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Wrongful Conviction and Criminal Justice Reform: Making Justice

Editors: Marvin Zalman and Julia Carrano

Chapter Outline

Preface and Acknowledgements

Marvin Zalman & Julia Carrano

Introduction

Jon B. Gould

A leading wrongful conviction authority outlines the issue. Despite growing awareness of a flawed criminal justice system, many cannot identify with being wrongful convicted, weakening public demand for change. Nevertheless, as reforms designed to reduce miscarriages of justice take hold, the issue should not be viewed as a partisan issue but one of vital concern to all criminal justice stakeholders and the public.

PART I. PRELUDE: APPROACHES TO INNOCENCE REFORM

Chapter 1: An Introduction to Innocence Reform

Julia Carrano & Marvin Zalman

The chapter briefly reviews the definition of wrongful conviction, the magnitude of the problem, and sources of wrongful convictions. Summaries and brief statements about the chapters follow.

Chapter 2: The Public Policy Process and Innocence Reform

Marvin Zalman & Nancy Marion

This chapter applies the public policy development framework to innocence reform, examining the innocence movement through the steps of problem identification, agenda setting, legitimation, budgeting, policy implementation, and problem review.

Chapter 3: The Role of the Media & Public Opinion on Innocence Reform: Past and Future

Rob Warden

The news media, and especially investigative reporting, has been essential to raising public awareness of wrongful convictions. With the rapid decline of traditional print and broadcast news, journalists have responded by finding alternate modes of investigative journalism.

Chapter 4: An Etiology of Wrongful Convictions: Error, Safety, and Forward-Looking Accountability in Criminal Justice

James M. Doyle

Wrongful convictions are re-conceived as “organizational accidents” formed by latent system weaknesses and small errors. Lessons from error-avoiding systemic practices in aviation and medicine can be applied to criminal justice to reduce error.

Chapter 5: Innocent Defendants: Divergent Case Outcomes and What They Teach Us

Jon B. Gould, Julia Carrano, Richard A. Leo, & Katie Hail-Jares

This chapter reports on an empirical study of factors that predict a wrongful conviction of an innocent defendant rather than a dismissal prior to trial or an acquittal (a “near miss”). Ten factors are significantly predictive of case outcomes, some of which mirror the factors traditionally associated with wrongful convictions.

PART II. INSTITUTIONS OF INNOCENCE REFORM

Chapter 6: The Innocence Movement, the Innocence Network, and Policy Reform

Keith Findley & Larry Golden

This chapter offers an inside view of the innocence movement’s development, innocence projects, and the Innocence Network. The authors describe problems confronting these institutions and assess prospects for future success.

Chapter 7: Exoneree Initiatives and Innocence Reform: Witness to Innocence

Ronald Keine

A death penalty exoneree describes his case and how he was invited to participate in the innocence movement. As a member of Witness to Innocence, an exoneree organization that educates the public and lobbies against capital punishment, Keine describes its operations and impact.

PART III. CHANGING THE CRIMINAL JUSTICE SYSTEM

Police Investigation and Wrongful Convictions

Chapter 8: Policies, Procedures and the Police: An Assessment of Wrongful Conviction Risk in Nebraska

Rebecca K. Murray, Laurel Gegner & Justin Pelton

The authors present original research assessing police agency attitudes toward innocence reforms in one state. The agencies view innocence reforms as bureaucratic impediments, suggesting that innocence advocates need to engage more closely with agencies and take institutional culture and imperatives into account when advocating changes.

Chapter 9: The Detective and Wrongful Conviction

Marvin Zalman

This case study of the first DNA exoneration argues that wrongful conviction scholarship and policy activism should focus on police investigation generally, in addition to discrete police tasks, and rethink the problem of tunnel vision.

Forensic Science's Reform Agenda

Chapter 10: The Innocence Crisis and Forensic Science Reform

Simon A. Cole

The DNA revolution created a crisis in forensic science. In recent years, the forensic sciences have generated many reform proposals. Instead of relying on an externally generated crisis, the author argues that forensic science needs regular existing mechanisms and institutions to detect when future reforms are necessary.

Prosecution Reactions to Innocence

Chapter 11: Conviction Integrity Units: Toward Prosecutorial Self-Regulation?

Evelyn L. Malavé & Yotom Barkai

The authors draw on their recent research to examine a new response to wrongful convictions—prosecutors’ conviction integrity units—assessing their “front-end” as well as “back-end” functions, examining internal resistance, and offering a cautiously optimistic appraisal of their continuation.

Defense Counsel

Chapter 12: Public Defense in an Age of Innocence: The Innocence Paradigm and the Challenges of Representing the Accused

Alissa Pollitz Worden, Andrew Lucas Blaize Davies & Elizabeth K. Brown

The authors review concerns about the quality of indigent defense highlighted by the innocence movement and discuss reforms to address these deficiencies, including increased resources, changing legal standards of ineffective defense, allowing defenders to pursue policy advocacy, and developing new institutions.

New Models of Adjudication and Appeal

Chapter 13: Investigative Procedure and Post-Conviction Review: Resetting Incentives to Separate the Innocent from the Guilty

Samuel R. Gross

To reduce the incentives for innocent defendants to plead guilty, the author proposes an investigative trial as an *alternative* between plea bargaining and full trial that defendants could select, upon waiving certain trial rights. This proposal relies on an inquisitorial approach, and will likely be more diagnostic of truth and would provide greater avenues for fact-based appeal.

New Models for Establishing Innocence Post-Conviction

Chapter 14: The North Carolina Innocence Inquiry Commission: Catching Cases that Fall Through the Cracks

Christine C. Mumma

The author provides a detailed inside account of the policy considerations and politics that went into creating the innovative North Carolina Innocence Inquiry Commission. This chapter provides guidance for other states that embark on innocence reform projects.

Death Penalty Directions

Chapter 15: Deadly Errors and Salutory Reforms: The Kill That Cures?

James R. Acker & Rose Bellandi

The authors trace the interdependent nature of the capital punishment abolition and the innocence reform movements. They discuss the difficult question of whether the decline of the death penalty and the likely decrease in DNA exonerations will weaken public support for innocence reforms.

Exoneree Compensation

Chapter 16: Exoneree Compensation: Current Policies and Future Outlook

Robert J. Norris

The author examines the passage and content of exoneree compensation laws in detail. With only half the states having passed such legislation, he asks whether the rate of passage may be slowing due to the recent economic downturn.

Part IV. Summation

Epilogue: The Prospects for Innocence Reform

Marvin Zalman & Julia Carrano

The editors offer thoughts on the role played by actual innocence in stimulating reforms of the criminal justice system to date, and on the contributions of the chapters in this volume to moving to the next level of perpetual reform.

Contributor Biographies

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Preface

Each chapter in this volume presents research and scholarship on innocence reform—a shorthand phrase for the complex agenda of change in the justice system designed to reduce error and help exonerees. They represent the latest thinking on the subject. Several are based on cutting-edge research published elsewhere within the last two years. Other chapters have been solicited as original work. Although several authors are familiar names in wrongful conviction scholarship, we have turned not only to recognized senior scholars but have followed leads to highly innovative work; as a result, several law and graduate students are lead and second authors. *Wrongful Conviction and Criminal Justice Reform: Making Justice* is not a compendium of what has been learned about wrongful convictions since serious scholarship began in the 1980s. Instead, it breaks new ground by expressly examining many of the issues and processes related to wrongful conviction in the light of the policy reform process. The book should be essential for wrongful conviction scholars and for criminal justice, political science and law professors concerned with the investigation, prosecution and adjudication components of the criminal justice process.

Nonetheless, *Wrongful Conviction and Criminal Justice Reform* is accessible to students. The chapters are free of jargon and have been written to be easily comprehended by an intelligent lay audience. The book is designed as the main text for a course on wrongful conviction and a valuable secondary text for general courses in criminal justice, political science, and for law school innocence clinics.

No book can cover a field entirely and this is especially true in an area of scholarship that is exploding with new and innovative work. This is an incredibly exciting period of expanding studies and ideas about wrongful convictions. Just within the last year or so a raft of important books have been published that enrich wrongful conviction scholarship. These include Feld's (2013) study of false confessions by teenagers, Garrett's (2011) intensive exploration of the first 250 DNA exonerations, Givelber and Farrell's (2012) demonstration that acquittals are often based on actual innocence, Harris's (2012) study of the sources of police resistance and potential advance regarding innocence reform, an anthology edited by Huff and Killias (2013) that explores wrongful conviction issues in an international context Medwed's (2012) short but comprehensive examination of prosecutors and wrongful conviction, Simon's (2012) magisterial review and analysis of the psychological literature illuminating error in policing, prosecution and adjudication, and Westervelt and Cook's (2012) in-depth exploration of the exoneree experience. If the time frame of important books is expanded slightly, we can include broader studies of the death penalty (Baumgartner, DeBoef, & Boydston, 2008), interrogation (Leo, 2008), prosecution (Davis, 2007), informants (Natapoff, 2009), citizen commissions (Gould, 2008), and the anthology edited by Ogletree and Sarat (2009) which shed light on attributes of those practices and institutions that generate wrongful convictions. Within this time frame the path breaking survey of forensic science was issued by the National Academy of Sciences (2009), that was itself stimulated by the innocence movement. Finally, recognizing the monumental impact of wrongful convictions, the American Psychological Association has published or sponsored anthologies relating to the innocence issues of false confessions (Lassiter & Meissner, 2010), expert eyewitness testimony (Cutler, 2009), and wrongful convictions generally (Cutler, 2012).

This list of important books has been accompanied by a flood of diverse research and scholarship published in law reviews and scientific journals.

In view of this outpouring of scholarship and research of the highest quality it may seem immodest to suggest that the present volume offers a novel way of addressing the subject of actual innocence. Innocence reform has of course been an important aspect of wrongful conviction scholarship from the beginning. We nevertheless submit that along with the superb contributions of the authors, the singular focus on reform and the reform process of the present anthology helps advance the view that the analysis of wrongful convictions is inherently a part of criminal justice policy studies. The goal must be the continuous examination and renewal of the criminal justice system as it undertakes one of the most momentous actions of government—determining guilt or innocence.