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Convicting the Innocent: The Impact of Wrongful Conviction in the U.S. Criminal Legal System

Aubrie Entwood
age2742@rit.edu

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Convicting the Innocent: The Impact of Wrongful
Conviction in the U.S. Criminal Legal System

by

Aubrie Entwood

A Capstone Project Submitted in Partial Fulfillment of the
Requirements for the Degree of Master of Science in Criminal Justice

Department of Criminal Justice

College of Liberal Arts

Rochester Institute of Technology

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Student: **Aubrie Entwood**

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Impact of Wrongful Conviction in the U.S. Criminal Legal
System**

Graduate Capstone Advisor: **Dr. Jason Scott**

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Capstone Overview

Wrongful conviction is a justice system error with far-reaching consequences. This capstone project looks at four different issues within wrongful conviction and exoneration in the U.S. criminal legal system. Chapter 1 focuses on the impacts of wrongful conviction for female exonerees, highlighting the way they are different from male exonerees, the factors that contribute to wrongful conviction that are more salient to females, and the specific ways the police and courts contribute to the wrongful conviction of females. Special attention is paid to the “crimes” of female exonerees and the additional psychological consequences that many female exonerees suffer. Ways in which the justice system, the innocence community, and female exonerees have contributed to reducing the impact of this problem are considered along with recommendations for ways to expand that work.

Chapter 2 looks at the confluence of race and wrongful conviction, analyzing case data from the National Registry of Exonerations for the most serious crimes of murder, manslaughter, sexual assault, and child sex abuse. This paper explores the interaction effects of race, contributing factors to wrongful conviction, and types of official misconduct on an exoneree’s time between conviction and exoneration. An argument for racialized cumulative disadvantage is made by analyzing the impact of the known contributing factor of official misconduct and police and prosecutor misconduct on Black exonerees.

Remedying wrongful conviction is complex and can be approached from several justice system angles, one of which is monetary compensation. Chapter 3 looks at compensation as an intervention for wrongful conviction and argues that compensation may primarily impact the exonerated but has the potential to be a deterrent to official misconduct. At a minimum, it is one step the state can take towards making amends for the harm of a wrongful conviction. This paper

reviews the literature on various forms of compensation for exonerees, their impact, and how they can be improved.

For some exonerees, involvement with the criminal legal system continues after their exoneration. Chapter 4 looks at sociological theories that can explain this post-exoneration offending behavior and argues for an explanation that integrates labeling and strain theories. Being wrongfully convicted of a crime causes harm to the individual. After exoneration and release from prison, the impact of the harm is compounded by issues of reentry to society. Barriers to reentry combined with the harm of being wrongfully imprisoned can explain why a subset of exonerees commit crimes after their release. The integrated theory posits that stigmatization associated with the offender label combined with strains that are either unjust, severe, or provide an incentive for crime, contribute to criminal offending by exonerees. Support for the theory is explored and limitations of the theory are considered. Policy recommendations to prevent future criminal behavior by exonerees are suggested.

Chapter 1

Women and Wrongful Conviction: The Impact of Gender in the Justice System

Wrongful conviction is an egregious error of the United States' criminal justice system. Over 3,300 individual exonerations have been archived in the National Registry of Exonerations (NRE) since 1989 (National Registry of Exonerations, n.d.-a). The NRE is a project of the University of Michigan Law School, Michigan State University College of Law, and University of California Irvine Newkirk Center for Science and Society. In addition to the individual registry, the NRE began archiving group exonerations in 2020 (National Registry of Exonerations, n.d.-c). A group case occurs when a group of defendants' cases are connected by systematic official misconduct—police, prosecutorial, or forensic—during the investigation or prosecution stages. The 30 recorded group cases that have occurred between 1992 and today represent the exonerations of 35,793 defendants. Together, these numbers reflect a subset of the wrongfully convicted, specifically, those who have been exonerated based on evidence of actual innocence (National Registry of Exonerations, n.d.-b, n.d.-d). Researchers state that the true rate of wrongful convictions is difficult to determine (Acker, 2017; Zalman & Norris, 2021), but the generally accepted rate is between 0.5% and 1% of all convictions (Zalman, 2012).

The overall rate of wrongful conviction is gender neutral. According to N.A. Jackson et al. (2022), the data is not often separated by male and female, which makes gender differences in the population mostly unknown. They assert that the vastly greater proportion of exonerations for males is primarily due to the preponderance of exoneration cases containing DNA, which is more likely to be found in crimes committed by males (see also, Konvisser, 2011). Research on female wrongful conviction is limited and has only been given attention in the last decade (N. A.

Jackson et al., 2022; Webster & Miller, 2014). Webster and Miller (2014) note that a subtle shift in research on wrongfully convicted women occurred in the mid-aughts due to female exonerees' desire to create a community to discuss their unique needs and challenges. At the same time, there was an increased interest by the media due to the changing scientific understanding of Shaken Baby Syndrome (now known as abusive head trauma). After discovering unique attributes of the cases of wrongfully convicted women, the Center on Wrongful Convictions established a Women's Project in 2012 in order to accept more cases of wrongfully convicted females (Redden, 2015). While the research on the prevalence of wrongful conviction for women is limited, several analyses conducted on data from the NRE and other collections of exoneration cases have shown female exonerees represent only 8-10% of known exonerations (Henry, 2018; N. A. Jackson et al., 2022).

Wrongfully Convicted Women are Different

Females represent a small percentage of total exonerations but there are specific features of wrongful conviction that are more salient to them than men. Gender stereotyping—specifically the stereotyping of idealized motherhood—makes females especially vulnerable to wrongful conviction for crimes against family members and children in their care (Konvisser, 2011). Women are susceptible to no-crime wrongful convictions (Henry, 2018). A “no-crime” case is one in which a person is convicted for an act that did not actually occur, such as a death labeled as a homicide which is later determined to be a death by suicide, accident, or natural causes (N. A. Jackson et al., 2022). Further, female exonerees experience the intersection of gender and race in their wrongful convictions for specific types of crimes; White females are more likely to be wrongfully convicted of child sexual abuse than Black women, while Black women are more likely to be wrongfully convicted for “street” crimes (Parkes & Cunliffe, 2015;

Ruesink & Free, 2005; Webster & Miller, 2014). Not only are there differences between male and female exonerees in the types of crimes they are convicted for, but there are also differences in the factors that lead to their wrongful convictions (N. A. Jackson et al., 2022; Ruesink & Free, 2005).

Contributing Factors

Research into the factors that contribute to wrongful conviction reveal numerous failures of our justice system: false confessions; inadequate defense; eyewitness misidentifications and suggestive lineups; false accusations by jailhouse snitches; faulty or misleading forensic evidence; prosecutorial misconduct; police misconduct and coercive interrogation tactics; and other false accusations (Garrett, 2020; National Registry of Exonerations, n.d.-a). While the overall factors that contribute to wrongful convictions are well-researched (Garrett, 2019; Gould & Leo, 2010; Ryan & Adams, 2015), factors specific to women have been studied less.

The body of research on factors that contribute to wrongful conviction of females shows that many of the factors are different or more common for women than men. Ruesink and Free (2005) found that the top two factors leading to wrongful conviction for women are official misconduct followed by eyewitness misidentification; for men, the reverse is true. The involvement of children in the cases of wrongfully convicted females may contribute to some of the differences in factors. In an analysis of wrongfully convicted women sentenced to life without parole or the death penalty, Lang (2021) discovered a preponderance of false confessions or child-victims in their cases. Ruesink and Free (2005) discovered a new factor specifically for women erroneously convicted of child sexual abuse: improperly suggestive interviewing of children.

N. A. Jackson et al. (2022) noted that while eyewitness misidentification is a major contributing factor to wrongful convictions, in general, it is not a factor in a subset of wrongful convictions known as no-crime wrongful convictions, those in which the crime being charged did not actually occur (such as a death charged as murder that was accidental in nature). No-crime cases represent more than one-third of all wrongful convictions (Henry, 2018; N. A. Jackson et al., 2022; Zakirova, 2018) and approximately 63% of all female wrongful convictions (K. Jackson & Gross, 2014). Official misconduct in female no-crime cases consisted of lies by the police at both the investigative and trial stages, aggressive policing, and prosecutorial misconduct (Henry, 2018).

Gendered Crimes

The crimes that females are accused of often differ, primarily by proportion, from men. Cases of female exoneration are more likely to include property, drug, or other non-violent offenses than males (Webster & Miller, 2014). An examination of 42 cases of female exoneration between 1970 and 2005 found that the three most common charges for that dataset were murder, child abuse, and drug offenses (Ruesink & Free, 2005). Comparing murder charges for a representative sample of males, the authors found that men were wrongly convicted of murder in over 50% of cases, while wrongful murder made up 36% of female cases. Child abuse was charged in 36% of the cases reviewed for women, but only 7% of men were charged with child abuse.

The small body of research that exists on no-crime wrongful convictions shows that women are more likely than men to have a no-crime wrongful conviction (N. A. Jackson et al., 2022). Women represent 20% of the exonerations for no-crime wrongful conviction but only 5% of the actual-crime exonerations (Henry, 2018). Further, a 2014 analysis of the trends in female

wrongful conviction cases in the NRE found that 90% of cases where a woman was convicted for harm to a child were for violent crimes that never happened. The vast majority of those no-crime convictions (70%) resulted from accusations of child sexual abuse during the hysteria of the mid-1980s to mid-1990s or were deaths attributed at the time to abusive head trauma or so-called “Shaken Baby Syndrome” (K. Jackson & Gross, 2014).

Gendered Context

The U.S. criminal justice system is not gender blind. Women in the justice system, including those wrongfully convicted, experience stereotyping based on their gender. As relayed by Lang (2021), historian and professor of criminal justice, Mary Welek Atwell, analyzed the first 14 cases of females executed after the 1976 Supreme Court decision *Gregg v. Georgia*, which ended the moratorium on the death penalty. Atwell’s findings indicated that gendered stereotypes, language, sexuality, and failure to meet societal expectations of women were factors in their convictions and death sentences. Studying wrongfully convicted women, Parkes and Cunliffe (2015) argue that the errors in female conviction may stem less from the typically researched factors but from “more pervasive social failures, inequities, and discrimination” such as a lack of protection from the state for women leaving violent relationships (p. 221).

Researchers of female wrongful conviction believe this gendered context contributes to erroneous conviction (N. A. Jackson et al., 2022; Konvisser, 2011; Lang, 2021; Lewis & Sommervold, 2014). Webster and Miller (2014) found that false confessions were obtained by the manipulation of accused mothers’ grief and self-blame. Lang (2021) explored whether the cases of exonerated women sentenced to death or life without parole would depict a similarly gendered context to Atwell’s executed women. Lang’s analysis of the exoneree cases indicated that failure to conform to gender stereotypes may have played a part in these convictions.

Specifically, the police interrogations that resulted in false confessions were viewed as prejudicial instead of probative. Lewis and Sommervold (2014) state that law enforcement use gendered stereotypes of ideal motherhood in their interrogations of women in order to secure confessions.

Prosecutors have been shown to emphasize a woman's masculine characteristics or lesbianism to cast doubt on the defendant's innocence (Lewis & Sommervold, 2014) or use gender stereotypes to create a social stigma or character assassination for the female defendant (Konvisser, 2011). The use of "experts" to blame women, as mothers or caregivers, for deaths that are eventually deemed accidental exacerbates the effects of the prosecutors (Konvisser, 2011). The courts have adjudicated women who are perceived as less feminine or "gender inappropriate" with harsher sentences (Lewis & Sommervold, 2014).

Society views women who kill differently than men. Two stereotypes about women who kill are often applied to mothers and women acting as caretakers: the "bad" mother or the "mad" mother (Lewis & Sommervold, 2014). The "mad" mother conforms to femininity but kills because of mental illness, whereas the "bad" mother kills because she is "a cold, callous mother incapable of caregiving and therefore nonfeminine" (p. 1041). The media reinforces these stereotypes by the way they report on cases, which in turn can affect how the alleged offenders are treated and the way a jury views them.

Gender stereotypes also play a large role in the explanation for why women are more likely to be wrongfully convicted in no-crime cases. N. A. Jackson et al. (2022) reviewed modern workforce discrimination against women and found that in order for women to be viewed as competent, they must maintain gendered traits such as honesty, caring, and perfectionism while performing their work-related tasks. Further, they found that women in the

workplace who are perceived as being uninterested in having children experienced “social censure” (p. 5). Taken together, they propose that women who are perceived as dishonest or uninterested in being a mother may fall under heightened suspicion when a child in their care is injured or dies. Webster and Miller’s (2014) analysis found that cases of women exonerated for sex crimes always involve a child as the victim. They propose that it is the role of caregiver that makes the woman a suspect. Webster and Miller also found differences in how women’s exonerations are achieved. Deaths of intimate partners that were defended with the battered women’s self-defense argument were remedied by clemency instead of exoneration.

Intersection with Race

Race is a major differential factor in all wrongful convictions. Both male and female Black exonerees are overrepresented in exonerations databases compared to the general population (Ruesink & Free, 2005; Webster & Miller, 2014). An analysis of the first 3,200 cases in the NRE found that 53% of the exonerees were Black, while Black people represent only 13% of the population of the United States (Gross et al., 2022). Extrapolating from known exonerations, the authors note that Blacks are seven times more likely to be falsely convicted than Whites. The overwhelming majority of defendants in the group exonerations database are Black (National Registry of Exonerations, n.d.-d).

For men and women combined, there is a racial gap in the time between sentencing and exoneration (Rafail & Mahoney, 2019). Black exonerees spend more time in prison than White exonerees. Further, state-level differences in the speed of exonerating an individual were found to be correlated with the racial and political makeup of both the county of conviction and the exoneree. For example, Blacks are likely to spend a longer time in prison when they are convicted in a state whose speed of exoneration is slow and the population of the county of

conviction is overwhelmingly Black; Whites convicted in a state whose speed of exoneration is quicker and the community of conviction was primarily White, have shorter prison stays.

For male exonerees, predominantly Black racial minorities represented 62% of exoneration, but only 35% of female exonerees were racial minorities (predominantly Black) (Webster & Miller, 2014). Webster and Miller state that the overrepresentation of minority male exonerees is a reflection of the overrepresentation of minority men in prison. While women of color made up over half of the female prison population in 2014, they represented only 35% of female exonerees, which Webster and Miller attribute to the overrepresentation of White female exonerees for child sexual abuse hysteria cases tried in the 1980s and 1990s (representing 25% of the cases in the registry).

Women of color tend to be exonerated for street crimes instead of the domestic crimes typical of White female exonerees. In their sample of 42 female exoneration, Ruesink and Free (2005) found Black women were more likely to be convicted of murder than White women. Interestingly, this research found that Black women were more likely to be incarcerated for shorter periods than White women. The authors acknowledge that the data for Black female exonerees is skewed due to six of the seven Black exonerees in their sample coming from a group drug exoneration case in Tulia, Texas due to large-scale misconduct. The Black women in this study may not be representative of all Black female exonerees.

The proximity of Black female exonerees to concentrated poverty and violence makes them vulnerable to wrongful conviction for crimes involving illegal drugs via aggressive policing tactics occurring under “broken windows” policies (Henry, 2018). Henry highlights New York City’s Operation Clean Halls which swept up many poor people of color, held them in cells overnight, and subjected them to intense interrogation leading to their guilty pleas. Harris

County, Texas, the site of the Tulia, Texas drug convictions group exoneration, serves as an example of the intersection of race and wrongful conviction. The county stopped people for suspicion of drugs, tested them in-field with often faulty drug-residue test kits, and arrested them when the test indicated the presence of drugs. In order to avoid prison or pre-trial detention, many Blacks and Latinos who were stopped, tested, and arrested pled guilty. To Harris County's credit, the field tests, including those which resulted in guilty pleas, were sent to a crime lab for testing. Of the 133 cases of wrongful drug-related convictions that were exonerated, 66% of the exonerees were Black despite the County's racial composition being 20% Black.

The overwhelming evidence of racial disparities in wrongful conviction, especially those that are tied to the structural factors of concentrated poverty and disadvantage in cities in the United States, make Blacks especially more likely to be victims of wrongful convictions and contribute to the difficulties in overturning their wrongful convictions. Rafail and Mahoney deem these individuals as "doubly or triply disadvantaged" (2019, p. 551). When gender is considered with race, this may mean that Black women experience a quadrupled effect of disadvantage.

Psychological Consequences

All women who are incarcerated face unique health and medical issues that our prison systems are not equipped to handle. These include the need for female-specific healthcare services, the trauma of prior sexual victimization and the risk for sexual abuse in prison, as well as the impact on parenting. For exonerees, the psychological impacts of imprisonment are compounded by their unique situation of being innocent of their crime. For female exonerees who have been incarcerated for the death of a loved one, the psychological consequences are further compounded (Konvisser, 2015).

Much of the research conducted on the psychological consequences of wrongful conviction has used male exonerees, but is generalizable to women as well (Temares et al., 2022). Anxiety, depression, PTSD, anger, and trust issues are common in exonerees (N. A. Jackson et al., 2021; Wildeman et al., 2011). Exonerees experience a loss of identity, social stigma, and a strain on interpersonal relationships; the consequences of being wrongfully accused, including wrongfully convicted, are “extreme and long-lasting” and often include a change in self-identity (Brooks & Greenberg, 2021, p. 47). In a review of the literature, Temares et al. (2022) found that after exoneration, many exonerees feel a sense of guilt and experience permanent changes in personality. These effects of wrongful incarceration follow the exoneree home and can impact their family as well.

Zieva Konvisser (2011) explored the psychological consequences of wrongful conviction for women. One key difference for women, as compared to men, is that women often had to face the death of a loved one in conjunction with their conviction. Injustice is compounded by their grief. The injustice is further compounded when a lack of DNA evidence in their cases makes it more difficult to overturn their conviction or to get the attention of conviction review. Further psychological consequences come from the stigma of the “bad” or “mad” mother that media and prosecutors attribute to many of these women (Lewis & Sommervold, 2014).

Parental grief is a significant experience for any parent whose child has died. For female exonerees erroneously convicted for the death of their child, their grief is magnified and their mourning delayed (Temares et al., 2022). Temares et al.’s literature review of the impact of parental grief found evidence of increased physical illness and mortality, especially for mothers, due to the death of a child. One cause of the increased risk of mortality is due to the risk of psychiatric hospitalization as well as suicide. These risks were higher for mothers than fathers.

Parents must grieve for their child while in prison while simultaneously grieving for the loss of their free life due to incarceration. The ability to grieve openly in prison is severely limited, making the impact worse by suppressing and delaying the natural mourning process.

Remedies and Reforms

The prevention of wrongful convictions is the best solution to the problems faced by female exonerees, but this is a complex task. As previously discussed, the factors that contribute to wrongful conviction are many and varied. Factors that are specific to females are situated in the cultural context of gender. Despite this, there have been efforts to reduce the egregious justice system error of wrongful conviction.

Professional Exonerators

Professional exonerators include Conviction Review (or Integrity) Units (CRUs) and Innocence Organizations. CRUs are special units based out of District Attorney offices that are tasked with investigating claims of innocence. The CRU that is most often cited as the first was created in 2007 by the Dallas County District Attorney and inspired the development of other CRUs throughout the United States (Chandler, 2016). The National Registry of Exonerations (2022c) lists 44 different conviction review units across 17 states that have exonerations recorded in their database. In 2021, Conviction Review Units were responsible for securing 61 exonerations in the database in 2021 (National Registry of Exonerations, 2022a).

Innocence Organizations are non-profits that aid innocent incarcerated individuals in securing exoneration. The same National Registry of Exonerations Report (2022a) indicated that Innocence Organizations were responsible for adding 67 cases to the database in the same year. The involvement of an Innocence Organization in a conviction review has been found to hasten the exoneration process (Rafail & Mahoney, 2019). The limited capacity of both Conviction

Review Units and Innocence Organizations combined with the necessity of their participation in innocence claims means that expansion of both of these professional exonerators is necessary.

Focus on the Factors

There have been specific attempts to address multiple factors of wrongful conviction. Garrett (2020) reviews the research on factors that contribute to wrongful conviction and notes that there have been improvements to eyewitness misidentifications, forensic evidence, false confessions, and accurate police interrogation techniques. Other improvements include efforts by states to enact postconviction DNA testing claims and standards for presenting newly discovered evidence of innocence. Many of these improvements need more work. Unreliable forensics, eyewitness misidentification, and false confessions all need more research and policy or process changes.

Henry (2018) recommends four ways that the justice system can improve: reduce police and prosecutor misconduct and hold offenders accountable, review misdemeanor charges of wrongful convictions, continue to scrutinize forensic evidence and rid the system of evidence based on junk science, and increase resource allocation to the discovery of wrongful convictions that do not have DNA evidence—a particularly salient recommendation to helping exonerate women.

Norris et al. (2019) recommend changes to reduce false confessions, but fall short in considering the impact of these on women. They ignore changing the interrogation process by police in favor of suggesting that interrogations be recorded. Recording interrogations should be a best practice for interviewing suspects of a crime. However, additional changes to the interrogation process that would replace an accusatory style with a more probative investigatory style would positively impact wrongfully convicted women. For females, if the interrogations

contain gender-bias or evidence of tactics driven by a belief that women are not fulfilling their societal roles, and if these biases are also presented in courtrooms to juries who ultimately convict, simply recording an interrogation will have no impact—the bias is on the tape (or in the courtroom) only for those who are aware of the bias.

Gender Prejudice

Changing how the larger culture views women, especially women who find themselves involved with the justice system would help prevent wrongful convictions. This is a task that cannot be assigned to an agency to enact, but improvements can still be made. Research on the impact of gender stereotypes within the justice system should be conducted (N. A. Jackson et al., 2022) in order to raise awareness as well as determine policy and process changes that can help women. While increasing the awareness for prosecutors and judges about the influence of gender-prejudicial evidence in female wrongful convictions will be helpful, it will ultimately be difficult to exclude this type of evidence from court proceedings (Lang, 2021). Given the limited methods for excluding prejudicial evidence and false confessions under the current laws, Lang recommends making attorneys and judges aware of the ways that the evidence can contribute to confirming juries' beliefs about women's violations of societal roles.

In addition, Lang (2021) suggests that criminal justice actors could receive training on implicit bias. While this seems logical, the evidence does not support a long-term impact. Implicit bias training for police officers has been found to increase their knowledge of the bias, but the impact has limited durability. Lai and Lisnek (2023) found that post-training, police officers' intentions to address bias and the increased knowledge of bias lasts approximately one month. Research on the impact of racial bias training for police to reduce racialized stops and searches showed a similar result of increased knowledge but no effect on outcomes (Miller et al.,

2020). Even if police could be trained to be aware of gender bias in a way that resulted in less gendered treatment, similar training would need to be provided to judges and juries to impact the legal outcomes for wrongfully convicted women.

Conclusion

The community of wrongfully convicted women and exonerees experience their convictions differently than erroneously convicted males. The crimes that females are convicted for are unique. No-crime convictions and crimes against loved ones are more common for females. Black females face the intersection of race and gender in their wrongful convictions. The psychological impacts of wrongful conviction can also be different for females than males, especially when faced with punishment for the death of a loved one. Further, the gendered context that women face within police interrogations, in the courtroom, and by justice system actors is uniquely influential in contributing to the wrongful conviction of most women.

Beyond the negative aspects that thrust wrongfully convicted women into a special community, researchers have found that female exonerees express agency in establishing themselves as a community. Group therapy has been shown to be valuable for providing shared experiences and establishing a sense of family among exonerees (Konvisser, 2011). Many exonerees go on to work in advocacy, awareness, or reform work (Konvisser & Werry, 2017).

The unique conditions of female wrongful conviction within a gendered social context can help shine a light on the fallible nature of the U.S. justice system. The lack of research on this issue needs to be addressed. Research into the specific mechanics of the failures that lead women to be wrongfully convicted might expose the larger issues in the system. Addressing the gendered context of issues for women may be a more palatable and easier solution than working on the entrenched racialized bias of the system. As unfortunate as that is, the focus on correcting

gender bias in the system could set the stage and create a template for how to address other egregious biases in the criminal justice system and reduce overall error.

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Chapter 2

Racialized Cumulative Disadvantage in Wrongful Conviction: The Impact of Contributing Factors and Official Misconduct on Time from Conviction to Exoneration

The differential impact of race can be seen across all facets of the criminal justice system. Vélez and Brunson (2023) argue that criminologists must center race in the study of crime and criminal justice in the United States to acknowledge its importance in understanding crime and criminal justice. Centering race also provides a deeper understanding of how racial hierarchy in the U.S. contributes to disproportionate outcomes by race. For researchers of criminology, centering race allows the use of race as a proxy for how people are treated differently in the criminal legal system. The literature denotes racial bias throughout the justice system and wrongful convictions and exonerations are no exception. Structural factors of concentrated poverty and disadvantage in cities, combined with systemic racism in the United States, make Black Americans more likely to be involved with the justice system (Keith, 2016). These same factors also make Blacks more likely to be victims of wrongful convictions and contribute to the difficulties in overturning their wrongful convictions.

Black Americans, who are overrepresented in the incarcerated population at a rate nearly five times that of White Americans (Nellis, 2021), are also overrepresented in the thousands of wrongful convictions and exonerations in the U.S (Keith, 2016; Ruesink & Free, 2005; E. Smith & Hattery, 2011; Webster & Miller, 2014). As of 2022, Black Americans comprised only 13% of the U.S. population, but represented 53% of the first 3,200 exoneration cases in the National Registry of Exonerations (NRE) (Gross et al., 2022), a database that tracks known individual

exonerations with evidence of actual innocence¹. The NRE also tracks group cases of exonerations that are linked together by systematic official misconduct—police, prosecutorial, or forensic—during the investigation or prosecution stages (National Registry of Exonerations, n.d.-d). Among the groups database the vast majority of exonerees are Black (National Registry of Exonerations, n.d.-c). Extrapolating from these two sources of known exonerations, Gross et al. (2022) concluded that Blacks are seven times more likely to be falsely convicted than Whites. When analyzing cases of Black exonerees accused of raping White women, the disproportionate representation is starker. While Black men are responsible for committing 16% of rape against White women, they represented 78% of exonerations for this crime (E. Smith & Hattery, 2011). Black Americans are approximately eight times more likely to have a wrongful conviction for rape than White Americans (Gross et al., 2022). Further, systemic and overt racism in rape prosecutions can often be an “excuse” for official misconduct.

Racialized Cumulative Disadvantage

These various factors that increase the likelihood of involvement with the criminal legal system for Black Americans has also been described as *racialized cumulative disadvantage*, or the “accrual and perpetuation of socioeconomic, psychological, and emotional harms” (Umamaheswar, 2022, p. 1). Umamaheswar argues that this disadvantage disproportionately affects Black and Hispanic wrongfully convicted men. In her interviews with 15 wrongfully convicted men, she drew out themes from the exonerees’ early life course years, their experience of wrongful conviction and imprisonment, and their experiences upon release and reentry. Black and Hispanic exonerees experienced their wrongful conviction, imprisonment, and exoneration

¹ For the NRE’s comprehensive definition of innocence, see the definition of “Exoneration” in their Glossary (National Registry of Exonerations, n.d.-b).

differently than White exonerees. When comparing the prison experiences of socioeconomically disadvantaged White exonerees to Black and Hispanic exonerees, differences in experience by race continued to be prevalent, underscoring the impactful additional harms of the racialized prison culture.

This cumulative disadvantage for a Black exoneree touches every aspect of their wrongful conviction, from their identification as a suspect, the trial or plea bargain and conviction, sentencing, imprisonment, exoneration, their return to society, and finally, their financial, emotional, and physical well-being after exoneration. This analysis aims to understand this racial cumulative disadvantage by examining several components of a wrongful conviction that might predict the length of time between an exoneree's conviction and exoneration.

Known Contributing Factors

While the known contributing factors of wrongful conviction appear differently in the literature over time (Garrett, 2020; Gould et al., 2014; Gould & Leo, 2010; Ryan & Adams, 2015), six core factors are often used in research and are also tracked by the NRE in their database. These six factors are false confessions, inadequate legal defense, mistaken witness identification, false or misleading forensic evidence, official misconduct, and perjury or false accusations. The NRE case data contains information on which contributing factors were found within an exoneree's wrongful conviction. As of November 21, 2023, the NRE database contained 3,421 cases, of which perjury and false accusation and official misconduct represented the top two contributing factors at 64% and 60%, respectively (National Registry of Exonerations, 2023). Mistaken witness identification was found in 27% of the cases while false or misleading forensic evidence was found in 25%. False confessions were found in 13% of the cases. The NRE website displays a dynamic graph that represents contributing factors by type of

crime. For homicide cases, both perjury and false accusation (72%) and official misconduct (73%) are the largest contributing factors to wrongful convictions in the dataset. Mistaken witness identification (28%), false or misleading forensic evidence (29%), and false confessions (23%) were found in smaller percentages of exonerations in the NRE. Mistaken witness identification was the most common contributing factor to a wrongful sexual assault conviction, found in 66% of those cases. The most common contributing factor for wrongful child sexual abuse convictions was perjury or false accusation, found in 85% of those cases.

Official Misconduct

Official misconduct by governmental actors—police, prosecutors, forensic analysts, and child welfare workers—is a known contributing factor to wrongful convictions, regardless of the race of the exoneree. The NRE lists official misconduct in an exoneration when “police, prosecutors, or other government officials significantly abused their authority or the judicial process in a manner that contributed to the exoneree's conviction” (National Registry of Exonerations, n.d.-b, p. Official misconduct section). In a comprehensive evaluation of misconduct within exonerations listed in the NRE between 1989 and early 2019, Gross et al. (2020) found that misconduct occurs across five general categories: witness tampering, misconduct in interrogations, fabricating evidence, concealing exculpatory evidence, and misconduct at trial. Overall, misconduct was found in 54% of exonerations in the NRE, the majority of it committed by police and prosecutors. Thirty-five percent of cases in the NRE contained misconduct by police and 30% contained prosecutorial misconduct. Misconduct by forensic analysts primarily occurred in wrongful convictions for sexual assault. One-quarter of wrongful convictions for child sexual abuse contained misconduct by child welfare workers.

Misconduct may impact more than the likelihood of securing a wrongful conviction.

Prosecutorial misconduct was found to be correlated with an increase in the time from conviction to exoneration (Rafail & Mahoney, 2019). Prosecutorial misconduct contains tactics such as suppression of exculpatory evidence, use of false testimony, using coerced witness testimony (Garrett, 2020); suggestive coaching of witnesses, and inappropriate closing remarks (Gould & Leo, 2010). While the majority of prosecutors act ethically, Gould and Leo's list contains tactics that can be done inadvertently or unknowingly. The list includes Brady violations (when prosecutors do not turn over exculpatory evidence to the defense) that can occur unknowingly when prosecutors are unaware that they have the evidence or when police do not provide prosecutors with the evidence. Further, prosecutors' actions can multiply the effects of poor police investigations (B. Smith et al., 2011). Gross et al.'s (2022) analysis of misconduct in NRE cases revealed that the most common type of misconduct was concealing exculpatory evidence, occurring in 44% of exonerations and committed by both police and prosecutors.

Police misconduct occurred across all five of the misconduct categories identified by Gross et al. (2020). Within the cases they examined, 33% contained concealment of exculpatory evidence by police officers. Other police misconduct found in their examination included officers lying about how their investigations were conducted, especially around investigations that led to a false confession; the fabrication of evidence through false reports such as witnessing commission of a crime that didn't occur or of hearing a defendant's confession when none was given. Further, actual or threatened violence during interrogation was found in 64% of interrogations that contained misconduct. Where witness tampering occurred, 80% of the tampering was done by police.

Examinations of official misconduct in exonerations reveal more patterns of racial disparity. Among cases in the NRE, Black exonerees were slightly more likely to have

experienced misconduct in their cases when compared to White exonerees (Gross et al., 2020). The disparity grows for Black exonerees wrongfully convicted of murder. Black murder exonerees were 50% more likely to have experienced police misconduct in their convictions than White murder exonerees (Gross et al., 2022). Murder cases resulting in a sentence of death revealed even larger disparities for Black exonerees (Gross et al., 2020). Black exonerees account for 52% of murder exonerations; Gross et al. believe this racial disparity in murder exonerations is largely attributed to misconduct in obtaining and presenting evidence. In contrast, they conclude that the racial disparity in drug crimes, where Black exonerees account for 63% of individual exonerations for drug crimes and a larger proportion of drug crime frame-ups in the groups database, can be attributed to racial profiling among police, a form of misconduct that is not measured by the NRE but is none-the-less important.

Mogavero et al. (2022) examined racialized patterns of police and prosecutor misconduct in violent and sexual offense exonerations whose cases contained the known contributing factors of false accusation or mistaken witness identification. Their findings highlight racial differences between Black and White exonerees. Black exonerees had experienced more official misconduct and more actors producing misconduct than White exonerees. Among homicides, when compared to White exonerees, Black exonerees had more misconduct by multiple actors. Among wrongful convictions for sexual assault, Black exonerees were subjected to a disproportionate amount of official misconduct compared to White exonerees.

Time from Conviction to Exoneration

Scherr and Normile (2022) examined how the known contributing factors to wrongful conviction (false confessions, faulty or misleading forensic evidence, inadequate legal defense, mistaken eyewitness identification, official misconduct, and perjury) combined with other factors

such as DNA and race, impacted the time from conviction to exoneration for cases involving murder, attempted murder, and accessory to murder. The authors divided the time from conviction to exoneration into two distinct timeframes of conviction to release and release to exoneration. Their findings indicate that the time to release for an exoneree can be predicted by five of the six known contributing factors (only inadequate legal defense did not predict time to release). Further, adding race into their analysis, they determined that cases where the exoneree was a racial minority were associated with a longer time between conviction and release. When examining the time from release to exoneration, the only significant predictor found was the presence of a false confession. When examining the time from release from incarceration to exoneration, the authors found no racial differences.

Several examinations of race and exonerations have revealed interesting facets of the relationship. On average, Black exonerees spent three more years in prison than their White counterparts, regardless of their sentence (Gross et al., 2022). Rafail and Mahoney (2019) found a racial gap in the time between sentencing and exoneration; Black exonerees spend more time in prison than White exonerees. Further, state-level differences in the speed of exonerating an individual were found to be correlated with the racial and political makeup of both the county of conviction and the race of the exoneree. For example, Black exonerees are likely to spend a longer time in prison when they are convicted in a state whose speed of exoneration is slow and the population of the county of conviction is overwhelmingly Black; White exonerees convicted in a state whose speed of exoneration is quicker and the community of conviction was primarily White, have shorter prison stays. Rafail and Mahoney deem these individuals as “doubly or triply disadvantaged” (p. 551).

The disadvantage compounds when racial disparities in official misconduct are taken into

consideration. In their analysis of race among NRE cases, Gross et al. (Gross et al., 2022) posit that among murder exonerations, the disproportionate number of Black exonerees may be explained by racial disparity among both misconduct and the time to exoneration. Black exonerees who were wrongfully convicted of murder were more likely to have experienced official misconduct and waited longer to be exonerated.

Data and Methods

The National Registry of Exonerations (NRE), a project of the University of Michigan Law School, Michigan State University College of Law, and University of California Irvine Newkirk Center for Science and Society, tracks known cases of exoneration based on actual innocence since 1989 (National Registry of Exonerations, n.d.-a). In addition to the individual registry, the NRE began archiving group exonerations in 2020 (National Registry of Exonerations, n.d.-d). When a group of exoneration cases are connected by systematic official misconduct—police, prosecutorial, or forensic—during the investigation or prosecution stages of the original conviction, they are entered collectively as a case in the groups database. A group case may or may not result in cases being added to the individual registry. Together, these two databases represent a subset of all exonerations, including in the registries those who have been exonerated based on evidence of actual innocence (National Registry of Exonerations, n.d.-b, n.d.-e). The NRE offers a publicly available dataset as an excel spreadsheet, downloadable after filling out a web form. A link to their codebook is included and additional definitions about the tags within the dataset are available on their website. The dataset contains case information for each exoneree including age, race, gender, conviction year, county of conviction, length of sentence, worst crime within their wrongful conviction, and date of exoneration. The dataset also indicates what known contributing factors to wrongful conviction were found in the case and for

cases with official misconduct, indicates which sub-types of misconduct were present. The original dataset under examination was downloaded from the NRE on October 5, 2023, and contained 3,385 cases entered into the database as of September 19, 2023.

Exclusions from the Dataset

This analysis is concerned with felony convictions under the assumption that felonies often carry heavier sentences, more consequences, and longer prison terms and therefore may be given more attention for case review, as proposed by Scherr and Normile (2022). Therefore, misdemeanors were removed (n=145, 4.3%). Further, in Gross et al.'s (2020) analysis of misconduct in the NRE dataset, convictions for murder and manslaughter comprised the largest number of cases with official misconduct; sexual assault and child sex abuse both contained significant proportions of cases with official misconduct and were a significant proportion of the overall cases in the dataset. Therefore, using the NRE-coded variable "worst crime" of which the exoneree was convicted, cases that were not murder, manslaughter, sexual assault, or child sex abuse were removed (n=1,132, 31.6%). Cases tried in federal court (n=135, 4%) were removed due to their small sample size and because patterns of misconduct in federal court cases are different from patterns of misconduct in state court cases (Gross et al., 2020). Finally, cases in which the exoneree's race was classified as "don't know" (n=6, 0.002%) were removed. This left a final dataset of 1,967 cases. For some analyses, subsets of the final dataset were used: a dataset containing only cases that contained official misconduct (n = 1,240) and a dataset of official misconduct cases that contained only those cases in which the misconduct had been performed by both a police officer and a prosecutor (n=411).

Variables

While most information within the NRE dataset is contained as a single variable in a

single column, two important types of information are grouped into one column: important case information not contained in other columns and the sub-misconduct types for the official misconduct category. De-combining these two pieces of information into single variables was done by use of an “IF” formula in excel. A new column coded as yes/no was made for each variable. The data was loaded into SPSS 28.0 and several variables were re-coded to dichotomous variables or scale/count variables for ease of analysis. The variables most important to this analysis—race, time to exoneration, contributing factors, and official misconduct by actor and type—warrant further explanation.

Time to Exoneration

The outcome variable being measured is the time from an exoneree’s conviction to their exoneration. The publicly available dataset from the NRE contains case data for the year of conviction and the year of exoneration. This variable was calculated by subtracting the year of conviction from the year of exoneration to get the number of years between the two and then multiplying by 365.25 to calculate the number of days and take leap years into consideration. All references within this analysis concerning “time to exoneration” have been converted back to years for ease of discussion.

Race

The classification of race within the NRE contains seven categories: White, Black, Hispanic, Asian, Native American, Other (including native Hawaiian and Pacific Islander), and Don’t Know. How an exoneree’s race is classified has contradictory explanations from the NRE. In the publicly available code manual for the dataset, the designation by race is stated to be “self-identified by the exoneree.” The NRE’s own report on race and exonerations also indicates that the category of Hispanic is self-identified (Gross et al., 2022). However, in a published law

review on false convictions of Latino/a defendants, the editors of the NRE note that racial coding of cases in the dataset can be done by reviewing court records when self-identification is not available (O'Brien et al., 2019). This unreliable classification of an exonerees' Hispanic ethnicity makes it difficult to form conclusions about Hispanic exonerees. The NRE itself avoids discussing patterns in exonerations for Latino/a defendants (Gross et al., 2020).

NRE cases for exonerees of other racial minorities are combined together into the following categories: Asian, includes all people on the Asian continent except Russians; Native American, includes Alaska Natives; and other, includes native Hawaiians and Pacific Islanders. Except for Native Americans, these other groupings make discussion about exonerees of these races difficult. Further, as the NRE notes in its report on Race and Wrongful Conviction (Gross et al., 2022), analyzing race and ethnicity other than Black and White is complicated by the lack of uniform reporting methods for race to national criminal justice statistics clearinghouses. Table 1 represents the breakdown of cases by race in the full NRE dataset downloaded on October 5, 2023, which shows that cases for races other than Black and White are a small subset of the data.

Table 1

Frequency and Percentage of NRE Cases by Race, Original Dataset (N=3,385)

Race	N	%
Black	1,789	52.9%
White	1,103	32.6%
Hispanic	412	12.2%
Asian	31	0.9%
Native American	23	0.7%
Other	20	0.6%
Don't Know	7	0.2%

These factors contributed to the decision I made to code the NRE case data with the racial categories of Black, White, and Other which represents Asian, Hispanic, Native American, and Other. For use in bivariate and regression analyses, dummy variables were made for each race category.

Contributing Factors

The NRE dataset contains a variable for each of the six known contributing factors to wrongful conviction: inadequate legal defense, official misconduct, mistaken witness identification, false or misleading forensic evidence, perjury or false accusation, and false confessions. Each factor variable was recoded into 0=no and 1=yes. A new scale/count variable, *FactorCount* was created to sum the number of contributing factors for each case. Analysis of the data concerning the number of contributing factors used this new variable.

Official Misconduct

The NRE dataset has two ways of capturing information about official misconduct in a case. The first category is whether official misconduct of any type was a contributing factor to the wrongful conviction. That variable, *OMFactor*, was coded as 0 = no, 1 = yes. For cases that contained official misconduct, multiple sub-types of misconduct were tagged. The sub-types of misconduct that were tracked were either misconduct actions, such as withholding exculpatory evidence, or an indication of which actor performed the misconduct, such as a police officer or forensic analyst. The tags were concatenated into one variable within the dataset. After deconcatenating each of the 11 subtypes, a yes = 1, no = 0 coding scheme was adopted for each subtype. Further, these variables were recoded into two new variables that counted, for each case the number of subtypes of misconduct based on the actor (police, prosecutor, forensic analyst, and child welfare worker) or the act of misconduct (withholding exculpatory evidence,

misconduct that is not withholding evidence, prosecutor knowingly permitted perjury, witness tampering or misconduct interrogating a co-defendant, misconduct in interrogation of exoneree, perjury by official, and prosecutor lied in court). *OMActor* reflected the total number of actors who committed misconduct and *OMType* reflected the total number of types of actions of misconduct. Each of these variables counts the misconduct subtype, if it appears in a case at all, not the number of incidents that may have occurred within a case. An additional variable was constructed to identify cases that contained both prosecutorial misconduct and police misconduct (*PolicProsecMisc*, coded as 1=yes, 0=no).

Table 2 displays the characteristics of variables used in the analysis.

Table 2

Variable Characteristics

Name	Description	Statistical Information
<i>TimeToExon</i>	Difference between exoneration year and conviction year	Expressed in days
<i>RaceRecode</i>	Race of exoneree	Black=0, White=1, Other=2
<i>BlackDummy</i>	Exoneree is Black or Not Black	Black=1, Not Black=0
<i>WhiteDummy</i>	Exoneree is White or Not White	White=1, Not White=0
<i>OtherDummy</i>	Exoneree is Other or Not Other	Other=1, Not Other=0
<i>FactorCount</i>	Number of contributing factors	Range 0 to 4
<i>OMFactor</i>	Official Misconduct was contributing factor	1=Yes, 0=No
<i>OMActor</i>	Number of misconduct actors	Range 0 to 4
<i>OMType</i>	Number of misconduct types	Range 0 to 7
<i>PolicProsecMisc</i>	Both police and prosecutor misconduct were present	Yes=1, No=0

Analysis

This analysis builds upon Scherr and Normile’s (2022) findings that the presence of five

of the six known contributing factors predicts the time from conviction to release and that exonerees of minority races have longer times between conviction and release. Mogavero et al.'s (2022) findings that racial differences can be found in the amount of misconduct by both the number of actors and the number of types of misconduct contribute to this analysis. The time from conviction to exoneration outcome variable I am examining differs from how this variable was examined by other researchers. The publicly available dataset contains dates of conviction and dates of exoneration. Other researchers have examined different time periods, such as time from conviction to release and time from release to exoneration. However, those research findings have prompted questions for examination of the data available. Specifically, can the race of the exoneree, the number of contributing factors, and amount of both misconduct actors and misconduct types predict the time from conviction to exoneration? Further, can racialized cumulative disadvantage for the time to exoneration be seen within cases containing official misconduct as well as its sub-types of police and prosecutor misconduct?

Hypotheses

1) Race will be a significant predictor of all independent variables except official misconduct.

Black exonerees will:

- a) have more contributing factors, on average, than all other exonerees.
- b) be equally likely as exonerees of other races to have official misconduct in their case.
- c) have more misconduct actors, on average, than all other exonerees.
- d) be more likely than any other exoneree to have both police and prosecutor misconduct.
- e) have more misconduct types, on average, than all other exonerees.

2) Race will be a significant predictor of the dependent variable, time to exoneration. Black

exonerees will experience longer times between conviction and exoneration, on average, than all other exonerees.

- a) Within cases that contain official misconduct, Black exonerees, on average, will experience longer time to exoneration than other exonerees.
 - b) Within cases that contain both prosecutor and police misconduct, Black exonerees will be more likely than any other exoneree to have experienced longer time to exoneration.
- 3) Race, the number of contributing factors to the wrongful conviction, and the number of misconduct types and actors will predict the time from conviction to exoneration.
- a) Race of the exoneree will explain a greater percentage of the variance in time to exoneration than any other factor.
 - b) The number of contributing factors will explain a greater percentage of the variance in time to exoneration than either the number of misconduct types or the number of misconduct actors.

Statistical Approach

Descriptive statistics were run on the variables within the dataset. I ran Chi-square tests for independence to determine if relationships exist between race and *OMFactor* as well as race and *OMType*. One-way analysis of variance (ANOVAs) were used to find significant differences among racial groups for the means of the following variables: *TimeToExon*, *FactorCount*, *OMActors*, *OMType*. I ran bivariate correlations to test whether linear relationships existed between each of the race dummy variables and *OMActor*, *OMType*, and *TimeToExon* as well as whether linear relationships existed between *TimeToExon* and *FactorCount*, *OMFactor*, and *OMType*. I used a linear regression model to predict *TimeToExon* based on the independent

variables of *OMActors*, *OMTypes*, *FactorCount*, and all race dummy variables.

The following analysis were used for each of two subsets of the dataset, one for cases containing official misconduct and one for cases containing both police and prosecutor misconduct: an ANOVA to test mean racial differences within *TimeToExon*, a bivariate correlation to test if a linear relationship exists between all race dummies and *TimeToExon*, a linear regression to predict *TimeToExon* based on the independent variables of *OMActors*, *OMTypes*, *FactorCount*, and all race dummy variables.

Results

Table 3 contains descriptive statistics for the final data set (N=1,967).

Table 3

Select Case Characteristics (N=1,967)

Characteristic	n	%
Time to exoneration (in years) (range = 0-58 years, <i>M</i> = 15.19 years)		
0-4 years	323	16.4%
5-9 years	376	19.1%
10-14 years	306	15.6%
15-19 years	337	17.1%
20-24 years	248	12.6%
25-29 years	204	10.4%
30-34 years	93	4.7%
35-39 years	47	2.4%
40-44 years	17	0.9%
45-49 years	12	0.6%
50-54 years	1	0.1%
55-59 years	3	0.2%
Race		
Black	1002	50.9%
White	708	36%
Other	257	13.1%

Characteristic	n	%
Known wrongful conviction factors*		
Perjury or false accusation	1352	68.7%
Official misconduct (OM)	1240	63%
Mistaken witness identification	647	32.9%
Inadequate legal defense	622	31.6%
False or misleading forensic evidence	547	27.8%
False confession	354	18%
Official misconduct, by actor*		
Police Officer	839	42.7%
Prosecutor	779	39.6%
Forensic Analyst	74	3.8%
Child Welfare Worker	51	2.6%
Official misconduct, by type*		
Exculpatory evidence withheld	1032	52.5%
Misconduct not withholding evidence	999	50.8%
Witness tampering or improper co-defendant interrogation	615	31.3%
Perjury by an official	330	16.8%
Prosecutor knowingly permitted perjury	218	11.1%
Misconduct in interrogating exoneree	209	10.6%
Prosecutor lied in court	160	8.1%
Most serious offense		
Murder	1241	63.1%
Sexual Assault	352	17.9%
Child Sexual Abuse	316	16.1%
Manslaughter	58	2.9%

*A case may contain more than one of the sub-categories; total of n's will not add to 1,967

Male exonerees accounted for 93.7% (n=1,843) of cases. The race of exonerees was 50.9% Black (n=1,002), 36% White (n=708), and 13.1% Other (n=257). Exonerations occurred in all fifty states, the District of Columbia, and Guam. Conviction dates ranged from 1956 to 2019 while exoneration dates ranged from 1989 to 2023. Over half (n=1005) of the exonerees spent between zero and fourteen years convicted of their crimes while an additional 40% (n=789)

of exonerees spent between 15 and 29 years convicted. The remainder, 8.8% (n=173) spent 30 years wrongly convicted. The majority of exonerees were convicted for murder (63.1%, n=1,241); all homicides (murder and manslaughter convictions) made up two-thirds of the dataset.

Contributing Factors

The top two contributing factors to the wrongful convictions in our dataset were perjury or false accusation (68.7%, n=1,352) and official misconduct (63%, n=1,240). The average number of contributing factors for the dataset was 2.42 (SD = 1.09). On average, Black exonerees' cases contained 2.55 (SD = 1.06) contributing factors, White exonerees' cases contained 2.24 (SD = 1.12) contributing factors, and Other exonerees' cases contained 2.42 (SD = 1.06) contributing factors. Results of the one-way ANOVA indicate statistically significant mean differences in number of contributing factors by race ($p < .001$, $F = 16.678$) with post hoc LSD results indicating that White exonerees' convictions contain statistically significantly fewer contributing factors than any other exoneree. White exonerees' convictions contained 0.31 fewer contributing factors than Black exonerees ($p < .001$) and 0.18 fewer contributing factors than exonerees of other races ($p = .027$). There is no statistically significant difference in the means of contributing factors for Black exonerees and Other exonerees ($p = .08$).

Official Misconduct

Official misconduct was a contributing factor in 63% (n=1240) of cases in the dataset and was found in 67.2% of Black exonerees' cases, 57.6% of White exonerees' cases, and 61.9% of Other exonerees' cases. These differences are statistically significantly different but not meaningful ($\chi^2 = 16.375$, $p < .001$, Lambda = .000). The relationship between race and official misconduct was slight enough to be negligible. Table 4 displays the results of the chi-square test

for significance.

Table 4

Official Misconduct by Race

		Race						Total	
		Black		Other		White		N	%
		N	%	N	%	N	%		
OMFactor	No	329	32.8%	98	38.1%	300	42.4%	727	37.0%
	Yes	673	67.2%	159	61.9%	408	57.6%	1240	63.0%
Total		1002	100.0%	257	100.0%	708	100.0%	1967	100.0%
Chi-square = 16.375 (p<.001)									

Misconduct Actors

The number of actors who produced misconduct ranged between 0 and 4 per case. Among all exonerees in the dataset, the average number of misconduct actors was 0.94 ($SD = .777$) for Black exonerees, 0.83 ($SD = .855$) for White exonerees, and 0.83 ($SD = .785$) for Other exonerees. The mean for the entire dataset was 0.89 ($SD = .808$). For Hypotheses 1c, an ANOVA revealed statistically significant differences between the three racial groups ($p = .017$, $F = 4.078$) with unequal variance in the means. A post hoc Welch test revealed statistically significant differences ($p = .017$). Black exonerees had 0.104 more misconduct actors than White exonerees ($p = .028$). There were no significant differences between Black and Other or White and Other exonerees. However, as seen in Appendix 1, Table 1, further bivariate correlation revealed that while the relationship between official misconduct actors and race is statistically significant for Black exonerees ($r = .064$, $p = .004$) and White exonerees ($r = -.049$, $p = .030$), the magnitude of the correlation is too small to conclude any meaningful relationship.

Results of the analysis between race and an exoneree's case containing both police and prosecutor misconduct revealed statistically significant but not meaningful differences ($\chi^2 = 13.941, p < .001, \text{Lambda} = .000$). Table 5 displays the results of the chi-square test for significance.

Table 5

Police Plus Prosecutor Misconduct by Race

		Race						Total	
		Black		Other		White		N	%
PolicProsecMisc		N	%	N	%	N	%	N	%
	No	759	75.7%	213	82.9%	584	82.5%	1556	37.0%
	Yes	243	24.3%	44	17.1%	124	17.5%	411	63.0%
Total		1002	100.0%	257	100.0%	708	100.0%	1967	100.0%
Chi-square = 13.941 (p < .001)									

Misconduct Types

Misconduct types ranged between 0 and 7 per case. The average number of misconduct types for Black exonerees was 2.03 ($SD = 1.85$), for White exonerees was 1.47 ($SD = 1.57$), and for Other exonerees was 1.9 ($SD = 1.89$). The total average was 1.81 ($SD = 1.77$). An ANOVA revealed statistically significant differences in the means ($p < .001, F = 21.401$) with unequal variances. The post hoc Welch test was significant ($p < .001$). Black exonerees, on average, had 0.56 more types of misconduct than White exonerees ($p < .001$) while Other exonerees had 0.43 more types of misconduct than White exonerees ($p = .003$). There were no differences in average number of misconduct types between Black and Other exonerees ($p = .602$). As seen in Appendix 1, Table 1, bivariate correlation found a very weak, positive, statistically significant

relationship between being Black and the number of misconduct types ($r=.125$, $p<.001$), meaning being a Black exoneree explains only 1.56% of the variance in the number of official misconduct types within cases. Being a White exoneree was very weakly, negatively correlated with official misconduct type ($r=-.144$, $p<.001$). Being a White exoneree accounts for 2.07% of the variance in misconduct type.

Time to Exoneration

The average time from conviction to exoneration was 15.19 years ($SD = 10.11$ years). The range of *TimeToExon* was zero years to 58 years. When analyzed by race, the average time from conviction to exoneration for Black exonerees was 17.47 years ($SD = 10.41$ years), for White exonerees was 12.40 years ($SD = 9.33$ years), and Other was 14.02 years ($SD = 8.85$ years). I ran a one-way ANOVA to test these mean differences and was statistically significant ($p<.001$, $F = 57.042$) with unequal variance. The post hoc Brown-Forsyth test was significant ($p<.001$). On average, time to exoneration for Black exonerees takes 5.06 years longer than White exonerees ($p<.001$) and 3.45 years longer than Other exonerees ($p<.001$). The time to exoneration for Other exonerees is statistically significantly longer than White exonerees by 1.62 years ($p = .037$). A bivariate correlation, as seen in Appendix 1, Table 2, revealed a weak, positive, statistically significant correlation between time to exoneration and being a Black exoneree. Being Black increases the likelihood of a longer time between conviction and exoneration. However, only 5.24% of the variance in time to exoneration can be explained by being a Black exoneree. There is a weak, negative, statistically significant correlation between being a White exoneree and time to exoneration. Being White increases the likelihood of exoneration taking less time, but only 4.28% of the variance in time to exoneration can be explained by being White. The magnitude of the statistically significant correlation between time

to exoneration and Other races was so small that no relationship can be assumed.

Cases that contain official misconduct ($n = 1,240$) are a subset of the entire dataset ($n = 1,967$). Among this subset, the average time to exoneration was 16.95 years ($SD = 10.31$). Average time to exoneration by race was 18.97 years ($SD = 10.69$) for Black exonerees, 15.35 years ($SD = 9.21$) for Other exonerees, and 14.24 years ($SD = 9.32$) for White exonerees. An ANOVA was run and revealed statistically significant differences in the means ($p < .001$, $F = 30.304$) with equal variances assumed. The average time to exoneration for Black exonerees was statistically significantly longer by 4.73 years than it was for White exonerees ($p < .001$). Compared to Other exonerees, Blacks experienced longer time to exoneration by 3.62 years ($p < .001$). There were no significant differences in time to exoneration within this subset of cases for White exonerees and Other exonerees ($p = .239$). As seen in Appendix 1, Table 2, bivariate correlations revealed a weak, positive, statistically significant relationship between being a Black exoneree and time to exoneration ($p < .001$). Being Black can explain 4.6% of the variation in time to exoneration for cases containing official misconduct. Being a White exoneree is very weakly, negatively, but statistically significantly correlated with fewer years between conviction and exoneration ($p < .001$). Being a White exoneree explains 3.4% of the variation in time to exoneration for this subset of cases. Finally, being an exoneree of other races had a statistically significant, but not meaningful correlation with time to exoneration ($p = .036$, $r = -.06$).

Of exoneration cases that contain official misconduct, 33% ($n = 411$; 29% of full dataset) contain both police and prosecutor misconduct. The average time to exoneration for this subset was 18.82 years ($SD = 9.68$). For Black exonerees, average time to exoneration was 20.58 years ($SD = 9.98$) compared to 15.96 ($SD = 9.10$) years for White exonerees and 17.18 years ($SD = 7.22$) for Other exonerees. To test if these averages by race are statistically significantly

different, an ANOVA was run. It was statistically significant ($p < .001$, $F = 10.525$) with equal variances assumed. The average time to exoneration for Black exonerees was statistically significantly longer than both White exonerees ($p < .001$) and Other exonerees ($p = .029$). For exonerees with both police and prosecutorial misconduct, on average, Black exonerees experienced 4.62 more years between conviction and exoneration compared to White exonerees and 3.4 additional years compared to Other exonerees. As seen in Appendix 1, Table 2, the bivariate correlations revealed a weak, positive, statistically significant relationship between being a Black exoneree and time to exoneration ($r = .219$, $p < .001$). Being a Black exoneree explains 4.8% of the variance in time to exoneration among this subset of cases. Being a White exoneree is very weakly, negatively, correlated with time to exoneration. Being a White exoneree explains 3.8% of the variance in time to exoneration for this subset.

To test what variables can predict time to exoneration (Hypothesis 3) bivariate correlations were performed for time to exoneration and number of contributing factors, the presence of official misconduct, the number of actors performing misconduct, and the number of types of official misconduct. Results of the correlations can be seen in Appendix 1, Table 2. Weak, positive, statistically significant correlations were found between time to exoneration and number of contributing factors ($r = .254$, $p < .001$), the presence of official misconduct ($r = .227$, $p < .001$), the number of misconduct actors ($r = .217$, $p < .001$) and the number of types of official misconduct ($r = .281$, $p < .001$). Individually, as each of the previous variables increases, the time to exoneration increases. Individually, 6.5% of the variation in time to exoneration is explained by the number of contributing factors, 5.2% is explained by the presence of official misconduct, 4.7% is explained by the number of misconduct actors, and 7.9% is explained by the number of types of official misconduct.

To determine whether the race of the exoneree, number of known contributing factors, the presence of official misconduct, the number of misconduct actors, and the number of misconduct types can predict the exoneree’s time to exoneration, I ran a linear regression and diagnostics (see Table 6).

Table 6

OLS Regression on Time to Exoneration

	b (years)	SE	β
<i>BlackDummy</i>	1494.798 (4.09)*	172.834	.202
<i>OtherDummy</i>	327.664 (0.90)	253.929	.030
<i>FactorCount</i>	415.678 (1.14)*	96.386	.123
<i>OMFactor</i>	28.127 (0.08)	322.109	.004
<i>OMActor</i>	-193.562 (-0.53)	199.524	-.042
<i>OMType</i>	435.750 (1.19)*	81.157	.209
<i>Intercept</i>	3103.184 (8.5)*		
<i>R²</i>	.127*		

*p<.001

Race, the number of contributing factors, the presence of official misconduct, the number of misconduct actors, and the number of misconduct types can reliably predict time to exoneration ($F = 47.406$, $p < .001$). 12.7% of the variability in time to exoneration can be explained collectively by the independent variables of race, number of contributing factors, whether official misconduct is present, the number of misconduct actors, and the number of misconduct types ($R^2 = .127$). However, 87.3% of the variability in the time from conviction to exoneration cannot be explained by the model. Controlling for all other variables in the model,

the number of misconduct types is a significant predictor of time to exoneration ($p < .001$). For every additional misconduct act in an exoneree's case, their time to exoneration extends by 1.19 years. *OMType* has the strongest explanatory power of the model ($\beta = .209$ [very weak]). Controlling for all other variables in the model, being a Black exoneree is a significant predictor of time to exoneration ($p < .001$). Being Black increases time from conviction to exoneration by 4.09 years. *BlackDummy* has the second strongest explanatory power of the model ($\beta = .202$ [very weak]). Controlling for all other variables in the model, the number of contributing factors is a significant predictor of time to exoneration ($p < .001$). For every additional known contributing factor in an exoneree's case, their time to exoneration extends by 1.14 years. *FactorCount* has the weakest explanatory power of the model ($\beta = .123$ [very weak]). When controlling for all other variables in the model, the following independent variables were not significant predictors of time to exoneration: *Other Dummy* ($p = .197$), *OMFactor* ($p = .930$), and *OMActor* ($p = .332$). We can use this model to predict the length of time from conviction to exoneration for a Black exoneree with two contributing factors, official misconduct as a factor, two actors of misconduct, and three misconduct types to be 17.56 years. Plotting the standardized residuals and predicted values for this model revealed no heteroscedasticity. There appear to be no issues with multicollinearity in the model given that Betas are all below .80 and the VIF scores are all below 5. Contrary to Hypotheses 3a and 3b, the number of misconduct types can explain more variance in time to exoneration than race or the number of contributing factors.

Discussion

Racism, whether overt or systemic, is a powerful influence within the criminal justice system. It is clear that racial differences exist within known exonerations, but the relationship

between race and exoneration is complex. Multiple characteristics of the severity of a crime, the number of issues within a conviction, the misconduct of government actors, and race interact to create a complex picture of wrongful conviction. Among known exonerations for murder, manslaughter, sexual assault, and child sexual abuse, race of the exoneree is a significant predictor of the number of known contributing factors, the number of misconduct actors, and the number of misconduct types. Exoneree race is also a significant predictor of time to exoneration and continues to be so even among exonerations for these crimes in which official misconduct was present and exonerations for these crimes in which both police and prosecutor misconduct was present. Being a Black exoneree, the number of known contributing factors, and the number of types of misconduct in a case predicts time to exoneration. Each of these findings are discussed in more depth.

Race and Contributing Factors

Six factors have been consistently found among exoneration cases. If there was not a relationship between race of the exoneree and these factors, we would see these factors evenly distributed across racial groups. This research has shown that exoneree race and the number of contributing factors is related. However, unlike what I hypothesized in 1a, exonerees of all racial minorities, not just Black exonerees, have more contributing factors in their cases, on average, than White exonerees. While the differences are statistically significant, it is important to note that the size of the differences is quite small, with White exonerees having, on average, less than half of one additional factor than Black exonerees and less than a quarter of one additional factor than exonerees of other races. Considering the average number of factors for the dataset was 2.42, this may indicate the power of any single contributing factor in securing a wrongful conviction. The interaction between the number of contributing factors and race of the exoneree

on the time it takes to secure an exoneration will be examined later.

Race and Official Misconduct

Official misconduct is an important contributor to wrongful conviction. For exonerees convicted of murder, manslaughter, sexual assault, or child sexual abuse, 63% experienced official misconduct in their conviction. Racial disparities within cases containing official misconduct are nuanced. As predicted, for these most extreme violent felonies, race is invariant for the presence of official misconduct. The nature of the charges may be a more powerful motivator for misconduct than racial biases. However, when official misconduct in wrongful conviction is examined by the people who produce misconduct and the types of misconduct produced, a different relationship emerges.

Hypothesis 1c predicted that Black exonerees would have more actors performing misconduct than any other exoneree. Race appears to be invariant in the relationship with the number of misconduct actors. Despite hypothesizing in 1d that Black exonerees would experience more misconduct by both police and prosecutors, the relationship was not meaningful among the entire dataset. While Mogavero et al. (2022) found racial differences in the number of actors, they were examining this relationship within the context of a subset of cases containing false accusations among non-sexual homicides. They also found specific relationships between police and prosecutor misconduct and race. Taken with the findings of this analysis, the relationship between the race of the exoneree and the number of misconduct actors may only become apparent when drilling down into specific subtypes of exoneration cases. This drilling down on the relationship between a case containing both police and prosecutor misconduct, the race of the exoneree, and the time spent between conviction to exoneration will be discussed later.

Assessing racial differences in the average number of misconduct types reveals a significant but very weak relationship between the two. However, racial disparities exist in the number of types of misconduct for exonerees of all racial minorities, not just Black exonerees as hypothesized in 1e. Exonerees who are Black or of other racial minorities are more likely to have experienced, on average, more types of misconduct than White exonerees. White exonerees' cases contained 0.56 fewer types of misconduct than Black exonerees' cases and 0.43 less types of misconduct than exonerees of other racial minorities. Analyzing misconduct by the number of types may more accurately reveal the relationship between official misconduct and exoneree race than does looking at the aggregate representation of misconduct as a contributing factor. If the desire to secure a conviction within cases with the most extreme charges is a driving factor in official misconduct, it may also contribute to the number of types of misconduct performed to solidify that conviction. The pressure to secure a suspect and then a conviction in a case with these extreme charges puts pressure on both police and prosecutors and that pressure can contribute to misconduct. The interaction between race and official misconduct types and its effect on time from conviction to exoneration will be explored later.

Race and Time to Exoneration

As supported in the literature (Gross et al., 2022; Rafail & Mahoney, 2019, 2019), findings in this analysis reveal a racial disparity in the time from conviction to exoneration. Among the known exonerations for murder, manslaughter, sexual assault, and child sexual abuse, time from conviction to exoneration is, on average, 15.19 years, but there is large variability among individual exonerations. As expected, when looked at by race, there are statistically significant, but weak, differences in time from conviction to exoneration. Black exonerees wait longer than any other exoneree. On average, a Black exoneree spends 5.06 more

years convicted than a White exoneree and 3.45 more years convicted than an exoneree of any other race. Exonerees of other racial minorities also take longer to be exonerated than White exonerees, 1.62 years on average. A small percentage of the variation in an exoneree's time between a conviction and exoneration can be explained by being Black or being White, with Black exonerees more likely to have longer exonerations and White exonerees more likely to have shorter exonerations. Any differences in time to exoneration that can be explained by race, while statistically significant, are weak, suggesting that factors other than, or in addition to, race might provide better explanations.

Race within Cases of Official Misconduct and Time to Exoneration

Examining the subset of cases within our dataset that contained official misconduct reveals the cumulative impact of this known contributing factor and the race of the exoneree on time from conviction to exoneration. While the relationships between race and time to exoneration for this subset are weak, they are still significant, as hypothesized in 2a, for Black exonerees who have more years between conviction and exoneration, on average, than any other exoneree. Black exonerees whose convictions were found to contain official misconduct spent 4.73 more years being wrongly convicted than their White counterparts and 3.62 more years than exonerees of other racial minorities. When comparing Black exonerees who cases contain official misconduct to Black exonerees in the entire dataset, the average time to exoneration for those who experienced official misconduct increases by 1.5 years.

Race within Cases of Police and Prosecutor Misconduct and Time to Exoneration

Further evidence of the cumulative effect of racial disparity can be seen by examining cases that contain both police and prosecutor misconduct. While this subset of cases accounts for only 29% of the exonerations for murder, manslaughter, sexual assault, and child sexual abuse,

the ramifications for exonerees time spent between being convicted and exonerated is significant. On average, this group of exonerees were wrongfully convicted for 18.82 years, more than 3.5 years longer than the average of the full dataset. For Black exonerees, the average time to exoneration in this group is even longer. Of these cases with both police and prosecutor misconduct, Black exonerees served an average of 20.58 years. Compared to Black exonerees in the entire dataset, those who experienced both police and prosecutor misconduct, experienced, on average, an additional 3.03 more years wrongfully convicted.

The impact of being a wrongfully convicted Black person in the U.S. is concentrated the further one drills down into the dataset, as evidenced by the additional time to exoneration that Black exonerees served when their cases contain governmental misconduct, in general, and misconduct by both police and prosecutors, specifically. These are important observations that showcase the cumulative racial disadvantage of Black exonerees. However, this cannot fully explain the variability in the time to exoneration for exonerees of violent felonies.

Predicting Time to Exoneration

The time between conviction and exoneration is arguably a measure of the impact of wrongful conviction for exonerees. The longer the time spent wrongly convicted, the larger the impact on the lives of the innocent person and their family. Understanding what can predict differences in the time between erroneous conviction and exoneration can help justice systems actors work to remedy and prevent wrongful convictions. This analysis has shown that individually, race, the number of known factors that contribute to wrongful conviction, the presence of official misconduct, the number of misconduct actors, and the number of misconduct types can all explain a small percentage of the variability in time to exoneration. Collectively, these individual factors can reliably predict the time to exoneration, however they can only

explain 12.7% of the variance in time from conviction to exoneration. Controlling for all other variables in our model, the number of types of official misconduct, the race of the exoneree, and the number of contributing factors each are reliable predictors of exoneration. The number of types of official misconduct is a stronger predictor of time to exoneration than race, which is a stronger predictor than the number of contributing factors. Specifically, a Black exoneree whose wrongful conviction contains more misconduct types or contains more contributing factors will experience a longer time between conviction and exoneration. Simply being Black increases the time to exoneration by 4.09 years, 1.19 years are added for each act of misconduct in their case, and 1.14 more years are added with each additional known contributing factor within their case.

Limitations

While these results are powerful and important, there is still a large variability in time to exoneration that is not explained by race, the number of contributing factors, and the number of misconduct types. It is possible that other factors not considered in this analysis, such as sentence length, DNA being a substantial factor in the exoneration, or racial differences within the other types of known factors may better explain time to conviction. Variables that impact time to exoneration that are not available within the dataset may interact with variables studied. Racial disparity in time to exoneration may interact with the county of conviction as discovered by Rafail and Mahoney (2019). It is also possible that there are interactions between the variables in this analysis that were not accounted for. Other statistical limitations may include not removing outliers in the analysis or the skew to the data for time from conviction to exoneration as there are a large number of cases with shorter time to exoneration.

Future Research

Future research examining the outcome variable of time from conviction to exoneration

could look at the relationship between race and the known factor of false accusations or perjury as well as race and the known factor of mistaken witness identification, both of which have evidence of racial bias (Gross et al., 2020). Future analysis could duplicate this analysis for all cases in the NRE database as well as cases for crimes that are not the worst charges examined here to see if these racial differences hold true. Importantly, as suggested by Gross et al. (2022), all analysis of NRE data that contain murder convictions should be re-examined periodically on the newest dataset to account for historical spikes seen in the data that are caused by the timing of the work of conviction integrity review units.

Conclusion

The nature of studying exonerations is one of looking backwards to find out what characteristics of the investigation and court case went wrong, such as examining patterns among an exoneree's personal characteristics or characteristics of the state of conviction, to see what might explain the justice system error. Racial disparity in exonerations is substantial. This research has shown that Black exonerees are disproportionately and cumulatively at risk for extended time between conviction and exoneration. The impact of racism in the U.S. criminal legal system is detrimental to the pursuit of justice and to the due process rights afforded by the Constitution. While intentional racism is found in the narratives of many exonerations, more often, racism of the structural type played a role in the conviction of an innocent Black person (Gross et al., 2022). Routine biases built into our criminal legal system are harder to detect and remedy. However, attempts at remedying known issues of wrongful conviction, some that involve racial bias, have already been made—advancement in interrogation techniques, forensic science improvements, the establishment of conviction review units, changing line-up practices for witness identification, and increasing awareness of cross-racial mistaken witness

identification—which gives hope that more progress could be made in the future. Using the larger issues of racial cumulative disadvantage to find ways to reduce justice system errors, not only helps those wrongfully convicted, it can also course correct a justice system that lacks justice in the most meaningful sense of the word. While racial cumulative disadvantage is a historical problem entrenched within every aspect of the U.S. and is larger than justice system errors, any attempts to rectify racism and its ill effects will be a step towards rectifying wrongful conviction. Simultaneous overhauls of parts of the criminal legal system, such as policing reforms, sanctions for police and prosecutors who commit misconduct, and a focus on legal remedies for appeals, will make large impacts in reducing future wrongful convictions.

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Appendix 1

Table 1

Bivariate Correlations for Race and Official Misconduct Variables

		<i>OMActor</i>	<i>OMType</i>
<i>BlackDummy</i>	Pearson Correlation	.064**	.125**
	Sig. (2-tailed)	.004	<.001
	N	1967	1967
<i>WhiteDummy</i>	Pearson Correlation	-.049*	-.144**
	Sig. (2-tailed)	.030	<.001
	N	1967	1967
<i>OtherDummy</i>	Pearson Correlation	-.025	.020
	Sig. (2-tailed)	.256	.376
	N	1967	1967

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

Table 2

Bivariate Correlations for Time to Exoneration and Independent Variables

		<i>TimeToExon</i> N=1,967	<i>TimetoExon</i> for cases w/ Police + Prosecutor Misconduct n=411
<i>FactorCount</i>	Pearson Correlation	.254**	
	Sig. (2-tailed)	<.001	
<i>OMFactor</i>	Pearson Correlation	.227**	
	Sig. (2-tailed)	<.001	
<i>OMType</i>	Pearson Correlation	.281**	
	Sig. (2-tailed)	<.001	
<i>OMActor</i>	Pearson Correlation	.217**	
	Sig. (2-tailed)	<.001	
<i>BlackDummy</i>	Pearson Correlation	.229**	.219**
	Sig. (2-tailed)	<.001	<.001
<i>WhiteDummy</i>	Pearson Correlation	-.207**	-.195**
	Sig. (2-tailed)	<.001	<.001
<i>OtherDummy</i>	Pearson Correlation	-.045*	-.059
	Sig. (2-tailed)	.046	.235

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

Chapter 3

Compensating the Wrongfully Convicted: Impact and Improvements

Wrongful conviction is a justice system error with far-reaching consequences. The often-cited Blackstone Principle—it is better to prevent the wrongful imprisonment of an innocent person than it is to let many a guilty person go free—has been influential in the establishment of the rules of the U.S. legal system (Baumgartner et al., 2018). Yet, there have been over 3,300 known individual exonerations in the U.S. since 1989 (National Registry of Exonerations, n.d.-a).

Interventions for this criminal justice system issue often focus on the ways to prevent wrongful conviction. Studies examining the factors that contribute to wrongful convictions are plentiful (Gould & Leo, 2010). There have been specific attempts to rectify multiple contributing factors including improvements to eyewitness misidentification, forensic evidence, false confessions, and police interrogation techniques (Garrett, 2020). Methods to overturn convictions and remove innocents from incarceration have been put in place. States have made efforts to enact postconviction DNA testing claims and create standards for presenting newly discovered evidence of innocence. In 2021, conviction review units within District Attorney offices and private innocence organizations were collectively responsible for securing 60%, or 97 of the 161, new exoneration cases being tracked by the National Registry of Exonerations (National Registry of Exonerations, 2022a).

Less attention has been paid to the need for post-exoneration support. Exonerees face barriers to reentry that have been found to be worse than offenders' experiences (Estes, 2022). Reentry barriers include an immediate need for housing, medical and dental concerns plus a lack

of insurance, as well as barriers to post-release employment (Estes, 2022; N. A. Jackson et al., 2021; Kukucka et al., 2020; Westervelt & Cook, 2012). One significant intervention for wrongful conviction is compensation as a method of post-exoneration support. It is also a mechanism to correct the injustice caused by a wrongful conviction. Compensation is defined as anything awarded as “atonement for loss, injury, or suffering” (Goldberg et al., 2019, p. 829). Thirty-two states have some form of compensation legislation (Innocence Project, 2022) but less than half of the recorded exonerations have received compensation (National Registry of Exonerations, 2022b). This paper will review the literature on this intervention to determine the impact of post-exoneration compensation on the issue of wrongful conviction. Recommendations for improving post-exoneration compensation will be considered.

Impact of Wrongful Conviction

A person who has been wrongfully convicted, and especially those wrongfully imprisoned, have had their lives irrevocably changed. The consequences are “extreme and long-lasting” (Brooks & Greenberg, 2021, p. 47). The impact of wrongful conviction is multi-faceted and includes psychological, economic, and relationship consequences. Anxiety, depression, PTSD, anger, and trust issues are common in exonerees (N. A. Jackson et al., 2021; Wildeman et al., 2011). Exonerees experience a loss of identity, social stigma, and strain on interpersonal relationships (Brooks & Greenberg, 2021). These effects of wrongful incarceration follow the exoneree home and can impact the family members of the wrongfully convicted. Brooks and Greenburg find that most studies of exonerees mention family members experiencing stigma and stressors similar to their exonerated loved one.

The economic impact on those wrongfully convicted is multi-faceted. Without access to immediate compensation, exonerees have to rely on family and friends for housing and expenses

until they can find employment (N. A. Jackson et al., 2021). Finding employment can be difficult for exonerees. Because expungement is not automatic for most exonerees (Sholsberg et al., 2011), they carry the label of felon with them like convicted offenders and are required to “check the box” on employment applications (Estes, 2022). Other employment-related strains for exonerees include having gaps in their work history due to imprisonment; facing technological advancements in the workplace that were made while they were in prison; and a loss of educational, vocational, and networking opportunities while in prison (Kukucka et al., 2020). Further, exonerees face employment discrimination that is similar to and sometimes worse than offenders due to the perceptions and stigma assigned to an exoneree (Kukucka et al., 2020). In their experimental study, Kukucka et al. asked hiring professionals to rate exonerees, the general public, and criminal offenders on several measures of character and competency. Hiring professionals found both offenders and exonerees less trustworthy than someone with no criminal history. However, they additionally found exonerees to be less articulate, intelligent, and competent than an applicant with no criminal history, but these stereotypes were not applied to offenders.

Compensating Exonerees

As an error of the justice system, wrongful conviction creates a victim who has been harmed by the state. Exonerees become victims of state harm because their conviction was a result of “explicit illegal state action or the misapplication of state power” (Westervelt & Cook, 2010, p. 261). The harms to exonerees are compounded by their lack of power, the lack of punishment of state officials, and being blamed for their own suffering. They also must often rely on the state (their victimizer) to seek exoneration. Consistent with the principles of the U.S. criminal legal system, the victim deserves justice. Exonerees express a desire for the justice

system to acknowledge its error, even though they know compensation cannot give back all that was lost due to their years of wrongful incarceration (Campbell & Denov, 2004). Justice should be achieved by holding the offender—the state—accountable. One method to hold the state accountable is compensation to the exoneree (Keith, 2016).

Compensation of the wrongfully convicted, in addition to holding the state accountable, provides needed support to exonerees who experience multiple consequences of wrongful convictions. Monetary compensation can reduce the economic disadvantage and related strain of exonerees. Further, it can reduce future criminal behavior of an exoneree. In studying post-exoneration offending behavior, Mandery et al. (2013) found that higher rates of compensation were correlated with lower rates of offending. Specifically, when the value of compensation received was above \$500,000, exonerees offended at a lower rate than when compensation was lower than \$500,000 or was not awarded.

There are three paths to an exoneree receiving compensation from the state: private bills, civil litigation, or legislative statutes. Private bills are the rarest form of compensation (Goldberg et al., 2019; National Registry of Exonerations, 2022b). They require the exoneree to petition the state legislature for redress under a legislative bill created on their behalf. They are time consuming and costly, requiring the petitioner to have the ability to navigate the political system or have a legislative advocate. They also make the exoneree's compensation dependent on their compelling personal narrative. Cost, complexity, and politicization cause private bills to have unequal access among exonerees within the same state (Goldberg et al., 2019).

Civil litigation is another path that is time consuming and costly. Most civil suits are filed in federal court over violations of the exoneree's constitutional rights by state actors (National Registry of Exonerations, 2022b). However, some litigation is done at the state level through tort

law claims. They require an exoneree to demonstrate that a state actor breached a right or law and that breach caused the wrongful conviction. These cases often result in pre-trial dismissals by a judge, rather than a civil jury decision. Goldberg et al. (2019) note that qualified immunity of police and prosecutors often impedes litigation and if a case is won against a police officer, the officer rarely has funds to pay the exoneree.

State Statutes

Madrigal and Norris (2022) note that litigation and private legislation are mostly impossible avenues to achieve relief. Instead, statutory solutions to compensation are the most common path for an exoneree. Statutes vary greatly by state and only thirty-eight states have them (Innocence Project, 2022). Most of the states with statutes do not provide adequate relief and the relief is often difficult to obtain (Goldberg et al., 2019). However, statutes provide a more equal distribution among exonerees who receive compensation and typically are less burdensome to obtain than in civil litigation or private bills. While statutes do not require the exoneree to prove the state's actions as causal to the wrongful conviction, they do require the exoneree to prove their innocence, have been convicted of a felony, and have been incarcerated for that conviction (National Registry of Exonerations, 2022b). In addition, as of 2019, 19 states provided non-monetary compensation for college tuition, medical insurance, counseling, reentry and employment programming, and housing (Goldberg et al., 2019).

State compensation statutes vary greatly in monetary awards (National Registry of Exonerations, 2022b). The per-year-of-incarceration rate varies from \$5,000 (with a cap of \$25,000) in Wisconsin to Texas' generous \$80,000 per year given as a lump sum with additional annuities supplied annually. Virginia sets its per-year amount based on 90% of the state's per-capita income (Madrigal & Norris, 2022). Only three statutes provide additional compensation

for time spent on death row. Twenty-four statutes include compensation to cover court and attorney fees, imprisonment charges, and fines. Only 13 statutes address the expungement of criminal records.

Shortcomings of Statutes

Many state statutes have exclusionary requirements or other conditions that make the statute limited in its comprehensiveness. Limitations on eligibility to receive compensation from statutes may explain why less than half of the exonerees listed in the NRE have received compensation (National Registry of Exonerations, 2022b). In his analysis of 1,900 NRE cases, Gutman (2017) found that only a small percentage of exonerees seek state statute compensation and what does get paid, based on an average amount per year of incarceration, is low. Statutes that limit eligibility to wrongful conviction for a felony crime, reduce the pool of people wrongfully convicted of misdemeanors.

States that require exonerees to show that they were not responsible for causing their wrongful convictions exclude those who pled guilty and those who have falsely confessed (Goldberg et al., 2019; National Registry of Exonerations, 2022b). False confessors already have additional struggles while they await exoneration and upon reentry. They have been found to be stigmatized more than other exonerees (Clow & Leach, 2015b) and viewed more negatively than exonerees whose cases involve other factors (Savage et al., 2018). While false confessions are a small percentage of overall exonerations, guilty pleas are present in approximately 15% of all exonerations (analyzed through 2015) and drug crimes constitute 40% of these exonerations (National Registry of Exonerations, 2015). According to the NRE, group exonerations contain many guilty pleas (National Registry of Exonerations, n.d.-c). The exclusion of both false confessors and those who pled guilty from eligibility for compensation is particularly

problematic given that both types of exonerees have experienced official misconduct by state actors in their cases.

Other requirements for eligibility include having been exonerated based on DNA evidence or to not have had a prior felony conviction (Goldberg et al., 2019; National Registry of Exonerations, 2022b). Both of these exclude specific vulnerable groups from receiving compensation. Requirements for DNA-based exoneration excludes women exonerees since DNA evidence is more likely to be found in cases involving males (Konvisser, 2011). Florida is the only state that disallows compensation for exonerees with prior felonies. Other states discontinue or disallow compensation for exonerees with subsequent convictions. Both of these requirements disproportionately affect Black exonerees. Black Americans are disproportionately represented within the criminal justice system and more likely to have priors (Keith, 2016). While the public perceives exonerees without priors as more deserving of compensation (Karaffa et al., 2017), a prior record does not make the justice system error less harmful to the exoneree. Further, subsequent criminal offending does not negate the harm of the wrongful conviction. When the effects of prison, especially those that might be criminogenic are taken into account, it is not surprising that some exonerees may offend after release. An analysis of a small subset (n=118) of exonerees found that 58.8% had prior convictions and 38.1% offended post-exoneration (Mandery et al., 2013).

Some state statutes have a limited time from exoneration by which the claim must be made and others require exonerees to waive their right to additional civil litigation (Goldberg et al., 2019). Another shortcoming of state statutes is that states do not always have funding to pay compensation awards (Goldberg et al., 2019). There is also a risk that statutes can be legislatively repealed (Gutman, 2017). Further, the amount of compensation awarded by statutes

is often not enough. The average amount states have paid to exonerees amounts to a low wage job and provides nothing for the loss of freedom or hardship of being incarcerated.

Compensation caps in a statute and the fact that statutes do not allow for individual circumstances of the exoneree can produce inequality among exonerees in the same state.

Overall, the insufficiency of these awards amounts to what Gutman calls a “begrudging rather than restorative approach” to correcting the state harm to exonerees (pp. 371-372).

Social and Political Determinants

Researchers have sought to understand why there is variability in the compensation statutes of states. Reparations for the wrongly convicted are enmeshed in a political culture because legislatures, government agencies, courts, and voting behavior of the general public make decisions that dictate compensation (Owens & Griffiths, 2011). The presence of an Innocence Organization or the type of political climate may explain the variability in the existence and adequacy of state statutes.

Owens and Griffiths (2011) argue that Innocence Organizations are interest groups who put pressure on the political system by bringing awareness of the issue to the public as well as aiding in the attainment of exonerations. Their findings indicate that states with a larger number of exonerations are significantly more likely to have a compensation statute. However, the presence of an Innocence Organization does not impact the state’s likeliness to have a compensation statute. Further, a state’s political ideology had no effect on the presence of a compensation statute. The other factors they examined—including a state’s liberalness, resources available to prosecutors, and whether a state’s penal regime had a rehabilitative or punitive ideology—also had no impact. The number of exonerations in a state is the only significant predictor of the existence of a compensation statute. Owens and Griffiths propose two

explanations for their findings: either states adopt statutes as a way to acknowledge the justice system error and provide reparations to the victim or states adopt compensation statutes in order to limit their fiscal liability as more wrongdoing is discovered.

State compensation statutes are part of a broader set of legal changes that may reduce the likelihood of wrongful convictions. Kent and Charmichael (2015) analyzed several factors that might influence a state's likelihood of having preventative laws, including compensation laws. Their findings are somewhat contrary to Owens and Griffiths (2011) but this is most likely due to the fact that their research on legislative statutes is broader than just compensation. However, their findings around political climate and Innocence Organizations are important to consider. Regarding the political climate, Kent and Charmichael (2015) find an interaction effect of Innocence Organization presence and political ideology. The presence of an advocacy organization has a significant influence on the adoption of legislation to reduce wrongful conviction, but the impact is dampened in states with a large percentage of Republican voters. They also analyzed whether a state's crime rate and the public's perception of the threat of crime may influence criminal justice policy. In their study, the public's perception of the threat of crime is operationalized as the proportion of a state's population that is either African American or unemployed. Contrary to their expectations, they found that states with a larger percentage of African Americans or higher unemployment rates are more likely to have laws that reduce the likelihood of wrongful conviction. However, the violent crime rate did not influence the presence of such laws. They propose that legal changes, as mechanisms of social control, are more responsive to the social and political climate than to actual crime rates.

Improving Compensation for Exonerees

Compensation for exonerees can be improved in several ways. States without compensation statutes should adopt them without problematic ineligibility requirements. In addition to this, adding non-monetary compensation for mental and physical health, job training and placement, covering child support payments, and free tuition will especially help Black exonerees (Keith, 2016). The Innocence Project (2009) put forth model legislation for state compensation bills that includes four recommendations:

- Provide a minimum of \$70,000, untaxed, per year of wrongful imprisonment and \$100,000, untaxed, per year on death row. This amount is based on the federal government's standard created through the Innocence Protection Act of 2004. (It appears the minimum amount of \$70,000 was raised from an initial recommendation of \$50,000 in 2009; see Innocence Project, n.d.)
- Cover limited and appropriate attorney's fees associated with filing for compensation.
- Provide immediate services including housing, transportation, education, workforce development, physical and mental health care through the state employee's health care system and other transitional services.
- Issue an official acknowledgment of the wrongful conviction (p. 5).

The model legislation should be considered the minimum a state can do. The monetary compensation suggested averages between \$137 and \$192 per day (depending on the original or modified recommendation). An analysis of jury awards to exonerees shows an estimate of the actual costs of wrongful conviction to be \$6.1 million, or \$1,334 per day of wrongful imprisonment (Cohen, 2021). Given the previously mentioned issue with litigation,

compensation statutes are preferable but an increase in actual compensation would make them more just.

Improvements can be made in the inequality of statutes by having comprehensive compensation to reduce state variability (Goldberg et al., 2019). Some statutes have a vague definition of innocence when requiring the exoneree to prove their innocence to achieve compensation. While it would be best to strike eligibility requirements like this, if states continue to include this Goldberg et al. recommend that states define innocence. They also believe states need to clearly designate the funding source for compensation awards in order to reduce budgetary concerns. Finally, they recommend that states that have eligibility requirements for exonerations based on DNA expand to include non-DNA exonerations. As mentioned above, this would increase access for female exonerees. Gutman (2017) posits that fixing weak state compensation statutes, especially in states with high non-filing, might do more to rectify the harms of wrongful conviction than adopting statutes within the remaining 12 states where they are absent. Fixing weak statutes and adopting new ones would ensure that exonerees in all states have access to recompense.

Conclusion

Wrongful conviction of the innocent is a justice system error. Those who have been wrongfully convicted are harmed by the state and suffer serious adverse consequences. The state should rectify their errors and provide compensation to the exoneree. Regardless of the deterrent effect of compensation, rectifying the harm done to the exoneree through both monetary and non-monetary compensation is necessary. Statutes for compensation should be adopted by all states and the states that have inadequate compensation should remedy their statutes. Ensuring an adequate dollar amount of compensation should be the first priority. Mandery et al.'s (2013)

findings would indicate that \$500,000 total should be the minimum level of compensation.

Compensation statutes should allow for individual differences in exonerees' adverse conditions post-conviction as well as include non-monetary compensation such as access to health care and mental health services. While the intervention of compensation has been necessary, it has not been adequate. Innocence Organizations should continue their advocacy work to enact adequate statutes and legislators should act now to aid exonerees. By improving and expanding state statutes, the state can begin to better address the harms it has caused.

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Chapter 4

Explaining Post-Exoneration Offending: An Integration of Labeling and Strain Theories

Criminological theory seeks to understand what causes crime, especially why an individual does or does not commit a criminal act. Individual theories of crime fall into several different types such as positivist, classical, strain, critical, and conservative (Lilly et al., 2019). While theories of organizational crime exist, even those within *Criminological Theory: Context and Consequences* (Lilly et al., 2019) are rooted in explaining an individual actor's wrongdoing within the context of the organizational climate, and the wrongdoing in that context is typically criminal. Wrongful conviction, while egregious and harmful, is not a crime but a justice system error. Applying criminological theories to the misbehavior of justice system actors, such as police and prosecutors, begs for analysis at the organizational level and some have framed wrongful conviction as a theory of state harm (Westervelt & Cook, 2010). The criminological explanations for wrongful conviction are limited (Clarke, 2015) and scholars do not always agree on the direction theorizing should take (Leo, 2017).

One aspect of wrongful conviction that lends itself to theorizing about criminal offending of individuals is found in the examination of post-exoneration offending. The data is scant on how many exonerees commit crimes after their exoneration and release from prison. Mandery (2013), Shlosberg et al. (2014), and Shlosberg et al. (2018) examined the post-exoneration criminal offending behaviors of a sample of exonerees. Out of 118 cases reviewed, 38.1% of wrongfully convicted individuals offended post-exoneration (Shlosberg et al., 2014). The analysis was conducted on cases from Texas, New York, Florida, and Illinois and the rate of

post-exoneration offending by state varied from 8.3% in New York to 58.8% in Florida (Mandery et al., 2013).

The number of known cases of offending post-exoneration is small but allows us to examine factors that may explain why someone would commit a crime after being exonerated. Theorizing about post-exoneration offending leads this author to propose an integrated explanation rooted in labeling theory and general strain theory. This integrated theory of post-exoneration criminal offending argues that stigmatization associated with the offender label combined with strains that are either unjust, severe, or provide an incentive for crime, contribute to criminal offending by exonerees.

Applicable Theories

Explanations for individual offending behavior of exonerees can be found within two theories presented in *Criminological Theory: Context and Consequences* (Lilly et al., 2019). *Labeling Theory* and *General Strain Theory* offer explanations for criminal offending of exonerees post-release. Each theory is explained below before being integrated together into a new theory.

Labeling Theory

Crime is socially constructed, changes over time, and is differentiated across societies (Lilly et al., 2019). What behavior gets labeled as criminal is not about whether the behavior is inherently harmful but is concerned with how society reacts to that behavior. Society's negative reaction to a behavior determines whether the state applies the label of crime/criminal. Labeling theorists argue that the application of the label of criminal, felon, or prisoner actually increases criminal involvement instead of reducing it. The application of the label, rather than the act that was committed, causes crime. Several factors contribute to the causal chain of a person being

labeled as criminal and then becoming a chronic offender. The label of criminal carries a morally degrading stigma with it that makes conforming to society's behavioral expectations more difficult. The way the person sees themselves through the eyes of others, as a criminal, can result in a self-fulfilling prophecy by which they subsequently act in the manner that society expects of them. Labeling theorists also note that being institutionalized by the state is criminogenic, resulting from the individual's broken ties to society.

Labeling theory considers that what gets defined as a crime depends on who has power (Lilly et al., 2019). Those with power determine who and what gets labeled as criminal over those without power. People are often labeled as criminals not due to an action, but due to characteristics such as race or class. While this is important to our overall understanding of the social construction of crime, there is a limitation in labeling theory. The limitation is that the theory does not consider the individual reasons why a crime was committed in the first place, before the label was applied. Two extensions to labeling theory may help to address this limitation: Sherman's defiance theory and Tyler's procedural justice theory. Both theories are concerned with the negative impact on groups of people, such as inner-city Black and Brown youth, that state actions and sanctions can have. The negative impact results in a perception of a lack of legitimacy of the state or its laws. This perceived lack of legitimacy by a group leads *individuals* to commit crime.

Sherman's defiance theory posits that when sanctions lack legitimacy or the process of sanctioning is disrespectful and unfair, a person may offend out of defiance (Lilly et al., 2019). In addition, if a person's social bonds to their community are weak, defiance is likely. If the sanction causes stigma but the person rejects the shame of the stigma and responds with pride, they may offend as an act of revenge. Tyler's procedural justice theory posits that people may

offend when procedural justice is lacking. That is, when criminal justice actors act in a manner that is oppressive or unjust, people may perceive a lack of legitimacy in the system that contributes to their disinterest in complying with the law. When decision making and interpersonal treatment are unfair, there is a lack of perceived procedural justice that increases the likelihood of criminal offending.

General Strain Theory

Robert Agnew's general strain theory, is concerned with how crime can result from a response to stress, or strain, experienced by the individual (Lilly et al., 2019). While Robert K. Merton's original strain theory was solely focused on economic strain, Agnew's theory broadened the definition. His theory includes three types of strain: 1) blockage of any goal that was positively valued; 2) the removal or loss of a positively valued stimulus; and 3) the addition of a negative stimulus. Importantly, the strains can be perceived or experienced. Not all strain will lead to criminal offending. Agnew identified several factors, or *conditioning variables*, that can increase or decrease the risk for offending when combined with strain. Some factors that reduce a person's risk for committing a crime include the ability to substitute a different goal for the blocked goal, the existence of social bonds, and individual coping resources. Criminal offending risk is increased by factors such as low self-control, prior criminal learning, a tendency to blame others for their strain, and negative emotions.

Lilly et al. (2019) note that there is empirical support for the idea that exposure to strain increases a person's chances of being involved in criminality. Yet, the vast majority of people experiencing strain do not commit crime. Agnew later attempted to address this limitation by clarifying which strains are more likely to result in criminal behavior. The types of strain that are

likely to be criminogenic belong to four categories: a) unjust strain; b) severe strain; c) strain caused by low social control; and d) strain that creates an incentive for crime.

An Integrated Theory of Post-Exoneration Offending

The integrated theory of post-exoneration criminal offending argues that stigmatization associated with the offender label, combined with strains that are unjust, severe, or provide an incentive for crime, contribute to criminal offending by exonerees. Those who have been exonerated for crimes of which they were wrongfully convicted experience the label of criminal, ex-offender, or felon. The stigma and discrimination attached to these labels creates a post-release experience for exonerees that can be similar to offenders (Clow & Leach, 2015a). For exonerees who falsely confessed, the stigma they experience is worse than other exonerees (Clow & Leach, 2015b). Further, exonerees experiences after release from prison and post-exoneration are similar to or worse than offenders' post-release experience (Estes, 2022). Exonerees often experience the same economic, social, and psychological sources of strain that actual offenders experience (Shlosberg et al., 2020). For some exonerees, the negative effects of wrongful conviction and imprisonment cause strain that, when combined with the effects of being labeled a criminal, lead to criminal offending behavior post-exoneration. The causal chain can be thought of as: 1) an individual is exonerated and released from prison back to society where they carry the stigmatizing label of offender; 2) the label of offender carries negative stigma that impacts reentry; 3) the reentry difficulties contribute to strain that is unjust, severe, or incentivizes criminal offending; 4) the stigma and strain lead the individual to adopt criminal offending behaviors.

Post-Exoneration Offending

Before theorizing about why someone might commit a crime after exoneration, it is important to understand what post-exoneration criminal offending looks like. While there is ample research on imprisonment and recidivism, there is very little research on the factors surrounding offending behaviors of exonerees. Three research articles using the same data source provide insight into a small subset of exonerees who offended after being exonerated for their crimes. Mandery et al. (2013) looked at the relationship between differences in compensation for exonerees, their post-exoneration offending behavior, and their prior offenses (if any) of the exonerees. Shlosberg et al. (2014) examined whether expungement status is a predictor of post-exoneration offending behavior. The final analysis of the data set examined whether the experience of being imprisoned impacted post-exoneration offending (Shlosberg et al., 2018). These studies are examined in more detail later in this paper.

Researchers obtained detailed case data from the Center on Wrongful Convictions, housed at Northwestern Pritzker School of Law, and criminal history data from Maximum Reports, Inc. The 118 individuals were exonerated between 1999 and 2009 and came from four states: Texas, Illinois, Florida, and New York (Mandery et al., 2013). The gender and racial demographic differences of the samples are fairly similar to the overall demographics of the total known cases of exoneration since 1989 which are housed in a database at the National Registry of Exonerations (NRE). The NRE is a project of the University of Michigan Law School, Michigan State University College of Law, and University of California Irvine Newkirk Center for Science and Society. The Innocence Project reports that women make up almost 8% of all NRE cases (Selby, 2022). The sample of cases analyzed had a slightly smaller percentage of women exonerees (4.2%) compared to 95.8% of males (Shlosberg et al., 2018). Racial

composition of the sample was 56.8% African American exonerees, 28.8% White, 11.9% Hispanic, and 2.5% “other” (Shlosberg et al., 2018). Blacks accounted for approximately 53% of the cases in the NRE in 2022 (Gross et al., 2022).

Offense types were majority murder/manslaughter (48.3%), followed by rape/sexual assault (28.2%), drug (15.3%), property (4.2%), and “other” (1.7%). The overwhelming majority of exonerees were given custodial sentences (62.7%). Life without parole (18.6%), death (14.4%), and non-custodial (3.4%) sentences made up the rest. The mean age at conviction was 27.7 years (SD=7.7) and exonerees served an average of 11.2 years (SD=7.1). The mean age at release was 39.1 with a standard deviation of 9.1 years. Cases were almost evenly split between DNA (49.2%) and non-DNA (50.8%) exonerations (Mandery et al., 2013).

Post-exoneration offending occurred in 38.1% of the cases and did not occur in 61.9% (Shlosberg et al., 2014). Mandery et al. (2013) reported a difference in post-exoneration offending by state. Florida’s exonerees exhibited the highest rate of post-exoneration offending (58.8%) while New York’s exonerees offended post-release at the lowest rate (8.3%); Texas’ post-exoneration offending rate was 45.7% and Illinois’ rate was 38.7%.

The negative impact of false accusation, conviction, and imprisonment to an individual is unarguable. These impacts are compounded by the experiences exonerees face post-exoneration, including a lack of reentry services, discrimination in employment and housing that is attached to their criminal label, psychological consequences of wrongful conviction, and social stigma upon return to the community.

Labeling and Social Stigma

Wrongful conviction is well-suited to understanding labeling theory. Someone who is innocent of a crime is accused, tried, and convicted. A criminal label is applied by the state to

their behavior and to them. The state constructs a reality—one that is factually false—around their behavior in order to apply the label. Despite being exonerated, the criminal label continues to follow an exoneree. The overturning of a conviction may release the exoneree from prison, but the criminal record of the conviction still exists. Expungement of the record is not automatic. Approximately 42% of the sample of exonerees studied above did not have their records sealed (Sholsberg et al., 2011).

A criminal record contributes to stigmatization. Upon return from prison, exonerees face stigma and discrimination similar to offenders (Clow & Leach, 2015a). In an experimentally designed study, participants were randomly assigned to three groups to assess the difference in their feelings towards the general public, exonerees, and offenders. Participants rated the wrongfully convicted as less warm and less competent than the general public. They also desired to be more socially distant from exonerees than from the general public. The participants rated exonerees similarly to offenders on warmth and competence, however, they did desire more social distance from offenders than exonerees. While participants did not generally pity the wrongfully convicted, they did feel more pity for them than the general public. However, the subtle difference in pity towards exonerees did not impact their opinion on the assistance they should receive post-release. Participants' willingness to support assistance, such as counseling, subsidized housing, and career help, was just as high for the general public as it was for the wrongfully convicted. The implication of these findings suggests that people may view exonerees as responsible for their involvement with the justice system and no more deserving of assistance than the average person. This may also explain why some exonerees experience worse stigma than others. Exonerees who had falsely confessed to their crimes were stigmatized more than other exonerees (Clow & Leach, 2015b). In this experimental study, participants were more

likely to perceive exonerees who falsely confessed as guilty, less competent, and less warm compared to someone who was exonerated due to a mistaken eyewitness or jailhouse informant.

The public views having been imprisoned, even for crimes one did not commit, negatively. Blandisi et al. (2015) conducted interviews with the public to ascertain their perceptions of exonerees and found support for the public stigmatizing exonerees. Respondents viewed incarceration negatively, expressed in-group and out-group biases, questioned an exoneree's actual innocence, held negative associations with the label "conviction," and affirmed that media coverage of an exoneree influences the public's view of the exoneree. Not only does wrongful conviction carry its own label, but these findings also indicate that the labels of "spent time in prison," "convicted," and the questioning of an exoneree's actual innocence contributes toward negative stigma that prohibits the exoneree from full participation in society upon reentry.

The stigma associated with being an exoneree may contribute to the self-fulfilling prophecy of labeling theory. The self-fulfilling prophecy operates on the principle that the application of the criminal label invokes a reaction by society to the labeled individual which shames the individual into social conformity or pushes them into further criminal careers (Lilly et al., 2019). In their analysis of whether expungement of the criminal record affects post-exoneration offending behavior, Schlosberg et al. (2014) found differences between exonerees who received expungement and those that did not. Of those exonerees whose records were expunged, 31.6% offended after exoneration compared to offending by 50% of the exonerees who did not receive expungement. Those exonerees who more visibly carried the label of criminal, offended more.

The concept of prison being criminogenic is an extension of labeling theory. Research on labeling theory supports that state criminal justice system intervention with offenders is criminogenic (Lilly et al., 2019). Specifically, the research supports two concepts that are relevant to those wrongfully convicted: a custodial sanction can be criminogenic for low-risk offenders and longer prison terms can increase criminal involvement. Those who have been imprisoned for crimes they did not commit can reasonably be considered low risk. The average length of sentences served by exonerees in the sample studied was 11.2 years with a standard deviation of 7.1 (Mandery et al., 2013). Shlosberg et al. (2018), found support for the concept of prisonization among the sample of exonerees. Their comparison between exonerees who had a prior criminal history and those who did not revealed that the exonerees without a prior criminal history served longer jail sentences and committed their post-exoneration offense sooner than those exonerees with a prior criminal history.

Strain

Labeling theory alone cannot explain post-exoneration offending. The labeling of an exoneree as criminal results in differential treatment by society which creates strain for an exoneree that when unjust, severe, or provides an incentive for crime, is more likely to be criminogenic. Individuals released from prison in the United States are likely to experience barriers to successful reintegration. However, due to the special nature of their wrongful conviction, exonerees' experience of reentry can often be worse than offenders' experience (Estes, 2022). Due to the exoneration process, wrongfully convicted individuals are incapable of accessing prison pre-release services; most exonerees only have a few hours' notice of when they are being set free (Westervelt & Cook, 2012). An immediate need for housing is an initial barrier for exonerees who have had no time to plan for their release (Estes, 2022), including those

released from death row (Westervelt & Cook, 2012). Other issues post-exoneration include finding housing (Westervelt & Cook, 2012) and medical and dental issues (N. A. Jackson et al., 2021; Westervelt & Cook, 2012). Exonerees face a lack of reentry services and post-release support that can contribute to economic strain and family strife. The psychological impacts of the wrongful conviction contribute to other sources of strain. The injustice of being wrongfully accused and imprisoned creates unjust strain.

Employment

Employment after prison is difficult for exonerees. Being suddenly released from prison due to exoneration means exonerees lack access to post-release employment services offered to parolees, making their post-release employment situation worse than that of actual offenders (Kukucka et al., 2020). “Check the box” employment barriers—the requirement to inform employers that you have been convicted of a crime—apply to exonerees whose records have not been expunged in the same way they apply to offenders (Estes, 2022). Research on the perceptions of seasoned hiring professionals by Kukucka et al. (2020) found exonerees faced hiring discrimination similar to offenders. In addition, hiring professionals applied additional stereotypes to exonerees. Researchers randomly assigned experienced hiring professionals to read identical job applications except for the labeling of the application as coming from an offender, an exoneree, or someone with no criminal record. They then asked participants to comment on the strength of the application, the likelihood of interviewing the applicant, their perception of the applicant’s character, the number of references they would call, their starting wage, and positive or negative qualities of the application. While there were no differences in the likelihood of interviewing applicants, hiring professionals indicated differences in perception of character and competency among types of job seekers. Both offenders and exonerees were rated

as significantly less trustworthy than someone with no criminal history. The study indicates that exonerees seeking employment face additional stereotypes from hiring professionals than offenders. Specifically, exonerees were expected to be less articulate, intelligent, and competent than an applicant with no criminal history, but these stereotypes were not applied to offenders. Hiring professionals also wanted to contact more references for exonerees and give them a lower wage compared to those without criminal histories.

Other employment-related strains for exonerees include: having gaps in their work history due to imprisonment; facing technological advancements in the workplace that were made while they were in prison; and a loss of educational, vocational, and networking opportunities while in prison (Kukucka et al., 2020). These barriers to employment contribute to economic strain for exonerees.

Compensation

Exonerees face additional economic strain that compounds their lack of employment when waiting for compensation (N. A. Jackson et al., 2021). Compensation for wrongful conviction can be obtained by suing the federal government under tort claims, petitioning a state legislature via a private bill, or through application to a pre-existing state statute for compensation (Mandery et al., 2013). All three methods are limited and take time. According to the Innocence Project (n.d.), there are still 12 states that do not have compensation laws for exonerees. Mandery et al.'s (2013) analyzed the compensation status of the 118 exoneration cases with criminal offending history. They found that compensation levels had an effect on offending behavior when compensation was viewed as a continuous variable. Seventy-one cases (60.2%) received compensation. The authors note that this is much higher than what has generally been found among exoneration cases and it may be due to the sample containing cases

from one mass exoneration in Texas. Of the 71 compensated exonerees, 57.6% were compensated under state statute, 30.7% under a civil suit, and 11.5% under a private bill. Compensation amounts varied widely.

In the sample, higher rates of compensation were correlated with lower rates of offending (Mandery et al., 2013). Specifically, when the value of compensation received was above \$500,000, exonerees offended at a lower rate (18.2%) than when compensation was lower than \$500,000 (50%) or was not awarded (40%). When compensation for being wrongfully convicted is absent or low, exonerees offend at much higher rates than those who received a larger sum of compensatory funds. The variation in compensation awards and the relationship to offending is supportive of evidence of economic strain for exonerees who are not compensated. It is possible that those who go on to offend after receiving a low compensation award, may be under additional unjust strain if they perceive the compensatory value of years of erroneous imprisonment as offensively low. This finding supports the idea that economic strain can explain why some exonerees go on to offend and others do not.

Psychological Impacts

Exonerees do not escape the psychological impacts of imprisonment and their unique situation of being innocent of their crime compounds the effects. The negative consequences of being wrongfully accused, including wrongfully convicted, are “extreme and long-lasting” and often include a change in self-identity (Brooks & Greenberg, 2021, p. 47). In addition to the effects of the stigma discussed above, PTSD, anxiety, depression, and anger are common among exonerees (Brooks & Greenberg, 2021; N. A. Jackson et al., 2021; Wildeman et al., 2011). In a systematic review of the literature, Brooks and Greenberg (2021) found that the overwhelming majority of exonerees interviewed across several studies reported depression and suicidal

thoughts. Other psychological and health impacts include sleep problems, pain, high blood pressure, and dietary problems (Brooks & Greenberg, 2021).

Exonerees express difficulty maintaining relationships with others (Brooks & Greenberg, 2021). Isolation due to alienation or wanting to avoid being a burden are reasons given for withdrawal from others. Withdrawal alone can impact relationships, but other factors contribute to the strain that families experience when a loved one is wrongfully convicted. Brooks and Greenberg (2021) find that most studies of exonerees mention family members experiencing stigma and stressors similar to their exonerated loved one.

Female exonerees may experience additional psychological consequences. Prosecutors and the media use gender stereotypes of “bad” or “mad” mothers when women are accused or convicted of the death of a loved one (Konvisser, 2011). Courts also treat women differently due to gender stereotypes that are employed by prosecutors to create a social stigma or character assassination for the female defendant. Female exonerees may experience different types of strain than male exonerees.

A lack of trust is common among exonerees (N. A. Jackson et al., 2021). Exonerees report feeling let down because they trusted the system and discouraged that confidants in prison did not believe their claims of innocence. Post-release, exonerees report being hypervigilant when they go out. Jackson et al. hypothesize that a lack of trust in the criminal justice system, combined with the fear of re-incarceration may contribute to hypervigilance. A lack of faith in the justice system is understandable after being wrongly convicted and imprisoned. Mandery et al. (2013) propose that the difference in offending post-exoneration by compensation amount may be due to perceptions of procedural fairness that contribute to whether an exoneree sees the law as legitimate. In advocating for a victimology of state harm to include those wrongfully

convicted, Westervelt and Cook (2010) note that exonerees become victims of state harm because their conviction was a result of the illegal action of or misapplication of power by state actors. The harms to exonerees are compounded by their lack of power, the lack of punishment of state officials, and being blamed for their own suffering. They also must often rely on the state (their victimizer) to seek exoneration.

The sum of an exoneree's experiences lead to strain. Issues in finding employment can be perceived as unjust, be experienced as severe strain, and contribute to strain that provides an incentive for crime. Feelings of distrust and a perception of the law as lacking legitimacy contribute to unjust strain experienced by exonerees. These strains, combined with the stigma associated with a criminal label, can lead to offending behavior.

Limitations of the Integrated Theory

As with other theories of offending, we must consider whether there are factors that we have not included when developing the theory of post-exoneration offending. It is likely that structural factors that existed before an individual was wrongly convicted will still exist upon exoneration. If an exoneree was indigent at the time of their trial, it is unlikely that their financial situation will have improved while in prison. If they are Black or Brown and race-related factors went into their wrongful conviction, those race-related factors, such as overpolicing, are likely to exist after their release. These structural factors may combine with strain and labeling to further increase the likelihood of offending post-exoneration. A further limitation of this theory is in its individual explanation for offending by exonerees. The focus on the individual takes away any responsibility the state may have in contributing towards offending behavior. Further research and the application of a criminology of state harm would pressure states to acknowledge their

errors and create policies to address the needs of exonerees upon reentry (Westervelt & Cook, 2010).

Policy Recommendations

Scholarly research on ways to prevent wrongful conviction and reduce the factors that contribute to it is plentiful (Gould & Leo, 2010). The Innocence Movement has greatly contributed to the awareness of the issue and to the aid of many innocents in obtaining exonerations (Gould, 2007). There is much less research on what would help exonerees upon reentry. Based on the theories presented, policies aimed at reducing strain will benefit exonerees the most.

Strain theories suggest that we could reduce crime by expanding opportunity, especially economic opportunity, to all people. The same is true for exonerees. Providing social supports through post-release programming, access to housing, job training and other employment support should reduce strain and thereby reduce crime. Economic strain can especially be reduced by providing adequate compensation. Providing compensation above \$500,000 can also reduce perceptions of procedural injustice (Mandery et al., 2013) and contribute to a reduction in post-exoneration offending. All states should adopt compensation statutes that are adequate as well as accessible. Criteria for eligibility should be reduced as far as possible to ensure that actually innocent exonerees can quickly and easily get back on their feet economically.

Expungement of the criminal record is another way to reduce economic strain as well as social stigma. Shlosberg et al.'s (2014) analysis of a sample of exonerees' expungement records and post-release offending revealed that New York had the lowest levels of offending post-exoneration (8.3%) and was also the only state that fully expunged all conviction records. This is due to the expungement in New York being automatic; other states have discretionary

expungement (Sholsberg et al., 2011). All states should adopt automatic and swift expungement laws. Expunging the record results in the removal of reentry barriers that are tied to their conviction being “on the books,” such as employment and housing discrimination, as well as reduce stigma.

Conclusion

Wrongful conviction is an egregious error of the justice system. The harm done to innocents is severe and the barriers to reentering society upon exoneration are often consequential. Post-exoneration criminal offending unfortunately occurs for some exonerees. Explanations for this criminal behavior of exonerated people are rooted in the stigmatization of the offender label combined with severe, unjust, or criminally incentivizing strains experienced upon reentry. If the integrated theory of post-exoneration offending is accurate, this type of criminal behavior may be preventable. Efforts by states to award compensation to exonerees and automatically expunge their criminal records may contribute to a reduction in post-exoneration offending. Further research on the post-exoneration criminal offending behavior of exonerees is needed. The single sample studied to-date covers only a small portion of the total exonerations in the United States from four states. If more research was conducted, we may have more support for the integrated theory or other explanations which could lead to serious policy changes. These research findings and policy changes could arguably have a widespread impact on reducing criminal offending behavior of many individuals, not just those who have been exonerated.

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