

FOREWORD

*Sandra D. Westervelt**
*Kimberly J. Cook***

In the *Foreword* to the inaugural issue of the *Albany Law Review's* special series on *Miscarriages of Justice*, Professor James Acker begins, "Innocent people are wrongly accused, convicted, and imprisoned in American systems of criminal justice. Guilty parties escape detection, verdicts fail to speak the truth, and punishments do not match the crimes. Justice sometimes miscarries."¹ Quite true; no system of justice created and implemented by human hands is perfect. Mistakes are made. Abuses occur. In such cases, it is incumbent upon those working within the system to ensure that those wrongs are righted—the innocent are freed, the truly guilty are pursued, the truth is revealed, and equity remains paramount. The quality of justice delivered by the American system of justice hinges as much on how it responds when justice miscarries as on its attempts to prevent such miscarriages from the outset.

Later in that same *Foreword*, Professor Acker outlines a vision for the law review's special series on miscarriages of justice, a vision that insists on a broad understanding of what constitutes such a miscarriage: "The focus on 'miscarriages of justice' is deliberately expansive. It encompasses wrongful convictions and their antecedents and consequences, erroneous acquittals and corresponding lapses in law enforcement and prosecution, disservices to the victims of crime, inequitable punishments, and related matters."² The focus of this special edition, *Revealing the Impact & Aftermath of Miscarriages of Justice*, expands this definition to include the system's reluctance to recognize and right the wrongs created when justice miscarries. Is it not also a miscarriage of justice to ignore the harms caused by the failures of

* Associate Professor, Department of Sociology, University of North Carolina Greensboro; Ph.D., University of Virginia.

** Professor and Chair, Department of Sociology and Criminology, University of North Carolina Wilmington; Ph.D., University of New Hampshire.

¹ James R. Acker, *Foreword*, 74 ALB. L. REV. 1067, 1067 (2010/2011).

² *Id.* at 1068.

the system and to compound those harms by an unwillingness to recognize and remedy its mistakes? In particular, the articles included in this special edition explore the aftermath of wrongful convictions for innocent people. As these authors have stated elsewhere, justice continues to miscarry for those wrongly convicted of crimes “when the state fails to assist their reintegration efforts and recognize its responsibility in their wrongful convictions.”³

The focus on aftermath in this edition also is “deliberately expansive”⁴ in both topic and method. Topics reveal a depth of examination of aftermath issues intended to prompt new lines of thinking and to go beyond a one-dimensional discussion of the obstacles that litter the path of those exonerated of crimes (though such research is quite important in its own right). These topics include the impact of a wrongful conviction on family members and other case participants, the role of public perception in shaping the experiences of the wrongly convicted when they return to their communities, and barriers to successful reintegration currently institutionalized in public policy. The methods of analysis vary, ranging from quantitative and qualitative social science analyses of stigma, public perception, and interest group politics to legal analyses of public policy issues and case analysis.

To date, studies of the aftermath of the wrongful conviction of the innocent have coalesced around two primary issues—barriers to reintegration experienced by exonerees⁵ and policy-level deficits, in particular with regard to compensation, that compound their reintegration struggles.⁶ An examination of the barriers to

³ Saundra D. Westervelt & Kimberly J. Cook, *Framing Innocents: The Wrongly Convicted as Victims of State Harm*, 53 CRIME, L. & SOC. CHANGE 259, 261 (2010).

⁴ Acker, *supra* note 1, at 1068.

⁵ See, e.g., Kathryn Campbell & Myriam Denov, *The Burden of Innocence: Coping With a Wrongful Imprisonment*, 46 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 139 (2004); Adrian Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, 46 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 165 (2004); Saundra D. Westervelt & Kimberly J. Cook, *Coping with Innocence After Death Row*, 7 CONTEXTS 32 (2008); Westervelt & Cook, *supra* note 3.

⁶ See, e.g., Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703 (2004); Adele Bernhard, *A Short Overview of the Statutory Remedies for the Wrongly Convicted: What Works, What Doesn't and Why*, 18 B.U. PUB. INT. L.J. 403 (2009); Daniel S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 U. MICH. J.L. REFORM 123 (2010); Frederick Lawrence, *Declaring Innocence: Use of Declaratory Judgments to Vindicate the Wrongly Convicted*, 18 B.U. PUB. INT. L.J. 391 (2009); Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 LEGIS. & PUB. POL'Y 405 (2008); Robert J. Norris, *Assessing Compensation Statutes for the Wrongly Convicted*, 23 CRIM. JUST. POL'Y REV. 1 (Forthcoming 2012, Published Online 2011).

reintegration faced by exonerees is an essential starting point in the study of the aftermath of miscarriages of justice. It brings attention to an invisible dimension of the wrongful conviction issue that received very little analysis prior to the mid-2000s. To that point, most scholarly work in the area of wrongful convictions in both the legal and social science disciplines focused on identifying the sources of wrongful convictions, the legal and extra-legal mistakes and abuses that lead innocent people to be convicted of crimes they did not commit.⁷ Exoneration and release from prison were, it seemed, the end of the story. More recent research into the post-release experiences of exonerees makes visible their continuing struggles to reintegrate successfully into their families and communities.⁸ The story most certainly does not end on their day of release from prison.

Examination of the institutionalized barriers to reintegration, such as limited and inadequate compensation provisions, also calls attention to a crucial piece of the aftermath puzzle—the persistent refusal of state actors to take responsibility for injustices they helped to create.⁹ Post-exoneration, the harm produced by a wrongful conviction is amplified when the state appears unwilling to “own” its role in creating the injustice or providing adequate redress to help those injured rebuild a life and get back on their feet.¹⁰ Given our capitalist society, it should not be surprising that the majority of the discussion of remedy and redress has focused on how best to monetarily compensate those suffering.

These have been essential starting points for the development of a literature on the aftermath of miscarriages of justice. However, it is time to move the discussion forward by asking new questions about aftermath. How do exonerees cope with the persistent trauma caused by their wrongful convictions? How do they manage the stigma they confront in their communities? What factors lead to better or worse outcomes for those released? How do they reconstruct their identities after exoneration and release? What

⁷ See, e.g., C. RONALD HUFF ET AL., CONVICTED BUT INNOCENT: WRONGFUL CONVICTION AND PUBLIC POLICY (1996); MICHAEL L. RADELET ET AL., IN SPITE OF INNOCENCE: ERRONEOUS CONVICTIONS IN CAPITAL CASES (1994); BARRY SCHECK ET AL., ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGLY CONVICTED (2000); WRONGLY CONVICTED: PERSPECTIVES ON FAILED JUSTICE (Saundra D. Westervelt & John A. Humphrey eds., 2001).

⁸ See, e.g., Campbell & Denov, *supra* note 5; Grounds, *supra* note 5; Westervelt & Cook, *supra* note 5.

⁹ Westervelt & Cook, *supra* note 3.

¹⁰ See SAUNDRA D. WESTERVELT & KIMBERLY J. COOK, LIFE AFTER DEATH ROW: EXONEREES' SEARCH FOR COMMUNITY AND IDENTITY (forthcoming 2012).

dynamics shape public perception and community acceptance? What influences do the media have on successful reintegration? Aside from revised compensation provisions, what additional policy initiatives need to be addressed to ease transition? What factors influence successful implementation of such policies? How can nonprofit organizations provide essential services needed during reentry? What challenges do such organizations face and how might they overcome those challenges? What theoretical paradigms can be used to better understand the complex dimensions of aftermath?¹¹

The articles in this special edition take up many of these questions and carry the discussion of aftermath in new directions. The articles by Amy Shlosberg et al.,¹² and Randall Grometstein and Jennifer Balboni¹³ raise important questions about additional policy initiatives—automatic expungement and limitations on prosecutorial immunity—that could provide redress to exonerated persons. Michael Owens and Elizabeth Griffiths¹⁴ attack the issue of inadequate compensation anew by examining the political influences on passage of compensation statutes at the state level, and Rachel Dioso-Villa¹⁵ unveils the lack of transparency in compensation decisions in Australia. The articles by Adina Thompson et al.,¹⁶ and Kimberley Clow et al.¹⁷ address the stigmatization of exonerees and public understandings of the legitimacy of their needs, while the articles by Rose Ricciardelli et al.,¹⁸ and Elizabeth Vartkessian and Jared Tyler¹⁹ examine the factors that inform public understanding and acceptance as

¹¹ For a more detailed discussion of some of these questions, see Westervelt & Cook, *supra* note 5 and WESTERVELT & COOK, *supra* note 10.

¹² Amy Shlosberg et al., *The Expungement Myth*, 75 ALB. L. REV. 1229 (2011/2012).

¹³ Randall Grometstein & Jennifer Balboni, *Backing Out of a Constitutional Ditch: Constitutional Remedies for Gross Prosecutorial Misconduct Post Thompson*, 75 ALB. L. REV. 1243 (2011/2012).

¹⁴ Michael Leo Owens & Elizabeth Griffiths, *Uneven Reparations for Wrongful Convictions: Examining the State Politics of Statutory Compensation Legislation*, 75 ALB. L. REV. 1283 (2011/2012).

¹⁵ Rachel Dioso-Villa, *Without Legal Obligation: Compensating the Wrongfully Convicted in Australia*, 75 ALB. L. REV. 1329 (2011/2012).

¹⁶ Adina M. Thompson et al., *After Exoneration: An Investigation of Stigma and Wrongfully Convicted Persons*, 75 ALB. L. REV. 1373 (2011/2012).

¹⁷ Kimberley A. Clow et al., *Public Perception of Wrongful Conviction: Support for Compensation and Apologies*, 75 ALB. L. REV. 1415 (2011/2012).

¹⁸ Rose Ricciardelli et al., *"Now I See It for What It Really Is": The Impact of Participation in an Innocence Project Practicum on Criminology Students*, 75 ALB. L. REV. 1441 (2011/2012).

¹⁹ Elizabeth S. Vartkessian & Jared P. Tyler, *Legal and Social Exoneration: The Consequences of Michael Toney's Wrongful Conviction*, 75 ALB. L. REV. 1471 (2011/2012).

2011/2012]

Foreword

1227

exonerees reintegrate into their communities. This volume exploring the aftermath of wrongful convictions concludes with personal reflections by many whose lives have been profoundly impacted by these miscarriages of justice.

In her examination of the coping and recovery of trauma survivors, Judith Herman notes, “Once it is publicly recognized that a person has been harmed, the community must take action to assign responsibility for the harm and to repair the injury. These two responses—recognition and restitution—are necessary to rebuild the survivor’s sense of order and justice.”²⁰ Studies of the impact and aftermath of miscarriages of justice, wrongful convictions in particular, reveal that attempts by the criminal justice system and other responsible state actors to provide these two necessary responses of recognition and restitution are currently lacking. As such, justice continues to miscarry. It is time to redouble efforts to analytically and critically examine issues related to the aftermath of miscarriages of justice. This special edition provides a very good beginning.

²⁰ JUDITH HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* 70 (1997).