ELEPHANTS IN THE STATION HOUSE: SERIAL CRIMES, WRONGFUL CONVICTIONS, AND EXPANDING WRONGFUL CONVICTION ANALYSIS TO INCLUDE POLICE INVESTIGATION¹

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ABSTRACT

In this article we advocate that the study of miscarriages of justice be expanded to view the entirety of police crime investigation as a source of wrongful convictions. We set this proposal in a framework of how the inductive innocence paradigm was developed and analyze how the term “causation” is used in legal, scientific and case analysis. We then explore a subject not yet addressed by wrongful conviction scholarship but that may confront an investigator: whether an unsolved crime is the work of a serial criminal and whether a suspect is the serial criminal. We examine a convenience sample of forty-four exonerees convicted of crimes committed by thirty serial criminals. The analysis is aimed at opening up a discussion of the kind of complexity that investigators face in hard-to-solve cases.

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Wrongful conviction research, according to Bonventre, Norris, and West, includes identifying exoneration cases, “establishing rates” of wrongful convictions, “examining known cases to establish the correlates of their causation and detection,” and studying “established factors, such as confessions, to better understand their relationship with wrongful convictions and to improve practices.”

The array of research methods used to study the correlates and causes of wrongful conviction have included descriptive case studies, content analysis, aggregate data descriptive statistics, comparison/control studies, and experimental studies. The present article explores the correlates and causes of wrongful convictions, but approaches the issue by advocating that the correlates include the entirety of police investigation. Related to that goal, we discuss how causation is and should be addressed in innocence advocacy and scholarship.

The study of causation, although a subject of philosophy, legal theory, and scientific inquiry, is driven by practical desires to understand and control causal mechanisms. Understanding causal mechanisms in applied technology leads to improved manufacturing efficiency and better products. Cause and effect has been a mantra of medicine at least since scientific principles were applied in the nineteenth century to curing infectious diseases, but has probably driven the work of healers and herbalists well before that. Even in criminal law, where causation is a prerequisite to ascertaining whether an event constitutes a crime, the goal is to control either

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3 Bonventre et al., *supra* note 2, at 302–05.


6 See Alfred S. Evans, *Causation and Disease: The Henle-Koch Postulates Revisited*, 49 *Yale J. Bio. & Med.* 175, 175, 177 (1976); David H. Wegman et al., *How Would We Know a Gulf War Syndrome If We Saw One?*, 146 *Am. J. Epidemiology* 704, 705 (1997).
the offender (through special deterrence, incapacitation, or rehabilitation), society (via general deterrence and the prevention of private vengeance), or the state (by requiring police and prosecutors to bring suspects to courts of law and prove their cases by presenting evidence rather than by exercising raw state power).  

Wrongful conviction studies have been driven from the time of Edwin Borchard’s survey of sixty-five actual innocence cases to the most recent scholarship by a desire to know what has caused prosecutions to go awry. The goal from the beginning has been to improve verdict accuracy by correcting specific criminal justice and legal process errors. As the innocence movement rapidly matured after the 1990s, a set of standard or canonical causes or sources of wrongful convictions has been thought to explain false convictions. The theme of the present issue, “Elephants in the Courtroom” is premised on the idea that some issues which figure importantly as wrongful conviction causes have not received commensurate attention in policy or research arenas.

We explore this theme by examining the “elephant in the station house,” so to speak: the failure of innocence movement advocates, activists, and scholars to view the entirety of police investigation as a potential source of wrongful convictions, as opposed to exploring arguably more discreet police processes (e.g., eyewitness identification, interrogation, handling informants). We advocate

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7 One may argue that these goals are achieved through punishment, an essential criminal law element. See generally HALL, supra note 4, at 297, 309–10 (describing common characteristics of punishment). However, punishing where criminal causation has not been proven is incoherent.


10 A wrongful acquittal is as equally inaccurate as a false conviction. Some factors leading to wrongful acquittals might differ from those typical of false convictions (e.g., jury nullification). Although we cannot be sure, perhaps improving conviction accuracy by measures designed to reduce false convictions might also reduce false acquittals caused by weaknesses in police investigation, forensic science, or the processing of cases by defense lawyers and prosecutors. In any event, we focus on wrongful convictions, which has been the subject of voluminous research and scholarship.

11 As with all sweeping generalizations, there are exceptions. There is a large body of exemplary scholarship examining police crime investigation in relation to wrongful convictions. See, e.g., DAN SIMON, IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS 17 (2012); Jonathan Simon, Recovering the Craft of Policing: Wrongful Convictions, the War on Crime, and the Problem of Security, in WHEN LAW FAILS: MAKING SENSE OF MISCARRIAGES OF JUSTICE 115–16 (Charles J. Ogletree, Jr., & Austin Sarat eds., 2009). Dan Simon’s book is possibly the only assemblage of psychological research that focuses generally on police investigation. See SIMON, supra at 236–61 nn.1–243. See also D. KIM ROSSMO, CRIMINAL INVESTIGATIVE FAILURES 3, 4 (2009) (recognizing police investigative failures as a factor of wrongful convictions). Curiously, the innocence movement has no problem in
that innocence scholarship amplify its perspective by including police investigation, generally, as a source of miscarriages of justice. One article cannot explore the very large subject of police investigation. Instead, we focus on whether, in the investigation of a difficult case, investigators may fail to discover that the crime was committed by a serial criminal, and not the suspect, who does not fit the serial criminal profile. We approach this topic gingerly. It would be a mistake, given the present state of knowledge, to overemphasize the serial criminal/wrongful conviction link or to suggest that we can establish investigation protocols with check-off boxes for “serial criminal factors” in every hard-to-solve murder or sexual assault investigation.

Our exploration of forty-four exonerees’s cases—who paid dearly for crimes committed by serial criminals—is designed not to create a serial crime/wrongful conviction investigation profile, but to stress the need to think about the challenges to diagnostic accuracy in criminal investigations.

We proceed in Part II by reviewing the way in which the innocence paradigm (i.e., a limited set of wrongful convictions “causes”) came to dominate wrongful conviction advocacy and scholarship, assessing the paradigm’s strengths and weaknesses. Part II lays a foundation for advancing our goal of incorporating police investigation into the correlates of wrongful conviction that should be considered by innocence advocates and scholars. In Part III we analyze three approaches to wrongful conviction causation: legal causation, nomothetic analysis aimed at providing general statements (via social scientific methods) about wrongful accepting the complex arena of forensic science failure as a general source of wrongful convictions within the general forensic error category. More specific sources of error are examined such as weak forensic methods relying on comparison (including “junk science”), substandard laboratories, incompetent examiners/lack of rigorous proficiency testing, misleading forensic testimony, corruption and perjury, and the like.

12 See generally CHARLES R. SWANSON ET AL., CRIMINAL INVESTIGATION 18, 38, 39 (11th ed. 2012) (describing the structure and features that are within the investigative process).

13 Most cases we explore involve serial killers or serial violent sex offenders. Some criminological inquiry suggests “a considerable amount of short-term specialization” among ten street crimes (burglary, business robbery, personal robbery, assault, theft, auto theft, forgery, fraud, drug crimes, and rape). C. Sullivan, et al., Rethinking the “Norm” of Offender Generality: Investigating Specialization in the Short-Term, 44 CRIMINOLOGY 199, 221 (2006). If left unsolved, such crimes could be pinned on innocent people. Indeed, one of our cases (exoneree Charles Bunge) shows that is the case. See infra Part IV.C.8. The focus on wrongful convictions attributed to serial killers and serial rapists in this article reflects the condition that the bulk of exoneration activity has been taken on behalf of prisoners serving long sentences for very serious crimes.

14 See infra Part II.
convictions, and causation in idiographic case analysis. Legal causation is an issue in constitutional tort cases imposing liability on state actors for causing wrongful convictions under 42 U.S.C. § 1983. Describing differences and similarities of these methodological and theoretical approaches may be useful to scholars or lawyers working primarily within other causal frames. In Part IV, we analyze cases in which forty-four innocent defendants were convicted of crimes committed by thirty-three serial criminals. In this part we briefly discuss the nature of serial criminality, exploring this criminological topic through the lens of information useful to the investigation of hard-to-solve crimes where serial criminality might better fit the circumstantial evidence than the guilt of an innocent suspect. We conclude in Part V, indicating some of the limitations of our study and making suggestions for further research.

II. THE INNOCENCE PARADIGM: STRENGTHS AND LIMITS

A co-author wrote about this issue’s “elephants in the courtroom” theme, calling the innocence paradigm “the organizing heuristic for the innocence movement.” The paradigm was defined broadly as the idea that “wrongful convictions result from a number of causes, which are tied to a reform agenda.” More specifically, Barry Scheck, Peter Neufeld, and Jim Dwyer, in Actual Innocence, generated an innocence paradigm as “a list of factors deemed to cause wrongful convictions, along with reforms to prevent the errors and to alleviate the suffering of exonerees, and to establish an

15 See infra Part III.
16 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . . 42 U.S.C. § 1983 (2014).
17 See infra Part IV. B.1; Table 1.
18 See infra Part IV. B.2; Table 2.
19 See infra Part V.
21 Justice Model, supra note 20, at 1498.
innocence network.” The content of the paradigm, (i.e., the factors that “cause” wrongful convictions) has not been specified with absolute agreement by different authors, but there is a good deal of overlap. As Samuel Gross famously noted, there is “a canonical list of factors that lead to false convictions: eyewitness misidentification; false confession; misleading, false, or fraudulent forensic evidence; testimony by highly motivated police informants such as ‘jailhouse snitches’; perjury in general; prosecutorial misconduct; ineffective legal defense. All these factors are common among cases of known exonerations.”

Where did this list come from? Or, to put the question differently, how have authors who studied wrongful convictions cases come to generate these factors? We might also ask about different authors’ variations from the canonical list observed by Gross, and, further, to what degree were the authors motivated by scientific/scholarly goals or by reformist agendas.

It was observed that “the innocence paradigm’s factors were derived inductively from case descriptions.” The rise of the innocence paradigm might be likened to Edward Levi’s classic description of how legal doctrines develop in the process of legal reasoning and precedent, whether in case law, statutory interpretation, or constitutional analysis. “The steps are these: similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case.” As new cases appear before the courts, the doctrine, useful for resolving the tensions inherent in the litigants’ arguments, is expanded and branched out to resolve subsidiary issues. Legal doctrines remain in play to shape courts’ decisions for as long as they remain legally and socially useful, but may decline thereafter. The analogy to the innocence paradigm is not perfect,

23 Justice Model, supra note 20, at 1500 (emphasis added).
24 “There is actually no single authoritative list of ‘causes’—they vary depending on the source.” Id. at 1501.
25 Gross, supra note 9, at 186.
26 Justice Model, supra note 20, at 1501. Zalman demonstrated this by showing that an excellent study based on a review of wrongful conviction cases from Virginia generated an overlapping but alternate list of factors:

The Virginia study led by Jon Gould identified nine primary factors, split misidentification into two (“honest mistaken identification” and “suggestive identification procedures”), labeled “[t]unnel vision by police” as a separate factor, and found that, in Virginia capital cases at least, “inconsistent . . . statements by defendants” led to wrongful convictions.

Id. (alteration in original).
but because we assert that the paradigm is a socially constructed concept\textsuperscript{28} we believe that exploring how it arose is consequential. The paradigm, after all, shapes how the movement conceives of itself and shapes its policy agenda. As a legal doctrine is both fixed and fluid, giving shape to judicial decisions as judges reshape the doctrine while deciding cases\textsuperscript{29} the innocence paradigm helps to define the policy goals of the innocence movement but is also modified as innocence advocates confront new challenges.

The American innocence paradigm was constructed in the 1990s.\textsuperscript{30} Although many people participated,\textsuperscript{31} the major influence on its shape was \textit{Actual Innocence} and its List of Reforms in Appendix 1.\textsuperscript{32} Applying the legal doctrine analogy, the list of reforms in \textit{Actual Innocence} was not the “first case” but rather the “second case” that saw similarities with an earlier “case,” or rather,
Four years before the publication of *Actual Innocence*, Neufeld and Scheck wrote that “in many respects the reasons for the conviction of the innocent in the DNA cases do not seem strikingly different than those cited by Yale Professor Edwin Borchard in his seminal work, *Convicting the Innocent*.” This brief line appeared in a National Institute of Justice study of the first twenty-eight DNA exonerations that “quickly became one of the most talked about publications in the criminal justice system. [NIJ Director Jeremy] Travis had seen to it that this new ‘Green Book,’ as it was called, became an event rather than one more list [of DNA exonerations].” The Green Book aimed to legitimize the importance of DNA testing to exonerate innocent prisoners to a skeptical justice system that was not ready to absorb the actual innocence message. It did indeed help raise consciousness of actual innocence among criminal justice leaders, a consciousness that would soon spread to the larger society, in no small measure because of the activity of the small but growing

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53 Compare id. (providing a list of eleven reforms to protect the innocent) with BORCHARD, supra note 8, at BORCHARD, supra note 8, at xxv nn.1 & 7–13; xxvi nn.15–18, 20–21 & 25–26, xxvii nn.27–29, 31, & 33–38 (providing a list of factors to classify the wrongful convictions of the author’s analysis), and Peter Neufeld & Barry C. Scheck, Commentary, CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL, at xxviii, xxx (1996) (noting the similarity of factors between conviction of innocent in DNA cases and in earlier cases).

54 Neufeld & Scheck, supra note 33, at xxx.


56 After all, 1996 was the year in which the Antiterrorism and Effective Death Penalty Act (AEDPA) became law with the design to further curtail federal habeas corpus appeals by state prisoners and speed up executions. See John H. Blume et al., In Defense of Noncapital Habeas: A Response to Hofmann and King, 96 CORNELL L. REV. 435, 441–42 (2011); cf. NANCY J. KING & JOSEPH L. HOFFMANN, HABEAS FOR THE TWENTY-FIRST CENTURY: USES, ABUSES, AND THE FUTURE OF THE GREAT WRIT 33–34 (2011) (noting that despite the law, many courts granted habeas petitions). As of 1996 the news had not gotten out that crime rates were dropping fast. See Alfred Blumstein & Joel Wallman, The Recent Rise and Fall of American Violence, in THE CRIME DROP IN AMERICA 1, 1 (Alfred Blumstein & Joel Wallman eds., 2000). In 1996 the research was still being conducted that would show that that two-thirds of all death penalty appeals resulted in reversals and “judicial review takes so long precisely because American capital sentences are so persistently and systematically fraught with error that seriously undermines their reliability.” JAMES S. LIEBMAN ET AL., A BROKEN SYSTEM: ERROR RATES IN CAPITAL CASES, 1973–1995, at i (2000), http://www2.law.columbia.edu/instructionalservices/liebman/index.html. And in 1996 the research had not yet begun that would show with virtual certainty that if all defendants sentenced to death were executed, one in twenty-five would be innocent—not quite the rate of “decimation” for recalcitrant soldiers in the army of the Roman Empire, but a worrisome rate for modern Americans. See Samuel R. Gross et al., Rate of False Conviction of Criminal Defendants who are Sentenced to Death, 111 PROC. NAT’L ACAD. SCI. 7230, 7235 (2014) (arguing that 4% of death row convictions are in error).
group of innocence organizations.\textsuperscript{37}

So, in our analogy, Scheck and Neufeld (the second “case”) took from Borchard’s \textit{Convicting the Innocent} (the first “case”) a sense that wrongful convictions could be categorized according to their causes, i.e., the innocence paradigm. By comparing the way in which Borchard categorized these causes or factors in 1932 with how Scheck, Neufeld and Dwyer did so in 2000, we see distinctive features of the contemporary innocence paradigm in sharper relief.

Borchard searched through his sixty-five cases for patterns and noted that some “particular errors are so typical that it seems permissible to draw certain inferences from them in order that their repetition may be minimized and, if possible, avoided.”\textsuperscript{38} Mistaken identification, the most prominent cause, was seen to exist in twenty-nine cases, and in eight of those, the accused and the perpetrator “bore not the slightest resemblance to each other.”\textsuperscript{39} Another common factor, observed in eleven cases, was reliance on circumstantial evidence.\textsuperscript{40} In his careful parsing of errors in the chapter’s text, Borchard clustered combinations of error, like circumstantial evidence and mistaken identity (fifteen cases) or circumstantial evidence and perjury (eleven cases).\textsuperscript{41} In this way he saw that most wrongful convictions are not generated by single factors but by combinations of error.\textsuperscript{42} The endnotes to Borchard’s analytic chapter provide a list of factors that either could be viewed as “causes” or as distinctive case features.\textsuperscript{43} These factors were set off by italics, followed by the names and page number of the cases, allowing a reader to count the number of instances of each item.\textsuperscript{44}


\textsuperscript{38} BORCHARD, \textit{supra} note 8, at xiii.

\textsuperscript{39} Id.

\textsuperscript{40} Id. at xiv.

\textsuperscript{41} Id. at xv.

\textsuperscript{42} Id. see also Neufeld & Scheck, \textit{supra} note 33 at xxx (discussing how a variety of factors often in combination, lead to false convictions).


\textsuperscript{44} The italicized endnotes listed the cases after each entry, with some cases involving multiple defendants; the number of cases listed in each category are noted in parenthesis: Mistaken identity (29); No crime committed (13); Commission of crime doubtful (3); Circumstantial evidence (11); Circumstantial evidence and mistaken identity (15); Circumstantial evidence and perjury (11); Perjury, circumstantial evidence contributing (15); “Frame-ups” (14); Prosecution not at fault (16); Overzealousness of police (13); Overzealousness of detectives (4); Gross negligence of police (10); Overzealousness of prosecution (13); Prior convictions or unsavory record (22); Community opinions demanding a conviction (14); No murder committed (9); “Murdered” person reappears (6); Hairbreadth escapes from execution (8); Commutations prevented execution (8); Unreliability of “expert”
The list, on reflection, is a bit of a jumble. There is overlap as many of the cases are listed under different factors. Borchard’s analysis was valuable in showing the variety of factors that led to wrongful convictions. The large number of factors and the mixing of ostensible causes with other case attributes, however, limited the utility of his analysis as a force to mobilize reform action. This conclusion is strengthened by the rather weak reform proposals added as an afterthought in the chapter and by Borchard’s main goal of having states pass exoneree compensation laws. In all fairness, the condition of the criminal justice and legal systems in the early twentieth century, such as the primitive state of forensic science, the weak training of detectives, and high levels of police corruption, suggests that the modern innocence movement, with its broad reform agenda, was not then possible.

It is clear that Scheck, Neufeld and Dwyer took Borchard’s basic idea and reworked it both in light of the changed late twentieth-century conditions and a vision of how to mobilize information to create an agenda for change. How they reworked the idea was, in evidence (6); Same crimes continue after conviction (8); Corroborated confessions of others (15); All participants in joint crime accounted for (6); Sheer luck discloses error (6); Prosecution aids in disclosing error (13); and False alibi though innocent (3). Id.

Contemporary reviews following the publication of Convicting the Innocent, while favorable, noted that the book did not offer prescriptions to prevent wrongful convictions. See, e.g., James P. Gifford, Book Review, 48 POL. SCI. Q. 127, 128 (1933); Henry W. Taft, Book Review, Miscarriages of Justice: Convicting the Innocent, SATURDAY REV. LITERATURE, May 7, 1932, at 712, 712 (“It is not the main purpose of Professor Borchard in writing this book to advocate reforms in criminal judicial procedure.”); William G. Thompson, Book Review, 32 COLUM. L. REV. 1460, 1461–62 (1932).


See Richard A. Leo, Rethinking the Study of Miscarriages of Justice: Developing a Criminology of Wrongful Conviction, 21 J. CONTEMP. CRIM. JUST. 201, 206 (2005). It is worth considering one other early “big-picture book,” as they were dubbed. Id. The other substantial early review of wrongful conviction cases rivaling Borchard’s book in importance and perhaps surpassing it in depth of analysis, was Not Guilty, published in 1957 by the noted legal philosopher and federal judge Jerome Frank, and his daughter Barbara Frank. They were clearly influenced by Borchard’s work and cited it in their review of “thirty-six comparatively recent cases in which the wrong man was convicted” (a quote taken from the book’s dust jacket). See JEROME FRANK & BARBARA FRANK, NOT GUILTY (1957). Not Guilty covered some of the same ground as Borchard’s Convicting the Innocent (e.g., mistaken identification) but gave greater emphasis to trial-related factors like the ineffective assistance of counsel, the inability of indigent defendants to obtain the services of expert witnesses,
our view, the central factor in fashioning the innocence paradigm, which can be seen now not only as a socially constructed mental schema that describes the causes of wrongful convictions but as an agenda:

[F]ashioned so as to bring together disparate elements of an innocence puzzle, viewed as causes of wrongful convictions, into a synergistic whole. As a human, intellectual construct, the innocence paradigm created a unified foundation and strategy for viewing wrongful convictions as an area for policy reform. This paradigm provided an intellectual framework for the innocence movement’s policy agenda.

Like items on an agenda, the list cuts through each item’s complexity by summarizing it in a word. The innocence paradigm did two things. First, it disconnected wrongful convictions from the complacent or pessimistic view that human error is inevitable and nothing can be done to correct conditions that lead to wrongful convictions; instead, it linked them to “obvious” justice system problems and reforms. Second, it provided intellectual support for movement actors—the lawyers and law students who would look for evidence about junk science or suggestive lineups in their case reviews—and especially for innocence projects making system reform an important part of their work.50

Scheck and Neufeld’s efforts to increase the small number of innocence projects or innocence organizations into a larger network, which bought into their “ready-to-wear” ideational framework, expanded the institutional framework that worked to implement the innocence paradigm, turning a set of ideas into changed practice and policy reforms.51 The innocence paradigm—the canonical list of causes and issues—has been quite successful in beginning to move a

prosecutorial misconduct, and the inherent weaknesses of juries to come to accurate conclusions. The latter emphasis is no surprise given Jerome Frank’s work as one of the leading legal realist scholars and author of *Law and the Modern Mind* (1970) and *Courts on Trial: Myth and Reality in American Justice* (1963). We speculate that if Scheck and Neufeld were more influenced by Frank and Frank than by Borchard, and chose to emphasize aspects of the court process more than police or forensic science investigations as sources of wrongful conviction, the innocence paradigm might look different today. This is counterfactual thinking, with all its pitfalls, but perhaps not out of place in a symposium dedicated to rethinking the wrongful conviction paradigm.

50 *Justice Model*, supra note 20, at 1467, 1500–01.
criminal justice system resistant to change toward innocence reform positions. Its success is due in part to its simplicity, substituting Borchard’s somewhat opaque, fussy, and overlapping analysis of cases with a bold list of “to-dos.” Like an agenda, the items do not have to state all of their complexity to be effective; once a committee begins to work on an agenda item, the item will “expand” into its component parts. The paradigm’s value in shaping the innocence movement should not be overlooked.

The motivation for the present issue, however, is the idea that some issues not addressed by the innocence paradigm need to be considered to better understand and deal with wrongful convictions. The risk of adding too many items to the innocence agenda is that an expanded paradigm will lose its clarity. But the risk of leaving the paradigm as is, and not considering other issues, is a stagnation that retards needed action to improve justice processes that generate inaccurate verdicts. In this vein, we do not explore the serial criminal/wrongful conviction link as an innocence paradigm category in its own right. Rather, we study the serial cases in order to shed light on the larger neglected issue of crime investigation, as a whole, that ought to be reviewed for its potential to render inaccurate results. To the degree that innocence scholarship fails to account for the entirety of criminal investigation, a gap will exist in the range of issues that should be addressed to reduce wrongful convictions.

III. CAUSATION AND WRONGFUL CONVICTIONS

A. Prelude: Thinking about Causation and Wrongful Convictions

In Part IV we examine a non-random sample of known exoneration cases involving serial criminals through a modified case-study approach in order to contribute to understanding how wrongful convictions and exonerations occur. This approach may

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53 The idea for this study began with a popular talk given under the auspices of a program sponsored by the College of Liberal Arts and Sciences at Wayne State University, known as “Knowledge on Tap,” in which faculty members talk about their research interests at local restaurants. The talk, “From Serial to Serial: Serial Podcast to Serial Killers” (January 2015), speculated about whether Adnan Syed, the subject of a wildly popular 2014 NPR podcast, was wrongfully convicted perhaps because his former girlfriend was murdered by a serial killer. Colin McEnroe, Our Criminal Justice System Is a Disaster: The Conversation We Need to Have After “Serial,” SALON (Dec. 20, 2014), http://www.salon.com/2014/12/20/our_
be useful in thinking about the way in which causation is used in wrongful conviction studies. Part of the innocence paradigm’s power to generate reforms has been to identify items like “mistaken eyewitness identification” and “false confessions” as causes of wrongful convictions, with the implication that knowing the cause presupposes a cure.\(^54\) This use of “cause” led social scientists to object that correlations of these factors in exoneration cases did not rise to the scientific understanding of causation.\(^55\) They argued that wrongful convictions need to be studied scientifically and advanced that program.\(^56\) We briefly trace this intellectual history in this section, and explain why it is important and useful for innocence scholars to think about causation in a variety of settings.

Innocence scholarship has been strongly influenced by Richard Leo’s call for social scientists to “seek out root causes, not legal causes, of wrongful conviction[s]” in order to rescue it from “theoretical[] impoverish[ment].”\(^57\) Criminologists responded by conducting research that has enriched our understanding of wrongful convictions.\(^58\) It would be unfortunate, however, if this call to arms disvalues other approaches to causation, namely legal causation in civil rights lawsuits and causal conclusions drawn in individual crime investigations by police, or by innocence organization clinics examining previous convictions. Of course, a plaintiff’s requirement in a § 1983 suit—establishing that a false confession or mistaken identification “caused” a wrongful conviction\(^59\)—is different from the question of whether, in a set of cases including wrongful convictions and “near misses,” false confessions arise as statistically significant factor predicting the
wrongful convictions. A police investigator makes causal claims when closing a case with a recommendation to prosecute, as does an innocence clinic when it decides to pursue a prisoner’s petition as a wrongful conviction. These latter processes, similar to the task of finding legal causation, draw conclusions in single cases based on case fact evaluations. They are deterministic decisions while the findings of social scientists are probabilistic. Despite these differences, we believe that wrongful conviction scholars can benefit from comparing the methods.

Systematic knowledge about the causes of social or natural phenomena cannot be uncoupled from the methodologies employed to gather and analyze data. Rational methods of gaining knowledge include systematic case reviews (of single or groups of cases), historical analysis, and various scientific methods. One way of distinguishing both methodological and theoretic approaches is by contrasting ideographic versus nomothetic approaches.

The former term refers to those methods which highlight the unique elements of the individual phenomenon—the historically particular—as in much of history and biography. The contrast is with the nomothetic, which seeks to provide more general law-like statements about social life, usually by emulating the logic and methodology of the natural sciences.

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60 See Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C. L. Rev. 891, 953 tbl.8 (2004) (reporting the results of one study that showed of 125 proven false confessions, 44 confessors, or 35%, were convicted; the others were never charged or the prosecutions against them failed).


62 See, e.g., Anatomy of a Criminal Case, supra note 61; About the Innocence and Justice Center, supra note 60.


64 Case analysis can be grounded in a discipline or theory, as, for example, applying the “sociological imagination” in qualitative research. The foundation of knowledge about the psychological consequences of wrongful conviction, for example, is based on a psychiatric assessment of eighteen subjects. See Grounds, supra note 2, at 167.

The social science methods listed by Bonventre and colleagues at the outset of this article, especially comparison/control studies and experimental studies, have nomothetic goals.66 Our exploratory analysis of exoneration cases involving serial crimes, drawn from available descriptions, bridges these two approaches in order to advance our objectives of advocating the broad study of crime investigation in wrongful conviction scholarship and to explore the meaning of wrongful conviction causation.67 It also reflects the limited data available to wrongful conviction researchers.68 Our approach necessarily falls short of the nomothetic goal of wrongful conviction theory construction and testing.69

Bonventre et al. expanded on the “predominant critique of the scholarship on the production of wrongful convictions” based on “narrative methodology” which “fails to capture the underlying sources, or root causes of wrongful convictions or to appreciate the multiple complex ways that the factors can influence or interact with one another.”70 We explore Richard Leo’s dissatisfaction with the innocence paradigm’s approach to causation—which was made just as the paradigm was jelling as the innocence movement’s organizing principle—to give us a better appreciation of this critique.71 Leo asserted that the paradigmatic causes “appear to be well known,” as they were repeated in “big picture” books throughout the twentieth century.72 This “familiar plot is the storyline in virtually all the major works in this genre.”73 The big picture narratives, written by “journalists, lawyers, and criminologists” were contrasted to “a more specialized academic and

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66 See supra notes 2–3 and accompanying text.
67 “It is a fundamental precept in social science that the research objective should dictate what data to collect and what analytic strategy to use.” Bonventre et al., supra note 2, at 301.
68 Leo, supra note 49, at 216, 217 (describing lack of meaningful random samples of innocence cases and recommending studies using control groups).
69 Theory development was described as “the holy grail of scientists.” Marvin Zalman, Theorizing Wrongful Conviction, in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK: MOVING FORWARD 283, 283 (Allison Redlich et al. eds., 2014).
71 Leo, supra note 49, at 207–08.
72 Id. at 207. Books such as Borchard’s told the “big picture” of wrongful conviction by recounting a number of exoneration stories, and by inductively abstracting from the stories a number of factors, i.e., obvious errors like a misidentification, that were deemed “causes” of the wrongful convictions. Id. at 206.
73 Id. at 207.
scientific literature on the various causes of wrongful conviction undertaken primarily by cognitive and social psychologists.”74 His three examples of specialized literature included the substantial research on eyewitness misidentification, child suggestibility, and false confessions.75 In contrast to the storytelling approach of the big picture books, these research-based specialty fields have been “success stories because the research has been innovative, insightful, and has led to important policy debates and reform.”76 Yet, however impressive, these subfields “can only tell us part of the story because that is all they are about. To study the individual causes of wrongful conviction is to study a different unit of analysis than the wrongful convictions themselves.”77 In effect Leo’s plaint is a concern that no research up until 2005—neither the wrongful conviction narratives or the psychological literature on specific factors—had provided a complete causal model of wrongful convictions.

[T]he individual causes cannot tell us much about the interaction effects between different sources of error or across multiple stages of the criminal process from arrest to prosecution to conviction. Nor does the study of individual cases tell us much about the life cycle of wrongful conviction cases. In every miscarriage of justice, the whole is far greater than the sum of its parts. In short, one must go beyond the study of individual sources of error to understand how social forces, institutional logics, and erroneous human judgments and decisions come together to produce wrongful convictions.78

To remedy these limits Leo proposed a criminology of wrongful conviction that would “seek out root causes, not legal causes, of wrongful conviction[,]” and in doing so rescue “theoretically impoverished” extant wrongful conviction scholarship.79 What Leo had in mind was research applying social science methods and theory construction to the workings of the criminal justice system. In the subsection on “scientific causation,” below, we will describe research that Leo and others have conducted along these lines.80

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74 Id. at 208.
75 Id. at 208, 209.
76 Id. at 208.
77 Id. at 210.
78 Id. at 210–11.
79 Id. at 213.
80 See infra Part III.C.
The writers of big picture books may have overlooked police investigation as a “cause” of wrongful convictions for a number of reasons. Police investigation error is ubiquitous and perhaps too amorphous to be seen as an error in itself. The method used by Borchard and those who followed him was the inductive examination of narratives for apparent errors, perhaps not unlike an appellate attorney parsing a trial transcript for appealable error. The big picture book writers, as journalists and lawyers rather than experts in criminal investigation, did not have the training to create categories of error that a police scholar could identify. The closest that wrongful conviction scholarship has come to grappling with this category is in discussions of tunnel vision, but the classic law review article on the subject focuses on defense lawyers, prosecutors, and the legal process. An edited volume exploring investigative failures has only recently been published. We will pick up the thread of this discussion in the subsection on idiographic causation, below.

If, as happened in the cases reviewed in Part IV, a person was wrongfully convicted of a crime committed by a serial criminal, is the failure to recognize the crime as a serial crime a “cause” of the wrongful conviction? To generalize, we might ask whether any diagnostic failure in a police crime investigation in a case resulting in a wrongful conviction is a “cause” of the wrongful conviction. The answer may depend on how the term cause is used in different disciplines or applying different methods.

A final point is worth noting. Of the three tasks employing causal thinking, scientific inquiry is optional; if undertaken, correlations found in samples are not deemed causes if objective statistical criteria for assessing cause are not met. Investigators, judges, and innocence lawyers, to the contrary, have no choice. When confronted with a case, detectives are duty bound to investigate and theorize what the underlying truth is based on the evidence

81 Leo, supra note 49, at 216.
83 ROSSMO, supra note 11, at 3, 4.
collected. Similarly, a judge in a § 1983 suit must decide whether alleged police errors caused a wrongful conviction. Innocence clinics are not duty bound to accept all requests for assistance, but they must determine to their satisfaction whether the facts in submitted cases meet their criteria of wrongful convictions and specify the reasons (i.e., causes) for that conclusion. These actors make subjective evaluations of innocence based on evidence.

B. Legal Causation and Wrongful Conviction

Wrongful conviction scholarship has paid little attention to the issue of legal causation. Yet, causation, as a necessary element in tort law, has played a role, even if implicitly, in every state tort or federal civil rights lawsuit brought by exonerees claiming that constitutionally tortuous action (usually by police) led to their wrongful convictions. It is axiomatic and virtually universal in tort law that liability for non-contractual harms can be assessed against defendants only if a court determines first, that the defendant caused a harm in some physically material manner, and, second, that a causal nexus between conduct and damage meets the legal criteria designed to ensure standards of fairness or policy. The first requirement goes under various terms: "condicio sine qua non -requirement . . . but-for test, equivalence theory, ‘cause-in-fact’, or factual cause." The second requirement follows the idea of proximate cause resting on foreseeability in common law countries and the notion of adequate causation in continental countries.

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85 Roper-Simpson, supra note 84, at 285.
87 Risinger & Risinger, supra note 84 at 125, 134.
88 Leo’s criticism of “legal causes” as opposed to “root causes” of wrongful convictions was a criticism of the crudely inductive way in which apparent sources of wrongful convictions found in narrative accounts, whether written by lawyers or journalists, were accepted and stands in contrast to scientific approaches. In this section, we use the term legal causation as it is properly applied in tort and criminal law. Leo, supra note 49, at 213.
89 See, e.g., Sims v. Adams, 537 F.2d 829, 831 (5th Cir. 1976); Garrett, supra note 59, at 65, 66.
90 See ARTHUR BEST & DAVID W. BARNES, BASIC TORT LAW: CASES, STATUTES, AND PROBLEMS 369 (3d ed. 2010) (showing that damages are apportioned based on who caused the tort). See also Jaap Spier & Olav A. Haazen, Comparative Conclusions on Causation, in UNIFICATION OF TORT LAW: CAUSATION 127, 127 (Jaap Spier ed., 2000) (reviewing tort law criteria and rules for Austria, Belgium, England, France, Germany, Greece, Italy, South Africa, Switzerland, and the United States). Only Belgium claims to rest liability only on the basis of cause-in-fact ("condicio sine qua non"). Id. at 127.
91 Spier & Haazen, supra note 90, at 127.
92 Id. at 131, 132.
Theoretical scholarship on tort causation is formidable and mostly beyond the goals of the present study. However, the topic is worth considering because judges must rely on expert appraisals in difficult cases, where the cause of an injury is not immediately apparent, to decide whether but-for causation existed. By extension, exonerees who pursue claims that errors or wrongs committed by justice system agents caused their wrongful convictions can force judicial consideration of the nature of the justice process. These considerations in turn might amplify our understanding of wrongful convictions or establish an authoritative source of data about wrongful convictions.

These themes were explored in Brandon Garrett’s survey of § 1983 wrongful conviction actions. His article, structured by the innocence paradigm, was aimed at showing that whereas in criminal appeals the harmless error doctrine submerges the real harm occurring from violations of constitutional rights, “a civil claim can capture the revelatory impact of an exoneration—that government misconduct concealed evidence probative of a person’s innocence.” To effect such a claim:

[I]n a civil case, the tort law requirement of causation applies. A jury decides whether unconstitutional official conduct caused the unfair trial of an innocent person. . . .

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93 See Stephen R. Perry, Risk, Harm, and Responsibility, in PHILOSOPHICAL FOUNDATIONS OF TORT LAW 321, 321, 345–46 (David G. Owen ed., 1995) (considering the idea that risk of harm or reducing the chance to avoid harm is itself a basis of tort liability). If, at present, risk of harm may not be considered a proper foundation for liability in wrongful conviction cases, it could possibly become a basis in the wrongful conviction context if the notion of safety in the conduct of criminal justice were to expand. See Boaz Sangero & Mordechai Halpert, A Safety Doctrine for the Criminal Justice System, 2011 Mich. St. L. Rev. 1293, 1303 (2011). The movement toward exoneree compensation laws can cut through tort law conundrums by extending strict liability to exonerees. The safety approach has been advanced by the Justice Department. See Dan Simon, Front-end and Back-end Solutions, in MENDING JUSTICE: SENTINEL EVENT REVIEWS 28, 28 (2014), https://www.ncjrs.gov/pdffiles1/nij/247141.pdf.

94 A good deal of speculative writing about causation in tort law was spurred by the complex scientific work in assessing cause and effect in toxic tort litigation. Donald Elisburg, Causation in Toxic Exposure Cases: “Policy and Legislation”, in THE ROLE OF SCIENCE IN TOXIC TORT LITIGATION: EVALUATING CAUSATION AND RISK, 139, 141 (1989) (“The American public is deeply concerned with the effects of toxic poisoning in their communities; and their representatives in Washington have awakened to those concerns with a massive legislative program in the past ten years.”); Mario J. Rizzo, Foreword: Fundamentals of Causation, 63 Chi. Kent L. Rev. 397, 397, 403–04 (1987).

95 Garrett, supra note 59, at 36.

96 Id. at 70 (categorizing § 1983 cases by Brady v. Maryland violations, ineffective assistance of counsel, suggestive eyewitness identification procedures, coerced confessions, and fabrication of evidence).

97 Id. at 70; see also 65–69 (discussing causation elements in wrongful conviction civil rights suits).
civil actions, where a plaintiff must simply satisfy the tort requirement of causation, those [harmless error] rules lose their harmful effect.98

Remedies from wrongful conviction suits may also feed back to influence criminal procedure law and encourage judges to consider adopting protections to prevent such miscarriages. During pretrial suppression hearings, trial judges could consider systemic evidence regarding the predictable causes of wrongful convictions, and also at trial provide jurors instructions or expert testimony regarding reliability of evidence based on such data.99

Garrett argued that the profound differences in both legal and attitudinal postures that separate criminal appeals from tort suits had the capacity to generate systemic innocence reforms.100 Although it will take more than a string of large-compensation victories in exoneree civil cases to refashion the American criminal justice system, the causation cases are significant for the innocence movement:

Unlike harmless error, which is a decision for deferential appellate judges, a Section 1983 case involves the question of whether causation existed; this is a mixed question of law and fact and thus, a question for a civil jury to decide. This difference is profound. Civil juries are not repeat players, and therefore will not presume guilt when they know to a scientific certainty that an innocent person was convicted.101

While such cases shed light on wrongful convictions, Garrett’s organization of the cases reinforced the innocence paradigm, confirming the “familiar plot” understanding of wrongful conviction causes.102 His study advanced a hopeful picture for the innocence movement—that monetary awards in tort cases will strengthen the idea that the canonical causes are the causes of wrongful convictions and that knowing them will spur reforms.103

Teressa Ravenell offers a more cautionary tale about the role of causation in constitutional tort suits.104 She notes that “[w]rongful

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98 Id. at 38.
99 Id. at 40 (emphasis added).
100 Id. at 111, 113–14.
101 Id. at 66.
102 Id. at 54–55. See supra notes 70–78 and accompanying text.
103 Garrett, supra note 59, at 111, 113–14.
Constitutions are usually the product of a combination of many factors.” This important observation may create roadblocks to § 1983 recovery where police conduct at the pre-trial investigatory stage increases the likelihood of a wrongful conviction (e.g., faulty lineup procedure) but cannot be deemed a sole cause (e.g., the mistaken eyewitness identification). In a § 1983 suit, the plaintiff must prove that a state actor (i.e., “person . . . acting under the color of state law”) “deprived him of a federally protected right.” Because a state malicious prosecution tort does not amount to a constitutional wrong, for a plaintiff to prevail under § 1983, police errors must amount to a deprivation of liberty without probable cause, creating a Fourth Amendment violation. Assuming that the officer’s qualified immunity defense does not prevail, the constitutional wrong has not yet caused a wrongful conviction, only a wrongful detention. That is because any deprivation of liberty occurring at the trial is guided not by the Fourth Amendment, but by Fourteenth Amendment substantive due process grounds.

For an erroneous arrest to lead to § 1983 liability for a wrongful conviction, the officer’s wrongs have to infect the trial process.

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105 Id. at 695. The observation that wrongful convictions usually are the result of several system failures was noted early in the history of wrongful conviction scholarship. See George Castelle & Elizabeth F. Loftus, Misinformation and Wrongful Conviction, in Wrongly Convicted: Perspectives on Failed Justice 17, 31 (Saundra D. Westervelt & John A. Humphrey eds., 2001). Further, it is the basis of the Sentinel Event Review approach toward addressing systemic causes of wrongful convictions. See James M. Doyle, An Etiology of Wrongful Convictions: Error, Safety, and Forward-Looking Accountability in Criminal Justice, in Wrongful Conviction and Criminal Justice Reform: Making Justice 56, 63, 66 (Marvin Zalman & Julia Carrano, eds., 2014). This common observation was also the basis of several social scientific comparison studies. Bonventre et al., supra note 2, at 304.


107 Albright v. Oliver, 510 U.S. 266, 269–70 (1994) (quoting Albright v. Oliver, 975 F.2d 343, 346–47 (7th Cir. 1992)); Ravenell, supra note 104, at 703. The civil rights act is a procedural vehicle only; recovery depends on proving a substantive federal statutory or constitutional violation. See Baker, 443 U.S. at 144 n.3.

108 See Ravenell, supra note 104, at 717.

109 The Supreme Court in Graham v. Connor, 490 U.S. 386 (1989) specified that police conduct possibly giving rise to § 1983 liability must be guided by the more specific and objective mandates of the Fourth Amendment rather than “the more generalized notion of substantive due process.” Id. at 395.

110 Ravenell, supra note 104, at 704.

111 Cf. id. at 718 (describing how a police officer’s fabricated evidence ultimately caused a chain of events that ended with a plaintiff being incarcerated).
But, as a witness, the officer enjoys absolute immunity from suit. Assume, for example, the officer lies while testifying about the circumstances of an unconstitutional arrest. Without other evidence leading a federal court to find that the officer’s action infected the trial, and did not lead only to a deprivation of liberty without probable cause, a plaintiff may not be able to recover for police-stage errors that in fact contributed to a wrongful conviction. As a result, “the serial nature of constitutional injuries in wrongful conviction cases often makes it difficult to fit these claims into the Supreme Court’s § 1983 rubric.”

This division regarding the substantive and constitutional basis of the state’s liability in § 1983 wrongful conviction suits has led lower federal courts to differentiate the basis of liability, but such cases “still fail to account for conduct that begins during one phase of the criminal process [e.g., the police or forensic investigation phase] and spills into subsequent phases [e.g., trial].” In addition, this “complicates questions of causation because, to prevail in a § 1983 claim for monetary damages, the plaintiff must prove that a constitutional deprivation caused his injury.” Ravenell goes on to clarify that to obtain more than a nominal award a § 1983 plaintiff must establish but-for causation in accord with standard tort law principles. A wrongful act by a police officer, alone, may not be the but-for cause of a wrongful conviction if errors by other actors provided a basis for a wrongful conviction. In such case reliance on “a ‘substantial factor’ test may resolve the problem of establishing causation when there are multiple causes contributing to the plaintiff’s injury.” And even if a wrongful conviction tort claim survives the defendant’s factual-cause challenge, narrow interpretations of legal causation can preclude compensation for wrongful convictions resulting from constitutional violations by state actors. Without delving further into tort law thickets, we conclude that innocence scholars should be aware that causation is an important element of wrongful conviction civil rights cases that establish a legal basis for identifying factors leading to miscarriages of justice.

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112 Id. at 692 n.25.
113 Id. at 701.
114 Id. at 706.
115 Id.
116 Id. at 709, 714.
117 Id. at 715.
118 Id. at 719.
119 Id. at 724.
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How might a crime committed by a serial criminal fit into the causation criterion in a civil rights lawsuit brought by a plaintiff wrongfully who was wrongfully convicted? Clearly, the commission of a crime by a serial criminal itself is not the proximate cause of a wrongful conviction. After all, in every "wrong person" miscarriage of justice\(^{120}\) someone other than the exoneree committed the crime. A train of events must happen after the crime occurred before a wrong person is convicted. Wrongful convictions, of course, begin with suspicion falling on an innocent person. The innocent person sometimes haplessly injects himself into the scene by volunteering information to the police, stirring an investigator's suspicion.\(^{121}\) The initial spark of suspicion more typically begins with a victim or witness mistakenly detecting a resemblance between an innocent person and the perpetrator,\(^{122}\) possibly initiated by a police-created composite sketch.\(^{123}\) At other times a victim or witness picks the exoneree's photograph out of a police mug book, conceivably entered

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120 Factual wrongful convictions can be divided into wrong person cases in which an innocent person is convicted for another person's crime, and no crime cases, in which a crime never occurred.

121 The hapless person is at times a low IQ individual or teen who relates a “dream” to the police. See, e.g., THOMAS FRISBIE AND RANDY GARRETT, VICTIMS OF JUSTICE: VISITED 32–33, 61, 95 (2005) (describing how police claimed the “young” Rolando Cruz had related a “vision” he had of the victim’s death); Welsh S. White, Confessions in Capi tal Cases, 2003 U. ILL. L. REV. 979, 1016, 1017 (2005) (discussing David Vasquez, a young man of low intelligence who described his dream that in some ways mirrored a crime for which he would later be tried). But the person can be a well-educated theology student. GORDON HARESIGN, INNOCENCE: THE TRUE STORY OF STEVE LINS COFT 39, 74 (1986).

122 In no-crime cases, suspicion typically arises from the presence of a dead or harmed person, and the police considering, often reasonably but ultimately erroneously, that a family member was responsible.

on the basis of a minor encounter with the authorities.\footnote{This happened to Marion Coakley. See Scheck \textit{et al.}, supra note 22, at 15. We know of no systematic, empirical studies on the initiation of false suspicion, but every wrongful conviction narrative includes a description. This would include exoneree narratives and those related to non-exonerated people who are innocent to a high degree of certainly, like Kerry Max Cook. See Michael Hall, \textit{Released but Never Exonerated}, A Man Fights for Freedom, N.Y. TIMES (Mar. 31, 2012), http://www.nytimes.com/2012/04/01/us/released-but-not-exonerated-kerry-max-cook-fights-for-true-freedom.html?_r=0. The practice of “mugshot trawls” was criticized by D. Michael Risinger and Lesley C. Risinger in their article. D. Michael Risinger \& Lesley C. Risinger, \textit{Innocence Is Different: Taking Innocence into Account in Reforming Criminal Procedure}, 56 N.Y. L. SCH. L. REV. 869, 900–05 (2011).} The coincidence of being legitimately or criminally in the vicinity of a crime can lead to suspicion.\footnote{For example, as this article was nearing publication we discovered the exoneration of Lonnie Erby in 2003 for a string of rapes on teen girls committed in St. Louis in 1985 by Johnnie Moore. See Lonnie Erby, \textit{Lonnie Erby}, NAT’L REGISTRY EXONERATIONS (June 2012), http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3206. This was the case for several exonerees in our sample: Charles Bunge, the Central Park Five (Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana, and Korey Wise), Claude McCollum, and David Vasquez. Parts IV.C.1, IV.C.6, IV.C.8. This is a factor that automatically applies to family members of victims: David Camm, Clarence Elkins, Kevin Green, and Julie Rae. See infra Part IV.C.3.} Once suspicion attaches to the innocent, many kinds of justice system process errors deepen police and prosecutor suspicion, possibly leading to a conviction.\footnote{Erroneous initial suspicion does not inevitably result in wrongful convictions, but may result in acquittals or “near-miss” dismissals. See Jon B. Gould, \textit{et al.}, \textit{Predicting Erroneous Convictions}, 99 IOWA L. REV. 471, 494, 495–96 (2014).} Typical process errors include the canonical factors: mistaken eyewitness identification, false confessions, false accusations by interested witnesses (including the actual perpetrator), and jailhouse snitch fabrications.\footnote{See id. at 476.} Errors in forensic science evidence, inadequate defense, and prosecutorial excess or misconduct compound mistakes initiated during the crime investigation.\footnote{See id. at 479.} But we should also consider more subtle or less visible investigative errors, keeping in mind that what is \textit{visible} may be determined in part by our expectations of what factors caused wrongful convictions.

In this context, considering whether a crime was committed by a serial criminal and not the suspect falls into the sphere of \textit{general crime investigation} rather than a particular procedure, like conducting a lineup. Although “investigation” is not included in the canonical list of wrongful conviction causes, we believe it should be given more weight by innocence scholars and innocence organization lawyers, and by litigators and judges in § 1983 lawsuits. As Ravenell noted, judges will find liability where
seriously deficient police work has led to recommendations to prosecute where probable cause was lacking. If it is the case that serial murders and rapes have characteristic patterns, the failure of police to investigate along these lines could be seen as seriously deficient. This could form the basis of § 1983 liability if deemed gross negligence leading to arrest without probable cause that substantially infected the trial process.

C. Causation in the Social Sciences: Seeking Nomothetic Explanations of Wrongful Convictions

By calling for a criminology of wrongful conviction Richard Leo advocated the application of empirical sociological methodology, borrowed from the natural sciences, to generate a scientific theory of wrongful conviction causation. In contrast to inductive reasoning from cases, this approach would be rigorously tested by quasi-experimental methods analyzing exoneration cases against matched samples to determine what caused the miscarriages of justice. The scientific process, designed to produce reliable and valid explanations of natural or social phenomena, requires scientific theory construction to focus scientists’ attention on a narrow range of phenomena and on theory testing to provide satisfactory explanations. The goal is nomothetic—to produce more general law-like statements or theories about a phenomenon. Scientific theory aims at (1) organizing facts into typologies; (2) predicting future events; (3) explaining past events; (4) providing a sense of understanding about facts and events, and (5) creating a potential to control events. A central feature of scientific understanding is generating causal explanations. Three criteria are needed to establish causation scientifically. First, the variables being studied must be empirically correlated. Unlike some physical or chemical variables where a specific cause always produces a specific effect, in the social world causal factors create probable effects, so the

129 See Ravenell, supra note 104, at 718.
130 Leo, supra note 49, at 218. Leo has recently revised his 2005 article offering comments in the research described herein, see Richard A. Leo, The Criminology of Wrongful Conviction: A Decade Later, J. CONTEMP. CRIM. JUST., ONLINE FIRST, DOI: 10.1177/1043986216673013 (2016); to be published in 33 J. CONTEMP. CRIM. JUST. (2017).
131 See HERBERT M. BLAULOCK, JR., AN INTRODUCTION TO SOCIAL RESEARCH 33 (1970).
132 PAUL DAVIDSON REYNOLDS, A PRIMER IN THEORY CONSTRUCTION 4 (1971). Knowing the cause of phenomena does not always lead to control, as in sciences like astronomy or geology. 133 See MAXFIELD & BABBE, supra note 65, at 85 (“One of the chief goals of social science researchers is to explain why things are the way they are.”).
134 Id.
correlations need not be perfect, but must be probable. The second criterion is temporal: cause must precede effect in time. Third, “the observed empirical correlation between two variables cannot be explained away as being due to the influence of some third variable that causes both of them.”

Following Leo’s 2005 critique of narrative approaches to wrongful convictions, he and Jon Gould published two articles explicating the social science critique of legal and journalistic narratives as a method of explaining the causes of wrongful convictions, asserting that “scholarship based on stories about wrongful conviction tends to oversimplify causation.”

Rarely does legal scholarship delve deeply or systematically into the multifactorial, interactive, and complex nature of human and institutional causation in wrongful conviction cases. Instead, wrongful conviction scholarship tends to portray causation as unidimensional—one case illustrates the problem of eyewitness misidentification, another case demonstrates the problem of false confession, a third case exhibits the problem of junk science, etc.—even though we know that cases of wrongful conviction have multiple sources.

They went on to catalogue the few scientific studies of wrongful conviction causation in which samples of wrongful convictions (i.e., exonerations) were matched with comparable cases of purportedly accurate convictions in order to determine whether correlates observed in the exoneration cases were statistically significant and

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135 See id. at 86, 88 (explaining that causal relationships are probabilistic and that absolute or conclusive causal inference is nearly impossible to establish).
136 Id. at 85.
137 Id. at 86. The key to prediction, explanation, and control consists of rigorous methods of data gathering and analysis, including applied statistical tests and mathematical modeling. This was emphasized in a recent social scientific study designed to predict wrongful convictions:
Social science, of course, is primarily concerned with understanding the world as it is rather than as it ought to be. The goal of traditional social science is generalizable knowledge. Empirical social scientists draw on five primary methods of data gathering—experiments, field observation, surveys, interviews, and analysis of documents—to produce valid and reliable knowledge about social phenomena.
138 Leo & Gould, supra note 56, at 16; see also Jon B. Gould & Richard A. Leo, One Hundred Years Later: Wrongful Convictions After a Century of Research 100 J. CRIM. L. & CRIMINOLOGY 825, 863 (2010) (referencing the need for new forms of research in examining the causes of wrongful convictions).
139 Leo & Gould, supra note 56, at 16.
thus potentially predictive of the outcomes studied. The goal of such an approach is the development of nomothetic explanations of wrongful convictions. Although the research at present is too limited to generate anything like a “law” of wrongful conviction causes, the studies reviewed have generated an evidence-based appreciation of those factors that are most likely to appear in wrongful conviction cases. In 2013, Gould, Leo and colleagues concluded a major study that extended the method of matched comparison samples by examining 260 wrongful conviction and 200 “near misses,” i.e., indictments of innocent people that resulted in dismissals or acquittals. This impressive study, which included an expert panel to evaluate the statistical findings, advanced our understanding of how and why cases involving innocent defendants who are formally charged with crimes either result in conviction or are diverted. The analysis disclosed ten variables that increased or decreased the likelihood of an erroneous conviction, confirming some of the canonical causes, but disconfirming others and adding richness and complexity to our knowledge. Thus, forensic error, the quality of defense, and prosecutor withholding evidence—traditional “causes” of wrongful convictions—were predictive, in their logistic regression analysis, of increasing the likelihood of wrongful convictions. On the other hand, some canonical causes—jailhouse informant, false confessions, and honestly mistaken eyewitness identification—were not statistical predictors of wrongful convictions. Their analysis demonstrated that factors like a state death penalty culture, a defendant’s (youthful) age, criminal history, and family or friends as alibi witnesses increased

140 See Gould & Leo, supra note 138, at 859, 860, 861, 862, 863 (first reviewing Harmon, supra note 70 at 957; then reviewing Talia Roitberg Harmon & William S. Lofquist, Too Late for Luck: A Comparison of Post-Furman Exonerations and Executions of the Innocent, 51 CRIME & DELING. 498, 498 (2005); then reviewing Samuel R. Gross & Barbara O’Brien, Frequency and Predictors of False Convictions: Why We Know So Little, and New Data on Capital Cases, 5 J. EMPIRICAL LEGAL STUD. 927, 948 (2008); and then reviewing Brandon L. Garrett, Judging Innocence, 108 COLUM. L. REV. 55, 130–31 (2008)).

141 See Gould et al., supra note 137, at xiv, 43. The content of the report was presented by its authors in at least two additional forums. See Gould et al., supra note 126, at 477; Jon Gould et al., Innocent Defendants: Divergent Case Outcomes and What They Teach Us, in WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 73, 73 (Marvin Zalman & Julia Carano eds., 2014).

142 See Gould et al., supra note 137, at iii.

143 That is to say, in the bivariate and logistic regression analysis, these variables were statistically significant holding other variables constant, indicating that the correlations were not the product of chance. See id. at xvii, 57, 64.

144 Id. at iii, 67–68.

145 Id. at iii, 60–61.
the probability of being wrongfully convicted. The study introduced significant variables that put a new light on wrongful convictions. Thus, a prosecutor’s weak case counterintuitively predicted a wrongful conviction. To the contrary, intentional or malicious misidentification by a witness decreased the likelihood of a wrongful conviction. The study had the benefit of an expert panel to help explain these paradoxical results. The panel concluded that juries could see through deliberate identification lies, but were less able to penetrate the truth when erroneous identifications were honestly advanced. As for the prosecutor’s weak case, the panel believed that prosecutors with weak cases more strenuously pursued their cases, resulting in wrongful convictions.

Without doubt, this 2013 study forces us to rethink what leads to wrongful convictions. It tends to support Leo’s 2005 insight that the standard approach had become repetitive and reached a dead end by observing “obvious” factors that might—or might not—generate wrongful convictions. One study cannot generate a theory of wrongful conviction causation, but its novel findings establish a case for further studies. As important, having upset the innocence paradigm applecart, the study has generated a search for other factors that may produce miscarriages of justice. This in turn is important to addressing wrongful conviction policy, demonstrating the value of wrongful conviction social science research. Indeed, the most recent analysis of the wrongful conviction-near miss data set by Gould and Leo now provides a much clearer picture of the exoneration process that could not be achieved with other research methods.

There are limits, however, to the theoretical and practical benefits of the application of classic social scientific methods designed to generate theoretical, evidence-based conclusions about the causes of wrongful convictions. One practical limit, addressed in the next section, is that a wrongful conviction theory can improve but cannot displace the idiographic case analysis of investigators. Therefore,
attention to developing theory should not undermine efforts to improve case analysis. Another practical limit is that, at the present time, the findings of “Predicting Erroneous Convictions” do not point to specific policy reforms beyond those already in the reform hopper. Advancing better theoretical knowledge should link-up to broader policy study (e.g., cost-benefit analysis), aiming to make criminal justice system changes at the most effective and efficient points for reducing miscarriages of justices. Studies like “Predicting Erroneous Convictions,” and, it is to be hoped, more to follow, are necessary but not sufficient evidentiary bases for reform.

Simon Cole and William Thompson, discussing the realm of forensic science, suggest that the scientific method may not be an entirely adequate framework for explaining the cause of wrongful convictions. In one sense they agree with Leo’s criticism that a crude inductive approach cannot explain causation. Although they do not directly address the ability of applying social science methods to comparison samples to generate a causal model of wrongful convictions, they imply that such methods may not provide a complete model.

[T]he “causal” framework is not the most useful way to think about the role of forensic science in wrongful convictions. We suggest that it is less useful to think of forensic science as a “cause” of wrongful convictions than to think of it as a system component with the potential to support or fail to support investigative hypotheses. Within this framework, we would ask not to how many exposed wrongful convictions forensic science contributed, but rather how good a job forensic science does at supporting correct investigative

154 See infra Part III.D.
155 Gould et al., supra note 137.
156 See generally Zalman & Carrano, supra note 20 at 958–60 (discussing various policy reforms, including the innocence paradigm, alternative ways of viewing wrongful convictions, placing emphasis on innocence institutions, such as exoneree-based organizations, and proposals to sustain criminal justice and forensic science system change).
158 See id. at 118 (“Such rankings [of the supposed causes of wrongful convictions] are relatively crude measures, in which a factor was counted as contributing to a wrongful conviction if it was used in the prosecution. It was not a measure of whether that factor caused the wrongful conviction or even of how much influence that factor may have had on various criminal justice system actors. Moreover . . . wrongful conviction data sets are undoubtedly skewed in ways that favor certain factors.”).
159 See id.
hypotheses and failing to support incorrect ones. More generally, we would ask to what extent forensic science lives up to its potential to support the doing of justice and to correct potential injustices.\textsuperscript{160}

If we substitute “police investigation” for “forensic science” this statement applies to our goal of rethinking how the investigation process contributes to inaccurate results and to wrongful convictions. However, unlike the seemingly direct cause and probabilistic effect of an accuracy error like a mistaken identification or false accusation, naming a subsystem (forensic science; crime investigation) as the locus of a wrongful conviction requires more precise analysis.

And, what it means for forensic science to “contribute” to a wrongful conviction is not an easy matter. Are we interested in whether faulty forensic evidence was used in a case that became a wrongful conviction, or do we need to establish that it was a crucial piece of evidence that led investigators, prosecutors, or fact-finders astray? If so, how do we determine which evidence was the basis for the formation of any of these actors’ beliefs?\textsuperscript{161}

In order to better understand the causal mechanisms leading from investigation to a wrongful conviction, we suggest that wrongful conviction scholars should use a combination of qualitative and quantitative methods. Indeed, the “Predicting Erroneous Convictions” study wisely included an expert panel that reviewed statistical findings and offered experience-based analyses of what they meant.\textsuperscript{162} But even without trying to make a firm case for a quantitative-qualitative strategy to develop wrongful conviction causal theory,\textsuperscript{163} the practical job of investigating cases and coming

\textsuperscript{160} Id. (citation omitted).
\textsuperscript{161} Id. at 115.
\textsuperscript{162} Gould et al., \textit{supra} note 137, at 72, 73, 74.
\textsuperscript{163} Marvin Zalman drew on part of a symposium essay regarding methodology and theory in the discipline of comparative politics, which was written by Peter Evans. See Zalman, \textit{supra} note 69, at 284–85. Evans subscribed to the view that that comparative politics study was a combination of social scientific and historical work that ranged from “postmodern or culturally relativistic claims” on one end of the methodological spectrum to the nomothetic claims of scholars applying deductive logic and microeconomic and game-theoretic models seeking overarching explanations of political life at the other end. See Atul Kohli et al., \textit{The Role of Theory in Comparative Politics: A Symposium}, 48 WORLD POL. 1, 1–2 (1995). In the study of comparative politics, like wrongful conviction, paradigms were generated by specific cases that interested scholars leading to nomothetic study of variables utilizing scientific methods to help predict outcomes. See id. at 3. However, Evans asserted that these approaches were limited and that understanding particular historical events in comparative
to conclusions draws on case-level reasoning that needs to be better understood and improved.

D. Case Analysis: Idiographic Causal Explanation

The intellectually hegemonic domains of law and science, occupying different realms of social action that frequently overlap, might seem to exhaust claims to knowledge of causation. Nevertheless, studying how a case is “solved” presents another approach to understanding causation. Case analysis is critically important in criminal law as the “facts” that enter the judicial arena are largely the product of police investigation. The investigator’s ability to correctly include or exclude a serial crime involves one element of accurately “diagnosing” a crime. As Dan Simon noted, “investigating crimes is a genuinely difficult task.” One reason is that the varieties of crimes presented to police are very large, even if they do fall into regular patterns. Evidence related to a suspected crime can be derived from many sources, possibly requiring complex and multi-step investigation.

Politics required idiographic historical analysis iterating with general theory. See id. at 4. Comparative politics scholars “see[] particular cases as the building blocks for general theories and theories as lenses to identify what is interesting and significant about particular cases. Neither theories nor cases are sacrosanct.” Id. Evans also stated that “[c]ases are always too complicated to vindicate a single theory, so scholars who work in this tradition are likely to draw on a melange of theoretical traditions in hopes of gaining greater purchase on the cases they care about.” Id.

164 This reflects the reality that most defendants are indigent and not able to participate in a criminal prosecution as envisioned by adversary trial theory. STEVEN K. SMITH & CAROL J. DEFRANCIS, BUREAU OF JUSTICE STATISTICS, INDIGENT DEFENSE (1996), http://www.bjs.gov/content/pub/pdf/id.pdf (reporting that eighty percent of inmates in the largest counties of the nation received assigned attorneys); see also Alissa Pollitz Worden et al., Public Defense in an Age of Innocence: The Innocence Paradigm and the Challenges of Representing the Accused, in WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 211, 212 (Marvin Zalman & Julia Carrano eds., 2014) (stating that ineffective assistance of counsel has shown to be a contributing factor to wrongful convictions).

165 SIMON, supra note 11, at 21.

166 See JOEL B. PLANT & MICHAEL S. SCOTT, U.S. DEPT JUSTICE, EFFECTIVE POLICING AND CRIME PREVENTION: A PROBLEM-ORIENTED GUIDE FOR MAYORS, CITY MANAGERS, AND COUNTY EXECUTIVES 11 (2009); William B. Waegel, Case Routinization in Investigative Police Work, 28 SOC. PROBS. 263, 263 (1981). A standard criminal investigation textbook discusses general topics (e.g., the crime scene, physical evidence, interviewing and interrogation, report writing) and investigating specific crimes (death investigation homicide, sex crimes, crimes against children, robbery, burglary, larceny, fraud, vehicle thefts and offenses, computer crime, environmental crime, drug crimes, etc.). See SWANSON ET AL., supra note 12, at v.

167 For example, physical evidence; crime-scene layout; lifestyle evidence; narrated circumstances of the crime or the victim’s movements, whereabouts, and interactions; knowledge about other crimes with patterns resembling the case at hand; video recording of the crime vicinity; witness accounts of suspicious activity, etc. See NAT’L FORENSIC SCI. TECH. CTR., CRIME SCENE INVESTIGATION: A GUIDE FOR LAW ENFORCEMENT 1, 6, 8, 12, 35 (2013),
especially as specialized crime scene investigation and forensic science methods have become more common.\footnote{See \textsc{Comm. on Identifying the Needs of the Forensic Sci. Cmty., Nat’l Research Council, Strengthening Forensic Science in the United States: A Path Forward} 4 (2009), \url{https://www.ncjrs.gov/pdfsfiles1/nij/grants/228091.pdf}; \textsc{Richard Saferstein, Criminalistics: An Introduction to Forensic Science} 1–2, 542 (6th ed. 1998).} Aside from complex and recondite methods of forensic science, the most common investigative techniques are interviewing witnesses and interrogating suspects, with all the pitfalls to getting to the truth inherent in these methods.\footnote{See Wayne R. LaFave, \textit{Search and Seizure: A Treatise on the Fourth Amendment} § 9.2, at 36 (1978); Simon, \textit{supra} note 11, at 90, 117.} But perhaps the greatest impediment to achieving correct decisions in hard-to-prove cases are cognitive biases inherent in human decision making that have been observed in criminal investigation.\footnote{See Simon, \textit{supra} note 11, at 22.}

Among the many possibilities confronting an investigator in a hard to solve sexual assault or homicide case is the issue we explore—whether the totality of facts point to a serial criminal. But even before moving to such a possibility, deciding whether a set of facts presented to a detective \textit{is} a crime is itself a matter of judgment. A death may be attributed to accident, suicide, or natural causes and a small proportion of sexual assault allegations may be closed as fabricated or consensual.\footnote{Rape accusations may be accurate or produce two types of errors: false positives (incorrectly believing a false accusation) or false negatives (inaccurately rejecting a true accusation). Some wrongful convictions involve false positives. See Dolores Kennedy, Gary Dotson, \textsc{Nat’l Registry Exonerations}, \url{http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3186} (last visited Dec. 19, 2015) [hereinafter Gary Dotson]. For an in-depth story of a false negative, see Ken Armstrong & T. Christian Miller, \textit{An Unbelievable Story of Rape}, \textsc{The Marshall Project} (Dec. 16, 2015), \url{https://www.themarshallproject.org/2015/12/16/an-unbelievable-story-of-rape?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20151216-341#.bDHCeuIiD}.} Jon Nordby, a philosopher and forensic scientist, noted that unlike certain natural events that can be explored through theoretical bodies of knowledge (earthquake through geological theory) there is no “available body of generalized ‘death theory’ to explain particular cases in this theoretical sense.”\footnote{Jon J. Nordby, \textit{Dead Reckoning: The Art of Forensic Detection} 122 (2000).} Thus, an investigator cannot draw on a general theory as a starting point but requires a different strategy, described below.\footnote{See \textit{id}.} If a death is diagnosed as a homicide or the allegations of a rape victim are credited, further questions include the basis for the diagnosis, the level of probability that the crime
was committed by a serial criminal, and the likelihood that the suspect is himself a serial criminal. These questions are difficult to answer, and our study might end by suggesting that in light of present knowledge about serial crimes they cannot be answered or can only be partially answered. Serial crimes are relatively rare. Scholarship suggests a plausible general rate of wrongful convictions ranging from .05 percent to 2 percent annually. The chance that a crime committed by a serial criminal (a low-frequency event) will be attributed to an innocent person, rather than remaining classified as unsolved, seems quite small. Yet, our sample shows that this does happen, and it may happen often enough for police to consider it, along with other possibilities, before closing a case with a recommendation to prosecute the suspect.

It might be impossible to understand how case investigation generates a causal conclusion if investigation is thought to be only a craft or art practiced by exceptionally talented investigators who operate on instincts and hunches that cannot be taught but is gained only through experience. In contrast to this belief, England’s police service has engaged in major efforts to study and systematize the investigative process and in the effort has tried to develop a theory of investigation. A central feature of the idea that investigation, although not a science, emulates science, is that detection involves forms of reasoning and hypothesis testing. Several reviews inquiring into the nature of crime investigation have observed that before a case can be concluded with the application of deductive reasoning, detectives engage in abductive reasoning, which is a critical feature of the investigative process.

Dan Simon explained the “circular nature of investigative reasoning.” Investigators are confronted with a large number of variables and number of possible hypotheses regarding the guilty party, and, given the impossibility of testing every possible outcome, “evidence is necessary to test hypotheses, while hypotheses are necessary to decide which evidence to pursue.”

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174 Marvin Zalman, Measuring Wrongful Convictions, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 3047, 3055 (Gerben Bruinsma & David Weisburd eds., 2014).
175 See Stephen Tong, Introduction: A Brief History of Crime Investigation, in UNDERSTANDING CRIMINAL INVESTIGATION 1, 7–8 (Stephen Tong et al. eds., 2009); Robin P. Bryant, Theories of Criminal Investigation, in UNDERSTANDING CRIMINAL INVESTIGATION 13, 16 (Tong et al. eds., 2009).
176 Bryant, supra note 175, at 20.
177 See SIMON, supra note 11, at 22.
178 Id.
179 Id.
A form of bootstrapping, known as abductive reasoning, is probably the only feasible method suited for conducting criminal investigations. Abductive reasoning is a recursive process of generating and testing hypotheses, geared toward eliminating invalid hypotheses and substantiating the correct one. The testing of hypotheses has two components: a search for information, followed by its evaluation, that is, the drawing of correct inferences from that information. While the evaluation of the information entails logical inference, the generation of hypotheses and decisions about which information to pursue require intuitive and conjectural thinking. Hence, police investigative work is described not only as a science, but also as a craft, even an art.\textsuperscript{180}

Abduction is a form of logic that does not stand alone in solving problems but supplements induction and deduction.\textsuperscript{181} According to philosopher Daniel McKaughan, the standard view sees abduction “as a recipe for generating new theoretical discoveries” and “as a mode of reasoning that justifies beliefs about the probable truth of theories.”\textsuperscript{182} In his “revisionist reading” of Peirce, which hews closely to the philosopher’s words, McKaughan casts some doubt on the second standard view and develops an interpretation of some relevance for those interested in the detective’s dilemma.\textsuperscript{183} In his “Pursuitworthiness Interpretation,” theory testing “comes after judgments have been made about which hypotheses are worth pursuing.”\textsuperscript{184} In this view, “the conclusions of abductive reasoning can be entirely non-epistemic in character; they are not, in the first

\textsuperscript{180} Id. Jon Nordby explains that abduction was conceived by the American logician Charles Sanders Peirce, the progenitor of pragmatism and semiotics. See NORDBY, supra note 172, at ix. In a semiotic context, “[a]bduction provides a method of reasoning from presented signs to their probable explanations.” See id. at at ix–x. Robin P. Bryant provides a detailed review of how abductive reasoning can apply in crime investigation. Robin P. Bryant, Forms of Reasoning and the Analysis of Intelligence in Criminal Investigation, in UNDERSTANDING CRIMINAL INVESTIGATION 35, 46–50 (Stephen Tong et al. eds., 2009). While hypothesis building is a core element of abductive thinking, Bryant also notes that the official English sources of more systematic approaches to crime investigation, as of 2005, were somewhat negative about the use of hypothesis development. See id. at 46, 47. This suggests that the somewhat acronym-happy program of developing systematic investigation methods in England, for all its efforts, was in a more pre-scientific than a scientific mode of development.

\textsuperscript{181} See NORDBY, supra note 172, at 42–43.


\textsuperscript{183} See id. at 447, 451.

\textsuperscript{184} Id. at 451, 452.
instance, evaluations of the likely truth of a hypothesis.”\textsuperscript{185} This
may at first blush seem an improper strategy for a process that
seeks to get to the truth. In a telling analogy, Peirce likens the
“intelligent guessing” of abductive reasoning to playing twenty
questions, in which a skillful question that tests a reasonable but
possibly untrue hypothesis will set aside many false leads and
direct attention to more fruitful and useful inquiry.\textsuperscript{186}

Nordby explains the nature of this investigative approach
through intricate case studies worthy of Sherlock Holmes.\textsuperscript{187}

In one case the drunken female partner of a couple living in
sordid circumstances was arrested for murdering her man.
He was thrown off a porch and killed by an apparent shotgun
blast to his midsection. The shotgun lay in the living room
pointing outward; the glass between the living room and
porch was shattered[].[T]he woman was too inebriated to
recall [the event].\textsuperscript{188}

The un-hypothesized evidence pointed to her guilt.\textsuperscript{189} “The
medical examiner patiently reasoned backward from the physical
signs (interpreted through scientific principles) to [hypothesize] . . .
that the scene most probably depicted a drunken, out-of-control
man, swinging the shotgun like a sledgehammer at everything in
sight.”\textsuperscript{190} In this view, he held the shotgun by the barrel, not the
stock.\textsuperscript{191} The deceased smashed the interior window while standing
on the porch.\textsuperscript{192} He tugged the gun, which became stuck on the
splintered window frame, toward himself.\textsuperscript{193} “[T]he trigger caught
on the debris of the window frame . . . set[ting] off the blast” that
blew the shot into his midsection, killing him.\textsuperscript{194}

[T]he blast . . . propelled him off the porch to the ground
below and propelled the shotgun back into the living room.
The apparent scene presented . . . as a murder. But a careful
reading of signs by the medical examiner led to hypotheses
that were then tested by scientific and logical analysis of the
evidence, which then led to other hypotheses, and so on until

\textsuperscript{185} \textit{Id.} at 453.
\textsuperscript{186} \textit{Id.} at 457–58.
\textsuperscript{187} \textit{See} \textit{NORDBY, supra} note 172, at 188–93; \textit{Zalman, supra} note 69, at 294.
\textsuperscript{188} \textit{Zalman, supra} note 69, at 293–94.
\textsuperscript{189} \textit{Zalman, supra} note 69, at 294–95.
\textsuperscript{190} \textit{See} \textit{id.} at 294.
\textsuperscript{191} \textit{Id.}
\textsuperscript{192} \textit{See} \textit{NORDBY, supra} note 172, at 189.
\textsuperscript{193} \textit{Id.}
\textsuperscript{194} \textit{Id.}
a satisfactory resolution of the case was achieved, [avoiding a wrongful conviction].

Nordby generalizes in ways that help to explicate the contributions and limits of idiographic case studies to understanding case outcomes, whether accurate or wrongful. He generates a useful distinction between explanations and causes that may help untangle the tension between nomothetic and idiographic approaches.

Even creators of scientific explanations covering complex events often confuse reasons or statistical associations with causes. Associations have many scientific functions, but they don’t serve to explain concrete events. Nor are reasons functionally equivalent to causes. The metaphysical fact remains that some processes forming a “single event” occur coincidentally.

Coincidence relates events not themselves causally related. To ignore coincidence and to embrace a world of simplistic causation commits one to holding absurd positions.

Nordby goes on to assert that a proper explanation of a hard-to-solve crime links relevant events in a chain that explains the result, but not every explanation allows a proper deduction about the causes of an event. “Inductive associations alone explain nothing. In fact, they demand explanations of their significance.” Relevant associations are specified by abduction, but the associations become inductively relevant if they reoccur and are logically connected. Thus, inductively deriving factors from a case, alone, does not explain. In explaining an unsolved case, the abductive process can lead an investigator to better understand what kind of evidence is missing that could explain (i.e., solve) it. Deep immersion assists the investigator in correctly evaluating conflicting explanations of evidence and in identifying a hitherto unnoticed or new sign (evidence) that points to a resolution of the case. Once the logically relevant evidence is in place, it can be tested by deductive logic or

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195 Id.
196 See NORDBY, supra note 172, at 59.
197 Id. The absurd result he alludes to is a guilt-ridden parent blaming oneself for allowing a child to engage in an otherwise innocent activity that led to tragedy because of coincidental factors that led up to the child’s death. Id. at 59–60.
198 Id. at 62.
199 Id. at 60.
200 Id.
by more direct proof, like an uncoerced confession supported by corroborating evidence.

E. Crime Investigators Work in the Context of Time, Resource, and Mental Limits

Unlike a specific procedure like a lineup, a crime investigation cannot be reduced to a checklist, although checklists help. The investigation does of course rely on the relevant techniques described in standard texts and is better off operating in a systematic fashion, but the specific steps often do not unfold in a routinized manner. While this suggests the limits of idiographic explanation in generating nomothetic causal explanations, it also suggests the limits of nomothetic general statements in coming to conclusions in specific cases. The overlapping concerns of social scientists, investigators, innocence project lawyers, and civil rights lawyers in understanding wrongful convictions points to activity spheres that operate under their own rules. But shared knowledge can help enlighten the work of each. Investigators can hone their abductive approaches with general knowledge gleaned from wrongful conviction studies (and from knowledge of forensic science, principles of reasoning, etc.). Social scientists can refine theories of wrongful conviction causation by close attention to cases.

We now turn to an exploratory study of the wrongful convictions that originated with crimes committed by serial criminals, one of many possible crime scenarios that confront a crime investigator.

IV. Analyzing Unlikely Collisions: Serial Crimes and Wrongful Convictions

A. Review of Serial Crime Scholarship

Broadly conceived, serial crime has received considerable attention by law enforcement, scholars, and the popular media since 1980, although for criminologists serial criminality is part of a larger exploration of professional, career, and other high-volume, rather than episodic criminals. For the most part, criminological

201 See Simon, supra note 11, at 22; Tong, supra note 175, at 8, 9, 10.

202 See, e.g., Marvin E. Wolfgang et al., Delinquency in a Birth Cohort 27, 38, 88–89, 102, 248 (Sanford H. Kadish et al. eds., 1972) (finding that just six percent of males in the cohort population could be classified as chronic/habitual offenders (i.e., having five or more contacts with police), and this group was responsible for a majority of crime, especially violent crime, in Philadelphia). This study also discovered that over seventy percent of both murders
study of serial crime focuses on serial murder, rape, and arson.\textsuperscript{203} Serial murder and rape shares the strongest and most substantively meaningful relationship with the incidence of wrongful conviction in the sample that we have developed, which, of course, has almost everything to do with the prevalence of DNA evidence that was available in such cases.\textsuperscript{204}

Although some scholarly interest in serial murder dates back to the late 19th century, it has been an increasingly popular area of theoretical and empirical inquiry since the Federal Bureau of Investigation’s efforts in the late 1970s to better understand the phenomenon.\textsuperscript{205} Despite the continued growth in attention to serial murder, there has been notable disagreement over and inconsistency in definitions of the phenomenon.\textsuperscript{206} According to Adjorlolo and Chan, this definitional inconsistency is a product of researchers either offering no definition in their work or choosing to emphasize specific but differing characteristics in the definitions they do adopt.\textsuperscript{207} For example, some researchers have stressed specific criteria in their definitions that have proven particularly difficult to operationalize, such as whether there was a “cooling-off” period between killings, whether there were sexual motives, or whether there existed a prior relationship between an offender and his victims.\textsuperscript{208} Acknowledging these limitations, Adjorlolo and Chan recently articulated what is likely the most cohesive definition of serial murder to date in an effort to help further this body of research:


\textsuperscript{203} \textit{See} Edelstein, \textit{supra} note 202, at 65; Richard N. Kocsis \& Harvey J. Irwin, \textit{The Psychological Profile of Serial Offenders and a Redefinition of the Misnomer of Serial Crime}, \textit{5 Psychiatry, Psychol. \\& L.} 197, 197 (1998).

\textsuperscript{204} \textit{See infra} Part IV.B.4.


Serial murder consists of three key elements: (1) Two or more forensic linked murders with or without a revealed intention of committing additional murder, (2) the murders are committed as discrete event(s) by the same person(s) over a period of time, and (3) where the primary motive is personal gratification.209

This definition is consistent with but offers more specificity than the FBI’s reformulated definition from 2008, which was developed with an eye toward law enforcement efficiency more than research.210

It is necessary to address two common misunderstandings about serial murder before proceeding. First, the phenomenon of serial murder is distinct from mass murder, which is commonly defined as a set of killings that occur within a more limited time frame (i.e. minutes or hours).211 Miller recently explained the difference between these two types of crime as follows:

Whereas the torture and murder activities of serial killers tend to be slow and close-up, involving low-tech weapons that gouge, flay, or strangle, the typical goal of mass murderers is to kill many [sic] as many victims as possible, quickly, efficiently, and at once, using the highest level of lethal technology available to them to do the most damage—handguns, assault weapons, explosives, or arson.212

Second, although popular interest in serial killers persists unabated, “serial murder accounts for an incredibly small percentage of yearly homicides.”213 Due to these small numbers, and the slow speed with which a measureable and analyzable sample grows, research on serial killers, like its ever-evolving definition over the years, has often been inconsistent and thus more inconclusive than most areas of individual-level criminological inquiry. As it stands, numerous typologies have been developed over the years, but each has only been able to offer limited insight into the behavioral profiles of this type of killer.214 Indeed, even in

209 Adjorlolo & Chan, supra note 207, at 490.
210 FED. BUREAU OF INVESTIGATION, supra note 205, at 8–9. According to this 2008 FBI report, serial murder is defined as “[t]he unlawful killing of two or more victims by the same offender(s), in separate events.” Id. at 9.
211 See id. at 8.
214 See Carrie Trojan & C. Gabrielle Salfati, Linking Criminal History to Crime Scene


217 Id. at 58–59.

218 See, e.g., Gurian, supra note 213, at 2, 3; Cheryl L. Maxson et al., Differences Between Gang and Nongang Homicides, 23 CRIMINOLOGY 209, 210, 212, 215 (1985).

219 Id. at 60; D. Kim Rossmo, Geographic Profiling 155, 169 (2000). In our sample, nine serial killers are black and five white. See infra Part IV.B.3.


221 Rossmo, supra note 219, at 155, 169 (indicating that of the fifteen serial killers, only two were women); Kocsis & Irwin, supra note 203, at 209, 210.

222 See, e.g., Gurian, supra note 213, at 4, 7.

223 See, e.g., Godwin, supra note 216, at 62; Hickey, supra note 220, at 209, 212.

224 Gurian, supra note 213, at 2.
A handful of other noteworthy demographic characteristics necessarily require attention when understanding serial killer profiles. Most research studies have demonstrated that the average age of these killers is in the late twenties to early thirties.225 In one of the more rigorous studies of serial killers, Godwin found that fifty-one percent of serial killers were employed, while another sixteen percent were self-employed.226 His research also showed that fifty-six percent of killers were high school dropouts, with only sixteen percent having completed at least some college credits.227 Lastly, the majority of his sample (i.e. fifty-nine percent) was unmarried at the time of arrest, although he notes that his figure is much lower than the FBI’s finding of eighty percent of serial killers being unmarried.228

Finally, a set of useful research has helped explicate the criminal histories of known serial killers. While it is true that many serial killers started their killing career without any officially recorded criminal history, studies have consistently revealed that most have some prior involvement in crime.229 According to Godwin, prior involvement in burglary, theft, and robbery is especially common.230 In his sample of serial killers, sixty-one percent of the sample had engaged in at least one of those forms of crime, which he notes is consistent with the estimates yielded by Hickey’s seminal efforts.231 Like burglary, other studies have found serial killers have had prior involvement in rape.232 Although these offenses may seem to have little in common, Miller maintains that “[w]hile the reasons for this particular association are not settled, it seems evident that both of these crimes involve the willful violation of another person’s intimate self, either their home or their physical body.”233

225 Godwin, supra note 216, at 70; Hickey, supra note 220, at 135–36; Gurian, supra note 213, at 4.
226 Godwin, supra note 216, at 61.
227 Id. at 62.
228 Id.
229 Miller, supra note 212, at 4.
230 Godwin, supra note 216, at 66.
231 Id.
233 Miller, supra note 212, at 4.
B. Characteristics of a Serial Crime Wrongful Conviction
Convenience Sample

As previously noted, we compiled a list of forty-four exonerees whose crimes were attributed to serial criminals, listed in Table 1. The list is a convenience sample drawn from the National Registry of Exonerations (NRE), from our own knowledge of wrongful conviction cases, and from James Acker’s review of “flipside injustice” cases where the guilty go free. All that this demonstrates is that a number of exonerees have been convicted of crimes committed by serial criminals. At this stage we cannot know the numerical relationship between these cases and the universe of like cases, although we would guess that our sample undercounts serial exonerees even among the known exonerations listed in the NRE. Our list was not the product of an exhaustive records search; it was compiled in the spirit of Glaser and Strauss’s notion of a “theoretical sample” designed to generate grounded theory. If the present analysis produces useful ideas about the wrongful conviction-serial crime link, future studies can test hypotheses about serial exonerees with more comprehensive samples.

This limited data set also raises the caveats that surround any study of exonerations, which are most likely a tiny fraction of wrongful convictions. Exonerations are obtained fortuitously

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234 See infra Table 1. To shorten the cumbersome handle of “exonerees who were convicted for crimes committed by serial criminals” for this article we refer to the forty-four individuals as “serial exonerees” or “exonerees.” Narrative accounts of each exoneree and his or her case can be found in the National Registry of Exonerations. About the Registry, Nat’l Registry Exonerations, http://www.law.umich.edu/special/exoneration/Pages/about.aspx (last visited Aug. 14, 2016). We do not cite to the NRE every time an exoneree or serial criminal is mentioned. References to an exoneree’s NRE Narrative can be found by browsing either the NRE’s Detailed View or Summary View. See Exoneration Detail List, Nat’l Registry Exonerations, http://www.law.umich.edu/special/exoneration/Pages/browse.aspx (last visited Aug. 14, 2016).

235 The term “serial” was entered in the NRE filter and generated eighteen cases on December 16, 2015. Exoneration Detail List, supra note 234. We surely missed serial crimes in which the word “serial” was absent from the NRE narrative.


237 See infra Table 1.


239 See Gross et al., supra note 36, at 1730. Wrongful conviction may plausibly occur in about one percent of all felony convictions, although the general rate cannot be stated with certainty. See Samuel Gross, How Many False Convictions Are There? How Many Exonerations Are There?, in WRONGFUL CONVICTIONS & MISCARRIAGES OF JUSTICE: CAUSES
because efforts to exonerate the falsely convicted reflect factors (e.g., presence of an innocence clinic or project; family resources; seriousness of the crime) that are not related to the proportion of all inaccurate convictions.240 Because serial crimes are rare events, it is even more risky to assume that a sample of “serial” exonerations accurately reflects a known proportion of the universe of wrongful “serial” convictions.241

1. The Cases

With these caveats in mind, we review the data to get a perspective of the cases, noting that the proportions reported simply reflect what can be derived from this listing of forty-four exonerees,242 thirty criminals (who we define as serial criminals),243 fifty-four victims (including one fetus),244 and the cases in which they crossed paths. Exonerations can be divided into crimes that actually occurred and “no crime cases.” The latter constitute 30.2% of reported exonerations, as of December 19, 2015.245 All of the

AND REMEDIES IN NORTH AMERICAN AND EUROPEAN CRIMINAL JUSTICE SYSTEMS 45, 46 (C. Ronald Huff & Martin Killias, eds., 2013). The consensus of wrongful conviction scholars is that the rate of felony wrongful conviction is not vanishingly small. Zalman, supra note 174, at 3047, 3049.

240 See Gould & Leo, supra note 152, at 340, 345–46, 347.

241 Gurian, supra note 213, at 2–3. Care in expressing numerical statements about wrongful conviction can be seen in the still common statement that “eyewitness misidentification was the leading contributing factor of wrongful convictions.” Eyewitness Misidentification, INNOCENCE PROJECT, http://www.innocenceproject.org/causes-wrongful-conviction/eyewitness-misidentification (last visited Aug. 14, 2016). This reflects data derived from DNA exonerations published by the Innocence Project. The Cases: DNA Exoneree Profiles, INNOCENCE PROJECT, http://www.innocenceproject.org/cases-false-imprisonment/front-page#c10=published&b_start=0&c4=Exonerated+by+DNA (last visited Aug. 14, 2015). However, the larger exonerations number (about 1,750 compared to 330 DNA exonerations as of December 2015), reflects a broader base of cases reported by the NRE, drawn from all felonies and misdemeanors. Exonerations by Contributing Factor, NAT’L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx# (last visited Aug. 14, 2016). In contrast, DNA exonerations are drawn primarily from sexual assault and homicide cases. Id. The NRE sample indicates that perjury or false accusation is the factor most highly associated with exonerations, followed by official misconduct. Id. Mistaken witness identification is in “third place.” Id. The associations vary with the crime. Id.

242 See infra Table 1.

243 See infra Table 1. Twenty-nine offenders are identified. In the case of Carlos Lavernia, the suspected serial rapist was never caught and is identified by the nickname “Barton Creek Rapist.” See infra Table 1.

244 See infra Table 1.

wrongful convictions attributed to serial criminals, of course, refer to actual crimes. Table 1 lists the serial exoneree’s name, the date of exoneration, the serial criminal, the general crime label, and the name or identity of the victim and victim’s age if available.\textsuperscript{246} In our tables and text, we identify crimes by the most serious crime labels: murder, murder/rape, rape, and robbery.\textsuperscript{247} Aside from murder/rape we do not specify other multiple charges.\textsuperscript{248} The precise or statutory crime labels might differ, especially as ‘sexual assault’ is often used in the NRE.\textsuperscript{249} Where a rape is accompanied by another crime (e.g., robbery, kidnapping, burglary, unlawful entry, and assault) that crime label is omitted.\textsuperscript{250} The cases are listed chronologically, beginning with the first DNA exoneration in 1989 and includes an exoneration in 2015.\textsuperscript{251} In two cases, five exonerees were convicted of a crime against a single victim (the “Central Park Five” and “Dixmoor Five” cases) and in two other cases two exonerees were found guilty jointly of a single rape/murder (Cruz and Hernandez) and a murder (Pavlinac and Sosnovske).\textsuperscript{252} Ten exonerees were convicted of crimes against multiple victims.\textsuperscript{253} One exoneree,
Hubert Gerals, Jr., was himself a serial killer, convicted for six murders.\footnote{254} When police later attributed one of the murders to another serial killer, Gerals’ conviction for murdering Rhonda King was dismissed.\footnote{255} Four serial criminals were responsible for crimes attributed to two separate exonerees in separate criminal incidents: Eddie Lee Mosley (exonerees Frank Lee Smith and Jerry Frank Townsend); Aaron Doxie, III (exonerees Julius Ruffin and Arthur Whitfield); Walter Ellis (exonerees Chaunte Ott and William Avery); and Norman Derr (exonerees Jerry Lee Jenkins and Michael McAlister).\footnote{256} It is apparent that all of the serial criminals are male and all but two of the serial exonerees (Laverne Pavlinac and Julie Rea) are women.\footnote{257} The crime categories in our sample are consistent with studies of serial crime, almost exclusively consisting of the main charges of murder, murder/rape, and rape.\footnote{258} NRE exonerations include a wide variety of crimes but are still heavily weighted toward the most violent, with murder, sexual assault and child sex abuse comprising more than two-thirds of all cases as of December 19, 2015.\footnote{259} On December 19, 2015, the NRE listed these three crimes among the total of 1,721 crimes: murder, 710 (41.3%); sexual assault, 280 (16.3%); and child sex abuse (192) (11.2%).\footnote{260} Together


\footnote{255} \textit{Hubert Gerals, Jr.}, supra note 254.

\footnote{256} See infra Table 1.

\footnote{257} See infra Table 1. As noted by Hickey, women serial murderers have been identified, but patterns tend to involve surreptitious killings (e.g., by poison) in domestic relationships; under these circumstances it seems unlikely that such a crime will be attributed to an innocent person. Hickey, supra note 220, at 204, 205.

\footnote{258} A major exception is Charles Bunge, convicted of an unarmed street robbery. See infra notes 664–73 and accompanying text. The other case that does not precisely fit these crime categories is that of Kevin Green. His wife was severely assaulted (obliterating direct recollection of the assailant), raped, and as a result miscarried. Dianna Green’s suspicions ripened into an accusation at some time after the attack and Kevin Green was charged, on two occasions, of first-degree murder, assault and spousal rape. However, he was convicted of attempted murder and assault with a deadly weapon against Diana, and second-degree murder/fetal homicide. See \textit{Surviving Justice: America’s Wrongfully Convicted and Exonerated} 395–492 (Lola Vollen & Dave Eggers eds., 2005); Kevin Lee Green - Wrongfully Convicted, As I Travel This Life BLOGSPOT (Jan. 22, 2013, 3:13 PM), http://asitravelthislife.blogspot.com/2013/01/kevin-lee-green-wrongfully-convicted.html.

\footnote{259} See Exoneration Detail List, supra note 234.

\footnote{260} See id.
they comprise 68.8% of NRE cases. In contrast, national data from felony convictions in state courts in 2006 found that murder comprised 0.6% and rape 1.3% of all convictions.

Among the fifty-six victims, the clear majority were adult women (47), ranging in age from 18 to 60. Three victims were teenage girls, five young girls, five boys, and one fetus. In five cases the victims were family members of the exoneree, adding to the tragedy of the wrongful convictions. Kevin Green was convicted for the attempted murder of his wife, Dianna, and, under California law, second-degree murder for causing her to abort her fetus. Clarence Elkins was convicted of the murder/rape of his mother-in-law and rape of his six-year-old niece. Julie Rea was convicted for the murder of her ten year-old son, Joel Kirkpatrick. Byron Halsey was convicted for killing Tina and Tyrone Urquhart, his girlfriend’s children, whom he treated as his own. David Camm was convicted for murdering his wife Kim, and two his children, Brad and Jill.

2. Serial Exoneree Characteristics

Table 2 focuses on serial exoneree characteristics and includes: data on race; age at the time the crime was committed; sex; whether the exoneree had a prior criminal record; the dates of the crime, conviction, and exoneration; years in prison; the method of exoneration; the state; and the general crime type. Of the forty-four serial exonerees, twenty-six are African American (59%),

See id.
See infra Table 1.
In Rossmo’s survey of 178 serial crime victims, 27.5% were male. Rossmo, supra note 219, at 170.
See infra Table 1.
See Kevin Green, Innocence Project, http://www.innocenceproject.org/cases-false-imprisonment/kevin-green (last visited Mar. 14, 2016); see infra Table 1.
See Byron Halsey, Innocence Project, http://www.innocenceproject.org/cases-false-imprisonment/bryon-halsey (last visited Mar. 14, 2016); see infra Table 1.
See infra Table 2.
thirteen white (29.5%), and five are Hispanic (11.4%). This compares to NRE rates as of December 19, 2015: African American (46.8%); Caucasian (39.6%); Hispanic (11.7%); and other (0.7%). This proportion does not fit the racial pattern of known serial killers; most known serial killers are white and minority serial killers represent their proportion of the general population.

Thirteen of the serial exonerees were teens at the time the crime was committed, but ten of them were convicted in two notorious cases, the “Central Park Jogger” case in New York and the “Dixmoor Five” case in suburban Chicago. Sixteen exonerees were in their twenties, twelve in their thirties and three older than forty, a pattern that is comparable to the ages of serial criminals. Fourteen of the exonerees had identifiable prior criminal histories. Most of the exonerees were convicted within a year or
two of the date of the crime. In six cases involving eleven exonerees, there was a delay of several years between the date of crime and date of conviction, indicating complex and hard-to-solve crimes. The forty-four serial exonerees served a total of 493.5 years in prison, for an average of 11.2 years, ranging from no prison time for John Tingle, Jr. to twenty-nine years for Michael McAlister, who was released in 2015 for a rape that occurred in 1986. Two serial exonerees, Frank Lee Smith and Timothy Cole died in prison, Smith from cancer while on death row in Florida and Cole from an asthma attack in Texas. They were posthumously exonerated.

Table 2 also includes the methods by which the forty-four serial exonerees were exonerated. The National Registry of Exonerations (NRE) lists five methods and the numbers exonerated by each method among the first 1,600 exonerations: pardons (112), dismissals (1,240), acquittals (201), certificates of innocence (49), and posthumous exonerations (13). Among the forty-four serial exonerees, the methods of exoneration and their numbers are:


278 See infra Table 2. 279 See infra Table 2. These exonerees are William Avery, Jacob Beard; Anthony Capozzi, Hubert Gerals, Jr., Julie Rea, and the “Dixmoor Five”: Jonathan Barr, James Harden, Shainnie Sharp, Robert Taylor and Robert Veal. See infra Table 2.


282 See *Frank Lee Smith*, supra note 281; *Timothy Cole*, supra note 281.

283 See infra Table 2; see Gould et al., supra note 137, at 288–89.

284 See Glossary, NATIONAL REGISTRY OF EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx (last visited Dec. 19, 2015); *The First 1,600 Exonerations*, NATIONAL REGISTRY OF EXONERATIONS, https://www.law.umich.edu/special/exoneration/Documents/1600_Exonerations.pdf (last visited Mar. 21, 2016). The total exceeds 1,600 by fifteen because in some states a pardon or certificate of innocence may be required in addition to an acquittal on appeal or a dismissal for an exoneree to obtain compensation.
dismissals (35), acquittals (5), pardons (2), certificate of innocence (1), and posthumous exonerations (2).\textsuperscript{285} As is the case with NRE data, the number of methods exceeds the number of exonerees because Thomas Haynesworth was issued a certificate (or writ) of innocence after his case was dismissed.\textsuperscript{286} Given the small number of serial exonerees we would be cautious in drawing too much from the comparative figures, but the proportions of dismissals among the serial exonerees are remarkably similar to those of the first 1,600 exonerees. The comparable percentages, with the NRE figures first, are: Dismissal: 77.5\% and 79.5\%; Acquittal: 12.6\% and 11.4\%; Pardon: 7\% and 4.5\%; Certificate of innocence: 3.1\% and 2.3\%; Posthumous exoneration: 0.8\% and 4.5\%.\textsuperscript{287}

The fifteen states in which the serial wrongful convictions occurred can be counted by the number of cases (34), the total number of exonerees (44) stated in parentheses, or the total number of victims (56), stated in brackets: AZ, 2 (2) [2]; CA, 2 (2) [5]; FL, 2 (2) [8]; IL, 6 (11) [7]; IN, 1 (1) [3]; MD, 1 (1) [1]; MI, 1 (1) [1]; NJ, 1 (1) [2]; NY, 3 (7) [5]; OH, 2 (2) [3]; OR, 1 (2) [1]; TX, 3 (3) [3]; VA 6 (6), [11]; WV, 1 (1) [2]; WI, 2 (2) [2].\textsuperscript{288} We have no confidence that this distribution reflects underlying patterns of wrongful convictions resulting from serial crimes across the nation.

3. Characteristics of the Serial Criminals

In Table 3 we turn our attention to the twenty-nine identified serial criminals (with the “Barton Creek Rapist” unidentified).\textsuperscript{289} The table lists the serial criminal, age at the time of crime if known or ascertainable, race, sex, the number of reported victims during

\textsuperscript{285} See infra Table 2.
\textsuperscript{287} See infra Table 2; supra notes 285, 286 and accompanying text.
\textsuperscript{288} See infra Table 1; infra Table 2.
\textsuperscript{289} See infra Table 3.
his criminal career, the crime category for which the serial exoneree was convicted, the victim or victims of the crime that led to the miscarriage of justice, the last name of the exoneree and date of exoneration.290

All of the serial criminals are males between the ages of 18 and 38.291 Eighteen are African American, seven white, three Hispanic and one Native American.292 Among the 14 serial killers, nine are black and five white, which does not fit the data which show a preponderance of white serial killers.293 Several became known by popular handles generated by the news media (e.g., “Black Ninja Rapist” for Leon Davis) based on distinctive elements of their modus operandi.294 A few are not well known as serial criminals but a few have drawn sufficient notoriety to be listed on Wikipedia or Murderpedia, a site that provides a data snapshot and gathers news articles.295 Thirteen of the criminals in our sample were described in Murderpedia, an impressive number as fifteen of the thirty serial criminals were serial killers.296

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290 See infra Table 3.
291 See infra Table 3. This age group closely fits the age profile of known serial killers. See supra note 225 and accompanying text.
292 See infra Table 3.
293 See infra Table 3. ROSSMO, supra note 219, at 9–10. This suggests that our convenience sample is not a good representation of the known universe of serial killers. The alternate hypothesis that race is a factor that heightens the likelihood of wrongful conviction is too tenuous to draw from this sample. A major statistical study suggested that race effects, which appeared among near-miss and wrongful conviction cases, might increase the chance that an innocent person will be convicted but not necessarily increase the likelihood of wrongful conviction. Gould et al., supra note 126, at 477, 517–22.
294 See infra Table 3.
Forty-three of the cases fit the conventional serial crime profile of murder, murder/rape, or rape.\textsuperscript{297} One case in our sample, Charles Bunge, does not.\textsuperscript{298} The crime of attempted robbery is included in our sample because in the NRE Narrative the actual criminal, Manuel Vieara, described himself as a “serial drive-by purse snatcher.”\textsuperscript{299} We included the case in our exploratory study in order to raise the question about limiting the term serial criminal to serial killers and serial rapists, and to raise the possibility that many wrongful convictions may be originated with the ongoing criminal activity of career criminals or persistent offenders who do not fit the profile of serial criminals.\textsuperscript{300} In one crime incident involving exoneree Kevin Green, he was convicted of attempted murder of his wife; she had been raped but it was not charged.\textsuperscript{301} He was also convicted of second degree murder under a California law that created a new crime of fetal homicide.\textsuperscript{302} As would be expected, the serial criminals were reported to have committed multiple crimes.\textsuperscript{303} Several appear to have been arrested, convicted, and imprisoned for long terms, life, or sentenced to death fairly early in their potentially longer criminal careers.\textsuperscript{304} The actual Central Park rapist, Matias Reyes, was only 18 at the time of the crime.\textsuperscript{305} In a short period of time he committed several attempted and completed rapes and the rape/murder of a pregnant mother for which he was convicted, before his criminal career could expand further.\textsuperscript{306} Timothy Spencer, in his twenties, was responsible for a string of about nine rapes before graduating to gruesome rape-murders.\textsuperscript{307} His murder/rape career was interrupted by a prison term of a few years for burglary.\textsuperscript{308} Upon release he murdered four more women in a brief time-span.
before he was captured, convicted, sentenced to death, and ultimately executed. 309 Although these men had brief serial criminal careers, their crimes were horrific and their careers long enough to spawn wrongful convictions. 310 Brian Dugan was twenty-six when Jeanine Nicarico became his first victim, leading to the convictions of Rolando Cruz and Alejandro Hernandez. 311 Dugan’s early life included telltale signs of psychopathy. 312 In the two years following that crime he raped two women, attempted to abduct another, and raped and killed a woman and a little girl before being caught in 1985. 313

The serial criminal careers of several of the offenders, mainly serial rapists, are not well documented. Walter Cruise, whose rape of a ten year old boy sent Larry Youngblood to an Arizona prison for ten years, was described as having “had two prior child sex convictions in Texas.” 314 Robert Minton, “an accused serial murderer and rapist,” admitted in 1990 to the rape and attempted murder that landed Randall Lynn Ayers in an Ohio prison for eight years. 315 He would have been about twenty-one at the date of the crime, perhaps at the beginning of his serial crime career. 316 Kenneth Phillips, whose murder sent exoneree Ray Krone to death row, was described as a repeatedly violent sexual offender and was in prison for a child rape. 317 Aaron Doxie, III, whose rapes led to the wrongful convictions of Julius Ruffin and Arthur Whitfield, “already was serving life in prison for rapes he committed two years after Whitfield was sent to prison.” 318 The identity of the “Barton Creek

309 Id.
310 Jon Nordby describes a case in which a random murder was traced back to the young perpetrator with a criminal record that suggested he was on the cusp of entering a serial murder career. See Nordby, supra note 172, at 141, 144, 147.
311 See infra Table 3.
313 See Frisbie & Garrett, supra note 121, at 139, 142, 148; Brian James Dugan, supra note 312.
316 See id.
rapist,” responsible for Carlos Lavernia’s fifteen years in prison, was never disclosed.319 Robert Weeks, whose 2007 rape of a woman in a commercial garage in Chicago led to Jerry Miller’s twenty-five years of imprisonment, “went on to rape or assault four more women, injure police officers in three other attacks and commit other robberies and beatings over 23 years.”320

The backgrounds of other serial rapist are better documented, indicating longer careers and a larger number of victims. Some identified as serial rapists also had murders or alleged murders in their criminal histories. Altemio Sanchez, the “Bike Path Rapist,” “murdered at least three women and raped at least 14 others in and around Buffalo, New York, over a span of 25 years (1981-2006).”321 Charles Boney, ultimately convicted for the murder of Kim Camm and her two children, had a prior criminal history of violent crimes against women, but not for murder.322 In the 1980s he was labeled “the shoe bandit” for four bizarre crimes to which he pleaded guilty in which he knocked a woman to the ground and stole one of her shoes.323 Thereafter, his crimes became more violent, threatening women at gunpoint.324 He pleaded guilty to armed robbery, was sentenced to twenty years, and released on parole within seven, some time before the Camm murders.325 Jerry Wayne Johnson, the “Tech rapist” responsible for the wrongful conviction of Timothy Cole, was convicted for two rapes committed at about the time that Michelle Mallin was sexually assaulted; he was suspected of a murder.326

It is possible that several serial criminals can operate in the same area at the same time. We have evidence of two serial rapists, one

319 By an account of the Travis County (TX) District Attorney and Appellate Division Director, the unnamed criminal may have been responsible for three sexual assaults, several attempted sexual assaults, and two murders that had been committed along the five-mile path in Houston known as the Barton Creek Greenbelt. Ronald Earl & Carl Bryan Case, Jr., The Prosecutorial Mandate: See That Justice is Done, 86 JUDICATURE 69, 69, 70 (2002); Carlos Marcos Lavernia, supra note 123.
320 Kari Lydersen, Costs Are High for Convictions of Wrong People, N.Y. TIMES (June 18, 2011), http://www.nytimes.com/2011/06/19/us/19cncwrongful.html?_r=0.
321 Altemio C. Sanchez, supra note 296.
323 Id.
324 Id.
326 Beth Schwartzapfel, No Country for Innocent Men, MOTHER JONES, http://www.motherjones.com/politics/2011/12/tim-cole-rick-perry (last visited Mar. 18, 2016) (“He was also charged with murdering an insurance saleswoman, but those charges were dropped.”).
white and one black, committing crimes in the Richmond, Virginia environs in the early and mid-1980s.\textsuperscript{327} In a two-week period in 1986 Norman Derr committed two rapes, one in Maryland and the other in Virginia, which put Jerry Lee Jenkins and Michael McAlister in prison for a combined total of fifty-three years.\textsuperscript{328} Derr, who committed a string of rapes from 1981 to 1986 in Richmond, Virginia and surrounding areas, was captured in 1988 and sentenced to multiple life sentences in 1989.\textsuperscript{329} While in prison cold-case DNA testing led to additional convictions and life terms.\textsuperscript{330} At about the same time and place Leon Davis, the so-called “Black Ninja Rapist,” an African American man who attacked white women between the ages of fifteen and thirty, was operating.\textsuperscript{331} The Innocence Project developed a time line of crimes against seventeen women who were raped, stabbed, abducted, or robbed in and around Richmond from January 3 to December 13, 1984.\textsuperscript{332} Leon Davis, Jr., “the self proclaimed ‘Black Ninja’ rapist” was arrested on December 19, and is serving seven life terms.\textsuperscript{333}

Most of the serial killers and rapists in our sample were “locals,” staying in familiar, even confined, locales.\textsuperscript{334} Chester Dwayne Turner (exoneree David Allen Jones) “has been connected, through DNA, to 13 murders that occurred in Los Angeles between 1987 and 1998. Eleven of these murders took place in a four-block-wide corridor that ran on either side of Figueroa Street between Gage Avenue and 108th Street” in Los Angeles.\textsuperscript{335} Eddie Lee Mosley (exonerees Frank Lee Smith and Jerry Frank Townsend), the most prolific of serial criminals in our sample, was responsible for eight to sixteen or possibly twenty-five murders and more than one hundred rapes in one section of one city in the 1970s and 1980s.\textsuperscript{336} The African American community in Fort Lauderdale, Florida was

\textsuperscript{327} Michael McAlister, supra note 123; Thomas Haynesworth, supra note 250.

\textsuperscript{328} Frank Green, DNA Ties Rapist to More Attacks, RICHMOND TIMES-DISPATCH (June 23, 2013), http://www.richmond.com/news/local/article_2c3a1cca-7919-58ab-9770-1aea65a7044d.html; Jerry Lee Jenkins, supra note 123; Michael McAlister, supra note 332.

\textsuperscript{329} Green, supra note 328; Michael McAlister, supra note 327.

\textsuperscript{330} Michael McAlister, supra note 327.


\textsuperscript{332} See Thomas Haynesworth Timeline, supra note 331 (explaining the timeline of 17 women who were raped, stabbed, abducted or robbed).

\textsuperscript{333} Id.

\textsuperscript{334} See, e.g., Chester Dwayne, supra note 301.

\textsuperscript{335} Id.

\textsuperscript{336} See Simon, supra note 11, at 125–26; Eddie Lee Mosley, supra note 296.
terrorized with stunning levels of these crimes when Mosley was released from prison or mental hospitals.\textsuperscript{337} When incarcerated, these horrific crimes abated.\textsuperscript{338} According to Jonathan Simon, studied ignorance about African American communities led white authorities to casually assume that poverty areas were rife with serial criminals.\textsuperscript{339} What Doug Evans, the African American detective who captured Eddie Lee Mosley knew “through careful investigation[,]” though, was “that Mosley alone was responsible for the whole series of murders in the [African American section] that had been blamed on others, including Townsend and Smith[,]”\textsuperscript{340} Matthew Macon confined his crimes to the Lansing, Michigan area.\textsuperscript{341} He murdered and tortured at least six women within a short time period in 2007 after having killed Carolyn Kronenberg in 2005 at Lansing Community College.\textsuperscript{342} That crime led to the conviction of Claude McCollum, who was released after the string of later crimes led to a reexamination of the case.\textsuperscript{343} Macon had an extensive juvenile and adult criminal record and had been in and out of prison since 2001.\textsuperscript{344} Walter E. Ellis, also known as “[t]he Milwaukee North Side Strangler . . . raped and strangled seven women in the city of Milwaukee, Wisconsin, USA between 1986 and 2007.”\textsuperscript{345} Dennis McGruder, the “beauty shop rapist,” operated in the south side Chatham neighborhood in Chicago, and two of his ten known rapes led to the conviction of John Willis.\textsuperscript{346}

Other serial killers, however, roamed far and wide. Tommy Lynn Sells, executed in Texas in 2014, was responsible for at least one to thirteen murders in a career running from 1980 to 1999, and “claimed to have killed upwards of 70 people”\textsuperscript{347} across much of the middle part of the country, including Joel Kirkpatrick in southern Illinois, leading to the conviction of Joel’s mother, Julie Rea.\textsuperscript{348}

\textsuperscript{337} See Simon, supra note 11, at 126, 130.
\textsuperscript{338} See id. at 130; Eddie Lee Mosley, supra note 296.
\textsuperscript{339} See Simon, supra note 11, at 126–27.
\textsuperscript{340} Id. at 125, 131, 133.
\textsuperscript{341} See Matthew Emmanuel Macon, supra note 296.
\textsuperscript{342} See id.
\textsuperscript{343} See id.
\textsuperscript{344} See id.
\textsuperscript{345} See Walter E. Ellis, supra note 296.
\textsuperscript{347} Tommy Lynn Sells, supra note 296. Sells murdered Joel Kirkpatrick, for which Julie Rea was wrongfully convicted. Id.
\textsuperscript{348} See id.
Joseph Paul Franklin, who confessed to killing Nancy Santomero and Vicki Durian in rural West Virginia, which led to Jacob Beard’s wrongful conviction, also killed at least fifteen men, women, and children in Georgia, Missouri, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, Indiana, and Wisconsin, driven in part by a racist and anti-Semitic ideology. \(^349\) Keith Jesperson, the “Happy Face Killer,” was an interstate trucker who claimed to have killed eight women in six states: Nebraska, Oregon, Washington, California, Florida and Wyoming. \(^350\) Taunja Bennett was his first victim, and by inserting herself into that crime, Laverne Pavlinac and her boyfriend John Sosnovske were convicted. \(^351\)

4. Case Characteristics: Crimes, Victims, Investigation, DNA, and Sentences

In Table 4 we turn to some of the characteristics of the thirty-four criminal encounters that involved forty-four serial exonerees, thirty serial criminals, and fifty-six victims. \(^352\) The table includes data on the type of crime; characteristics and number of victims; whether the crime was investigated entirely or in part as a serial crime; whether DNA was involved in the exoneration; and the sentences meted out to the exonerees. \(^353\) Twenty-four of the encounters involved a single victim and ten involved multiple victims; thirty encounters involved one exoneree while four involved multiple exonerees. \(^354\)

As for crime types, as noted above, forty-three of the cases fall into one of three crime categories, in which at least one crime is murder, murder/rape, or rape; one case involved a robbery (Bunge); and one involved an attempted murder of an adult and a second-degree murder conviction under a fetal homicide statute (Green). \(^355\) Of the thirty-four encounters, ten involved murders (along with an attempted murder), seven murder/rapes, sixteen rapes, and one


\(^{350}\) See Keith Hunter Jesperson, supra note 296.


\(^{352}\) See infra Table 4; supra notes 242–47 and accompanying text.

\(^{353}\) See infra Table 4.

\(^{354}\) See id.; supra notes 252–56 and accompanying text.

\(^{355}\) See infra Table 4; supra note 258 and accompanying text.
robbery. If we count the fifty-six victims, the crime victimizations are: twenty-two murders, seven murder/rapes, twenty-five rapes, one attempted murder and one robbery.

The sentences meted out were understandably high. Five exonerees were sentenced to death, at least in their initial trials. Nine received life or life without parole (LWOP). Another nine received what may be viewed as the equivalent of life terms: sentences or minimum sentences of fifty years or more. The remaining twenty-one exonerees received prison sentences or minimums of less than fifty years.

A very high proportion of the cases, almost three-quarters, were finally resolved with the use of DNA evidence, twenty-five out of thirty-four cases. This is far higher than the rate for exonerations reported by the NRE, in which DNA played a role in slightly less than a quarter of exonerations as of the end of 2015. Of special interest are the facts surrounding police crime investigations of the cases. Our general goal is to promote the examination of the totality of investigations, and in service of this goal we will parse the cases, from available data, to try to understand why errors were made. Regarding the investigations, in ten out of thirty-four cases, the crimes were investigated at least in part as serial crimes. In these cases we are interested in finding whether any elements in the cases should have alerted police to the presence of a serial crime, and if so, why they missed this. In the ten cases that were investigated as serial crimes, the issue is why the serial exonerees were incorrectly identified as serial criminals.

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556 See infra Table 4.
557 See infra Table 4. Other data on victims are found in supra Part IV(B)(1).
558 See infra Table 4. The exonerees sentenced to death were Rolando Cruz, Alejandro Hernandez, Hubert Geralds, Jr., Frank Lee Smith, and Ray Krone. See id.; Exoneration Detail List-DNA, NAT’L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?FilterClear=1&View={af6edd8-5a68-4f8f-8a522c6115bf9ea7}&SortField=Title&SortDir=Asc&FilterField1=DNA&FilterValue1=8_DNA (last visited Mar. 14, 2016) [hereinafter Detail List-DNA]; Hubert Geralds, Jr., supra note 254.
559 See infra Table 4. Those exonerees were Laverne Pavlinac, John Sosnovske, Jacob Beard, Jerry Frank Townsend, Julius Ruffin, Claude McCollum, Byron Halsey, Chaunte Ott, and Jerry Lee Jenkins. See infra Table 4; Exoneration Detail List, supra note 234.
560 See infra Table 4. Those exonerees were John Willis, Jr., Carlos Marcos Lavernia, Clarence Elkins, Arthur Lee Whitfield, Jonathan Barr, James Harden, Robert Taylor, Julie Ren, and David Camm. See infra Table 4; Exoneration Detail List, supra note 234.
561 See infra Table 4.
562 See infra Table 4.
563 On Dec. 19, 2015 the NRE reported DNA involvement in 419 out of 1721 exonerations, or 24.3%. Detail List-DNA, supra note 358; Recently Posted Cases, supra note 273.
564 See infra Table 4.
Finally, in several of these cases the police investigated the crimes as serial crimes at some point but not at other times. These cases may be especially helpful in identifying what was missed. We will explore these issues through case study vignettes. We offer the obvious caveat that we examine the cases from a distance, relying only on secondary data and case files provided by the NRE. As this is an exploratory study designed to raise questions, we believe it is worthwhile going forward, and would welcome future revisions by those with more information.

C. Case Vignettes

We have grouped similar cases for analysis, with the names of exonerees followed by the serial criminals. Where serial criminals were responsible for two separate wrongful convictions, they will be analyzed together. In the following vignettes, we focus on the issue of whether investigators observed facts that would indicate a serial crime and explore the possible reasons why errors about this were made in each case. Two caveats should be noted. First, the following accounts are based on secondary materials and do not rest on a wealth of data that supports a true case study. Second, it is always worth noting in the study of wrongful convictions that the outcomes are unidimensional in that they include only investigation failures. At the present stage of knowledge we cannot purport to establish a proportion of all investigations in which wrongful convictions involved serial criminality.

1. Notorious “Mass-Teen” Wrongful Conviction Cases

Central Park 5—Matias Reyes

Dixmoor 5—Willie Randolph

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365 For an example, see Jon Shane, Learning from Error in Policing: A Case Study in Organizational Accident Theory 17, 18–19 (2013).

366 Marvin Zalman, The Detective and Wrongful Conviction, in Wrongful Conviction and Criminal Justice Reform: Making Justice 147, 151, 153, 155 (Marvin Zalman & Julia Carrano eds., 2014) (discussing how detective literature falls into three frames: a negative innocence frame, a positive narrative frame, and a more balanced social science frame).
Two notorious cases from New York and suburban Chicago, the Central Park Five or Jogger\textsuperscript{367} and the Dixmoor Five cases,\textsuperscript{368} are similar in several respects: the five teens convicted in each case were African Americans or minorities; they were quite young, fourteen and sixteen years old; both cases involved false confessions; DNA profiling was important in resolving the cases; and in both the pressures to solve the case were high, although that can be said of most of the cases in our sample.\textsuperscript{369} The victim in the Dixmoor case, fourteen-year-old Cateresa Matthews was raped and murdered.\textsuperscript{370} Although Tricia Meili, the “Central Park jogger,” survived, it was something of a medical miracle; the serial criminal, Matias Reyes, smashed the victim’s head and left her for dead.\textsuperscript{371} He went on to rape and murder a pregnant mother in her apartment while her children were locked in a closet, and raped and stabbed another three women in attempts to blind them, and almost abducted another within months of his attack on Meili.\textsuperscript{372} This spree was preceded by another rape of his in Central Park and two attempts.\textsuperscript{373} Likewise, Willie Randolph, “went on to commit a number of other violent crimes throughout the Chicago area.”\textsuperscript{374} Both trials occurred in the era before crime rates fell and before innocence consciousness began to raise the possibility of wrongful convictions in the minds of police and prosecutors. The “Central Park Five” investigation and trial was attended with high local and national publicity and took place in a racially charged atmosphere.\textsuperscript{375}

Although some of the facts surrounding the nature of the crime and the investigation in the cases differed, a key similarity is that in neither case did the investigators consider the possibility of a serial rapists or killers at work.\textsuperscript{376} Another similarity is that in


\textsuperscript{368} Acker, supra note 236, at 1682, 1683; Rob Warden, James Harden, Nat’l Registry Exonerations, http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3838 (last updated June 28, 2014) [hereinafter James Harden].

\textsuperscript{369} Acker, supra note 236, at 1682, 1684, 1686, 1687, 1688.

\textsuperscript{370} James Harden, supra note 368.

\textsuperscript{371} Korey Wise, supra note 367.

\textsuperscript{372} Acker, supra note 241, at 1689–90.

\textsuperscript{373} Id.; Annaliese Griffin, A Profile of Matias Reyes, N.Y. DAILY NEWS (Apr. 9, 2013), http://www.nydailynews.com/services/central-park-five/profile-matias-reyes-article-1.1308560.


\textsuperscript{376} See generally Acker, supra note 236, at 1683, 1687 (discussing how despite evidence
both cases DNA profiles excluded the defendants but the evidence was ignored.377

Cateresa Matthews was a middle school classmate of several of the Dixmoor defendants, two of whom were brothers.378 In November 1991 she went missing while walking home from her great-grandmother’s house.379 After twenty days “her body, naked from the waist down, was found . . . on a path running along I-57 in Dixmoor, a south suburb of Chicago. She had been raped and shot in the mouth with a .25-caliber weapon.”380 The Dixmoor serial criminal, “33-year-old convicted sex-offender Willie Randolph” did not know Cateresa Matthews, but lived about a mile from where her body was found.381 Randolph “had raped another young woman in the exact field where Ms. Matthews’ body was found, and [he] called the Dixmoor Police Department himself to report the body.”382 Despite his call, the body was not found for more than two weeks.383 The case went unsolved for the better part of a year when a teenager reported that Jonathan Barr mentioned seeing Cateresa getting into a car with Robert Taylor and Robert Lee Veal.384 Using psychological pressure interrogation techniques police obtained confessions from three of the boys and in October 1992 arrested all five.385

suggesting the innocence of the accused in both cases, prosecutors did not look at other suspects).

377 Id. at 1687; James Harden, supra note 368.
379 Cooper, supra note 378; Tepfer et al., supra note 378, at 638.
381 Complaint, supra note 374, at 2.
382 Id.
383 Id. at 7.
384 Id. at 11 (alleging that the police questioned a 15-year old boy, Keno Barnes, about the other teens, and that when Keno denied any knowledge, this information was suppressed and that the police falsely reported that Keno made a hearsay statement implicating Robert Veal and Robert Taylor); Jonathan Barr, supra note 380.
In June 1994, while the five awaited trial, the state police crime laboratory identified a lone male DNA profile from sperm recovered from Cateresa’s body that matched none of the five. Nonetheless, police and the Cook County State’s Attorney’s Office proceeded with the prosecution based on the three confessions — even though the confessions contradicted each other regarding material facts about the crime.386

No physical evidence connected the boys with the crime and the DNA test did not cause the police or prosecutors to reassess their decision.387 The police investigation, according to the civil rights compliant, “failed to develop information that would have established the guilt of . . . Willie Randolph.”388 The police knew Willie Randolph as a violent sex offender, that he was recently paroled for serving time for rape and armed robbery, and that he had previously raped a teen in the field where Cateresa’s body was found.389 In March 1992, Randolph was arrested for cocaine possession “after he was found wandering through the street disrupting traffic about a block from his home—again, not far from where Ms. Matthews’ body was found.”390 His criminal history apparently revealed “his past convictions as a violent sex offender and his parole date shortly before Ms. Matthews disappeared.”391 Two months later Randolph was convicted of shooting a revolver in the street and sentenced to a four-year term.392 With all of this he was never investigated as a suspect in the Matthews case.393 Over the years Randolph had been in and out of trouble with the law.394

Once the police were given (or possibly elicited) hearsay statements about the guilt of the five boys, they pursued the case with the intent of securing convictions.395 The Dixmoor boys were convicted (with the juveniles tried as adults) in separate trials in 1997, and received lengthy sentences.396 For our purposes the gist of the case is that the police actually knew a serious criminal in

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386 Jonathan Barr, supra note 380.
387 Acker, supra note 236, at 1683.
388 Complaint, supra note 374, at 7.
389 Id.
390 Id. at 8.
391 Id.
392 Id.
393 See id. at 2, 7.
394 Id. at 7, 8.
395 See id. at 11; Jonathan Barr, supra note 380.
396 Acker, supra note 236, at 1683.
their midst who fit the serial criminal profile and seemed to completely ignore him as a potential perpetrator of a heinous rape and murder.\textsuperscript{397} It is all the more astonishing that a DNA test, requested in order to confirm the police judgment, identified a single rapist and cleared the “Dixmoor Five.”\textsuperscript{398}

Unlike the delays between the crime, the discovery of Cateresa’s body, and the first allegations in the then relatively obscure Dixmoor case, the wild array of facts in the Jogger case exploded into public view on April 19, 1989 and in the days, weeks and months that followed.\textsuperscript{399} A rampage through Central Park that night by up to forty teens from Harlem created a media sensation and a massive police response.\textsuperscript{400} When the barely live body of a female jogger whose head had been bashed in came to light, a snap judgment was made that some of the rampaging teens had to have been the culprits.\textsuperscript{401} Aware of the huge public spotlight, the police and prosecutors videotaped the lengthy (and false) confessions that had a decisive impact on the convictions in the case.\textsuperscript{402} Having swung into gear behind an obvious cause and effect,\textsuperscript{403} the prosecutorial forces were not about to back down, even when it became clear that DNA testing, then in its infancy and before DNA profile databanks existed, cleared the defendants.\textsuperscript{404} To account for this glitch, and to square the confessions of the boys with the fact of the brutal rape, the prosecution surmised that one rapist escaped,\textsuperscript{405} a ploy jocularly known as the “unindicted co-ejaculator.”\textsuperscript{406}

\textsuperscript{397} Complaint, \textit{supra} note 374, at 2 (“[D]espite the evidence implicating Randolph, [the] Illinois State Police and Dixmoor Police Officers failed to pursue Randolph at the time of the crime . . . . Tragically, Randolph went on to commit a number of other violent crimes throughout the Chicago area.”).\textsuperscript{398} Acker, \textit{supra} note 236, at 1683.\textsuperscript{399} \textit{See} SARAH BURNS, \textit{THE CENTRAL PARK FIVE} 39 (2011); TIMOTHY SULLIVAN, \textit{UNEQUAL VERDICTS: THE CENTRAL PARK JOGGER TRIALS} 57, 77 (1992); \textit{Analysis of Confessions in '89 NYC Rape}, ABC NEWS, http://abcnews.go.com/Primetime/story?id=132077&page=1 (last visited Mar. 12, 2016); Acker, \textit{supra} note 236, at 1682; Smith, \textit{supra} note 375; Warden, \textit{supra} note 380.\textsuperscript{400} N. Jeremi Duru, \textit{The Central Park Five, The Scottsboro Boys, and the Myth of the Bestial Black Man}, 25 CARDOZO L. REV. 1315, 1316, 1348 (2004).\textsuperscript{401} \textit{Id.} at 1316; Smith, \textit{supra} note 375.\textsuperscript{402} Duru, \textit{supra} note 400, at 1353.\textsuperscript{403} A woeful example of the \textit{post hoc ergo propter hoc} fallacy. For an explanation of this fallacy, see Philip D. Donohoe, \textit{The Butterbaugh Fallacy}, 61 A.F. L. REV. 149, 172–73 (2008).\textsuperscript{404} Duru, \textit{supra} note 400, at 1357–60; see \textit{supra} note 403 and accompanying text.\textsuperscript{405} See SULLIVAN, \textit{supra} note 399, at 210 (“Forced by the DNA evidence to acknowledge that at least one rapist had escaped, [prosecutor] Lederer argued that it did not necessarily follow that these defendants were innocent.”).\textsuperscript{406} \textit{The Unindicted Co-Ejaculator}, SKEPTICAL JUROR (Nov. 10, 2010), http://www.skepticaljuror.com/2010/11/unindicted-co-ejaculator.html; \textit{MI: Prosecution’s “Unindicted Co-Ejaculator Theory” Results in Exoneration After DNA Excludes Defendant}, OPENFILE (Sept. 8, 2014),
police practices and organization may have contributed to the tunnel vision in this case. For one thing, NYPD investigative units were divided by types of crime and a lack of communication allowed Matias Reyes’ rape of Trisha Meili to go unnoticed.\footnote{Jim Dwyer, Convict Says Jogger Attack Was His 2nd, N.Y. TIMES (Oct. 5, 2002), http://www.nytimes.com/2002/10/05/nyregion/convict-says-jogger-attack-was-his-2nd.html.} Two attempted rapes, one just two days before April 19, focused some attention on Reyes by a Sex Crimes unit detective.\footnote{See id.; Jim Dwyer, Amid Focus on Youths in Jogger Case, a Rapist’s Attacks Continued, N.Y. TIMES (Dec. 4, 2002), http://www.nytimes.com/2002/12/04/nyregion/amid-focus-on-youths-in-jogger-case-a-rapist-s-attacks-continued.html; Griffin, supra note 373.} The so-called “wilding” that night was investigated by the Central Park Precinct detective division, which began to investigate the rape.\footnote{See Duru, supra note 400, at 1348; Smith, supra note 375; Richard A. Leo et al., Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century, 2006 WIS. L. REV. 479, 480 (2006).} The notoriety of the case led to its being taken over quickly by the Manhattan North Homicide Squad, an elite unit, rather than Sex Crimes Unit detectives, because Meili was not expected to survive.\footnote{Dwyer, supra note 408.} This lack of communication that \textit{might} have brought Reyes to the attention of the homicide detectives was compounded by the fact that it was apparently not standard operating procedure in 1989 for NYPD detectives “to question suspects for leads on any and all other crimes.”\footnote{Smith, supra note 375.} Reyes’ horrific string of rapes, accompanied by stabbing his victims’ eyes to prevent them becoming witnesses, and a murder that led to his arrest four months after the Central Park rape was itself newsworthy, but the link to that crime, for which five teens were imprisoned, did not come to light for over a decade until a remorseful Reyes, in prison for life, began to tell his story.\footnote{In what may be the most unintentionally ironic page among the millions of law review folios, Paul Giannelli’s book review of Harlan Levy’s book on the prosecutorial use of DNA profiling, \textit{And the Blood Cried Out}, interleaves the stories of the “East Side Slasher,” i.e., Matias Reyes, and the interrogation of the Central Park Jogger suspects, never suspecting that Reyes was indeed the real criminal. This coincidental pairing of a perpetrator with the wrongful conviction crime he committed speaks to the blindness of the prosecutors to really understand what the DNA evidence was telling them in the Central Park Five case. See Paul Giannelli, \textit{The DNA Story, An Alternative View}, 88 J. CRIM. L. & CRIMINOLOGY 380, 383–84, 391 (1997).}

Why did it never occur to the investigators that these brutal murder/rapes may have been committed by serial killers? Was it
rational for them to not consider the issue? As noted, investigators with a difficult case are faced with innumerable investigative options and must rely on heuristics to get to the most likely explanation.413 There was apparently no checklist of possible explanations that required the detectives in these cases to consider alternate scenarios. Although, it is possible that the criminology of serial killers could have provided some clues that pointed to alternative suspects. Serial killer usually begin their careers with less serious offenses before committing more serious crimes along the way; they often exhibit past histories of abuse and signs of psychopathy.414 Although a serial rapist and killer like Reyes was young, the physical capacities of an 18 and 14 year old differ.415 The horrific injuries to Tricia Meili were a sign of a deeply disturbed criminal.416 In Cateresa Matthew’s case, neither a spent bullet cartridge nor any other physical evidence linked the teens to the crime.417 None of these factors provided a magic profile to identify a serial criminal, but it is conceivable that investigators trained to read the signs of serial criminal careers could have made better judgments about that possibility.418 Adding the possibility of a serial criminal to the mix of investigative options could result in fewer errors of the type observed in the “mass-teen” wrongful conviction cases.

A final way in which the two cases are similar is that both resulted in very large civil rights settlements—about $40 million for each case.419 As we noted in our discussion of legal causation, a civil rights plaintiff must overcome hurdles to prove that improper police

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413 See supra Part III.D.
417 See Acker, supra note 236, at 1683.
418 NORDBY, supra note 172, at 49, 77, 140, 141, 147 (describing the incredibly detailed search of records to locate a child serial-rape killer in a child-abduction case and in another case the way in which an investigator with knowledge of serial killers’ careers developed a list of likely suspects in a local population leading to a successful solution).
investigation caused a wrongful conviction. In the Dixmoor Five case, the plaintiff alleged that police did not just make bad judgments, but fabricated evidence. By settling, both cities deflected the blame that would have come with trial verdicts.

2. Wrongful Convictions Involving Murder of Street-Walking Prostitutes

David Allen Jones—Chester Turner
Chaunte Ott, William Avery—Walter Ellis
Hubert Geralds, Jr.—Andre Crawford

The Jack-the-Ripper scenario—killing streetwalking prostitutes—is a classic locus of serial murder. Four such cases (involving three responsible serial killers) appear in our sample: David Allen Jones in Los Angeles, Chaunte Ott and William Avery in Milwaukee, and Hubert Geralds, Jr. in Chicago. All the exonerees and the serial killers—Chester Turner (Los Angeles), Walter Ellis (Milwaukee), and Andre Crawford (Chicago)—were African American. DNA contributed to three of the exonervations (Jones, Ott, Avery). Two of the exonerees, Geralds and Avery had prior criminal histories. Jones's case was investigated as a serial crime, indicating an error of wrongly identifying someone as a serial murder. The two other cases from Milwaukee, Ott and Avery, were not investigated as serial crimes; thereby uncovering errors in failing to treat the cases as serial crimes.

The Hubert Geralds–Avery Crawford case is truly odd, but on reflection quite understandable. In 1997, Geralds, a mentally retarded serial killer, was convicted in a jury trial for strangling
and murdering six drug-addicted prostitutes in Chicago between 1994 and 1995, including Rhonda King. The killings in the four cases were confirmed by DNA evidence and Gerals’ confessions, with both regarded as critical evidence. In 2000, Chicago police arrested Andre Crawford on suspicion of murder. He confessed to murdering eleven, including Rhonda King. Crawford’s confession was found to be accurate and prosecutors moved to vacate Gerals’ conviction for murdering King. In 2009, Crawford was convicted for the eleven murders, including King’s, and was sentenced to life imprisonment. This kind of confusion could stem from the fact that in a large city more than one serial killer might be operating simultaneously. Police intelligence may be derived in part from the disorganized lives and muddled brains of perpetrators. A news story accompanying Gerals’ arrest, for example, noted that some of the corpses killed by Gerals “gave no apparent indication of foul play” because he killed some of his victims by covering their noses and leaving no marks on their throats, a technique associated with strangulation. The causal issue in such a case lies not with the elements of the innocence paradigm, but with the need for investigative agencies to be better trained to recognize serial crimes (along with other unusual crime patterns); and better organized to maintain the kinds of records that would help detectives sort through the confusing facts of many such cases.

Aside from this unusual case, the errors in the other cases are troublesome. In the case of David Allen Jones, the police properly analyzed four murders committed near an elementary school in Los Angeles between September 30 and December 16, 1992 as the work of a serial killer. On December 31, Jones, a disabled part-time janitor in a fast food franchise with an IQ of 62, was arrested on suspicion of having raped a prostitute the day before. Two weeks later police got confessions to all crimes from Jones, and proceeded with his prosecution. The prosecution was flawed. Serology
testing on semen and saliva from three victims indicated type A, when Jones’s blood type was O.440 Records of the two-day interrogation showed that detectives asked leading questions and corrected two statements made by Jones that were wrong as to location.441 Jones was tried for the four murders.442 He was convicted of three and acquitted of one because the jury felt that the severe beating of the woman did not fit the pattern of the other three killings.443 Jones was exonerated nine years later when, after dogged police work, DNA profiling of Chester Turner linked him to eleven murders that included two of the crimes for which Jones was convicted.444 Based on the “signature nature” of the crimes indicating that all were committed by the same person, all of Jones’s convictions were dismissed.445

Was the kind of gross inaccuracy and gross injustice in Jones’s convictions “caused” by the false confession and disregard of the forensic evidence, or by an unprofessional and shoddy approach to the investigation? In that case it may be more accurate to say that police tunnel vision was a deeper cause than the forced and manipulated confession because the police used pressure tactics to achieve a goal that they already believed (i.e., that Jones was the serial killer).446 However, that does not end the likely dynamics at work that allowed this miscarriage. While reformed interrogation practices and instruction may reduce the number of wrongful convictions, the forces that generate systemic (but not necessarily routine) errors in all likelihood lie in matters dealing with the accountability structures and historic cultures within police departments.447

Walter Ellis, also known as the Milwaukee North Side Strangler, was an American serial killer who raped and strangled seven women in the city of Milwaukee, Wisconsin between 1986 and

440 Id.
441 Id.
442 Theresa Torricellas, Man Cleared 12 Years After Falsely Confessing as Serial Killer, 27 JUSTICE: DENIED 16, 16 (2005).
443 Id.
444 Acker, supra note 236, at 1700–01.
445 David Allen Jones, supra note 437.
446 See Acker, supra note 236, at 1699.
In 1998, “Maryetta Griffin, drug-addict and prostitute, was found partially clothed” in a pile of garbage in a Milwaukee garage.449 “She had been strangled.”450 This case would seem to fit a serial killer profile. Police became suspicious of William Avery, 25, who ran a crack house near the garage where Maryetta’s body had been found, because Avery knew Griffin.451 They questioned him for two days and came out with a fabricated confession, according to allegations in Avery’s civil rights lawsuit.452 Even though there was still not enough evidence to charge him with the murder, Avery was convicted in 1998 on drug-dealing charges and sentenced to 10 years in prison.453 While incarcerated, three prisoners snitched to authorities that Avery confessed to killing Griffin.454 Although one of the prisoners later recanted, the other two snitches’ testimony was sufficient to convict Avery of murdering Maryetta Griffin in 2005.455 Walter Ellis’s criminal career came to an end with his arrest in 2009 and his conviction of murdering seven women in Milwaukee over the years.456 Avery then requested DNA testing on evidence from Griffin, which excluded Avery and included Ellis.457 After his release, Avery won a §1983 trial verdict against the Milwaukee police, which found “that the detectives violated Avery’s civil rights by making up the incriminating statement and getting other inmates to corroborate it.”458

Chaunte Ott also won a settlement for Milwaukee police violations of his civil rights in conjunction with his wrongful conviction for the murder of Jessica Payne, a 16-year old runaway, whose body was found in 1995 near a drug house, her throat

449 William Avery, supra note 448.
450 Id.
451 Id.
453 William Avery, supra note 448.
454 First Amended Complaint, supra note 452, at 7.
455 William Avery, supra note 448.
456 Id.
457 Id.
slashed and her pants down around her ankles.\textsuperscript{459} Ott was implicated in her death by claims made by two men who testified to alleged facts of the crime at Ott’s trial.\textsuperscript{460} There was virtually no physical evidence connecting Ott to the murder.\textsuperscript{461} In 2002, DNA tests on semen found in Payne excluded Ott, but it did not lead to his release as he had not been convicted of rape.\textsuperscript{462} In 2007, prosecutors announced that the DNA profile matched two others from women murdered in the same neighborhood where Payne’s body was found.\textsuperscript{463} On that basis a new trial was ordered and the prosecutor declined to prosecute, freeing Ott.\textsuperscript{464}

In the Milwaukee cases the errors seemed like the willful disregard of a crime series that must have been known to all police investigators. Although the errors could be attributed to specific officers, as they were in Avery’s civil rights verdict,\textsuperscript{465} those pursuing structural reforms must address the kinds of factors that allow such errors in the first place; such as, funding, workloads, professional status, accountability structures, and cultures of the investigative units of police departments.

3. Family Member Wrongful Convictions

Kevin Green—Gerald Parker (“Bedroom Basher”) [wife and fetus]

Clarence Elkins—Earl Mann [mother-in-law and niece]

Julie Rea—Tommy Lynn Sells [son]

Byron Halsey—Clifton Hall [two informally adopted children]

David Camm—Charles Boney [wife and two children]


\textsuperscript{460} \textit{Chaunte Ott}, supra note 459.

\textsuperscript{461} Id.

\textsuperscript{462} Id.

\textsuperscript{463} Id.

\textsuperscript{464} Id.

\textsuperscript{465} See Barton, supra note 458.
The wrongful conviction of family members for harming their loved ones is especially heart wrenching. The factual circumstances of each of the five cases in this group differ, but in each investigators failed to connect the crimes to the true, serial criminals. In the cases of Kevin Green and Julie Rea, suspicions harbored by authorities did not lead to their immediate arrests.\footnote{See Heather Buchanan, The Unreliable Eyewitnesses, CRIME MAGAZINE (Sept. 16, 2013), http://www.crimemagazine.com/unreliable-eyewitnesses; Dusty Rhodes, Who Killed Joel?, ILL. TIMES (July 24, 2003), http://illinoistimes.com/article-372-who-killed-joel-.html.}

In Kevin Green’s case, his pregnant wife was alone in their apartment when she was choked and severely beaten, causing memory loss and a miscarriage.\footnote{Daniel Yi, Wrongly Convicted Man Settles Lawsuit Brought by Ex-Wife, L.A. TIMES (Dec. 8, 1999), http://articles.latimes.com/1999/dec/08/local/me-41671; Ernie, Kevin Lee Green–Wrongfully Convicted, AS I TRAVEL THIS LIFE BLOG (Jan. 22, 2013, 3:13 PM), http://asitravelthislife.blogspot.com/2013/01/kevin-lee-green-wrongfully-convicted.html; VOLLEN & EGGERS, supra note 260, at 399; Kevin Lee Green, supra note 301.} Green had gone out for hamburgers and police noted that when they arrived on the scene the food was still warm.\footnote{See Kevin Lee Green, supra note 301.} In the next few months his wife, with whom he had strained relations, grew suspicious and accused him of the crime; never considering an alternate hypothesis.\footnote{Id.; Kevin Lee Green, supra note 301.} Despite the lack of corroborating evidence, he was convicted for the attempted murder of his wife and second-degree murder of the fetus.\footnote{Ctr. on Wrongful Convictions, Julie Rea, NAT’L REGISTRY EXONERATIONS, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3278 (last visited Mar. 14, 2016) [hereinafter Julie Rea]; Dusty Rhodes, The End, ILL. TIMES (Aug. 10, 2006), http://illinoistimes.com/article-3319-the-end.html; Rhodes, supra note 471.}

He was not charged with rape, although the crime investigation detected and preserved the presence of sperm.\footnote{Julie Rea, supra note 475.} To the credit of the police, when DNA profiling became more prevalent, a cold case unit in 1996 linked the DNA from Dianna Green and others to Gerald Parker, an imprisoned convicted sex offender who was due for parole.\footnote{Id.} In addition to the DNA evidence, Parker admitted to the assault and rape of Dianna Green, perhaps because he and Kevin Green were ex-Marines.\footnote{Id.}

Julie Rea, a Ph.D. student in psychology, had custody of her ten-year-old son, Joel Kirkpatrick, and lived in a rural Illinois town.\footnote{Julie Rea, supra note 474.} In October 1997, an intruder entered the house at night and stabbed Joel to death.\footnote{Julie Rea, supra note 475.} Julie, asleep in another room, awoke and
was knocked down by the masked intruder.\textsuperscript{476} She ran to a neighbor’s house, confusedly thinking that Joel had been kidnapped.\textsuperscript{477} Although the police were suspicious of her, due to the anomalous nature of the crime in such a peaceful community, there was not sufficient evidence to charge.\textsuperscript{478} Possible local leads were investigated but did not pan out and the investigation was further poisoned by Julie’s ex-husband’s recriminations.\textsuperscript{479} Three years after the murder a new prosecutor obtained a grand jury indictment and Julie was convicted in 2002.\textsuperscript{480} The prosecutor simply could not fathom any explanation for the crime other than Julie taking revenge on her ex-husband, despite some physical evidence supporting her story.\textsuperscript{481} By a remarkable coincidence, true crime writer Diane Fanning, who was writing a book about imprisoned serial killer Tommy Lynn Sells asked him for his opinion about Julie’s story, which was the subject of a \textit{20/20} broadcast.\textsuperscript{482} To her surprise Sells plausibly admitted to the killing, having been in the vicinity of the crime.\textsuperscript{483} An appeal led to a retrial in which Julie Rea was acquitted.\textsuperscript{484}

In the Green and Rea cases, the crimes seemed inexplicable and so suspicion ripened into prosecutorial action. In a rational sense, the crimes were inexplicable, but as Jon Nordby points out, killers have their own logic: “Random killers may have aberrant beliefs, but no killing is illogical from the killer’s point of view.”\textsuperscript{485} The commonsense logic of the investigators and prosecutors in these cases simply failed to imagine a rare, but far from impossible, serial criminal scenario, and pursue the signs of such a possibility.

Clarence Elkins was convicted in 1999 of murdering his 58-year

\textsuperscript{476} Id.; see Rhodes, supra note 474.
\textsuperscript{477} Rhodes, supra note 466; Rhodes, supra note 474.
\textsuperscript{479} See generally id. (indicating that despite the lack of evidence against Julie Rea, certain statements made by Len Kirkpatrick fueled the State’s suspicions of Julie and ultimately led to her indictment).
\textsuperscript{480} Rhodes, supra note 466; Julie Rea, supra note 474.
\textsuperscript{481} See Sherr et al., supra note 478 (quoting prosecutor Ed Parkinson’s description of Julie’s version of events as being “nonsense”); see also Rhodes, supra note 466 (describing the evidence not being in favor of Julie).
\textsuperscript{482} Rhodes, supra note 466.
\textsuperscript{483} See Rhodes, supra note 474.
\textsuperscript{484} Julie Rea, supra note 474.
\textsuperscript{485} NORDBY, supra note 172, at 136. In a letter to Diane Fanning related to the murder of Joel Kirkpatrick, Sells wrote: “A murder don’t always have to do with sex or any of the norms y’all may want to label me with . . . . Maybe, someone just pissed me off and I did not want their child to be like them. That’s cold, I understand. Maybe more than just one person is in jail for the same thing.” Rhodes, supra note 466.
old mother-in-law, Judy Johnson, and raping his niece, Brooke Sutton, 6, in rural Ohio.\textsuperscript{486} Without any physical evidence linking him to the crime and his stout denials, his conviction rested on the girl's testimony that the crimes were committed by Uncle Clarence.\textsuperscript{487} Although a post-conviction Y-STR DNA test eliminated Elkins as the source of crime scene evidence, it was considered insufficient proof and a new trial denied.\textsuperscript{488} His wife's investigative perseverance of likely suspects identified Earl Mann as a likely suspect.\textsuperscript{489} With the luck of being housed in the same cell block as Earl Mann, and a bit of derring-do, Elkins retrieved a cigarette butt with Mann's DNA that identified Mann as the donor of the biological crime evidence.\textsuperscript{490} By that time Brooke's story began to change, reviving pre-trial uncertainty.\textsuperscript{491} Earl Mann was the common law husband of Tonia Brasie, Judy Johnson's neighbor.\textsuperscript{492} On the morning of the crime, a distraught Brooke went to Tonia's home and, instead of being cared for or calling authorities, was left outside for a half-hour while Tonia dressed her daughters and then took Brooke to her home.\textsuperscript{493} It was Tonia who claimed that Brooke announced that Clarence Elkins killed her grandmother.\textsuperscript{494} Earl Mann “had a long violent criminal record” and was later convicted for raping his three daughters.\textsuperscript{495}

Byron Halsey, a man with little education and severe learning disabilities, lived with Margaret Urquhart and her two children, Tina, 7, and Tyrone, 8, in a New Jersey rooming house.\textsuperscript{496} He helped support the family and raised the children as his own.\textsuperscript{497} One evening in 1985, when Margaret was at work, Byron left the children unattended to party with friends, being driven by next-door

\textsuperscript{487} Id.; Acker, supra note 236, at 1670.
\textsuperscript{489} Acker, supra note 236, at 1671.
\textsuperscript{490} Id. at 1672.
\textsuperscript{491} PETRO & PETRO, supra note 488, at 16.
\textsuperscript{492} Id. at 21.
\textsuperscript{493} Id. at 11.
\textsuperscript{494} Id. at 21.
\textsuperscript{495} Id.
\textsuperscript{496} See Acker, supra note 236, at 1656–57; The Innocence Project, Byron Halsey, NAT'L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3272 (last updated July 15, 2015) [hereinafter Byron Halsey].
\textsuperscript{497} Byron Halsey, supra note 496.
neighbor, Clifton Hall. Hall left Byron at the party and went home. Hall, in fact, went to Halsey’s apartment and raped and murdered the children in a horrific and brutal manner. Suspicion fell on Halsey. After a 30-hour interrogation Byron made guilty admissions. He also failed a polygraph examination. Clifton Hall testified against him at the trial. Six years later Hall was convicted for three brutal sexual assaults. When Halsey obtained access to crime scene evidence, DNA testing of the semen and other biological excluded him and instead included Clifton Hall. Although this case did not have the characteristic of a publically known serial criminal, the investigation seems clearly deficient in not scanning other likely suspects in the vicinity of the crime.

David Camm, a businessman recently retired from the Indiana State Police, returned home from a church recreational center basketball game at about 9:20 p.m. on a September evening in 2000 to find his wife, Kim, 35, shot and killed on the garage floor and his children, Brad, 7, and Jill, 5, in the car. He attempted to resuscitate Brad, but to no avail. Camm was immediately targeted as the killer and his conviction was bolstered by blood spatter forensic evidence, although he had strong alibi witnesses. His 2002 conviction was overturned because the prosecution introduced evidence of Camm’s extramarital affairs. Before his second trial DNA evidence from Charles Boney, a serial criminal, was found on a sweatshirt tucked under Brad. Camm was tried with Boney a second time on the theory that he molested his daughter and hired Boney to commit the murder to silence her. Camm and Boney were tried on murder and conspiracy charges in

498 Id.
499 Id.
500 See Halsey v. Pfeiffer, 750 F.3d 273, 279 (3d Cir. 2014) (“Tina had been raped, beaten, and strangled to death; Tyrone had been sexually assaulted, mutilated with scissors, and killed with five large nails hammered into his brain.”).
501 Byron Halsey, supra note 496.
502 Id.
503 Halsey, 750 F.3d at 278.
504 Byron Halsey, supra note 496.
505 Id.
506 Id.
507 See Halsey, 750 F.3d at 279–80.
508 David Camm, supra note 270.
509 Id.
511 Camm, 812 N.E.2d at 1129; David Camm, supra note 270.
512 David Camm, supra note 270.
513 Id.
separate trials; Camm was convicted in 2006 on the murder counts, 
the judge having dismissed the conspiracy count.\footnote{514} In his second 
trial, the prosecution introduced three prison snitches claiming that 
Camm admitted to the crimes.\footnote{515} Camm’s second conviction was 
reversed on the grounds that the molestation claim was highly 
speculative.\footnote{516} He was acquitted in 2013 in a third trial in which 
molestation evidence was excluded, Boney testified against Camm, 
and a forensic expert testified to Boney’s DNA under one of Kim’s 
fingernails.\footnote{517}

Charles Boney had a long history of assaults on women and 
stealing their shoes due to a foot-fetish.\footnote{518} Beginning “in the 1980s 
when he was a student at Indiana University. Newspapers called 
him the shoe bandit and followed his bizarre crimes. There had 
been four separate incidents. His early MO: he would knock the 
woman to the ground and make off with one of her shoes.”\footnote{519} In the 
Camm crime scene, Kim’s shoes were placed neatly on the vehicle 
and she had a series of bruises and abrasions to her feet.\footnote{520} Although Boney’s DNA was entered into the criminal DNA database 
prior to 2000, the prosecution apparently did not test the sweatshirt 
for evidence of another criminal.\footnote{521}

Aside from the failure of the police or prosecution to consider an 
alternate theory to the crime and the lapses in the initial 
investigation, this case is troubling in the sense that once a serial 
criminal emerged, with a crime signature connecting him to the 
crime, the prosecution switched to a theory of the case with many 
implausible features, including the tenuous motive and Camm’s 
hiring a recently released parolee with an unstable background to 
kill his family.\footnote{522} Police are fully justified in considering spouses as 
potential suspects in the unexplained killing of their partners given 
the reality and number of such crimes, but they need to follow the 
evidence rather than manufacturing it or floating bizarre theories.

\footnote{514}Id.\footnote{515}Id.\footnote{516}Id.\footnote{517}David Camm, supra note 270.\footnote{518}Katie Mettler, Suspended Justice, IND. DAILY STUDENT (last visited May 16, 2016), http://specials.idsnews.com/suspended-justice/.\footnote{519}Dateline: Mystery on Lockhart Road (NBC television broadcast Jan. 31, 2014).\footnote{520}Id.\footnote{521}Id.\footnote{522}Id.
2015/2016] Elephants in the Station House 1015

4. Long Distance Serial Killer Wrongful Convictions

Laverne Pavlinac and John Sosnovske—Keith Jesperson (“Happy Face Killer”)

Jacob Beard—Joseph Paul Franklin

Julie Rea—Tommy Lynn Sells

As occurred in Julie Rea’s case, a serial killer on the move can create devastation and then leave the scene of a crime, with local investigators utterly confused as they run down dry leads.\textsuperscript{523} The police failure to identify such serial crimes is perhaps more understandable than the willful blindness to acknowledge a local serial killer who has not been caught. Nevertheless, it can generate its own forms of error. In the case of Jacob Beard, three young women in the summer of 1980 hitchhiked to rural southeast West Virginia to attend a “hippie” gathering of the “Rainbow Family” in Monongahela National Park.\textsuperscript{524} One woman left but shortly after the bodies of Nancy Santomero, 19, and Vicki Durian, 26, were found near Droop Mountain Park in Pocahontas County.\textsuperscript{525} The crimes were unsolved for years as rumors floated through the tight knit local community.\textsuperscript{526} Police reinvestigated the crime in 1991 and traced some previously unfollowed leads to a witness whose decade-old accusations led to further interviews.\textsuperscript{527} As a result, in 1992 Beard and six others were indicted.\textsuperscript{528} The indictments were dropped when the prime witness recanted, claiming police coercion.\textsuperscript{529} In 1993, Beard and four others were re-indicted.\textsuperscript{530} The others testified against him and Beard was convicted.\textsuperscript{531} The trial judge refused to allow into evidence a 1984 confession to the killings of Nancy and Vicki made by Joseph Paul Franklin, a notorious serial killer who was imbued with racist hatred.\textsuperscript{532} Beginning his

\textsuperscript{523} See, e.g., Julie Rea, \textit{supra} note 474.
\textsuperscript{525} Id.
\textsuperscript{526} Id.
\textsuperscript{527} Id.
\textsuperscript{528} Id.
\textsuperscript{529} Id.
\textsuperscript{530} Id.
\textsuperscript{531} Id.
\textsuperscript{532} See \textit{id.} He changed his name from James Clayton Vaughn, Jr., out of admiration for
crime career in 1976, Franklin travelled across the country killing and wounding targets with a sniper rifle, bombings, and bank robberies. Included among his attempted murders were attacks on civil rights leader Vernon Jordan, Jr. and Larry Flynt, the outspoken publisher of *Penthouse* magazine. "He killed possibly more than 20 people and seriously injured six more." An FBI article noted that his wide travels "and [the] lack of evidentiary connections between his crimes—as well as his skill at living the life of an anonymous drifter—kept Franklin under the radar for a time." His arrest in 1980 was followed by convictions and life sentences of the death penalty in different states. He was being held in the federal penitentiary at Marion, Illinois when he confessed to the 1997 West Virginia crime to an Ohio assistant prosecutor in the course of investing another case.

The difficulty of tracking long-distance serial killers suggests better coordination between police agencies about such cases. When crime-fact communication occurs, it can lead to solving cases, as occurred in the Vasquez case.

The other long-distance case in our sample is truly odd. The first killing attributed to long-distance truck driver Keith Jesperson, the "Happy Face Killer," was that of Taunja Bennett, 23. Bennett's body was found in 1990 in a remote area of the Columbia Gorge, just outside Portland, Oregon. He met Taunja in a bar; they left, had sex, and he then beat and strangled her to death. He established an alibi by going out for drinks and conversing with people. The next day he disposed of the body at one place and


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533 *Serial Killers, supra* note 349.
535 *Serial Killers, supra* note 349.
536 Id.
537 Id.
538 Id.
539 *See infra* notes 572–75 and accompanying text.
541 Id.
542 Id.
543 Id.
some of Taunja’s belongings in another remote location, before leaving the area.\textsuperscript{544} News of Taunja’s corpse and the unsolved case drew the attention of Laverne Pavlinac, 57, in a bizarre and misguided way of dumping her abusive boyfriend, John Sosnovske, 39, by alerting police to a false story that he murdered Taunja.\textsuperscript{545} Her story dissolved into a confession that Sosnovske forced her to assist in the murder.\textsuperscript{546} Despite some inconsistencies and a belated plea of innocence, Pavlinac was tried and found guilty.\textsuperscript{547} Sosnovske pleaded no contest to murder and kidnapping.\textsuperscript{548} They received life sentences in 1991 and remained in prison for four years.\textsuperscript{549} In 1995, Jesperson was arrested for murdering his girlfriend in Washington State and talked about his other murders leading to the release of Pavlinac and Sosnovske, although the judge refused to vacate her conviction, “chastising her for abusing the judicial system.”\textsuperscript{550} In this case there could be no local knowledge of a serial killer on the loose. Despite the difficulty of finding the real killer, there were weaknesses in the case. Laverne changed her story at times and it included inconsistencies.\textsuperscript{551} No incriminating evidence was found and Pavlinac’s claim to have such evidence was determined by prosecutors to have been planted.\textsuperscript{552} These factors should have warned the prosecutors not to proceed, although it may be a matter of judgment as to how many loose ends can remain in an investigation before a line of inquiry comes to be seen as too weak to pursue. One last factor is that during the investigation and trial of Pavlinac and Sosnovske, Jesperson wrote letters, inscribed with a “happy face,” to newspapers claiming to have killed Taunja Bennett.\textsuperscript{553} Ignoring such letters may be understandable because police often receive unsolicited and unfounded claims of guilt in

\textsuperscript{544} See id. ("[Jesperson] showed authorities where he had scattered the contents of Miss Bennett’s purse.").
\textsuperscript{545} Id.
\textsuperscript{547} See id.
\textsuperscript{548} Id.
\textsuperscript{549} Id.
\textsuperscript{550} Id.; Louise Boyle, Daughter of ‘Happy Face’ Serial Killer Reveals How She Found Duct Tape In His Truck’s Sleeper Cabin and How He Hanged and Tortured Her Kittens When She Was Five, DAILYMAIL.COM, http://www.dailymail.co.uk/news/article-2823967/Daughter-Happy-Face-serial-killer-Keith-Hunter-Jesperson-reveals-duct-tape.html (last updated Nov. 6, 2014) (“The killer was finally caught in March 1995 after strangling long-time girlfriend.”).
\textsuperscript{551} See \textit{John Sosnovske}, supra note 546.
\textsuperscript{552} Id.
\textsuperscript{553} See Fuoco, supra note 540.
notorious murders, but detailed letters should lead to further investigation and caution about initial suspicions.

5. Serial Murder Wrongful Convictions

Ray Krone—Kenneth Phillips

Ray Krone was convicted in 1992 for murdering Kim Ancona, a bartender of a Phoenix bar that he frequented.554 The owner of the bar found Ancona’s body in the bar’s men’s room the Sunday morning after she was killed, apparently around closing time.555 She had been stabbed to death and bite marks were visible on her neck and left breast; she was naked except for her socks and her clothes had been cut up.556 Saliva samples came from a blood type-O secretor, and both Krone and Ancona were type-O secretors.557 There was no presence of semen on any sample.558 Although DNA testing was available in 1992, it was not performed.559 Krone was convicted on the basis of circumstantial evidence and faulty bite-mark analysis that supposedly matched his dentition to the marks found on Kim’s body.560 In 2002, a DNA test of the blood and saliva from the crime excluded Krone and matched Kevin Phillips.561 Phillips was serving time for molesting a child, which he had been arrested for approximately four weeks after Kim Ancona was murdered.562 Phillips lived a short distance from the bar and also frequented it.563 The investigation was apparently marked by tunnel vision as the police questioning of Phillips appeared to be cursory.564

This case indicates that labeling a person as a serial criminal can be tenuous. Phillips, an alcoholic, pleaded guilty to murdering Kim Ancona based on DNA and substantial other evidence, admitted to earlier entering a woman’s apartment and assaulting her, was on intensive probation at the time of the murder, and was serving a

554 Acker, supra note 236, at 1679; Ray Krone, supra note 317.
555 Acker, supra note 241, at 1679.
557 Id. at 19.
558 Id.
559 Id.
560 Id. at 20–21; Ray Krone, supra note 317.
561 Ray Krone, supra note 317.
562 RIX, supra note 556, at 341.
563 Id. at 170, 341.
564 See id. at 170.
long sentence for molesting a seven-year old girl.\textsuperscript{565} This serious, chronic series of crimes does not appear to fit the more classic serial crime profiles in our sample and raises questions not only about the precision of criminological definitions, but about the degree to which investigators should be concerned with the criminal backgrounds of potential suspects. Unlike Phillips’ sordid life, Krone had been a good high school student, an honorably discharged veteran, a responsible worker and an even-tempered fellow who “never had any altercations with the police—not even a traffic citation.”\textsuperscript{566} Yet, Phillips was barely questioned about the crime while suspicion fell on Krone.\textsuperscript{567} While “fine upstanding citizens” do commit serious crimes, and ex-convicts are wrongfully targeted and convicted for crimes they did not commit,\textsuperscript{568} the odds of misconduct are aligned to a person’s profile.\textsuperscript{569} The case also indicates the problems with labeling a crime. We do not include the case among the serial murder/rape cases, but Phillips pleaded guilty to first-degree murder and sexual assault for the crimes against Kim Ancona.\textsuperscript{570}

6. Serial Murder/Rape Wrongful Convictions

David Vasquez—Timothy Spencer

Rolando Cruz, Alejandro Hernandez—Brian Dugan [child victim]

Frank Lee Smith, Jerry Frank Townsend—Eddie Lee Mosley [one child victim]

Claude McCollum—Matthew Macon

\textsuperscript{565} Id. at 341, 405–06.
\textsuperscript{566} Id. at 12–13.
\textsuperscript{567} See id. at 170.
\textsuperscript{568} See CALVIN C. JOHNSON JR. & GREG HAMPKHIAN, EXIT TO FREEDOM 83, 127 (2003) (noting how a prior burglary crime led to wrongful rape charges and a conviction).
\textsuperscript{569} As Nordby stated:

When searching for a perpetrator, convicted felons provide a natural class of suspects. Jurists argue that past crimes do not provide evidence for current offenses. Investigators know better. Civil libertarians cry foul when newly paroled criminals routinely appear in police lineups. Yet supposing that an unsolved violent crime connects with an available violent felon supplies the simplest and most natural hypothesis to test. Each felon faces the elimination tests supplied by the evidence developed in the case. No shortage of felons hinders investigators. Usually too many match the crime.

NORDBY, supra note 172, at 140.

The four serial killers described in this section fit the nightmarish stereotype of the remorseless and vicious psychopath. Their careers have been briefly described above.\footnote{See supra Part IV.} In this section we focus on any possible errors made by investigators relating to the serial crime issue. The error in David Vasquez' conviction was quite similar to that in Central Park Five Case—imagining an “unindicted co-ejaculator.”\footnote{See James R. Acker & Rose Bellandi, \textit{Deadly Errors ad Salutary Reforms}, in \textit{WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE} 147, 272 (Marvin Zalman & Julia Carrano eds., 2014); Hilary S. Ritter, \textit{It's the Prosecution's Story, But They're Not Sticking to It: Applying Harmless Error and Judicial Estoppel to Exculpatory Post-Conviction DNA Testing Cases}, 74 FORDHAM L. REV. 825, 832 n.42, 843–44 (2005).} The torture, rape, and murder of Carolyn Hamm required great physical strength, a quick, lithe body able to enter a home through a basement window, diabolical planning, and a remorseless character.\footnote{See \textit{PAUL MONES, STALKING JUSTICE} 52, 86–87 (1995) (noting how Vasquez met none of these requirements); Zalman, supra note 366, at 148–49.} David Vasquez possessed none of these qualities, and the investigators knew it.\footnote{See supra note 572, at 1694–96.} But, having obtained a false confession from a man with a low IQ, who could not even drive to the crime scene, they assumed a co-conspirator who escaped.\footnote{Acker, supra note 572, at 1695–96; Zalman, supra note 573, at 148–49; Jonah Horwitz & Rob Warden, \textit{David Vasquez}, NAT'L REGISTRY EXONERATIONS, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3705 (last updated Mar. 11, 2014) [hereinafter \textit{David Vasquez}].} As this was the first DNA exoneration in the United States,\footnote{Ritter, supra note 572, at 833 n.57.} one might hope that with DNA profiling there may be fewer such errors. However, the suggestions made in regard to the “Central Park Five” case for better understanding of serial crimes among investigators are worth adopting since biological evidence may not always be present.\footnote{See supra Part 1; see, e.g., Giannelli, supra note 412, at 383–84.} Claude McCollum, a community college student with significant learning disabilities, was intensely interrogated for murdering Professor Carolyn Kronenberg, 60, in a classroom.\footnote{See supra note 573, at 148–49.} Along with his false confession in which answers to hypothetical questions were taken as admissions, a forensic expert testified that a strand of fiber on McCollum’s clothing might have come from the victim’s sweater.\footnote{Stephanie Denzel, \textit{Claude McCollum}, NAT'L REGISTRY EXONERATIONS, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3421 (last visited Mar. 9, 2016) [hereinafter \textit{Claude McCollum}].} A reinvestigation of McCollum’s 2006 conviction, instigated by serial rape-murderer Matthew Macon’s admission to...
the crime in 2007, revealed a number of errors. Most significant was a damaged surveillance videotape that showed McCollum to be in a different college building at the time of the murder. A state police investigator saw the tape and wrote a report clearing McCollum, which the trial prosecutor claimed he gave to the defense attorney. The defense, however, never received the report. On direct examination the prosecutor did not ask the detective about his exonerating conclusion. Also, a fingerprint on a plastic bag found near the crime scene that was examined during the post-conviction review came from Macon. This is a case where good police work could have prevented a miscarriage of justice, but prosecutorial misconduct led to a wrongful conviction. The trial prosecutor was fired for his misconduct. Aside from the clear misconduct in this case, including the tenuous nature of the confession, we note that that the possibility of a serial killer was apparently not considered. The deviant nature of the murder should have raised the possibility of a serial crime and a behavioral profile developed to assess whether McCollum was a likely fit.

The errors in the well known Cruz and Hernandez case were even more egregious. A tough police investigator, not averse to high-pressure interrogations, John Sam, concluded early on that the suspects Rolando Cruz, Alejandro Hernandez, and Stephen Buckley were innocent of raping and murdering Jeanine Nicarico in 1983. When facing the possibility of being called to testify for the prosecution, he resigned from his career. After the first

580 Id.
581 Id.
582 Id.
583 Id.
584 Id.
585 Id.
590 Rolando Cruz, supra note 589; Alejandro Hernandez, supra note 589.
591 FRISBIE AND GARRETT, supra note 121, at 87; see Rolando Cruz, supra note 589.
conviction of Cruz and Hernandez, serial killer Brian Dugan was arrested in 1985 for other abductions and admitted to the murder for which two men were on death row. The Cruz-Hernandez convictions were overturned on appeal in 1989, but the men were re-convicted. Even after a DNA test positively excluded Cruz and Hernandez and matched Dugan to near certainty, the prosecution was set to continue beyond a second reversal. An assistant attorney general, Mary Brigid Kenney, assigned to oppose Cruz’s second appeal, resigned in protest when her discovery of prosecutorial misconduct was disregarded. Cruz’s ordeal ended with a directed verdict at his third trial, and charges against Hernandez were then dropped. The level of police and prosecutorial misconduct was so great that three prosecutors and four sheriff’s deputies were prosecuted, but were acquitted in a bench trial.

The Frank Lee Smith and Jerry Frank Townsend cases also exhibited egregious police and prosecutorial misconduct, and exuded institutional racism and the malign neglect of an entire community brutalized by Eddie Lee Mosley, an out-of-control serial rapist and killer. These cases strongly indicated the presence of serial killers at work. In the Illinois case of Cruz and Hernandez authorities simply failed to absorb the lesson even after the serial killer confessed and his story was confirmed by DNA testing. An ex-detective in the case saw the connection but was ignored. In

*Alejandro Hernandez*, supra note 589.

592 *Rolando Cruz*, supra note 589; *Alejandro Hernandez*, supra note 589.

593 *Id.*

594 *Id.*

595 *Id.* See supra note 252 and accompanying text.

596 *Id.* See supra note 252 and accompanying text.


598 See supra notes 336–40 and accompanying text; Acker, *supra* note 236, at 1676–78.


601 See *FRISBIE AND GARRETT*, supra note 121, at 158 (explaining that shortly after Dugan’s arrest, John Sam suggest to his former colleagues that Dugan should be “checked out” in the killing of Jeanine Nicarico).
the Florida cases of Smith and Townsend, two experienced detectives who knew a serial killer was on the loose were virtually ignored of decades. The errors in these cases included the failure of investigative bureaus to conduct their business in more systematic and professional ways. It could have been the case that investigators who were better trained to be alert of the possibility of a serial crime could have reviewed the evidence for the possibility when the facts presented a reasonable chance that such a diagnosis would bear fruit. In addition, these cases included far more serious misconduct, which raise troubling questions about whether some forms of error in police investigation are systemic or episodic.

7. Serial Rape Wrongful Convictions

Randall Lynn Ayers—Robert Minton

John Tingle, Jr.—Kerri Charity Rape (“North End Rapist”)

John Willis, Jr.—Dennis McGruder (“Beauty Shop Rapist”)

Carlos Marcos Lavernia—“Barton Creek Rapist”

Larry Youngblood—Walter Cruise [child victim]

Julius Ruffin, Arthur Whitfield—Aaron Doxie, III

Anthony Capozzi—Altemio Sanchez

Jerry Miller—Robert Weeks

Timothy Cole—Jerry Wayne Johnson (“Tech Rapist”)

Ricardo Rachell—Andrew Hawthorne [child victim]

Thomas Haynesworth—Leon Davis (“Black Ninja Rapist”)


603 See id.
Jerry Lee Jenkins, Michael McAlister—Norman Derr

In seven cases the investigation erred by confusing the exonerees with serial rapists. Five others—John Willis, Jr., Carlos Lavernia, Anthony Capozzi, Timothy Cole, and Thomas Haynesworth—involved local serial rapes that were unsolved at the time the exonerees were arrested and convicted.604

John Willis, Jr. came to the attention of police by an anonymous tip claiming he was a serial rapist operating in a Chicago neighborhood.605 He was identified in a lineup and a forensic examiner who later became notorious for falsifying reports, Pamela Fish, testified that analysis of the crime scene semen was “inconclusive.”606 The fact that the serial rapes continued after Willis was arrested did not cause the police or prosecutors to examine the case more closely.607 He was convicted of two rapes and was wrongfully identified as a serial rapist.608

Similarly, Carlos Lavernia was convicted as a suspected serial rapist.609 Seven rapes had occurred near Barton Creek Park, the last in 1983.610 A year went by without any attacks and police guessed that the rapist had been jailed.611 They scoured prison records for prisoners from Barton Creek who fit the description of the last rapist, and the list including Lavernia.612 Actually, Lavernia, standing 5’4”, did not match the rapist’s reported height, 5’10”; he was convicted despite this discrepancy on the basis of weak eyewitness identification and a flawed forensic analysis of his blood type.613 DNA testing in 2000 excluded him and allowed him to prove his innocence.614 The “Barton Creek” rapist was never identified.615

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604 See infra Table 1.
606 Acker, supra note 236, at 1674.
607 See id. (noting how Willis was still brought to trial even though Dennis McGruder was arrested for and plead guilty to similar crimes during Willis’s detainment).
608 See id. at 1673–74; John Willis, supra note 605.
609 Carlos Marco Lavernia, supra note 123.
611 See Smith, supra note 610.
612 Id.
613 Id.; Carlos Marco Lavernia, supra note 123.
614 Carlos Marco Lavernia, supra note 123.
615 Carlos Lavernia, INNOCENCE PROJECT, http://www.innocenceproject.org/cases-false-
Thomas Haynesworth was identified as a serial rapist by five victims, tried for four of the crimes, and convicted of three. The rapes continued after he was arrested; the Richmond, Virginia assailant, Leon Davis, named himself the “Black Ninja.” Nevertheless Haynesworth, incarcerated at age 18, spent 26 years in prison until exonerated by DNA testing in 2011.

Anthony Capozzi was convicted in 1987 for three 1984 rapes with similar modus operandi committed near Buffalo, New York. From 1981 to 2007, when Altemio Sanchez, the “Bike Path Rapist” or the “Bike Path Killer,” was arrested, local detectives had been hunting for the predator who killed at least three of his many victims. As Capozzi’s conviction, based on flawed identifications, did not end the signature crimes, his conviction should have been suspect. Indeed, after DNA evidence excluded Capozzi, leading to his exoneration, a detective admitted that he was concerned that an innocent man may have been convicted for some of the Bike Path Rapist’s crimes. Within days of Sanchez’s arrest based in part on his DNA profile police opened Capozzi’s case and initiated action leading to his exoneration.

“From December, 1984-March 1985, five sexual assaults occurred on or near the Texas Tech campus in Lubbock County, Texas. All five attacks shared enough similarities that Police [sic] were fairly sure they were looking for one culprit.” A victim’s description generated a composite sketch. Police were on the lookout near the campus and an officer spotted Timothy Cole while entering a
restaurant as a possible look-alike. Flawed identification procedures compounded a mistaken identification. That, plus flawed forensic reporting and a disbelieved family alibi, contributed to Cole’s wrongful conviction. Also, the trial judge barred evidence of continuing rapes proffered by Cole’s attorney. Thirteen years later, Timothy Cole, an honorably discharged veteran who was supporting his younger siblings while attending college, died in prison from an asthma attack. He was posthumously exonerated when the perpetrator admitted to the crime and DNA testing excluded Cole.

Two wrongful convictions were generated by Norman Derr’s serial rapes in 1986 and 1987 that police pursued as possible serial crimes. Unfortunately, they missed the opportunity to nab the real assailant. Derr operated around Richmond, Virginia and into Maryland. In Virginia he had been suspected by police of raping women in apartment complex laundry rooms. A woman reported such a rape and a detective thought that the description might fit Michael McAlister, who was known to the police because of two public indecency arrests. In fact, the victim was shown photographs of McAlister and Derr, who closely resembled one another, and picked McAlister. Although her ability to see the assailant was limited, the judge disbelieved the family alibi witnesses.

A more egregious police decision occurred in the case of Jerry Lee Jenkins. Derr struck in Maryland at about the same time,
attacking real estate agents alone in their properties. A victim in 1986 provided a partial description to investigators. A detective thought the modus operandi of the crime was similar to a 1984 rape and began to investigate the case as a serial rape. When the investigation stalled, the detective showed Jenkins’ photograph to the victim; she said the photograph “looked like” her assailant but she was not sure. A blood analysis of the 1984 rapist arrived and it excluded Jenkins. At that point the detective dropped the serial rape theory and pursued the case as an isolated crime. Jenkins was convicted despite the weak eyewitness identification. A DNA test was performed, but in 1988 the technique was in its infancy, and the result was inconclusive. Jenkins was sentenced to life imprisonment. He was ultimately exonerated by a more advanced DNA test linking the crime to Derr, following a convoluted procedural battle.

Two convictions for sexual assaults on young boys, against Larry Youngblood and Ricardo Rachell, were obtained with mistaken eyewitness identification and a lack of proper forensic testing. In Rachell’s Texas case, similar sexual assaults continued in the vicinity after he was incarcerated. This should have sent a clear signal to investigators and prosecutors, especially when the actual perpetrator, Andrew Hawthorne, was a registered sex offender who lived in the same vicinity. Furthermore, the same officers who had arrested Hawthorne arrested Rachell but failed to see any connection to the crime for which Rachell was convicted. The offender in Youngblood’s case, Walter Cruise, may have been harder

640 Id.
641 Id.
642 Id.
643 Id.
644 Id.
645 Id.
646 Id.
647 Id.
648 Id.
649 Id.
651 Acker, supra note 236, at 1663.
652 Id.
653 Id.
to spot, as he had lived in Texas and Arizona and his more
dispersed crime pattern did not create the sense that a local
molester was at work. DNA testing helped exonerate both
Rachell and Youngblood.

Jerry Miller, an Army veteran who had never been in trouble,
spent 24 years in prison for a rape committed by Robert Weeks in
Chicago in 1981. A serial crime analysis may not have been
possible in the case, as Weeks was apparently just beginning a
prolific life of crime marked by abductions, rapes, and assaults on
police officers. Miller’s wrongful conviction included the use of a
composite sketch that led to him, the disbelief of a family alibi,
forensic science error, and the suppression of lineup evidence
identifying others.

In three additional cases the investigation erred by not
connecting the exonerees to the ongoing crime sprees of serial
rapists. One case, the conviction of John Tingle, Jr. for a rape in
Virginia Beach, Virginia based on a mistaken identification, was
overturned within two months when the serial rapist Keri Charity
was arrested and the victim and police realized their error. The
other two cases involved lengthy prison sentences and ultimate
exoneration when DNA testing revealed the perpetrators. Julius
Ruffin and Arthur Whitfield did time for rapes committed by Aaron
Doxie, III in 1981 in Norfolk, Virginia. Doxie’s criminal career
was cut short in 1984 with a sentence to life in prison. Both
Ruffin and Whitfield were convicted on mistaken identifications.
In both cases alibis were disbelieved. Both were ultimately released because Virginia crime laboratory analyst Mary Jane Burton had the unique practice in the pre-DNA testing era of preserving samples with biological material in the state’s crime files. Later DNA testing of these samples excluded Whitfield and Ruffin and pointed to Aaron Doxie as the rapist.

8. Wrongful Convictions Involving Other Kinds of Serial Crimes

Charles Bunge—Manuel Vieara

Bunge was convicted for a street robbery that was later admitted to by repeat offender Manuel Vieara. A woman thwarted an attempted purse snatching and the assailant drove off in a red car. Bunge had the misfortune of being stopped for a noisy muffler while driving a burgundy colored car nearby. The victim identified Bunge in a showup while he sat in the police cruiser. Before trial, Bunge, free on bail, noticed a Crime Stoppers reward poster for Manuel Vieara, who was wanted for several robberies. This evidence was disallowed at trial and Bunge was convicted. The conviction was reversed on appeal on the ground that the reward poster should have been admitted into evidence. On retrial, the reward poster was admitted and Bunge was acquitted. In a wrongful conviction lawsuit brought by Bunge, Vieara testified and admitted to the attempted robbery, saying “that he was a serial

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663 Dunton, supra note 660; Julius Ruffin, supra note 660.
664 Acker, supra note 236, at 1652; Dunton, supra note 660; Julius Ruffin, supra note 660.
666 Charles Bunge, supra note 277.
667 Id.
668 Id.
669 Id.
670 Id.
671 Id.
672 Id.
673 Id.
drive-by purse snatcher as far back as 1990.\textsuperscript{674} As noted above, this case was included in our sample because of Vieara’s self-designate label as a serial criminal.\textsuperscript{675} The more conventional criminological nomenclature would be a professional or repeat criminal as opposed to an amateur, one-time, or episodic criminal.\textsuperscript{676} In addition to including the case to highlight the common definition and focus of criminological research on serial crime, Bunge’s case suggests that investigation judgment errors may be rife in the more common felonies like theft, robbery, burglary, and drug offenses. As noted above, as of December 19, 2015, homicide, sexual assaults, and child sex abuse constitute 68.8% of NRE exoneration.\textsuperscript{677} Yet these crimes constitute less than 2 percent of total crime, and about 8½ percent of violent crimes, as reported to the FBI’s Uniform Crime Statistics (UCR) system.\textsuperscript{678} Moreover, property felonies known to the police are seven times more frequent than the violent crimes of murder and non-negligent homicide, rape, and robbery.\textsuperscript{679} Yet, as of December 19, 2015, the NRE included only 94 robbery, 61 assault, 9 burglary/unlawful entry, 11 theft, and 162 drug possession or sale exoneration.\textsuperscript{680}

\textsuperscript{674} Id.

\textsuperscript{675} See supra note 299 and accompanying text.

\textsuperscript{676} See Murat C. Mungan, The Law and Economics of Fluctuating Criminal Tendencies and Incapacitation, 72 Md. L. Rev. 156, 206 (2012) (stating that a professional criminal is defined as someone having fluctuating and high criminal tendencies).

\textsuperscript{677} See supra note 261 and accompanying text.

\textsuperscript{678} Note that there are several ways to count crime numbers. Crimes known to the police will provide somewhat different proportions than figures on arrests or convictions, or crimes reported to the National Crime Victimization Survey. Yet, for general comparisons the monitored and relatively stable UCR system is a useful tool.

\textsuperscript{679} In 2014, according to the UCR, there were an estimated 1,165,383 violent crimes compared to “8,277,829 property crimes (burglaries, larceny-thefts, and motor vehicle thefts) reported by law enforcement.” Latest Crime Stats Released, FBI (Sept. 28, 2015), https://www.fbi.gov/news/stories/2015/september/latest-crime-stats-released/latest-crime-stats-released [hereinafter Latest FBI Crime Stats].

Together these common crime categories amounted to 19.6% of 1,721 exonerations. Yet, robberies and aggravated assaults constitute 91.6 percent of all violent felonies; burglary and theft constitute 91.7 percent of all property crimes. As for drug offenses, the FBI reported 1,561,231 arrests for “drug abuse violations” in 2014. It should be abundantly clear that among this large number of crimes many will be committed by professional criminals who will take steps to hide their activities. Each such crime raises the risk that an innocent person will come under suspicion and some portion of them will be wrongfully convicted. This may state the obvious, but it points to the essential need for crime investigations to adhere to standards of excellence and best practices across-the-board. Given the very large number of law enforcement departments, the inevitable variations in quality, and endemic resource problems, errors will occur. This in turn highlights the need for innocence scholarship and advocacy to examine the complex enterprise of crime investigation in greater depth.

V. CONCLUSION

This excursion into analyzing a batch of wrongful conviction cases that originated with serial offenders’ crimes is designed to urge innocence activists and scholars to focus on crime investigation in its entirety—and not just on its parts. This should complement and not displace the significant work that has been done and must continue regarding the more discrete areas of identification procedure, interrogation, and the handling of informants. Sprinkled throughout the narratives in Part IV C are suggestions that closer attention to the possibility of a serial crime might have prevented a miscarriage of justice. The point is not that serial crime is a “cause” of wrongful convictions, but that less than professional and competent investigations are sources, if not causes in the scientific


See supra note 680 and accompanying text.

Latest FBI Crime Stats, supra note 679.


See supra Part IV.C.
sense, of wrongful convictions. Our exploration of the link between investigative failures and wrongful convictions should be followed by those more expert in crime investigation, a path that has already been cut by Kim Rossmo. As explained by Simon Cole and William Thompson, this would be similar to the approach taken by wrongful conviction studies toward the broad field of forensic science. The goal of innocence lawyers would be to uncover investigative errors and unprofessional investigation in the service of obtaining exonerations; but the larger goal of innocence advocates and scholars would be to strengthen the quality and accuracy of crime investigation, advancing Keith Findley’s vision of an “accuracy model” of criminal justice.

We reiterate the caveats and limitations made above of our analysis of the wrongful conviction–serial crime cases. Our cases constitute a convenience sample designed to explore an idea; any summary data derived from this limited study may not correlate to the reality disclosed by more systematic studies of serial crime. We know that the wrongful conviction–serial crime link exists and intuit that it is an issue worth further exploration, given the crying need to exonerate the innocent. Given our emphasis on expanding a concern with investigation, future analysis using true case study methods could more closely examine the details of the crime scenes to determine if they point to serial crime. For example, the psychodynamics of serial killing may be manifested in a higher rate of personalized (i.e., “skin-to-skin”) methods of killing and the posing of corpses to further degrade the victim. We welcome future studies and expect that further findings will qualify and perhaps refute some of the findings drawn from our sample.

Many of the cases we describe originated in the pre-DNA era, and most of the exonerations occurred as a result of post-conviction

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685 See Leo & Gould, supra note 56, at 27–28 (describing that the police should investigate the “source” of wrongful conviction rather than the “cause”).


687 Cole & Thompson, supra note 157, at 118.

688 Keith A. Findley, Can We Reduce the Amount of Wrongfully Convicted People Without Acquitting Too Many Guilty?: Toward a New Paradigm of Criminal Justice, 41 TEX. TECH L. REV 133, 156 (2008).

689 See supra Part IV.B.; see supra notes 239–41 and accompanying text.

690 Kocsis & Irwin, supra note 203, at 203.
Although DNA profiling should reduce the kinds of errors observed in our sample, there is no ground for complacency. The structural reasons for investigative failures—issues of funding, workloads, professional status, accountability structures, and cultures of police investigators and their departments—were not directly addressed in our article and surely continue to exist. A burgeoning method of coming to grips with justice system errors or failures, known as the sentinel events initiative (SEI), has emerged from wrongful convictions concerns. This all-stakeholder, evidence driven, “normal accident,” learning-from-error approach borrows from error review and reduction in the airline industry and in medicine. A decade and a half ago Scheck and Neufeld proposed that wrongful convictions should be studied in the way that the National Transportation Safety Board studies airplane crashes. The mechanism for such a review process was not then in place, but James Doyle’s recent scholarship has provided the intellectual underpinnings for ways to apply the “normal accidents” paradigm to criminal justice. This initiative has recently been advanced and supported by National Institute of Justice grants. Pilot projects are under way. Although a detailed analysis of SEI is beyond the scope of this article, we emphasize that our recommendation to broaden the innocence paradigm to include a complex enterprise like crime investigation fits well with the SEI organizational approach to studying and reducing error. It is worth emphasizing that SEI can accommodate the analysis of complex processes.

In addition to our advocacy for expanding the study of wrongful conviction sources to include crime investigation, we suggest in this

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691 See supra Part IV.B.1.
695 James M. Doyle, Learning from Error in the American Criminal Justice System, 100 J. CRIM. L. & CRIMINOLOGY 109, 109, 113 (2010); Doyle, supra note 105, at 57.
article that innocence scholars broaden their conceptualization of wrongful conviction “cause” to include case or idiographic causation and legal causation (as applied in tort law), as well as scientific causation. In this vein, scholars might review the records of successful §1983 civil rights wrongful conviction cases to determine if the wrongful convictions could be explained by factors that go beyond those that define the innocence paradigm as it currently exists. As noted in our review of legal causation, Brandon Garrett organized his analysis of civil rights cases by the “canonical causes.” This legitimate approach may reify the idea that only these factors are wrongful conviction causes. An in-depth examination of §1983 cases files might disclose problems in the investigations that went beyond innocence paradigm factors. A study of this kind could point to factors embedded in the investigation process that better explain wrongful convictions. Such a project could also provide insights that improve social scientific studies seeking nomothetic explanations of wrongful convictions.

We end with a comment about the small, interesting, and, we hope, growing field of wrongful conviction studies that flows from our discussion of three approaches to causation. We commented above about the nature of the field a comparative politics, a sub-field of political science. Unlike that field, in which all scholars have had the same basic disciplinary education in political science, wrongful conviction scholarship ranges across divergent disciplines, including law and several social sciences. Legal scholars who study wrongful convictions appreciate the benefits of social science analysis, and social scientists analyzing wrongful convictions must understand legal institutions and, perhaps, legal

698 See supra Part III.
699 See supra Part III.B.
700 Garrett, supra note 59, at 41–42.
701 See supra note 163 and accompanying text.
703 See Jacqueline McMurtrie, The Role of the Social Sciences in Preventing Wrongful Convictions, 42 AM. CRIM. L. REV. 1271, 1274 (2005). See also Leo & Gould, supra note 56, at 10–11 (explaining why legal scholars should draw from sociological research to understand the conditions that lead to wrongful conditions).
704 See Gould et al., supra note 126, at 516. A number of wrongful conviction scholars have both law and social science degrees.
A small essay can be written on this subject. We recommend to those scholars pursuing a “criminology of wrongful conviction” that the eclectic approach of comparative politics provides an attractive analogy, suggesting that including the study of wrongful conviction cases and law can expand and improve our understanding of wrongful conviction causation.

705 The research by Liebman, and colleagues on appellate and post-conviction reversals of death sentences is exemplary. See James S. Liebman et al., Capital Attrition: Error Rates in Capital Cases, 1973-1995, 78 Tex. L. Rev. 1839, 1850, 1856, 1859, 1863 (2000); see generally Liebman, et al., supra note 36 (outlining the rates of error in capital punishment convictions).
Table 1: Exonerees, Serial Criminals, Crimes, & Victims

<table>
<thead>
<tr>
<th>Exonerree</th>
<th>Date</th>
<th>Criminal</th>
<th>Crime</th>
<th>Victim(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Vasquez</td>
<td>1989</td>
<td>Timothy Spencer</td>
<td>Murder/rape</td>
<td>Carolyn Jean Hamm, 32</td>
</tr>
<tr>
<td>Randall Lynn Ayers</td>
<td>1990</td>
<td>Robert Minton</td>
<td>Rape, robbery; attempted murder</td>
<td>Female, 15</td>
</tr>
<tr>
<td>John Tingle, Jr.</td>
<td>1994</td>
<td>Kerri Charity (“The North End Rapist”)</td>
<td>Assault</td>
<td>Melissa Hellstrom, 24</td>
</tr>
<tr>
<td>Rolando Cruz</td>
<td>1995</td>
<td>Brian Dugan</td>
<td>Murder/rape</td>
<td>Jeanine Nicarico, 10</td>
</tr>
<tr>
<td>Alejandro Hernandez</td>
<td>1995</td>
<td>Brian Dugan</td>
<td>Murder/rape</td>
<td>Jeanine Nicarico, 10</td>
</tr>
<tr>
<td>Laverne Pavlinac</td>
<td>1995</td>
<td>Keith Jesperson (“Happy Face Killer”)</td>
<td>Murder</td>
<td>Taunja Bennett, 23</td>
</tr>
<tr>
<td>John Sosnovske</td>
<td>1995</td>
<td>Keith Jesperson (“Happy Face Killer”)</td>
<td>Murder</td>
<td>Taunja Bennett, 23</td>
</tr>
<tr>
<td>Kevin Lee Green</td>
<td>1996</td>
<td>Gerald Parker (“Bedroom Basher”)</td>
<td>Attempted murder; murder</td>
<td>Dianna Green, adult; unborn fetus</td>
</tr>
<tr>
<td>John Willis</td>
<td>1999</td>
<td>Dennis McGurder (“Beauty Shop Rapist”)</td>
<td>Rape, robbery</td>
<td>Female, two adults</td>
</tr>
<tr>
<td>Jacob Beard</td>
<td>2000</td>
<td>Joseph Paul Franklin</td>
<td>Murder</td>
<td>Nancy Santomero, 19; Vicki Durian, 26</td>
</tr>
<tr>
<td>Hubert Geralds, Jr.</td>
<td>2000</td>
<td>Andre Crawford</td>
<td>Murder</td>
<td>Six adult females</td>
</tr>
<tr>
<td>Carlos Marcos Lavennia</td>
<td>2000</td>
<td>“Barton Creek Rapist”</td>
<td>Rape</td>
<td>April Wooley, 24</td>
</tr>
<tr>
<td>Frank Lee Smith</td>
<td>2000</td>
<td>Eddie Lee Mosley</td>
<td>Murder/rape</td>
<td>Shandra Whitehead, 8</td>
</tr>
<tr>
<td>Larry Youngblood</td>
<td>2000</td>
<td>Walter Cruise</td>
<td>Rape</td>
<td>David Leon, 10</td>
</tr>
<tr>
<td>Antron McCray</td>
<td>2002</td>
<td>Matias Reyes – Central Park jogger case</td>
<td>Rape</td>
<td>Trisha Meili, 28</td>
</tr>
<tr>
<td>Kevin Richardson</td>
<td>2002</td>
<td>Matias Reyes – Central Park jogger case</td>
<td>Rape</td>
<td>Trisha Meili, 28</td>
</tr>
<tr>
<td>Yusef Salaam</td>
<td>2002</td>
<td>Matias Reyes – Central Park jogger case</td>
<td>Rape</td>
<td>Trisha Meili, 28</td>
</tr>
<tr>
<td>Raymond Santana</td>
<td>2002</td>
<td>Matias Reyes – Central Park jogger case</td>
<td>Rape</td>
<td>Trisha Meili, 28</td>
</tr>
<tr>
<td>Korey Wise</td>
<td>2002</td>
<td>Matias Reyes – Central Park jogger case</td>
<td>Rape</td>
<td>Trisha Meili, 28</td>
</tr>
</tbody>
</table>

706 As mentioned above, to shorten the cumbersome handle of “exonerees who were convicted for crimes committed by serial criminals,” for this article we refer to the forty-four individuals as “serial exonerees” or “exonerees.” Narrative accounts of each exoneree and his or her case can be found in the National Registry of Exonerations. About the Registry, NAT’L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/about.aspx (last visited Aug. 14, 2016). We do not cite to the NRE every time an exoneree or serial criminal is mentioned. References to an exoneree’s NRE Narrative can be found by browsing either the NRE’s Detailed View or Summary View. See Exoneration Detail List, NAT’L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/browse.aspx (last visited Aug. 14, 2016). The information in the tables was gathered using the NRE, as well as some additional websites referenced above in connection with each exoneree’s name.
<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
<th>Age</th>
<th>Race</th>
<th>Violations</th>
<th>Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>Jerry Frank Townsend</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Naomi Gamble, Barbara Brown, Sonja Marion, and four others</td>
</tr>
<tr>
<td>2002</td>
<td>Ray Krone</td>
<td></td>
<td></td>
<td>Murder</td>
<td>Kim Ancona, 36</td>
</tr>
<tr>
<td>2003</td>
<td>Julius Ruffin</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Female, adult</td>
</tr>
<tr>
<td>2004</td>
<td>David Allen Jones</td>
<td></td>
<td></td>
<td>Murder</td>
<td>Females, three adults</td>
</tr>
<tr>
<td>2005</td>
<td>Clarence Elkins</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Judith Johnson, 58; Brook Sutton, 6</td>
</tr>
<tr>
<td>2007</td>
<td>Claude McCollum</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Carolyn Kronenberg, 60</td>
</tr>
<tr>
<td>2006</td>
<td>Julie Rea</td>
<td></td>
<td></td>
<td>Murder</td>
<td>Joel Kirkpatrick, 10</td>
</tr>
<tr>
<td>2007</td>
<td>Anthony Capozzi</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Female, three adults</td>
</tr>
<tr>
<td>2007</td>
<td>Byron Halsey</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Tina Urquhart, 7, Tyrone Urquhart, 8</td>
</tr>
<tr>
<td>2007</td>
<td>Jerry Miller</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Female, 44</td>
</tr>
<tr>
<td>2009</td>
<td>Timothy B. Cole</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Michele Jean Murray, 20</td>
</tr>
<tr>
<td>2009</td>
<td>Chaunte Ott</td>
<td></td>
<td></td>
<td>Murder</td>
<td>Jessica Payne, 16 Male, 8</td>
</tr>
<tr>
<td>2009</td>
<td>Ricardo Rachell</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Female, two adults</td>
</tr>
<tr>
<td>2009</td>
<td>Arthur Lee Whitfield</td>
<td></td>
<td></td>
<td>Murder</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>William Avery</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Maryette Griffin, adult</td>
</tr>
<tr>
<td>2010</td>
<td>Charles Bunge</td>
<td></td>
<td></td>
<td>Robbery</td>
<td>Female, adult</td>
</tr>
<tr>
<td>2011</td>
<td>Jonathan Barr</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Cateresa Matthews, 14</td>
</tr>
<tr>
<td>2011</td>
<td>James Harden</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Cateresa Matthews, 14</td>
</tr>
<tr>
<td>2011</td>
<td>Shaunie Sharp</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Cateresa Matthews, 14</td>
</tr>
<tr>
<td>2011</td>
<td>Robert Taylor</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Cateresa Matthews, 14</td>
</tr>
<tr>
<td>2011</td>
<td>Robert Veal</td>
<td></td>
<td></td>
<td>Murder/rape</td>
<td>Cateresa Matthews, 14</td>
</tr>
<tr>
<td>2011</td>
<td>Thomas Haynesworth</td>
<td></td>
<td></td>
<td>Rape, sodomy, attempted rape</td>
<td>Female, 5 adults</td>
</tr>
<tr>
<td>2013</td>
<td>Jerry Lee Jenkins</td>
<td></td>
<td></td>
<td>Rape</td>
<td>Female, adult, 29</td>
</tr>
<tr>
<td>2013</td>
<td>David Camm</td>
<td></td>
<td></td>
<td>Murder</td>
<td>Kim Camm, (wife); Brad, 7 &amp; Jill, 5 (children)</td>
</tr>
<tr>
<td>2015</td>
<td>Michael McAlister</td>
<td></td>
<td></td>
<td>Attempted Rape</td>
<td>Female, adult, 22</td>
</tr>
</tbody>
</table>
### Table 2: Characteristics of Exonerees in Serial Crime Cases

<table>
<thead>
<tr>
<th>Exoneree</th>
<th>Race</th>
<th>Age</th>
<th>Sex</th>
<th>Crim. History</th>
<th>Crime</th>
<th>Conv. Date</th>
<th>Exon. Date</th>
<th>Years in Prison</th>
<th>Exon. Method</th>
<th>State</th>
<th>Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Vasquez</td>
<td>H</td>
<td>36</td>
<td>M</td>
<td>N</td>
<td>Murder</td>
<td>1984</td>
<td>1985</td>
<td>4</td>
<td>P</td>
<td>VA</td>
<td>Murder</td>
</tr>
<tr>
<td>Randall Lynn Ayers</td>
<td>W</td>
<td>17</td>
<td>M</td>
<td>N</td>
<td>Murder</td>
<td>1981</td>
<td>1990</td>
<td>8</td>
<td>D</td>
<td>OH</td>
<td>Rape; aggravated robbery; attempted murder</td>
</tr>
<tr>
<td>Rolando Cruz</td>
<td>H</td>
<td>19</td>
<td>M</td>
<td>Y</td>
<td>Murder/rape</td>
<td>1983</td>
<td>1985</td>
<td>10</td>
<td>A</td>
<td>IL</td>
<td>Murder/rape</td>
</tr>
<tr>
<td>Alejandro Hernandez</td>
<td>H</td>
<td>19</td>
<td>M</td>
<td>N</td>
<td>Murder/rape</td>
<td>1983</td>
<td>1985</td>
<td>10</td>
<td>D</td>
<td>IL</td>
<td>Murder/rape</td>
</tr>
<tr>
<td>Laverne Pavlinac</td>
<td>W</td>
<td>57</td>
<td>F</td>
<td>N</td>
<td>Murder/rape</td>
<td>1990</td>
<td>1991</td>
<td>4</td>
<td>D</td>
<td>OR</td>
<td>Murder/rape</td>
</tr>
<tr>
<td>John Sonnokave</td>
<td>W</td>
<td>39</td>
<td>M</td>
<td>N</td>
<td>Murder/rape</td>
<td>1990</td>
<td>1991</td>
<td>4</td>
<td>D</td>
<td>OR</td>
<td>Murder/rape</td>
</tr>
<tr>
<td>Kevin Lee Green</td>
<td>W</td>
<td>20</td>
<td>M</td>
<td>N</td>
<td>Attemped</td>
<td>1979</td>
<td>1980</td>
<td>16</td>
<td>D</td>
<td>CA</td>
<td>murder; fetal homicide</td>
</tr>
<tr>
<td>John Willis</td>
<td>B</td>
<td>42</td>
<td>M</td>
<td>Y</td>
<td>IL</td>
<td>1990</td>
<td>1993</td>
<td>1999</td>
<td>8½</td>
<td>D</td>
<td>Rape/robbery</td>
</tr>
<tr>
<td>Jacob Beard</td>
<td>W</td>
<td>34</td>
<td>M</td>
<td>N</td>
<td>Murder</td>
<td>1980</td>
<td>1993</td>
<td>2000</td>
<td>7</td>
<td>A</td>
<td>WV Murder</td>
</tr>
<tr>
<td>Carlos M. Lavernia</td>
<td>H</td>
<td>29</td>
<td>M</td>
<td>Y</td>
<td>TX</td>
<td>1983</td>
<td>1985</td>
<td>2000</td>
<td>15</td>
<td>D</td>
<td>Rape</td>
</tr>
<tr>
<td>Frank Lee Smith</td>
<td>B</td>
<td>37</td>
<td>M</td>
<td>Y</td>
<td>FL</td>
<td>1985</td>
<td>1986</td>
<td>2000</td>
<td>14</td>
<td>Ph</td>
<td>Murder/rape</td>
</tr>
<tr>
<td>Larry Youngblood</td>
<td>B</td>
<td>30</td>
<td>M</td>
<td>Y</td>
<td>AZ</td>
<td>1983</td>
<td>1985</td>
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**Key:**

Race: B = African American; H = Hispanic; W = White

Age = age at time of crime
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<th>Criminal</th>
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<th>Crime</th>
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<th>Exoneree(s)</th>
<th>Exoneration Date</th>
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<td>B</td>
<td>M</td>
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<td>Carolyn Jean Hamm, 32</td>
<td>Vasquez</td>
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<td>Kerri Charity (&quot;North End Rapist&quot;)</td>
<td>23</td>
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<td>Melissa Hellstrom, 24</td>
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<td>7R/3M</td>
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### Elephants in the Station House

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<td>Judy Johnson, 58; Brooke Sutton, 6 Carolyn Kronenberg, 60</td>
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### Key:

- **Age** = age at time of crime
- **Number victims** = reported number of victims in serial criminal’s career
- **Crime** indicates crime for which the exoneree was charged, does not indicate precise legal title of crime.
### Table 4: Case Characteristics: Crimes, Victims, Investigation, DNA, and Sentences

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<tr>
<td>2003</td>
<td>Ruffin Doxie</td>
<td>Rape</td>
<td>Female, adult</td>
<td>Y</td>
<td>L</td>
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<td>2004</td>
<td>Jones Turner</td>
<td>Murder</td>
<td>Female, adult</td>
<td>N</td>
<td>36 – L.</td>
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<tr>
<td>2005</td>
<td>Elkins Mann</td>
<td>Murder</td>
<td>Female, adult</td>
<td>Y</td>
<td>55 – L.</td>
<td></td>
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<tr>
<td>2007</td>
<td>McCollum Macon</td>
<td>Murder/rape</td>
<td>Female, adult</td>
<td>N</td>
<td>L</td>
<td></td>
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<tr>
<td>2006</td>
<td>Rea Sells</td>
<td>Murder</td>
<td>Male, child</td>
<td>N</td>
<td>65 y</td>
<td></td>
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<tr>
<td>2007</td>
<td>Capozzi Sanchez</td>
<td>Rape</td>
<td>Female, adult</td>
<td>Y</td>
<td>11 – 35 y</td>
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### Elephants in the Station House

<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
<th>Gender</th>
<th>Offense</th>
<th>No. Vct.</th>
<th>Inv.</th>
<th>DNA</th>
<th>DP</th>
<th>LWOP</th>
<th>Years</th>
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<tbody>
<tr>
<td>2007</td>
<td>Halsey Hall</td>
<td>Female</td>
<td>Murder/rape</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>20 y</td>
</tr>
<tr>
<td>2007</td>
<td>Miller Weeks</td>
<td>Male</td>
<td>Rape</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>45 y</td>
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<tr>
<td>2009</td>
<td>Cole Johnson</td>
<td>Female</td>
<td>Rape</td>
<td>1</td>
<td>Y</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>25 y</td>
</tr>
<tr>
<td>2009</td>
<td>Ott Ellis</td>
<td>Female</td>
<td>Murder</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>20 y</td>
</tr>
<tr>
<td>2009</td>
<td>Rachell Hawthorne</td>
<td>Male</td>
<td>Rape</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>40 y</td>
</tr>
<tr>
<td>2009</td>
<td>Whitfield Doxie</td>
<td>Female</td>
<td>Rape</td>
<td>2</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>63 y</td>
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<tr>
<td>2010</td>
<td>Avery Ellis</td>
<td>Female</td>
<td>Murder</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>40 y</td>
</tr>
<tr>
<td>2010</td>
<td>Bunge Viera</td>
<td>Female</td>
<td>Attempted Robbery</td>
<td>1</td>
<td>N</td>
<td>N</td>
<td>L</td>
<td>N</td>
<td>6 y</td>
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<tr>
<td>2011</td>
<td>Dixmoor Five Barr Harden Sharp Taylor Veal</td>
<td>Male</td>
<td>Murder/rape</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>85 y</td>
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<tr>
<td>2011</td>
<td>Haynesworth Davis</td>
<td>Female</td>
<td>Rape</td>
<td>5</td>
<td>Y</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>74 y</td>
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<tr>
<td>2013</td>
<td>Jenkins Derr</td>
<td>Female</td>
<td>Rape</td>
<td>1</td>
<td>Y/N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>20 y</td>
</tr>
<tr>
<td>2013</td>
<td>Camm Boney</td>
<td>Female</td>
<td>Murder</td>
<td>1</td>
<td>N</td>
<td>Y</td>
<td>L</td>
<td>N</td>
<td>35 y</td>
</tr>
</tbody>
</table>

**Key:**
- Date = year of exoneration
- No. Vict. = number of victims convicted in exoneree’s case
- Inv. = Was the crime investigated as a serial crime?
- DNA = Was DNA a factor in the exoneration?
- y = years
- DP = death penalty
- LWOP = life without parole
Table 5: Wrongful Conviction Cases Grouped for Serial Crime Analysis

<table>
<thead>
<tr>
<th>Notorious “Mass-Teen” Wrongful Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Park 5 — Matias Reyes</td>
</tr>
<tr>
<td>Dixmoor 5 — Willie Randolph</td>
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</table>

<table>
<thead>
<tr>
<th>Wrongful Convictions Involving Murder of Street-Walking Prostitutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Allen Jones — Chester Turner</td>
</tr>
<tr>
<td>Chaunte Ott, William Avery — Walter Ellis</td>
</tr>
<tr>
<td>Hubert Geralds, Jr. — Andre Crawford</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Family Member Wrongful Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kevin Green — Gerald Parker (“Bedroom Basher”) [one victim a fetus]</td>
</tr>
<tr>
<td>Clarence Elkins — Earl Mann [one child victim]</td>
</tr>
<tr>
<td>Julie Rae — Tommy Lynn Sells [child victim]</td>
</tr>
<tr>
<td>Byron Halsey — Clifton Hall [child victims]</td>
</tr>
<tr>
<td>David Camm — Charles Boney [two child victims]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Long Distance Serial Killer Wrongful Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laverne Pavlinac and John Sosnovske — Keith Jesperson (“Happy Face Killer”)</td>
</tr>
<tr>
<td>Jacob Beard — Joseph Paul Franklin</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Serial Murder Wrongful Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ray Krone — Kenneth Phillips</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Serial Murder/Rape Wrongful Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Vasquez — Timothy Spencer</td>
</tr>
<tr>
<td>Rolando Cruz, Alejandro Hernandez — Brian Dugan [child victim]</td>
</tr>
<tr>
<td>Frank Lee Smith, Jerry Frank Townsend — Eddie Lee Mosley [one child victim]</td>
</tr>
<tr>
<td>Claude McCollum — Matthew Macon</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Serial Rape Wrongful Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Randall Lynn Ayers — Robert Minton</td>
</tr>
<tr>
<td>John Tingle, Jr. — Kerri Charity rape (“North End Rapist”)</td>
</tr>
<tr>
<td>John Willis, Jr. — Dennis McGruder (“Beauty Shop Rapist”)</td>
</tr>
<tr>
<td>Carlos Marcos Lavernia — “Barton Creek Rapist”</td>
</tr>
<tr>
<td>Larry Youngblood — Walter Cruise [child victim]</td>
</tr>
<tr>
<td>Julius Ruffin, Arthur Whitlefield — Aaron Doxie, III</td>
</tr>
<tr>
<td>Anthony Capozzi — Altemio Sanchez</td>
</tr>
<tr>
<td>Jerry Miller — Robert Weeks</td>
</tr>
<tr>
<td>Timothy Cole — Jerry Wayne Johnson (“Tech Rapist”)</td>
</tr>
<tr>
<td>Ricardo Rachell — Andrew Hawthorne [child victim]</td>
</tr>
<tr>
<td>Thomas Haynesworth — Leon Davis (“Black Ninja Rapist”)</td>
</tr>
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<td>Jerry Lee Jenkins, Michael McAlister — Norman Derr</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Wrongful Convictions Involving Other Kinds of Serial Crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charles Bunge — Manuel Vieara</td>
</tr>
</tbody>
</table>

Note: Exonerees’ name followed by serial criminals.