scientific disciplines and historical context — by examining the linkages among race, society, and wrongful convictions.

Guilty Pleas

Guilty pleas account for the overwhelming majority of criminal convictions in this country: roughly 94% of those produced in state courts and 97% in federal courts.⁵⁴ But we know that not all admissions of guilt are reliable: 11.0% of convictions exposed by DNA (the Innocence Project exonerations) and 20.7% of NRE cases involved people wrongly convicted by guilty pleas.⁵⁵ The true figures may well be much higher. As discussed in the next section, guilty pleas are a staple of misdemeanor cases, where “assembly line” justice may result in incomplete investigations and inadequate preparation by defense counsel, if a lawyer is involved at all. In many cases, individuals charged with misdemeanors have no counsel to represent them,⁵⁶ leaving them ill-equipped to effectively defend themselves even if they are innocent.

Several incentives embedded in criminal justice systems can encourage innocent people to plead guilty.⁵⁷ Entering a guilty plea can be the quickest and surest way for people charged with crimes — even if unjustly — to escape pretrial incarceration and return to their families and jobs. Many individuals charged with a crime, regardless of guilt or innocence, simply want their criminal justice involvement to be over and view a guilty plea as a quick escape route.⁵⁸ Those who contest guilt and exercise their right to a trial risk facing significantly harsher punishment caused by structural rewards and institutionalized “trial taxes.”⁵⁹ In several cases, innocent individuals pled guilty after watching others charged in the same case lose at trial and receive harsh sentences. For example, referencing a set of wrongful convictions in Tulia, Texas, Law Professor Russell Covey states, “The first several Tulia defendants fought the drug charges at trial and were convicted and sentenced to draconian prison terms. After seeing the writing on the wall, however, most of the remaining defendants agreed to plead guilty.”⁶⁰

Another issue is that pleas frequently are negotiated and entered prior to the legal process of discovery. As a result, individuals charged with a crime might not be aware of exculpatory evidence within the possession of the prosecution or police and, thus, are unable to fully evaluate possible defenses.⁶¹ Indeed, the U.S. Supreme Court decided in *U.S. v. Ruiz* that exculpatory impeachment evidence need not be turned over to the defense prior to the entry of pleas.⁶² In the wake of the Supreme Court's ruling, lower courts have been divided about whether prosecutors have a constitutional duty to disclose other forms of exculpatory material (often called *Brady* material) to the defense in guilty plea cases.⁶³ Recent laboratory research has demonstrated that simply informing (mock) prosecutors about the *Ruiz* decision results in significantly less discovery being turned over, regardless of the decision to go to trial or offer a plea.⁶⁴ In addition, once judgment occurs on a guilty plea, opportunities to challenge convictions are quite limited in many jurisdictions, and individuals charged with a crime have little or no chance to demonstrate factual innocence based on newly discovered evidence or other grounds.⁶⁵

Further, plea bargaining — the nearly inseparable companion of guilty pleas and a practice full of explicit and implicit rewards and threats, informational deficiencies, and power imbalances — generates “a nearly perfect system for convicting the innocent,”⁶⁶ as argued by Professor Al Aischuler at the 2015 NSF-NIJ workshop. The plea-bargaining process presents formidable research and policy challenges, including identifying the specific factors that are likely to entice innocent individuals to plead guilty, then assessing whether justice systems that are so heavily dependent on plea bargaining and guilty pleas realistically can — and should — alter their practices to lessen those risks.

The predominant model for analyzing the guilty plea decision-making process suggests that plea bargaining takes place “in the shadow of a trial.”⁶⁷ This approach assumes that, absent a discounted punishment in exchange for pleading guilty, individuals charged with crimes rationally have no incentive to forgo their right to trial. The expected value of pleading guilty can be calculated by estimating the probability that the person would be convicted at trial, then factoring in the anticipated

punishments following conviction by guilty plea and by trial, respectively. However, critics claim that this shadow model overlooks many important factors that can skew bargaining considerations and outcomes, including but not limited to innocence, structural dynamics (attorney workloads and competence), the availability of individual and organizational resources, additional aspects of the justice process such as pretrial incarceration and bail policies, and psychological considerations.⁶⁸

Furthermore, while the shadow model tends to hold when examined in the aggregate, a closer look at individual plea decisions shows much more variation.⁶⁹ For example, recent research has demonstrated that numeracy (a person's prowess with numbers and math) can influence whether an individual charged with a crime adheres to, or deviates from, decisions predicted by the shadow model.⁷⁰ Research also finds that willingness to accept plea deals of varying discounts is affected by temporal discounting (for example, when the sentence is 5 years versus 25 years) and by high versus low rates of trial conviction probability.⁷¹

These recent findings do not support the basic tenets of the shadow model, suggesting that new theories of plea decision-making need to be developed. Without such models and measures to describe and explain the plea-bargaining process, inquiries that focus on factors that induce innocent people to plead guilty will remain obscure, as will reform efforts to effectively guard against wrongful convictions produced by guilty pleas. These larger, structural matters remain especially challenging. They include finding solutions to the pressures and incentives that are integral to the adversarial process and currently dominate the administration of justice, addressing workload and resource issues, and ensuring that tunnel vision and cynicism about the presumption of innocence do not cause justice system officials to lose sight of the reality that some people arrested and charged with crimes truly are innocent.⁷²

Misdemeanors

It has been more than 40 years since Malcolm Feeley wrote his seminal work on the lower criminal courts in New Haven, Connecticut. In *The Process Is the Punishment*, Feeley described a system of low-level offense adjudication in which no individuals who had been charged with crimes elected to go to trial and half endured the criminal process

without counsel. For those who did have attorneys, their interactions “were often little more than quick, whispered exchanges in the corridor, and proceedings before the bench consisted of little more than a defense attorney’s recapitulation of what his client told him.”⁷³ Judges staged mass arraignments where they informed distracted groups of individuals of their rights in noisy courtrooms. And in Feeley’s words, in court “the overwhelming majority of cases took just a few seconds.”⁷⁴

The bulk of criminal convictions in the United States occur at the misdemeanor level — approximately 13 million misdemeanor cases are filed annually⁷⁵ — and yet the blistering pace of misdemeanor adjudication has not abated over time.⁷⁶ The National Association of Criminal Defense Lawyers found misdemeanor courts in this country to be “grossly inadequate and frequently unjust.”⁷⁷ Inadequate or altogether absent legal representation, combined with prosecutorial and judicial pressure on individuals to take quick action in their cases, “leads to guilty pleas by the innocent, inappropriate sentences, and wrongful incarceration, all at taxpayer expense.”⁷⁸

Like the other “elephants,” scholars have paid relatively little attention to the nature and extent of wrongful convictions among misdemeanor offenses, though this is slowly beginning to change.⁷⁹ Professors Samuel Gross and Barbara O’Brien observed that “we rarely even think about wrongful convictions for misdemeanors or nonviolent felonies.”⁸⁰ Instead, scholarship has focused almost exclusively on felony convictions, and disproportionately on information derived from murder and rape exonerations.⁸¹ A body of theoretical and empirical research on misdemeanor offenses and courts was produced in the 1970s and 1980s,⁸² but few studies focused specifically on wrongful convictions or innocence.⁸³ While there has been a recent resurgence in legal scholarship on misdemeanors, a corresponding resurgence has not occurred in social science research.⁸⁴

Perhaps the lack of attention stems from the perception that these are “petty” offenses with trivial consequences. The consequences of misdemeanor convictions, however, can be far from minor.⁸⁵ As one study noted, “[Misdemeanants] criminal records deprive them of

employment, educational and social opportunities. . . . A petty conviction can affect eligibility for professional licenses, child custody, food stamps, student loans, health care, or lead to deportation. In many cities, misdemeanants are ineligible for public housing.”⁸⁶

Estimating the nature and extent of wrongful misdemeanor convictions is largely guesswork;⁸⁷ it is sometimes even considered unimportant.⁸⁸ Misdemeanor charges are rarely contested via trials, and innocent people may be charged with misdemeanors for conduct that is not even criminal. Most known wrongful convictions are of the wrong person type, where a crime actually occurred but the wrong person was convicted. Some, however, qualify as no-crime wrongful convictions, meaning a person is convicted even though no crime has been committed. For example, as noted by Professor Alexandra Natapoff, thousands of loitering arrests are made annually in Baltimore and New York.⁸⁹ However, failure to “move along” does not fit the legal definition of loitering; therefore, it is an open question whether the vast numbers of individuals arrested were actually loitering.⁹⁰ These findings echo Caleb Foote’s 1956 analysis of the administration of vagrancy laws in Philadelphia. In that study, the individuals who were charged and convicted of vagrancy often did not violate the statute; instead, they simply looked like they did not belong in Philadelphia.⁹¹ Thus, it may be that no-crime wrongful convictions occur more regularly among misdemeanors. Indeed, of the known 100 misdemeanor wrongful convictions listed in the NRE, 95 (or 95%) are for the no-crime type of wrongful convictions.

Additional research is also needed to explore the dynamic among those in the courtroom and the broader racial and sociopolitical context in which they operate. Natapoff has argued that, “As the misdemeanor world makes clear, the system does not ‘care’ that poor, Black, brown, young, illiterate and/or addicted suspects are arrested, charged and convicted of minor offenses on the thinnest possible bases. In turn, it is precisely that disregard for evidence and process that permits easy criminal convictions of potentially innocent vulnerable people. In minority communities where order maintenance policing generates thousands of problematic convictions, the misdemeanor process has become the first formal step in the racialization of crime.”⁹²

At the 2015 NSF-NIJ workshop, Natapoff noted that stories of wrongful felony convictions dominate and drive the innocence movement. These cases have a “silver lining” because the felony system is geared toward accuracy and evidence, and there are people who care to correct these errors. In the wrongful misdemeanor conviction story, however, individuals plead guilty to “petty” offenses because they have no money for bail and their overworked public defenders are ill-equipped to provide adequate representation. This occurs even though their conduct does not fit the statutory definition of the crimes with which they have been charged.⁹³ Natapoff observed that the system is not designed to go back and check to see if these individuals are actually innocent. She further observed that, if the majority of cases processed in the criminal justice system are misdemeanors, then the system is not about the features of felony justice: accuracy, evidence, and guilt or innocence. It is more about social control. Professor Issa Kohler-Hausmann characterized this social control, in part, as “marking,” or the “generation, maintenance, and regular use of official records about a person’s criminal justice contacts for critical decisions” about the person.⁹⁴

Going forward, how should scholars conceptualize wrongful misdemeanor convictions? To fully understand the extent and nature of this phenomenon in a systematic fashion, we may need to amass cases of misdemeanor exonerations defined with the same precision as felony exonerations — that is, if actual innocence, as opposed to disproportionate punishment, is our concern in these cases. If actual innocence is indeed the concern, then it is not promising if few care to look back to determine the innocence of individuals charged in misdemeanor cases.

Data and Methodological Constraints

Importantly, the links between wrongful convictions, race, guilty pleas, and misdemeanors are difficult to study. The above structural and systemic factors — those that implicate race, that can prompt the innocent to plead guilty, and that characterize the “assembly line” justice of misdemeanor cases — also make these issues difficult to study and miscarriages of justice even more difficult to identify.

In 2008, Samuel Gross and Barbara O’Brien asked the question, “Why [do] we know so little about false

convictions?”⁹⁵ Their basic premise was that wrongful convictions are hidden from view, thereby making them especially difficult to study. They focused on why researchers cannot know — or even reliably approximate — the frequency of wrongful convictions (or arrests) and their causes and predictors. What we think we know about wrongful convictions, such as the leading contributing factors, is based on an unrepresentative sample of exoneration cases that, to a large extent, originated with trial convictions for rape and murder.

As Joshua Marquis⁹⁶ and Justice Antonin Scalia⁹⁷ famously pointed out, the error rate for the criminal justice system is exceedingly small when we use the number of known wrongful convictions (exonerations) as the numerator and the total number of convictions from a given year (typically 1989, the year of the first DNA exoneration in the United States) as the denominator. This calculation is clearly artificial because known exonerations do not represent the universe of all wrongful convictions. Moreover, rape and murder account for approximately 2% of all felony convictions but were the underlying offenses in nearly three-quarters of the first 1,600 exonerations reported in the NRE. Considerably less is known about wrongful convictions in roughly 98% of felony cases and in misdemeanors. Finally, most known wrongful convictions — about 80% — result from trials. As previously discussed, trials are rare events, and the guilty plea process contributes to the invisibility of wrongful convictions.⁹⁸ Simply put, our current knowledge of wrongful convictions is incomplete because too little is known about how, when, and why wrongful convictions occur in most cases.

Gross and O’Brien suggested two options for making progress on these seemingly intractable issues. The first is to obtain representative samples of cases and try to distinguish between accurate and false convictions. The second option is to study samples of cases defined by their outcomes — in other words, “to compare known false convictions and known correct convictions and see if suggestive lineups, coercive interrogations, and so forth, are more common in one group than in the other.”⁹⁹ Professor Jon B. Gould and his colleagues employed a third option, which involved comparing “near misses” (adjudicated cases that did not result in a wrongful

conviction, but could have) to wrongful convictions.¹⁰⁰ They determined, for example, that although false confessions, false identifications and tips, and official misconduct were common in both case types at the onset of adjudication, a series of mitigating (for example, older age of the individual charged with the crime, strong defense) and aggravating (for example, punitive state, forensic errors) factors helped explain their different outcomes.

At the 2015 NSF-NIJ workshop, Gross reiterated that “what we think we know about wrongful convictions” is illusory. Using several examples, he demonstrated how our beliefs can hinge on the ever-changing sample size of known cases. For example, in 1987 he found that with a sample of 92 cases, the appearance of the individual suspected of committing the crime (for example, their picture was selected from a mugshot book or they matched the description of the person who committed the crime) was the primary reason for the initial suspicion in 60% of the known eyewitness misidentification cases.¹⁰¹ In 2012, with 375 cases, appearance accounted for 35% of misidentifications, and in 2015, with 545 cases, the proportion fell to 30%. What accounted for this 30 percentage-point decrease? Although it is difficult to pinpoint the precise reasons, the samples have important differences beyond the numbers. For example, Gross’s 1987 sample included all non-DNA misidentification cases from 1900 to 1983; in contrast, the 2015 sample was a mix of DNA and non-DNA cases from 1989 to 2015.

These temporal differences also involve differences in law and procedure, greater understanding and acceptance of the science of eyewitness identification, and the availability of avenues of exoneration. For example, in 1987 Gross found that the proportional effect of the individual’s appearance differed between cases that occurred before and after the Supreme Court’s decision in *Wade v. United States* (1967), which required the presence of defense counsel for line-up identifications that occur during critical stages of judicial proceedings. However, he concluded that these differences had more to do with missing data than actual patterns related to *Wade*.¹⁰²

The variety of factors — whether related to law, science, data collection, or other considerations — that could potentially explain these differences speaks to another

important point: In science, samples are meant to be representative of the population from which they are drawn. Do scholars have an adequate sense of the population of wrongful convictions? Or are they drawing inappropriate comparisons between samples representing different populations?

Scientific knowledge is a social construct.¹⁰³ At the 2015 NSF-NIJ workshop, Professor Simon Cole referred to recent scholarship — contrasting old, “bad” practices with new, “good” science — which maintains that most law enforcement agencies vigorously reject science. Cole, however, contends that these types of messages do not account for the known and the yet-to-be-known problems with today’s scientific findings. Further, Professor Cole and Alyse Bertenthal encourage law and social science scholars to “expect to find science messy, unclear, and unresolved,” and “suggest that it is difficult, if not impossible, to find occasions where the law can apprehend science as a stable, uncontested entity. Instead, the [law and social science] scholar will have to treat science as just as unstable and contested as law.”¹⁰⁴ This is particularly sage advice for wrongful conviction scholars.

Time for a New Beginning

Let us return to Borchard and the “canonical list” of factors that contribute to wrongful convictions: eyewitness misidentifications, unreliable expert testimony, false confessions, ineffective assistance of counsel, perjury, and governmental misconduct. But what of race, guilty pleas, and less serious crimes? Were these present in the 65 cases Borchard catalogued? Before we can address this question, we must examine how Borchard selected his cases, a point that speaks to our discussion of data and methodological constraints. In his words, “the cases were taken somewhat at random, for cases of this type are not systematically recorded.”¹⁰⁵ Thus, as with scholars today, the universe of wrongful convictions was not available to Borchard. In the overwhelming majority of cases, the exonerations occurred when the person who had truly committed the crime was found or when it was determined that the crime was not really a crime at all.

Borchard did not provide the race of the 82 individuals who had been wrongly convicted (across 65 cases), but he did

describe at least eight as “Negro,” “colored,” or “Black.” Seven of the eight were found guilty in southern states, and the racial overtones present in these pre-1930s cases are starkly apparent. For example, John Murchison, a “colored man” in 1920s Alabama, was wrongly convicted of killing John Franklin McClendon, a white man. Murchison and six other Black men were suspected and jailed. In total, four were convicted and sentenced to life in prison, all of whom, except for Murchison, died before official exoneration. At trial, it was suggested that McClendon, a married white man, was in a relationship with an unwed Black woman. The prosecution considered this one of the motives for murder. More than five years after the conviction, it became clear that McClendon’s own wife and nephew committed the crime.¹⁰⁶ Although separated by space and time, cases like Murchison’s, the Scottsboro Boys, and the Central Park Five share several commonalities. But in the past nine decades, wrongful conviction scholarship has paid too little attention to these sociopolitical factors that arguably further the “Southern strategy” of criminalizing particular races.¹⁰⁷

Only 3 of the 82 people who were wrongly convicted (3.7%) in Borchard’s cases falsely pled guilty.¹⁰⁸ Nonetheless, the circumstances under which they falsely pled guilty are reminiscent of today’s wrongful convictions produced by guilty pleas. For example, James Willis pled guilty because he “wanted to get it over with” and hoped for leniency. Nelson Green watched another person charged in the same case, Charles Stielow, be convicted and sentenced to death, and thus chose to plead guilty rather than risk a similar fate at trial.¹⁰⁹ Again, there are several striking similarities between cases in Borchard’s time and the present, and a body of research is emerging that addresses guilty pleas and wrongful convictions.¹¹⁰

Lastly, the majority of Borchard’s cases involved serious crimes (for example, murder, rape, and robbery) that went to trial. Without an in-depth analysis, it is not clear if the lower-level crimes Borchard included were misdemeanor charges in the respective states at those times. For example, Mary Berner, one of the few women in Borchard’s sample, was charged with passing fake checks under \$50 and then withdrawing 90% of the money. Individually, the offenses appear to be minor, but her conduct persisted for more than 18 months and affected more than 60 banks. Of

course, Borchard was limited to selecting cases that had garnered significant public attention. Without the internet or a national registry at his disposal, Borchard lacked a more robust sample of felony and misdemeanor exonerations. But these are the exact points we have tried to clarify and emphasize throughout this chapter: Wrongful convictions in misdemeanor cases are rarely scrutinized, and even when exposed, they command scant publicity. Like Borchard in 1932, researchers today still do not have access to the universe of wrongful conviction cases and therefore remain limited in their ability to define and investigate representative samples.

These four “elephants in the courtroom” — race, guilty pleas, misdemeanors, and data and methodological constraints — deserve a more in-depth examination by scholars and practitioners. Identifying the issues and stressing their importance is not resolving them. As Borchard’s scholarship marked one beginning in the study of wrongful convictions, perhaps the time has come for another beginning.

In Brief: A Few Emergent Issues

In the years that have passed since the 2015 NSF-NIJ workshop on wrongful convictions, we have gained new knowledge about the four elephants we originally identified — and more work remains to be done. During this time, new elephants have also emerged. Below we identify and briefly discuss several of these issues that would benefit from additional attention by researchers and policymakers:

- The production of wrongful convictions.
- The correction and detection of wrongful convictions.
- The consequences and damages of wrongful conviction.

The Production of Wrongful Convictions

No-Crime Cases

Although most exonerations involve the wrongful conviction of individuals for crimes committed by another person, a surprisingly high proportion — as of April 2021, more than a third (1033 in 2774, or 37.2%)¹¹¹ — arise from cases in which no crime was committed. No-crime

cases account for roughly two-thirds of the exonerations in wrongful convictions produced by guilty pleas,¹¹² and, as noted above, nearly all known wrongful misdemeanor convictions stem from guilty pleas.

Similarly remarkable is that nearly three-quarters (73%) of women exonerated since 1989 were convicted of crimes that never happened. This startling proportion of no-crime cases is explained, in part, by the high incidence (roughly 40%) of exoneration cases that involved women convicted of harming children or other loved ones in their care.¹¹³ Some of these erroneous convictions were supported by expert testimony concerning Shaken Baby Syndrome,¹¹⁴ a controversial diagnosis regarding the likely cause of traumatic harm experienced by young children.¹¹⁵

Many no-crime exoneration cases involved drug-related charges, although these are far from the only cases represented. Cases have involved arson, assault, child sex abuse, forgery, fraud, gun crimes, burglary, robbery, murder, and more. Indeed, perhaps the earliest recorded wrongful convictions in the United States were of Jesse and Stephen Boorn, who were found guilty of murder in Vermont in 1819 — although no such crime occurred. The alleged victim, their brother-in-law, was alive and surfaced just weeks before Stephen's scheduled hanging.¹¹⁶ Borchard chronicled the Boorns' wrongful convictions.¹¹⁷ Other scholars have since addressed no-crime wrongful convictions;¹¹⁸ however, they merit more urgent attention, particularly in light of their high incidence.

Juveniles

Another underexamined area is the wrongful conviction of juveniles in both criminal and juvenile courts.¹¹⁹ To date, juveniles — individuals age 17 or younger at the time of the offense — account for fewer than 1 in 10 known exonerations (245 in 2776, or 8.8%). However, some suspect that juveniles are more likely than adults to be wrongly convicted, particularly when considering contributing factors such as false confessions and false guilty pleas. Laboratory studies and self-report research have consistently demonstrated that youths — largely due to their immature development — are more likely than adults to make false admissions.¹²⁰ If juveniles are especially likely to falsely confess and enter false guilty pleas, and may be at heightened risk with respect to other

canonical contributing factors, it is likely that exonerations significantly undercount juvenile wrongful convictions.

Are juvenile wrongful convictions less likely than adult wrongful convictions to result in an exoneration? If so, why? One possible answer may relate to whether the adjudications or convictions were obtained in juvenile court or criminal court, respectively. Although we are unable to determine with certainty which court handled the cases of the 245 known juvenile wrongful convictions, it is likely that the majority occurred in criminal court. This is because most of the juvenile offenses were quite serious (for example, rape and murder),¹²¹ which likely prompted discretionary or mandatory transfers to criminal court.

Relatively little is known about the wrongful adjudications that occur in juvenile courts. The majority of offenses handled in juvenile courts are of lower severity (misdemeanors) and result in guilty pleas or admissions. More than a decade ago, Steven A. Drizin and Greg Luloff asked, “Are juvenile courts a breeding ground for wrongful convictions?”¹²² Their basic conclusion was yes. As they put it, “There are several factors that together make representation of children in juvenile court problematic and enhance the risk of a wrongful conviction: poor investigation, infrequent use of motions, high caseloads, over-reliance on pleas, a juvenile court culture of wanting to ‘help’ juveniles, and a general lack of training among attorneys on youth and adolescents.”¹²³

The Correction and Detection of Wrongful Convictions

Conviction Integrity Units

Housed in prosecutors' offices, conviction integrity units (CIUs) — sometimes called conviction review units — investigate cases in which innocent individuals may have been convicted, then take action to correct any identified erroneous convictions.¹²⁴ In April 2021, more than 80 CIUs operated throughout the United States, but fewer than half of them have been involved in an exoneration.¹²⁵

Although they vary considerably in size and effectiveness,¹²⁶ CIUs have been involved in — although have not necessarily been responsible for — increasing numbers of exonerations over time. The first CIU-facilitated exoneration took place in 2001, and roughly

six CIU-related exonerations occurred annually between 2007 and 2013. The numbers increased dramatically thereafter, with 51 CIU-related exonerations in 2014 and an average of 61 a year from 2015 through 2020. Eighty percent of CIU-related exonerations have involved individuals convicted of drug offenses or homicide.¹²⁷

CIUs often work with innocence organizations such as the Innocence Project. They contributed to nearly half (63 in 129, or 48.9%) of the exonerations that occurred in 2020 and collaborated with innocence organizations in 35 of those cases.¹²⁸ CIU-facilitated exonerations have accounted for roughly a sixth (488 in 2774, or 17.6%) of the total number of exonerations identified by the NRE through April 2021.¹²⁹ In light of their increasing importance — and also the variability in their effectiveness — additional research into the formation and operation of CIUs is warranted.

The Consequences and Damages of Wrongful Convictions

New Offenses Committed by the Person Who Truly Committed the Crime

When an innocent person is convicted of a crime, the individual who truly committed the crime remains at large and thus can commit more crimes and claim new victims. Although research has begun to explore these important issues, the new harms inflicted by the individual who actually committed the crime are an often-overlooked consequence of wrongful convictions. One study identified the individual who truly perpetrated the crime in 159 of the 325 DNA-based exonerations between 1989 and 2014.¹³⁰ Sixty-eight of these individuals went on to commit at least 142 violent crimes, including 77 rapes, 34 homicides, and 31 other violent crimes, while they eluded apprehension. These known additional crimes represent only a fraction of the new offenses because they fail to capture offenses committed by individuals who were never identified, and they include only the crimes known to have been carried out in the cases where the person who truly committed the crime was identified.

Researchers have collected information about the crimes committed by the truly guilty parties following the arrest and conviction of innocent individuals in Cook County, Illinois,¹³¹ and North Carolina,¹³² and have similarly identified numerous new offenses committed during these periods of “wrongful liberty.” One study identified 62 individuals who had committed serial homicide and who collectively were responsible for claiming the lives of 249 victims. Nearly half of those killings (114, or 46%) were committed after an innocent person was incarcerated following the initial homicide and thus were deemed preventable.¹³³

Other researchers investigated 109 cases of DNA-based exonerations in which the individual who truly committed the crime subsequently was identified through DNA evidence.¹³⁴ Among the 109 individuals, 102 were found to have committed a total of 337 new crimes while at large, or an average of 3.1 per person. Their new crimes included 43 homicides and 94 sex offenses. Projecting from these findings, the study estimated that, nationally, individuals who truly perpetrate crimes may escape apprehension and conviction in an estimated 7,040 to 13,440 violent crime cases per year. Because the identified individuals in these cases committed an average of 3.1 additional crimes per person, the wrongful convictions that occur each year would ultimately enable those who truly committed the crimes to commit roughly 21,000 to 41,000 additional crimes.

This line of research persuasively demonstrates that wrongful convictions inflict harms beyond those endured by the innocent people who are convicted and punished for crimes they did not commit. Wrongful convictions represent a significant threat to public safety and should be of grave concern to law enforcement.¹³⁵ Additional research of this nature promises to have important policy implications.

Untangling the “Web of Impact”

In their study of the post-release experiences of individuals who were on death row and then exonerated, Sandra D. Westervelt and Kimberly J. Cook discuss the web of impact, or “the ripple effects of a wrongful

conviction [that] extend beyond the exoneree to touch the lives of all those with whom the exoneree has relationships.”¹³⁶ Individuals in their study described the effects that their wrongful convictions had on their parents, siblings, and children.

Errors as egregious as wrongful conviction and incarceration do tremendous damage not only to the individual, but to others in their network of family, friends, and community. Negative effects are not restricted to the individuals’ inner circles, but extend into what Jennifer Thompson and Frank Baumgartner call “circles of harm.”¹³⁷

Wrongful convictions may also influence victims of crime and their survivors, legal actors and jurors involved in the case, and more. Thompson — the original crime victim in the case that led to the wrongful conviction of Ronald Cotton — discusses the “double-victimiz[ation]” of the original crime victim when the wrong person is arrested and convicted, as well as the ability of the individual who truly committed the crime to claim new victims. Thompson founded the organization Healing Justice, which uses restorative justice principles to support those who have been exonerated, crime survivors, and others affected by wrongful conviction. Due in large part to her efforts, the widespread harms generated by errors have received some attention, including from NIJ.¹³⁸ Still, the far-reaching consequences of wrongful convictions and incarceration are not yet well-understood in the existing literature, making this an important area in need of continued research and policy development.

Notes

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Conclusion

“The tip of an iceberg” is a commonly used metaphor in wrongful conviction scholarship¹³⁹ to emphasize that the instances of wrongful conviction that have been identified represent only a small fraction of the cases in which innocent people have been found guilty and punished for crimes they did not commit. Although this metaphor continues to ring true, we can be confident that the revealed cases of wrongful conviction are considerably more numerous than when Borchard published *Convicting the Innocent* some 90 years ago. With the progress made in the ensuing decades, we have reason to hope that the submerged portion of the iceberg of errors will become less vast.

In this chapter, we have attempted to identify several key issues that help explain why significant numbers of erroneous convictions occur and have yet to be exposed, and we urge researchers and policymakers to focus increased attention on them to minimize their influence on miscarriages of justice. As the essential work to prevent, detect, and correct wrongful convictions continues, we hope that, before long, the metaphor of the iceberg and its tip will melt away. This development will be facilitated by reckoning not only with the well-known factors that contribute to errors of justice, but by addressing a host of important understudied issues as well.

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Chapter 3.

The Unheard Voices of Wrongful Conviction

BY BETHANY BACKES, ERIC MARTIN, AND ANGELA MOORE

The strength of our criminal justice system depends on its accuracy: its ability to convict those who are guilty and clear those who are innocent. But innocent people are sometimes wrongfully convicted. At the time of publication, the Innocence Project listed 575 exonerations based on DNA evidence.¹ The National Registry of Exonerations at the University of Michigan Law School, which includes all known exonerations whether supported by DNA evidence or other grounds, had a more exhaustive list of 3,423 exonerations.² Research on this topic acknowledges that known wrongful convictions are likely only a fraction of the true number of erroneous convictions that have occurred.³ Although the exact number of wrongful convictions is unknown, many estimates still exist. As discussed earlier, research funded by the National Institute of Justice (NIJ) provides one estimate that suggests the rate of wrongful conviction may be as high as 5%⁴ and much higher among cases with DNA evidence.⁵

As the research, development, and evaluation agency of the U.S. Department of Justice, NIJ has been at the forefront in examining wrongful convictions and identifying ways to prevent these types of errors. Historically, the focus of this research has largely been on the causes and prevalence of these errors, rather than their impact on the lives of people who were wrongfully convicted and the original victims whose cases resulted in erroneous convictions.⁶ NIJ seeks to advance the literature on wrongful conviction by exploring ways to address the needs of those who have been affected by erroneous convictions.

In February 2016, NIJ, along with its partners in the Office of Justice Programs and external organizations,⁷ hosted

listening sessions over two days with victims and survivors of crimes⁸ that had resulted in wrongful convictions and for individuals who have been exonerated⁹ to better understand the problems these individuals face during the review of post-conviction innocence claims and after the exoneration. The listening sessions gave participants an opportunity to describe how the wrongful conviction affected their well-being, life trajectories, financial situation, and trust in the system and to suggest changes in criminal justice policy and practices that could reduce the impact or improve their current quality of life.

Each listening session consisted of a one-day facilitated discussion around a structured agenda. On the first day, five victims and survivors convened to tell their stories and share their experiences during each stage: crime, conviction, and exoneration. On the second day, seven individuals who have been exonerated — who had collectively served more than 115 years in prison for crimes they had not committed — shared their experiences: the initial accusation, the trial, imprisonment, time served on death row, efforts to regain freedom, release from prison, and life post-exoneration.

The listening sessions were powerful and emotional for both the participants and the audience members. The victims and survivors discussed a range of topics, including the media's insensitivity, revictimization by the exoneration process, the lack of adequate services, and the need for peer support. The individuals who have been exonerated focused on their difficulties in transitioning to civilian life, problems reconnecting with family and friends, and difficulties in obtaining a job or even basic necessities, such

as a driver's license. They also discussed their frustration over the lack of accountability for their false conviction, lack of restitution for lost wages and Social Security benefits, and lack of a standard definition of exoneration and automatic expungement of criminal records.

This chapter discusses the major themes that emerged during the listening sessions, including the necessity for criminal justice systems and other governmental entities to address the needs of original victims and individuals who have been exonerated. For instance, the victims shared that the services offered to original crime victims are inadequate. Reentry services for those who have been exonerated are often inappropriate.¹⁰ Although substantial attention has been devoted to the causes of erroneous convictions, limited focus has occurred on what happens after exoneration. Drawing on these themes, we share several policy recommendations that the participants relayed during the listening sessions to address their most pressing issues.

NIJ also commissioned a mini-documentary to give some of the participants a chance to share their stories with the public. It is important that their stories — told in their own words — do not get lost amid the themes and policy recommendations we provide in this report. The companion video was released in September 2017.¹¹

For the purposes of this report, a wrongful conviction refers to an individual's conviction of a crime they *factually* did not commit.¹² An exoneration is a government action to release an individual from custody with an acknowledgment of their innocence.¹³

Original Victims' Experiences

The wrongful conviction process and the plight of the person who has been erroneously convicted often overshadow the original crime victim's experience. Current knowledge and practice about original victims of these crimes are much more limited than our understanding of those who have been wrongfully convicted.

In 2011, NIJ funded a study to examine the impact that wrongful conviction has on victims.¹⁴ Researchers interviewed victims and associated stakeholders (for example, prosecutors) in 11 cases, exploring notification

practices, the impact of the exoneration process on the victim and immediate family members, and service needs. The researchers also surveyed 23 service providers to better understand the types of services given to victims during or after an exoneration and to gain additional insight into victims' experiences.

The listening session built on the findings from the NIJ report. Five original victims involved in wrongful conviction cases participated: three were survivors of sexual assault, and two had family members murdered.¹⁵ Survivors shared their stories and answered in-depth questions about the exoneration experience. The session focused on the survivors' experiences leading up to, during, and after the exoneration and included issues that they still face. In the summary that follows, we highlight the major themes from the victims' listening session and then discuss how these themes coincide with the findings from the previous NIJ report.

Both the NIJ-funded study and the victims' listening session shed light on the impact of wrongful convictions and the exoneration process on the original victims of these crimes. Participants in both the study and the listening session showed courage in discussing their personal experiences and in bringing attention to the critical issues involved in addressing all aspects of wrongful conviction.

Victims' Listening Session

Experiences among victim participants in the listening session differed, but some consistent themes emerged, including the reported lack of infrastructure and support for this group of victims and how the criminal justice system, the media, and the public treated them. Below are five overarching themes that emerged from the victims' listening session.

Notification and Learning About the Exoneration

The listening session began with a discussion of how original victims first learned about the possibility of a wrongful conviction or about the exoneration. Victim notifications varied greatly. Some victims learned the news from criminal justice officials; others heard it from a victim service provider.¹⁶ Some victims received no notification at all and instead learned of the wrongful conviction through

a third party, such as the media, at the same time the public did.

Only one victim in the listening session described a positive experience, in which law enforcement officials relayed the news initially and then provided support. Negative experiences shared during the listening session included receiving cold calls from innocence organizations asking the victim questions. A prosecutor told one victim to remain in the home when the individual who had been exonerated was released.

Some of the victims reported receiving limited or incomplete information regarding the exoneration process, even if criminal justice officials had notified them. For example, a group of police officers approached one victim at her workplace and demanded a swab for DNA evidence. The officers told her that if she did not comply, they would obtain a subpoena. She was offered little information about why DNA evidence was needed and received no onsite victim support. The victim said that the experience led to severe setbacks in her healing process.

Unmet Needs

The listening session participants reported that once they were notified, they received no support, services, or referrals to qualified providers. It was noted that service providers often do not provide services to this unique group of victims. The lack of support may indicate that providers do not have the infrastructure or knowledge to appropriately address such needs.

Victims received little information about who might have committed the crime or whether there would be a new trial. In some cases, the person who actually committed the crime remains unknown. Victims from the listening session had also been told that the statute of limitations had expired, so there was nothing to pursue.

The exoneration process can be confusing and overwhelming. Listening session participants said that they often did not understand the process or why it was happening, and that they received little explanation when they had to provide new DNA samples. Some victims reported feeling tremendous guilt, especially if their eyewitness misidentification contributed to the wrongful

conviction. Furthermore, in a few instances, officials involved in the original case refuted the innocence of the individual who had been wrongfully convicted, leaving the victim more confused. Victims were seldom reassured that cases of wrongful conviction typically result from systemic issues involving multiple mistakes, not just misidentification by eyewitnesses. Victims felt that the criminal justice system must be held accountable and should apologize for the harm caused by wrongful convictions.

Sources of Primary Support

The listening session participants identified several sources of support that were helpful throughout the exoneration process. Many victims relied on family and friends for support, although some felt that family members and friends could not fully comprehend what the victims were experiencing. In addition, not all family members or friends knew about the original cases, so victims had to figure out the best way to tell their children, colleagues, and others about their victimization experiences.

A few victims had positive experiences with statewide innocence commissions, which they thought were unbiased and straightforward and kept victims apprised of the process. Victims said they could find out information about the case, get questions answered, and connect to others in similar situations through the commissions.

Participants reported that the most important and helpful support came from other victims who had gone through a wrongful conviction. This peer support provided validation for the victim's feelings, offered information about the exoneration process, and connected the victim to other resources and support services. Some efforts have been made to establish peer networks, but it can still be difficult for victims to identify and connect with other victims.

Some of the listening session participants found that meeting with the individual who had been exonerated in their case was a source of healing, and some have developed a positive relationship with them.

Safety, Security, and Privacy Concerns

During the listening session, the victims described safety, security, and privacy concerns. Media attention figured

prominently. Victims described how the press released their names and pursued them at their workplaces and homes, sometimes blaming a victim for the wrongful conviction. Unmonitored comment boards online were particularly invasive, sometimes posting the victim's personal information, downplaying the victim's experience, and expanding on the victim-blaming and shaming dialogue that news articles had started. Survivors feared for their own safety and that of their families, and they did not think there were resources available to protect them from the invasiveness of the media and the public eye. Many victims thought there should be a buffer or a representative to protect the victims' interests regarding the media.

Victims also mentioned fears related to both the individual who had been exonerated and the person who actually committed the crime. The extreme guilt victims felt often triggered immense fear of what would happen once the individual was released from prison. Victims had no idea how they felt or whether they were angry. Some expressed concern that the individual who had been exonerated or their family would seek revenge. At times, service providers or criminal justice personnel even cautioned victims about the possibility of retribution. There was also the threat that the person who committed the crime potentially lived in the community. The victim's fear increased if the identity of the individual who committed the crime was unknown or if they were not already in prison. Some victims mentioned staying in their homes at all times, being afraid to go out in public, and feeling scared that the individual who committed the crime would find them.

General Impact

Participants in the listening session said that the impact of the wrongful conviction process mimicked the effect of the original victimization — and, at some points, it was worse. They felt victimized all over again, and some reverted back to the panic and uncertainty they had felt right after the original event. Guilt was a new emotion, and it made victims feel devastated and helpless. Some had suicidal thoughts or experienced severe physical health setbacks (for example, depression, panic attacks, gastrointestinal issues, nightmares, and insomnia) related to the stress and anxiety brought on by the wrongful conviction. Some

victims missed work and saw their relationships with friends and families disintegrate.

Themes From the Previous NIJ Study

The themes that emerged from the victims' listening session were similar to the findings from the NIJ study on victim experiences of wrongful conviction. The NIJ study findings included a reported lack of infrastructure and support available to this group of victims and issues with their treatment by the criminal justice system, the media, and the public.¹⁷ The findings regarding notification of the exoneration process were particularly notable. Service providers and victims alike reported feeling “disbelief, denial, shock, fear, frustration, anger, and confusion” and that the notification had a “significant and devastating impact on their lives.”¹⁸ Victims reported positive experiences when they were notified prior to the exoneration process and were provided real-time updates on the status of the case.¹⁹

Experiences of Those Who Have Been Exonerated

The seven participants who have been exonerated had collectively served more than 115 years in prison for crimes they did not commit. Of the seven, four had served time on death row and two had been incarcerated for the deaths of their own children. In some cases, there was wrongdoing on the part of police, prosecutors, or those on the bench; in others, witnesses recanted statements that had led to the conviction.²⁰ Research suggests that the reasons that lead to the erroneous convictions of those who are later exonerated may not be representative of most wrongful convictions, which are likely to be caused by honest errors rather than gross misconduct.²¹ However, it also suggests that the experiences of individuals who are exonerated — both during incarceration and after exoneration — are representative of the larger population of those who are wrongfully convicted.

The structured discussion covered participants' key needs at different times during the exoneration process, the support systems available, and their short- and long-term needs. It also explored what could occur to restore their freedom and well-being and to create a more equitable

criminal justice system. Although the seven individuals who have been exonerated had different backgrounds and unique stories, their experiences were largely similar. Below are the five main themes that emerged.

Lack of a Universal Definition of Exoneration

One pervasive theme was frustration at the lack of a universal definition of “exoneration.” Often, when an individual is exonerated and released, someone in the local criminal justice system still maintains that they are guilty and holds out the possibility of another trial. This can put the individual in a state of limbo and make it hard for them to show prospective employers or financial agents that the prior arrest and conviction were erroneous. Obtaining a certificate of innocence or other statement by the government that they are factually innocent is a fundamental step toward restoring their livelihood. However, some individuals who are exonerated never receive a formal acknowledgment by the state that they are innocent.

Difficulty in Obtaining Basic Necessities

Caitlin Plummer of the University of Michigan’s Innocence Clinic describes the post-release situation of many individuals who are exonerated: “If you’re an exoneree, you get nothing. . . . You walk out. That’s it.”²² The Innocence Project details the cumulative impacts of reentering society, which were also heard during the listening session.²³ Participants described how difficult it was to get basic necessities immediately following their exoneration and release, such as the identification documents needed to secure employment, transportation, and stable housing. Furthermore, individuals who are exonerated must often report their arrest and conviction on applications just as if they were rightfully convicted. Some said they received help from advocacy groups, but others were on their own in trying to get their basic needs met.

The fact that some individuals who are exonerated struggle after release is incongruent with a basic sense of justice. States are working to address the burden of collateral consequences — additional societal punishments faced by those who are convicted, such as restrictions

on employment, housing, and voting — for individuals who were rightfully convicted.²⁴ There has also been a tremendous increase in funding to support the reentry of individuals after their release.²⁵ However, other than trying to litigate when they are no longer guaranteed counsel, there is no formal help for people who were wrongfully convicted. Because there is no universal definition of exoneration, there is also no universal process for the automatic expungement of records, so the arrest and conviction records of an individual who was exonerated might still be available to the public.

Lack of Restitution for Loss of Social Security Benefits

Many listening session participants were incarcerated during their prime earning years. One participant explained that because she was incarcerated for 18 years and has had difficulty maintaining gainful employment since her release, she has been cut out of the country’s basic safety net — Social Security — and now fears she will be left homeless. At the time of publication, there is no process available for those who were wrongfully convicted to recover lost Social Security benefits from the years they were incarcerated, when they would have been paying into the system.

For individuals who were exonerated and received a settlement, the lost Social Security benefits are admittedly not a pressing issue, since the settlement or court-mandated restitution could support them in retirement. Currently, however, 13 states do not have a statute authorizing restitution for damages, and those that do authorize it often restrict eligibility.²⁶ For other civil liability claims, an individual who is exonerated often must prove intentional and malicious conduct by a state actor. Less than a third of those exonerated by DNA — who have the highest standard of proof of their innocence, a DNA exclusion — have won litigation for restitution and damages.²⁷

Overall Lack of Justice System Accountability

An apology is a low standard to set for correcting a miscarriage of justice, but it seems difficult for criminal

justice systems and governments to provide one. During the listening session, former Assistant Attorney General Karol Mason thanked the participants for sharing their experiences and apologized to them for having to endure what they did. Afterward, several participants remarked that this was the first time anyone had apologized to them for their wrongful conviction.

Many attributed the lack of accountability, or even the acknowledgment of error, to agencies' fear of liability or of being burdened by a large civil lawsuit. The fear of liability is understandable but should not prevent governments from actively seeking to correct past mistakes and prevent future miscarriages of justice.

In general, there seems to be a reliance on the courts to correct these errors and provide restitution to the individuals who are exonerated, but having a legal system correct the errors that it made may be ineffective or inappropriate. When they filed for a certificate of innocence, some participants had to face the same prosecutor who had pursued their conviction. Likewise, many said that they would not want to get post-release benefits from the department of corrections or the parole board because those bodies are intended to serve individuals who were rightfully convicted as they reenter the community. Participants indicated that an independent body was needed to help determine accountability for the miscarriage of justice and to provide restitution to those who had been wrongfully convicted.

Difficulty in Reconnecting With Family and Friends

The participants described their difficulty in acclimating to life outside prison. Although everyone who has served a long prison sentence has this experience, it may be even more poignant for those who were wrongfully convicted. Some had trouble leaving the routine of prison. All of the participants expressed a fear of being arrested again; one described constantly looking for ways to verify his location. Some had loved ones pass away while they were incarcerated.²⁸ Others said their frustration was deepened by family and friends who were unable to accept their innocence.

On a positive note, the participants found that peer-to-peer networks were helpful in the healing process. They said

that only other individuals who have been exonerated truly understood their experiences. Some described meeting with the original crime victim and drawing healing from that relationship. Although a face-to-face meeting is not appropriate in every case, those who do choose to meet may find comfort for both the victims and the individual who was exonerated.

Policy Recommendations

The experiences shared during the listening sessions underscore the complexity of the issues surrounding wrongful convictions. Here we present recommendations to address the short- and long-term needs of both victims and those who are exonerated based on what we learned during the listening sessions. We hope that policymakers and practitioners reading these recommendations will reflect on their own policies and practices and see what changes they can make to alleviate the harm caused by erroneous convictions.

Victims

Communication with victims should be institutionalized, informative, and private.

Institutionalized. Changes in how information is shared with victims during the exoneration process have great potential for mitigating harm. In the listening session, many victims described an overall lack of information during the exoneration process. Many received information second- or third-hand; some heard of the exoneration from the media rather than from law enforcement or prosecutors. It is critical that victims be informed of post-conviction innocence claims and the exoneration process. Law enforcement and prosecutors should adopt processes that require timely, victim-centric notifications of any new developments in the case after conviction. Dedicated personnel should be assigned to manage communications with victims throughout this process.

Informative. Communications with victims must be timely and informative. Law enforcement should explain the process of post-conviction claims of innocence to victims and precisely outline the requirements for victims to participate in the exoneration process. If physical evidence or additional statements need to be collected from victims, the same care and discretion should be taken as with a

victim in a new investigation. The purpose of evidence collection and its ramifications for potential innocence of the individual who had been convicted should also be made clear to victims.

Private. During the exoneration process, communication with victims must be private and include the same privileges extended to victims in new cases. The listening session made it clear that a lack of information about the process and how new evidence was collected exacerbated feelings of revictimization. To minimize revictimization, jurisdictions should concentrate on handling information appropriately, including notifying victims in a discreet and timely fashion.

Many of the victims in the listening session described how the media characterized them in ways that contributed to feelings of guilt and revictimization. Various reports and online comments blamed victims for wrongful convictions. Although it may be difficult for a jurisdiction to address the media's treatment of victims, public officials should emphasize, to the extent possible, that wrongful convictions result from a host of factors and that victims should not be ascribed blame. In addition, law enforcement should work with media outlets to either ensure that they monitor online comments posted in response to any coverage of exonerations or limit the ability for readers to comment on stories that mention the victim.

Services to victims should be impartial and continue throughout the exoneration process.

Impartial. Many of the victims in the listening session sensed a change in the access to and quality of their relationship with victim services offices after they supported the innocence of the individual who was exonerated. Many victim services offices are located in the prosecutor's office, which may hinder access to services if the prosecutor becomes openly critical of any acknowledgment of innocence. To avoid potential conflicts of interest, jurisdictions should consider using community-based victim services that are not tied administratively to any party involved in the prosecution or the exoneration. This would help ensure the consistent, impartial delivery of services, regardless of case outcomes.

If jurisdictions cannot provide services through a community-based provider, prosecutors must not appear to deny services to victims or try to influence victims' attitudes regarding the innocence of the individual who was exonerated. Victims' needs are complex and can be as critical during the exoneration process as they are immediately after their victimization. It is important that criminal justice practitioners avoid practices that could aggravate victims' feelings of guilt and revictimization.

Continue throughout the exoneration process.

Policymakers should consider expanding funding to provide specialized services to support victims during and after exonerations. Many of the victims in the listening session expressed dissatisfaction with the counseling services they received and felt that the assigned counselors were unable to provide the level of care they needed. Many victims did not think that they were fully understood until they networked with other victims whose cases resulted in a wrongful conviction. If a wrongful conviction occurs, jurisdictions should seek assistance from counselors or other service providers who have experience with these issues.

Similarly, policymakers should consider expanding victim compensation statutes to provide support to victims during and after an exoneration. Victims said that the exonerations presented new challenges to their daily lives. Some felt insecure, given the renewed attention they were receiving. There were increased feelings of vulnerability and fear knowing that the individual who actually committed the crime may be at large instead of being incarcerated. Compensation throughout the exoneration process could support victims who are seeking a range of services, including private counseling and updated security systems.

Individuals Who Are Exonerated

A common and accepted definition of exoneration should be developed.

The lack of a universal definition of exoneration creates significant challenges for individuals who are exonerated when they attempt to obtain compensation or have their records expunged; this was a consistent theme during the listening session. In some exoneration cases, the

individual's innocence is irrefutable, particularly when indisputable DNA evidence is present, but the vast majority of cases lack such evidence.²⁹ In many cases, there is no clear-cut point at which an individual is considered innocent or when their innocence is accepted across jurisdictions. Some individuals who are exonerated are forced to await a possible retrial if the prosecution decides to refile charges. They may have to petition the state to have their innocence acknowledged.

In addition to hindering the pursuit of restitution, the lack of a universal definition of exoneration can create psychological strains and exacerbate the pain and hardship caused by wrongful convictions. The fear and frustration of awaiting a possible retrial adds to the difficulties that these individuals face as they adjust to life outside of prison, try to rebuild family connections, and deal with the anger they have as they reflect on the lost years spent wrongfully incarcerated.

Although it may be difficult and require time and cooperation across multiple jurisdictions, a universal definition of exoneration should be developed to adequately address many of the issues that individuals who are exonerated face. This could be accomplished without hindering justice or the investigation and prosecution of those who actually committed the crime. Moreover, such collaboration on a universal definition may help states explore alternative evidence and crime theories and prevent future wrongful convictions.

Records should be automatically expunged upon exoneration.

If jurisdictions agree on a universal definition of exoneration, they should implement the automatic expungement of records. Once jurisdictions determine that individuals are factually innocent based on a universally accepted definition, their arrests and convictions should be struck from their records. Many of the listening session participants described the difficulty in finding gainful employment, housing, and transportation after release from prison because of their criminal records. Expungements could assist them in the reentry process and provide relief

from statutory collateral consequences. Expunging records would also demonstrate to these individuals that the justice system acknowledges their wrongful conviction and that they are deemed innocent of the crime.

The exoneration process should be independent and transparent.

Jurisdictions should examine the mechanisms in place for handling post-conviction claims of innocence. Any evidence of a person's innocence should receive timely consideration. If an exoneration is warranted, the person should have a clear pathway to release, regardless of whether the individual was wrongfully convicted because of a malicious action or an unintentional error.³⁰ Many participants described the need for an independent body to review wrongful conviction cases to ensure that the criminal justice system addresses the sources of error and to assign liability, if warranted.

The avenues for compensation to individuals who are exonerated should be expanded.

Automatic compensation. If jurisdictions can arrive at an accepted standard of exoneration and wrongful conviction, compensation mechanisms should be revisited to determine whether automatic compensation for individuals who are exonerated might be possible. Some states allow for compensation, but the individual often has to prove an intentional or malicious action by law enforcement or prosecutors.³¹ But individuals who were wrongfully convicted based on unintentional errors are no less harmed, and they should still receive compensation. They should not have to prove malfeasance, abuse, or systematic neglect of duties to receive compensation.

Replacement of lost Social Security benefits. Congress should also consider allowing individuals who are exonerated to receive Social Security benefits to offset the wages that they potentially would have paid into the system. By establishing an equitable way to make up for lost wages through Social Security benefits, Congress could help ensure that these individuals do not face undue collateral damage from wrongful convictions.

Conclusion

The listening sessions were critical to understanding the impact that wrongful convictions have on both the victims and the individuals who are exonerated. The sessions gave the Department of Justice an opportunity to hear directly from the affected individuals about what changes could make a difference in their well-being. We encourage criminal justice practitioners and policymakers to consider

what they can do to mitigate the damage resulting from wrongful convictions and to use these recommendations as a roadmap. The process of uncovering a wrongful conviction is complex, and the number of jurisdictions involved can make policy and practice innovation challenging. By committing to help both victims and individuals who are wrongfully convicted when errors are uncovered, policymakers and practitioners can make a difference in the lives of these individuals.

Notes

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2. The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx>, accessed November 30, 2023.
3. Samuel R. Gross and Barbara O’Brien, “Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases,” *Journal of Empirical Legal Studies* 5 no. 4 (2008): 927-962; James R. Acker, “Taking Stock of Innocence: Movements, Mountains, and Wrongful Convictions,” *Journal of Contemporary Criminal Justice* 33 no. 1 (2017): 8-25; and Charles E. Loeffler, Jordan Hyatt, and Greg Ridgeway, “Measuring Self-Reported Wrongful Convictions Among Prisoners,” *Journal of Quantitative Criminology* 35 (2019): 259-286.
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6. Seri Irazola, Erin Williamson, Julie Stricker, and Emily Niedzwiecki, “Study of Victim Experiences of Wrongful Conviction,” Final report to the National Institute of Justice, contract number GS-23F-8182H, November 2013, NCJ 244084, <https://www.ncjrs.gov/pdffiles1/nij/grants/244084.pdf>.
7. The listening sessions were hosted by the National Institute of Justice in association with the Bureau of Justice Assistance and the Office for Victims of Crime.
8. For the purposes of this report, when referring to original victims of wrongful conviction, “victim” and “survivor” may be used interchangeably.
9. Recruitment of the participants was facilitated by advocacy groups, including Healing Justice, the Innocence Project, Witness to Innocence, and the 8th Amendment Project.
10. This sentiment was based on conversations with Rebecca Brown and Angela Amel of the Innocence Project, September 22, 2016.

11. The documentary is available at <https://nij.gov/multimedia/pages/video-just-wrong.aspx>.
12. Irazola et al., "Study of Victim Experiences," 14; and Jon B. Gould, Julia Carrano, Richard Leo, and Joseph Young, "Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice," Final report to the National Institute of Justice, grant number 2009-IJ-CX-4110, February 2013, NCJ 241389, <https://www.ncjrs.gov/pdffiles1/nij/grants/241389.pdf>.
13. Allison D. Redlich, James R. Acker, Robert J. Norris, and Catherine L. Bonventre (Eds.), *Examining Wrongful Convictions: Stepping Back, Moving Forward* (Durham, NC: Carolina Academic Press, 2014).
14. Irazola et al., "Study of Victim Experiences."
15. Selection of the participants was based on recommendations from advocacy groups (Healing Justice, the Innocence Project, Witness to Innocence, and the 8th Amendment Project) that had originally called for the listening sessions.
16. It is unclear whether the victim service providers were criminal justice or community based, which could affect the experience.
17. Irazola et al., "Study of Victim Experiences."
18. Irazola et al., "Study of Victim Experiences," 39.
19. Irazola et al., "Study of Victim Experiences," 55.
20. This information comes from the biographies submitted by the participants. It can also be obtained from the Innocence Project's website.
21. See Hugo Adam Bedau and Michael L. Radelet, "Miscarriages of Justice in Potentially Capital Cases," *Stanford Law Review* 40 no. 1 (1987): 21-179; Edward Connors, Thomas Lundregan, Neal Miller, and Tom McEwen, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, Research Report, supported by grant number OJP-95-215 (Washington, DC: U.S. Department of Justice, National Institute of Justice, June 1996), NCJ 161258, <https://www.ncjrs.gov/pdffiles/dnaevid.pdf>; and Gould et al., "Predicting Erroneous Convictions."
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25. Marie Garcia and Nancy Ritter, “The Second Chance Act and Other Ongoing NIJ Research Projects,” *NIJ Journal* 269, March 2012, <https://www.nij.gov/journals/269/Pages/second-chance.aspx>.
26. PBS, “Exonerated But Not Supported”; and Kahn, “Presumed Guilty Until Proven Innocent.”
27. Innocence Project, “Executive Summary: ‘Making Up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation,’” December 2, 2009, <https://www.innocenceproject.org/executive-summary-making-up-for-lost-time-what-the-wrongfully-convicted-endure-and-how-to-provide-fair-compensation>.
28. This does not include the two mothers who were wrongfully convicted of the deaths of their children.
29. In certain cases, a DNA exclusion does not necessarily prove innocence beyond a reasonable doubt, particularly in cases where multiple individuals commit the crime.
30. See also Caitlin M. Plummer and Imran J. Syed, “‘Shifted Science’ and Post-Conviction Relief,” *Stanford Journal of Civil Rights and Civil Liberties* 8 no. 2 (August 2012): 259-298, abstract available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1989683.
31. “Compensation for Exonerees. Compensation Primer,” <https://www.law.umich.edu/special/exoneration/Documents/Compensation%20Primer.pdf>, accessed August 24, 2023; and Kahn, “Presumed Guilty Until Proven Innocent.”

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JUST WRONG:

The Aftermath of Wrongful Convictions

The strength of our criminal justice system depends on its ability to convict the guilty and clear the innocent. But we know that innocent people are sometimes wrongfully convicted and the guilty remain free to victimize others. The consequences of a wrongful conviction are far-reaching for the wrongfully convicted and the survivors and victims of the original crimes.

NIJ, along with its partners in the Office of Justice Programs and external organizations, hosted listening sessions with victims and survivors of crimes that resulted in wrongful convictions and with individuals who have been exonerated. NIJ released a documentary that revisits several participants of these listening sessions to provide them with a forum to explain how wrongful conviction changed their lives and how they are coping with the consequences today.

The documentary, “Just Wrong: The Aftermath of Wrongful Convictions, From Crime Victims to Exonerees,” chronicles the experiences of three individuals who spent decades in prison for crimes they did not commit and three crime victims or survivors whose lives were impacted by a wrongful conviction.



To see and hear their stories, watch “Just Wrong” at <https://nij.ojp.gov/just-wrong>.

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