

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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I. INTRODUCTION

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.”² 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.³ 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.⁴ Understanding causal mechanisms in applied technology leads to improved manufacturing efficiency and better products.⁵ 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.⁶ Even in criminal law, where causation is a prerequisite to ascertaining whether an event constitutes a crime, the goal is to control either

² Catherine L. Bonventre et al., *Studying Innocence: Advancing Methods and Data*, in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 301, 302 (Allison D. Redlich et al. eds., 2014). Wrongful conviction scholarship also includes research on the psychological effects of wrongful conviction and the compensation of exonerees. See, e.g., Robert J. Norris, *Exoneree Compensation: Current Policies and Future Outlook*, in WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 289, 290 (Marvin Zalman & Julia Carrano eds., 2014); Adrian Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, 46 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 165, 167, 176, 178 (2004).

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

⁴ See JEROME HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 247, 248–49 (2d ed. 1960).

⁵ See generally Erik Brynjolfsson & Lorin M. Hitt, *Beyond Computation: Information Technology, Organizational Transformation and Business Performance*, 14 J. ECON. PERSP. 23, 32 (2000) (recognizing the causal relationship between increased production and technology).

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).⁷

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.⁸ 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 causes⁹ or sources of wrongful convictions has been thought to explain false convictions.¹⁰ 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).¹¹ We advocate

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.

⁸ EDWIN M. BORCHARD, *CONVICTING THE INNOCENT: ERRORS OF CRIMINAL JUSTICE*, at xiii (Da Capo Press ed. 1970).

⁹ See Samuel R. Gross, *Convicting the Innocent*, 4 ANN. REV. L. & SOC. SCI. 173, 186 (2008).

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.¹² 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,¹³ 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.¹⁴ 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.¹⁵ Legal causation is an issue in constitutional tort cases imposing liability on state actors for causing wrongful convictions under 42 U.S.C. § 1983.¹⁶ 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.¹⁷ 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.¹⁸ We conclude in Part V, indicating some of the limitations of our study and making suggestions for further research.¹⁹

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."²⁰ The paradigm was defined broadly as the idea that "wrongful convictions result from a number of causes, which are tied to a reform agenda."²¹ More specifically, Barry Scheck, Peter Neufeld, and Jim Dwyer, in *Actual Innocence*,²² 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.

²⁰ Marvin Zalman, *An Integrated Justice Model of Wrongful Convictions*, 74 ALB. L. REV. 1465, 1469 (2010) [hereinafter *Justice Model*]; see also Marvin Zalman & Julia Carrano, *Sustainability of Innocence Reform*, 77 ALB. L. REV. 955, 960 (2013) (explaining the concept of innocence paradigm in terms of a set of "causes and cures").

²¹ *Justice Model*, *supra* note 20, at 1498.

²² BARRY SCHECK ET AL., ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGLY CONVICTED app. 1, at 255–60 (2000).

innocence network.”²³ The content of the paradigm, (i.e., the factors that “cause” wrongful convictions) has not been specified with absolute agreement by different authors,²⁴ 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.”²⁵

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.”²⁶ 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.”²⁷ 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).

²⁷ EDWARD H. LEVI, AN INTRODUCTION TO LEGAL REASONING 1–2 (1948).

but because we assert that the paradigm is a socially constructed concept²⁸ 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,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.³⁰ Although many people participated,³¹ the major influence on its shape was *Actual Innocence* and its List of Reforms in Appendix 1.³² Applying the legal doctrine analogy, the list of reforms in *Actual Innocence* was not the “first case” but rather the “second case” that saw similarities with an earlier “case,” or rather,

²⁸ For example, in regard to social construction, the innocence movements of China, England and Wales, and the United States differ as to their points of origin, focal concerns, and structures, suggesting that national political, ideological, and material variations shape their contours. See Marvin Zalman, *Wrongful Convictions: Comparative Perspectives*, in THE CAMBRIDGE HANDBOOK OF SOCIAL PROBLEMS (forthcoming) (manuscript at 3, 4, 20) (on file with author).

²⁹ See Frederic Bloom & Christopher Serkin, *Suing Courts*, 79 U. CHI. L. REV. 553, 554 (2012).

³⁰ See Nancy Marion & Marvin Zalman, *Towards a Theory of Innocence Policy Reform*, in CONTROVERSIES IN INNOCENCE CASES IN AMERICA 175, 177 (Sarah Lucy Cooper ed., 2014).

³¹ The short list would include Attorney General Janet Reno; Jim McCloskey, who founded of Centurion Ministries in 1983, Richard Dieter, founder of the Death Penalty Information Center; Northwestern University anti-death penalty innocence activists David Protes, Lawrence Marshall and Rob Warden, who became first director of the Center on Wrongful Conviction; law professors who initiated innocence projects before 2000 like Jacqueline McMurtrie at the University of Washington School of Law, and Keith Findley and John Pray at the Wisconsin Law School; and pioneering scholars who wrote on the subject before 1990, like Arye Rattner, C. Ron Huff, and Sam Gross. *Id.* at 177; Jacqueline McMurtrie, *The Innocence Network: From Beginning to Branding*, in CONTROVERSIES IN INNOCENCE CASES IN AMERICA 21, 22 (Sara Lucy Cooper ed., 2014); David J. Krajicek, ‘A Freakishly Rare Anomaly’, THE CRIME REPORT (Feb. 9, 2015), <http://www.thecrimereport.org/news/inside-criminal-justice/2015-02-a-freakishly-rare-anomaly/>; *Staff and Board of Directors*, DEATH PENALTY INFO. CTR., <http://www.deathpenaltyinfo.org/staff-and-board-directors> (last visited Aug. 2, 2016); *Staff*, CTR. ON WRONGFUL CONVICTIONS NORTHWESTERN PRITZKER SCH. OF LAW, <http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/aboutus/staff/#Rob> (last visited Aug. 2, 2016); Lawrence C. Marshall, STANFORD LAW SCH., <https://law.stanford.edu/directory/lawrence-c-marshall/> (last visited Aug. 2, 2016); David Protes, UNIV. CHI. SCH. SOC. SERV. ADMIN., <http://www.ssa.uchicago.edu/david-protes> (last visited Aug. 2, 2016); Jacqueline McMurtrie, UNIV. WASH. SCH. OF LAW, <http://www.law.washington.edu/directory/profile.aspx?ID=147> (last visited May 15, 2016); *Wisconsin Innocence Project*, UNIV. WISCONSIN LAW SCH., <http://law.wisc.edu/fjr/clinicals/ip/> (last visited Mar. 2, 2016). This list does not include the scientists who developed DNA profiling or the cognitive psychologists whose studies established a scientific basis for understanding eyewitness identification and confessions, and developed methods to reduce error. Such knowledge was absorbed by the paradigm’s creators and framed as a reform agenda.

³² SCHECK ET AL., *supra* note 22, app. 1, at 255–60.

an earlier study of wrongful convictions.³³ 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*.”³⁴ 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].”³⁵ 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.³⁶ 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

³³ 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).

³⁴ Neufeld & Scheck, *supra* note 33, at xxx.

³⁵ JAMES M. DOYLE, TRUE WITNESS: COPS, COURTS, SCIENCE, AND THE BATTLE AGAINST MISIDENTIFICATION 129 (2005).

³⁶ 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 Hoffmann 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.³⁷

So, in our analogy, Scheck and Neufeld (the second “case”) took from Borchard’s *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.”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.”³⁹ Another common factor, observed in eleven cases, was reliance on circumstantial evidence.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).⁴¹ In this way he saw that most wrongful convictions are not generated by single factors but by combinations of error.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.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.⁴⁴

³⁷ See Marvin Zalman et al., *Citizens’ Attitudes Toward Wrongful Convictions*, 37 CRIM. JUST. REV. 51, 53 (2012).

³⁸ BORCHARD, *supra* note 8, at xiii.

³⁹ *Id.*

⁴⁰ *Id.* at xiv.

⁴¹ *Id.* at xv.

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

⁴³ 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.

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.⁴⁵ 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 chapter⁴⁶ and by Borchard's main goal of having states pass exoneree compensation laws.⁴⁷ 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.⁴⁸

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.⁴⁹ 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.*

⁴⁵ *Id.*

⁴⁶ 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).

⁴⁷ *Convicting the Innocent* included a reprint of Borchard's full 1913 article, "State Indemnity for Errors in Criminal Justice", which analyzed compensation laws in other countries and advocated passage. BORCHARD, *supra* note 8, at 375–76. Borchard used the book after publication to campaign successfully to enact a federal compensation law in 1938. Marvin Zalman, *Edwin Borchard and the Limits of Innocence Reform*, in WRONGFUL CONVICTIONS & MISCARRIAGES OF JUSTICE: CAUSES AND REMEDIES IN NORTH AMERICAN AND EUROPEAN CRIMINAL JUSTICE SYSTEMS 329, 337 (C. Ronald Huff & Martin Killias eds., 2013).

⁴⁸ Zalman, *supra* note 47, at 339–40.

⁴⁹ 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.

⁵¹ SCHECK ET AL., *supra* note 22, app. 1 at 255–60. Appendix 1 was expanded in a subsequent edition. BARRY SCHECK ET AL. ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE RIGHT app. 1 at 351–62 (2003).

criminal justice system resistant to change toward innocence reform positions.⁵² 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.⁵³ This approach may

⁵² See Marvin Zalman & Julia Carrano, *An Introduction to the Innocence Reform*, in *WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 11*, 11 (Marvin Zalman & Julia Carrano eds., 2014).

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 conviction⁵⁹—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

criminal_justice_system_is_a_disaster_the_conversation_we_need_to_have_after_serial/?utm_source=facebook&utm_medium=socialflow; *Serial Podcast*, NPR, <https://serialpodcast.org/season-one> (last visited Aug. 6, 2016). Syed was more recently granted an evidentiary hearing on post-conviction review. See Story Hinkley, *Did popular 'Serial' Podcast Get Adnan Syed a Retrial?*, CHRISTIAN SCI. MONITOR (Nov. 9, 2015), <http://www.csmonitor.com/USA/Justice/2015/1109/Did-popular-Serial-podcast-get-Adnan-Syed-a-retrial>.

⁵⁴ See *supra* notes 24–25 and accompanying text.

⁵⁵ See *infra* notes 132–37 and accompanying text.

⁵⁶ Richard A. Leo & John B. Gould, *Studying Wrongful Convictions: Learning From Social Science*, 7 OHIO ST. J. CRIM. L. 7, 9–11 (2009).

⁵⁷ Leo, *supra* note 49, at 213. Leo's clarion call certainly resonated among social scientists, other scholars who concentrate on wrongful conviction issues, and, apparently, on justice funding agencies. Whether it was noted in significant ways by the larger community of innocence advocates is an empirical issue.

⁵⁸ See *infra* Part III.C. Some very good scientific research preceded Leo's 2005 article and so had some influence on his thinking. Leo, *supra* note 49, at 201.

⁵⁹ See *Wilson v. Lawrence Cty.*, 260 F.3d 946, 948–49 (8th Cir. 2001); Brandon L. Garrett, *Innocence, Harmless Error, and Federal Wrongful Conviction Law*, 2005 WIS. L. REV. 35, 92 (2005).

wrongful convictions.⁶⁰ 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.⁶¹ These latter processes, similar to the task of finding legal causation, draw conclusions in single cases based on case fact evaluations.⁶² They are deterministic decisions while the findings of social scientists are probabilistic.⁶³ 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),⁶⁴ 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.⁶⁵

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).

⁶¹ See, e.g., *Anatomy of a Criminal Case*, CTY. OF SANTA CLARA OFFICE OF THE DIST. ATT'Y, <https://www.sccgov.org/sites/da/prosecution/anatomyofcriminalcase/Pages/default.aspx> (last visited Aug. 6, 2016); *About the Innocence and Justice Center*, WAKE FOREST UNIV. SCH. OF LAW, <http://innocence-clinic.law.wfu.edu/about/> (last visited Aug. 6, 2016).

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

⁶³ See *Tools for Decision Analysis: Analysis of Risky Decisions*, UNIV. OF BALT., <http://home.ubalt.edu/ntsbarsh/opre640a/partix.htm> (last visited Aug. 6, 2016) (comparing deterministic and probabilistic models).

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.

⁶⁵ *Ideographic Versus Nomothetic Approaches*, ENCYCLOPEDIA.COM, <http://www.encyclopedia.com/social-sciences/dictionaries-thesauruses-pictures-and-press-releases/ideographic-versus-nomothetic> (last visited Aug. 4, 2015). See MICHAEL G. MAXFIELD & EARL R. BABBIE, *RESEARCH METHODS FOR CRIMINAL JUSTICE AND CRIMINOLOGY* 22 (6th ed. 2011). The term is spelled either idiographic or ideographic. See *Idiographic*, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/284770?redirectedFrom=ideographic#eid> (last visited Aug. 2, 2016).

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

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).

⁷⁰ Bonventre et al., *supra* note 2, at 302, 303. They cite the following works for this proposition: Simon A. Cole, “*Convicting the Innocent*”: *Forensic Science and Wrongful Convictions: From Exposer to Contributor to Corrector*, 46 NEW ENG. L. REV. 711, 733–34 (2012); Talia Roitberg Harmon, *Predictors of Miscarriages of Justice in Capital Cases*, JUST. Q., Dec. 2001, at 949, 954 (2001); Leo, *supra* note 49, at 213; Leo & Gould, *supra* note 56, at 10–11.

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

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.⁸¹ 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.⁸² An edited volume exploring investigative failures has only recently been published.⁸³ 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.⁸⁴ 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.

⁸² See, e.g., Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 322–33 (2006).

⁸³ ROSSMO, *supra* note 11, at 3, 4.

⁸⁴ See D. Michael Risinger & Lesley Risinger, *The Emerging Role of Innocence Lawyer and the Need for Role-Differentiated Standards of Professional Conduct*, in *CONTROVERSIES IN INNOCENCE CASES IN AMERICA* 123, 125 (Sarah Lucy Cooper ed., 2014) (discussing the role of innocence lawyers as fact finders); Casilda E. Roper-Simpson, *Detectives and the Criminal Investigation*, in *THE DETECTIVE'S HANDBOOK* 277, 285 (John A. Eterno & Cliff Roberson eds., 2015) (describing the detectives role as the “seeker of truth” by way of the facts).

collected.⁸⁵ Similarly, a judge in a § 1983 suit must decide whether alleged police errors caused a wrongful conviction.⁸⁶ 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.⁸⁷ 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.⁸⁸ 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.⁸⁹ 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.⁹⁰ The first requirement goes under various terms: “*condicio sine qua non*-requirement . . . but-for test, equivalence theory, ‘cause-in-fact’, or factual cause.”⁹¹ 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.⁹²

⁸⁵ Roper-Simpson, *supra* note 84, at 285.

⁸⁶ 42 U.S.C. § 1983 (2014). *See, e.g.*, Pierce v. Gilchrist, 359 F.3d 1279, 1281, 1293–94 (10th Cir. 2004).

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.⁹³ 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.⁹⁴ 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.⁹⁵ His article, structured by the innocence paradigm,⁹⁶ 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."⁹⁷ 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. . . . In

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 separated 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

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.

¹⁰⁴ See Teressa E. Ravenell, *Cause and Conviction: The Role of Causation in § 1983 Wrongful Conviction Claims*, 81 TEMP. L. REV. 689, 692–93 (2008).

convictions are usually the product of a combination of many factors.”¹⁰⁵ 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.”¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ Supreme Court doctrine, then, “seem[s] to indicate that the decision to initiate and pursue a criminal prosecution implicates the Fourth Amendment while decisions and acts that occur during trial implicate the Substantive Due Process Clause.”¹¹⁰

For an erroneous arrest to lead to § 1983 liability for a wrongful conviction, the officer’s wrongs have to infect the trial process.¹¹¹

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 *WRONGLY CONVICTED 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.

¹⁰⁶ Ravenell, *supra* note 104, at 700, 701. Section 1983 is not “a source of substantive rights,” but is only a procedural vehicle. *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979).

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.¹¹² 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."¹¹³

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]."¹¹⁴ 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."¹¹⁵ 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.¹¹⁶ 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.¹¹⁷ 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."¹¹⁸ 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.¹¹⁹ 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.

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.

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 justice¹²⁰ 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

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: REVISITED 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 Captial Cases*, 2003 U. ILL. L. REV. 979, 1016, 1017 (2003) (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 LINSKOTT 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.

¹²³ See generally TIM JUNKIN, BLOODSWORTH: THE TRUE STORY OF THE FIRST DEATH ROW INMATE EXONERATED BY DNA 45–47, 53 (2004) (describing how a suspect was identified via a biased composite sketch). In our sample, composite sketches figured in the wrongful convictions of Jerry Lee Jenkins, Carlos Marcos Lavernia, Michael McAlister, Jerry Miller, John Tingle, Jr., and Frank Lee Smith. Ctr. on Wrongful Convictions, *Jerry Miller*, NAT’L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3469> (last visited Aug. 9, 2016) [hereinafter *Jerry Miller*]; Innocence Project, *Carlos Marcos Lavernia*, NAT’L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3374> (last visited Aug. 9, 2016) [hereinafter *Carlos Marcos Lavernia*]; Innocence Project, *Frank Lee Smith*, NAT’L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3644> (last visited Aug. 9, 2016) [hereinafter *Frank Lee Smith*]; Maurice Possley, *Jerry Lee Jenkins*, NAT’L REGISTRY EXONERATIONS (June 7, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4191> [hereinafter *Jerry Lee Jenkins*]; Maurice Possley, *John Tingle, Jr.*, NAT’L REGISTRY EXONERATIONS (Mar. 11, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4113> [hereinafter *John Tingle Jr.*]; Maurice Possley, *Michael McAlister*, NAT’L REGISTRY EXONERATIONS (May 18, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4690> [hereinafter *Michael McAlister*].

on the basis of a minor encounter with the authorities.¹²⁴ The coincidence of being legitimately or criminally in the vicinity of a crime can lead to suspicion.¹²⁵ Once suspicion attaches to the innocent, many kinds of justice system process errors deepen police and prosecutor suspicion, possibly leading to a conviction.¹²⁶ 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.¹²⁷ Errors in forensic science evidence, inadequate defense, and prosecutorial excess or misconduct compound mistakes initiated during the crime investigation.¹²⁸ But we should also consider more subtle or less visible investigative errors, keeping in mind that what is *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 *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

¹²⁴ This happened to Marion Coakley. See SCHECK 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 certainty, like Kerry Max Cook. See Michael Hall, *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, *Innocence Is Different: Taking Innocence into Account in Reforming Criminal Procedure*, 56 N.Y. L. SCH. L. REV. 869, 900–05 (2011).

¹²⁵ 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, *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.

¹²⁶ Erroneous initial suspicion does not inevitably result in wrongful convictions, but may result in acquittals or “near-miss” dismissals. See Jon B. Gould, et al., *Predicting Erroneous Convictions*, 99 IOWA L. REV. 471, 494, 495–96 (2014).

¹²⁷ See *id.* at 476.

¹²⁸ See *id.* at 479.

seriously deficient police work has led to recommendations to prosecute where probable cause was lacking.¹²⁹ 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 conviction¹³⁰ 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.¹³¹ 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.¹³² A central feature of scientific understanding is generating causal explanations.¹³³ Three criteria are needed to establish causation scientifically. First, the variables being studied must be empirically correlated.¹³⁴ 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. BLALOCK, 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 & BABBIE, *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.¹³⁵ The second criterion is temporal: cause must precede effect in time.¹³⁶ 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.”¹³⁷

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.”¹³⁸

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.¹³⁹

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

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.

Jon B. Gould et al., *Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice* 24–25 (Univ. S.F. Law Research Paper No. 2013-20, 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231777.

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.¹⁴⁰ 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.¹⁴¹ 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.¹⁴² 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.¹⁴³ 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.¹⁴⁴ On the other hand, some canonical causes—jailhouse informant, false confessions, and honestly mistaken eyewitness identification—were not statistical predictors of wrongful convictions.¹⁴⁵ 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 & DELINQ. 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.¹⁴⁶ The study introduced significant variables that put a new light on wrongful convictions. Thus, a prosecutor's weak case counterintuitively predicted a wrongful conviction.¹⁴⁷ To the contrary, intentional or malicious misidentification by a witness decreased the likelihood of a wrongful conviction.¹⁴⁸ The study had the benefit of an expert panel to help explain these paradoxical results.¹⁴⁹ 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.¹⁵⁰ As for the prosecutor's weak case, the panel believed that prosecutors with weak cases more strenuously pursued their cases, resulting in wrongful convictions.¹⁵¹

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.¹⁵²

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.¹⁵³ Therefore,

¹⁴⁶ *Id.* at xx, 35, 68.

¹⁴⁷ *See id.* at 78.

¹⁴⁸ *Id.* at 68.

¹⁴⁹ *Id.* at iii.

¹⁵⁰ *Id.* at xx, 76.

¹⁵¹ *Id.* at 67, 79, 80.

¹⁵² *See* Jon. B. Gould & Richard A. Leo, *The Path to Exoneration*, 79 ALB. L. REV. 325, 332–33 (2016).

¹⁵³ *See infra* Part III.D.

attention to developing theory should not undermine efforts to improve case analysis.¹⁵⁴ Another practical limit is that, at the present time, the findings of “Predicting Erroneous Convictions”¹⁵⁵ do not point to specific policy reforms beyond those already in the reform hopper.¹⁵⁶ 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.¹⁵⁷ In one sense they agree with Leo’s criticism that a crude inductive approach cannot explain causation.¹⁵⁸ 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.¹⁵⁹

[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).

¹⁵⁷ Simon A. Cole & William C. Thompson, *Forensic Science and Wrongful Convictions, in WRONGFUL CONVICTIONS AND MISCARRIAGES OF JUSTICE: CAUSES AND REMEDIES IN NORTH AMERICAN AND EUROPEAN CRIMINAL JUSTICE SYSTEMS* 111, 112, 115 (C. Ronald Huff & Martin Killias eds., 2013).

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.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?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.¹⁶² But even without trying to make a firm case for a quantitative-qualitative strategy to develop wrongful conviction causal theory,¹⁶³ the practical job of investigating cases and coming

¹⁶⁰ *Id.* (citation omitted).

¹⁶¹ *Id.* at 115.

¹⁶² Gould et al., *supra* note 137, at 72, 73, 74.

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, *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., *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.¹⁶⁴ 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.”¹⁶⁵ One reason is that the varieties of crimes presented to police are very large, even if they do fall into regular patterns.¹⁶⁶ Evidence related to a suspected crime can be derived from many sources, possibly requiring complex and multi-step investigation,¹⁶⁷

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. DEP’T 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.¹⁶⁸ 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.¹⁶⁹ 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.¹⁷⁰

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 *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.¹⁷¹ 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.”¹⁷² Thus, an investigator cannot draw on a general theory as a starting point but requires a different strategy, described below.¹⁷³ 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

<http://www.nist.gov/forensics/upload/Crime-Scene-Investigation.pdf>.

¹⁶⁸ See COMM. ON IDENTIFYING THE NEEDS OF THE FORENSIC SCIS. CMTY., NAT’L RESEARCH COUNCIL, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD 4 (2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>; RICHARD SAFERSTEIN, CRIMINALISTICS: AN INTRODUCTION TO FORENSIC SCIENCE 1–2, 542 (6th ed. 1998).

¹⁶⁹ See 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 9.2, at 36 (1978); SIMON, *supra* note 11, at 90, 117.

¹⁷⁰ See SIMON, *supra* note 11, at 22.

¹⁷¹ 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*, NAT’L REGISTRY EXONERATIONS, <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, *An Unbelievable Story of Rape*, THE MARSHALL PROJECT (Dec. 16, 2015), 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#bDHCeuLiD.

¹⁷² JON J. NORDBY, DEAD RECKONING: THE ART OF FORENSIC DETECTION 122 (2000).

¹⁷³ See *id.*

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.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶ 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.¹⁷⁷

Dan Simon explained the "circular nature of investigative reasoning."¹⁷⁸ 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."¹⁷⁹

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.¹⁸⁰

Abduction is a form of logic that does not stand alone in solving problems but supplements induction and deduction.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.”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.¹⁸³ In his “Pursuitworthiness Interpretation,” theory testing “comes *after* judgments have been made about which hypotheses are worth pursuing.”¹⁸⁴ In this view, “*the conclusions of abductive reasoning can be entirely non-epistemic in character*; they are not, in the first

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 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.

¹⁸¹ See NORDBY, *supra* note 172, at 42–43.

¹⁸² Daniel J. McKaughan, *From Ugly Duckling to Swan: C.S. Peirce, Abduction, and the Pursuit Of Scientific Theories*, 44 TRANSACTIONS OF THE CHARLES S. PEIRCE SOC’Y 446, 447 (2008).

¹⁸³ See *id.* at 447, 451.

¹⁸⁴ *Id.* at 451, 452.

instance, evaluations of the likely truth of a hypothesis.”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.¹⁸⁶

Nordby explains the nature of this investigative approach through intricate case studies worthy of Sherlock Holmes.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].¹⁸⁸

The un-hypothesized evidence pointed to her guilt.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.”¹⁹⁰ In this view, he held the shotgun by the barrel, not the stock.¹⁹¹ The deceased smashed the interior window while standing on the porch.¹⁹² He tugged the gun, which became stuck on the splintered window frame, toward himself.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.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

¹⁸⁵ *Id.* at 453.

¹⁸⁶ *Id.* at 457–58.

¹⁸⁷ See NORDBY, *supra* note 172, at 188–93; Zalman, *supra* note 69, at 294.

¹⁸⁸ Zalman, *supra* note 69, at 293–94.

¹⁸⁹ See *id.* at 294.

¹⁹⁰ *Id.*

¹⁹¹ See NORDBY, *supra* note 172, at 189.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Zalman, *supra* note 69, at 294.

a satisfactory resolution of the case was achieved, [avoiding a wrongful conviction].¹⁹⁵

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.¹⁹⁶

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.¹⁹⁷

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.¹⁹⁸ "Inductive associations alone explain nothing. In fact, they demand explanations of their significance."¹⁹⁹ Relevant associations are specified by abduction, but the associations become inductively relevant if they reoccur and are logically connected.²⁰⁰ 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

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.*

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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.²⁰¹ 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.²⁰² 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.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.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.²⁰⁵ Despite the continued growth in attention to serial murder, there has been notable disagreement over and inconsistency in definitions of the phenomenon.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.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.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:

and rapes occurred at the hands of the chronic/habitual male offenders. *Id.* at 27, 68, 69, 102. See generally Arnon Edelstein, *Rethinking Conceptual Definitions of the Criminal Career and Serial Criminality*, 17 TRAUMA, VIOLENCE, & ABUSE 62, 65 (2016) (identifying serial criminality's main characteristics as continued learning and skill honing throughout a criminal career).

²⁰³ See Edelstein, *supra* note 202, at 65; Richard N. Kocsis & Harvey J. Irwin, *The Psychological Profile of Serial Offenders and a Redefinition of the Misnomer of Serial Crime*, 5 PSYCHIATRY, PSYCHOL. & L. 197, 197 (1998).

²⁰⁴ See *infra* Part IV.B.4.

²⁰⁵ See FED. BUREAU OF INVESTIGATION, SERIAL MURDER: MULTI-DISCIPLINARY PERSPECTIVES FOR INVESTIGATORS 2 (Robert J. Morton & Mark A. Hilts eds., 2008); *Crime and Corruption Across America, 1972-1988*, FED. BUREAU INVESTIGATION, https://www.fbi.gov/about-us/history/a-centennial-history/crime_and_corruption_across_america_1972-1988 (last visited Sept. 14, 2016).

²⁰⁶ William B. Arndt et al., *Critical Characteristics of Male Serial Murderers*, 29 AM. J. CRIM. JUST. 117, 117 (2004).

²⁰⁷ Samuel Adjorlolo & Heng Choon (Oliver) Chan, *The Controversy of Defining Serial Murder: Revisited*, 19 AGGRESSION & VIOLENT BEHAV. 486, 487–88 (2014).

²⁰⁸ Arndt et al., *supra* note 206, at 118–19; see also Jeffery R. Osborne & C. Gabrielle Salfati, *Re-Conceptualizing "Cooling-Off Periods" in Serial Homicide*, 19 HOMICIDE STUD. 188, 188 (2015) (examining serial homicide and factors involved in cooling-off periods).

[S]erial 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.

²¹² Laurence Miller, *Serial Killers: I. Subtypes, Patterns, and Motives*, 19 *AGGRESSION & VIOLENT BEHAV.* 1, 4 (2014).

²¹³ Elizabeth A. Gurian, *Reframing Serial Murder Within Empirical Research: Offending and Adjudication Patterns of Male, Female, and Partnered Serial Killers*, 59 *INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 1, 2 (2015).

²¹⁴ *See* Carrie Trojan & C. Gabrielle Salfati, *Linking Criminal History to Crime Scene*

studies yielding evidence of behavioral consistencies, caution such as the following is often encouraged: “[b]ecause this model was not found to be able to classify all homicides examined . . . the model should, until further more in-depth studies have been done, be used only as a guideline to research, and be used with caution, and certainly not stand-alone, in any investigation.”²¹⁵

One of the more conclusive areas of research on serial killers involves their demographic profiles.²¹⁶ As is the case with most violent crime, males are overwhelmingly likely to perpetrate serial murder,²¹⁷ but, contrary to other forms of homicide, are likely to kill alone.²¹⁸ Not only are serial killers overwhelmingly male, they are most often white males.²¹⁹ Indeed, numerous scholars have found that while close to half of single victim homicides involve black offenders, only fifteen to twenty percent of multiple murders were committed by a black offender, which is far closer to their representation in the general population.²²⁰ Despite the limited representation of women in serial killing,²²¹ a small but growing body of research has highlighted the characteristics of female serial killers.²²² Relative to their male counterparts, female killers are more likely to have financial motives, and are also more likely to kill a romantic partner.²²³ As indicated by Gurian, “solo female serial murderers . . . historically tend to target family members for reasons of profit, use poison as their method of murder, kill locally or within a specific place, and kill within 6 years or less.”²²⁴ Thus, while they account for a small fraction of all serial murders, their behavior and motivations are quite distinct.

Behavior in Single-Victim and Serial Homicide: Implications for Offender Profiling Research, 15 HOMICIDE STUD. 3, 5, 6, 7 (2011).

²¹⁵ C. Gabrielle Salfati & Alicia L. Bateman, *Serial Homicide: An Investigation of Behavioural Consistency*, 2 J. INVESTIGATIVE PSYCHOL. & OFFENDER PROFILING 121, 142 (2005).

²¹⁶ See, e.g., G. MAURICE GODWIN, HUNTING SERIAL PREDATORS 58–65 (2d ed. 2008).

²¹⁷ *Id.* at 58–59.

²¹⁸ 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 GODWIN, *supra* note 216, 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.

²²⁰ GODWIN, *supra* note 216, at 60, 70; ERIC W. HICKEY, SERIAL MURDERERS AND THEIR VICTIMS 136 (2d ed. 1997); JACK LEVIN & JAMES ALAN FOX, MASS MURDER: AMERICA'S GROWING MENACE 51 (1985); ROBERT J. MORTON ET AL., SERIAL MURDER: PATHWAYS FOR INVESTIGATION 44, 61 (2014).

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 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.*

²³² *See id.*; Matt DeLisi & Aaron M. Scherer, *Multiple Homicide Offenders: Offense Characteristics, Social Correlates, and Criminal Careers*, 33 CRIM. JUST. & BEHAV. 367, 373, 374 (2006); Robert K. Ressler et al., *Sexual Killers and Their Victims: Identifying Patterns Through Crime Scene Analysis*, 1 J. INTERPERSONAL VIOLENCE 288, 304 (1986).

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 1.²³⁴ The list is a convenience sample drawn from the National Registry of Exonerations (NRE),²³⁵ from our own knowledge of wrongful conviction cases, and from James Acker's review of "flipside injustice" cases where the guilty go free.²³⁶ All that this demonstrates is that a number of exonerees have been convicted of crimes committed by serial criminals.²³⁷ 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.²³⁸ 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.²³⁹ Exonerations are obtained fortuitously

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.

²³⁶ See generally James Acker, *The Flipside Injustice of Wrongful Convictions: When the Guilty Go Free*, 76 ALB. L. REV. 1629, 1635–36 (2012) (outlining wrongful convictions of innocent defendants in multiple jurisdictions due to a number of errors).

²³⁷ See *infra* Table 1.

²³⁸ BARNEY G. GLASER & ANSELM L. STRAUSS, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* 45, 76 (1967).

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.

²⁴⁵ National Registry of Exonerations, accessed December 15, 2015, reported 519 no crime cases out of 1721 exonerations. See *Exoneration Detail List*, *supra* note 234; *Exoneration Registry*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited Dec. 19, 2015).

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.²⁴⁶ In our tables and text, we identify crimes by the most serious crime labels: murder, murder/rape, rape, and robbery.²⁴⁷ Aside from murder/rape we do not specify other multiple charges.²⁴⁸ The precise or statutory crime labels might differ, especially as 'sexual assault' is often used in the NRE.²⁴⁹ Where a rape is accompanied by another crime (e.g., robbery, kidnapping, burglary, unlawful entry, and assault) that crime label is omitted.²⁵⁰ The cases are listed chronologically, beginning with the first DNA exoneration in 1989 and includes an exoneration in 2015.²⁵¹ 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).²⁵² Ten exonerees were convicted of crimes against multiple victims.²⁵³ One exoneree,

²⁴⁶ See *infra* Table 1.

²⁴⁷ See *infra* Table 1.

²⁴⁸ See *infra* Table 1.

²⁴⁹ See generally *Exoneration Detail List*, *supra* note 234 (providing a list of exonerees charged with sexual assault from various jurisdictions).

²⁵⁰ See *infra* Table 1. See also Maurice Possley, *Thomas Haynesworth*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3872> (last visited Dec. 19, 2015) [hereinafter *Thomas Haynesworth*] (denoting that Haynesworth was initially charged with sexual assault, kidnapping, attempt, violent gun possession or sale; however, the only crime noted in Table 1 is rape).

²⁵¹ See *infra* Table 1. Gary Dotson, also exonerated in 1989, is sometimes identified as the first DNA exoneree. Rob Warden, the leading authority on news media and wrongful convictions, identified Gary Dotson as the first DNA exoneree in an early article, but amended this perception later. See Rob Warden, *The Role of the Media and Public Opinion on Innocence Reform: Past and Future*, in *WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE* 39, 42 (Marvin Zalman & Julia Carrano eds., 2014); Rob Warden, *The Revolutionary Role of Journalism in Identifying and Rectifying Wrongful Convictions*, 70 *UMKC L. REV.* 803, 829 (2002).

²⁵² See *infra* Table 1. A basic overview of each case is found in narrative accounts in the National Registry of Exonerations, *supra* note 234. In their first trial Cruz and Hernandez were tried jointly and found guilty. See FRISBIE & GARRETT, *supra* note 121, at 122, 213. The jury returned a hung verdict against the third co-defendant, Stephen Buckley, and charges against him were ultimately dropped by the prosecution. *Id.* at 207, 256. After reversals on appeal Cruz and Hernandez were retried separately; Cruz was convicted and Hernandez' second jury hung; Hernandez was retried and convicted. *Id.* at 213, 234, 256, 268. Cruz's appeal to the Illinois Supreme Court was denied, but Hernandez conviction was reversed. *Id.* at 287, 299, 330. At Cruz's third trial, the trial judge entered a directed verdict of not guilty after the prosecution case. *Id.* at 344. After Cruz's acquittal, prosecutors dropped charges against Hernandez. *Id.* at 248.

²⁵³ See *infra* Table 1. John Willis, Jr. (2); Jacob Beard (2); Jerry Townsend (7); David Allen Jones (3); Clarence Elkins (2); Anthony Capozzi (3); Byron Halsey (2); Arthur Whitfield

Hubert Gerald, Jr., was himself a serial killer, convicted for six murders.²⁵⁴ When police later attributed one of the murders to *another* serial killer, Gerald's conviction for murdering Rhonda King was dismissed.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).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.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.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, 2015.²⁵⁹ 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%).²⁶⁰ Together

(2), Thomas Haynesworth (3); and David Camm (3). In the Beard, Elkins, Halsey, and Camm cases, the crimes were parts of single episodes. In contrast, Willis, Townsend, Jones, Capozzi, Whitfield, and Haynesworth were convicted of crimes that occurred at different times. See *Exoneration Detail List*, *supra* note 234.

²⁵⁴ See Ctr. on Wrongful Convictions, *Hubert Gerald, Jr.*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3795> (last visited Dec. 19, 2015) [hereinafter *Hubert Gerald, Jr.*]; *infra* Table 1.

²⁵⁵ *Hubert Gerald, Jr.*, *supra* note 254.

²⁵⁶ See *infra* Table 1.

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.

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 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>.

²⁵⁹ See *Exoneration Detail List*, *supra* note 234.

²⁶⁰ See *id.*

they comprise 68.8% of NRE cases.²⁶¹ 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.²⁶²

Among the fifty-six victims, the clear majority were adult women (47), ranging in age from 18 to 60.²⁶³ Three victims were teenage girls, five young girls, five boys, and one fetus.²⁶⁴ In five cases the victims were family members of the exoneree, adding to the tragedy of the wrongful convictions.²⁶⁵ 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.²⁶⁶ Clarence Elkins was convicted of the murder/rape of his mother-in-law and rape of his six-year-old niece.²⁶⁷ Julie Rea was convicted for the murder of her ten year-old son, Joel Kirkpatrick.²⁶⁸ Byron Halsey was convicted for killing Tina and Tyrone Urquhart, his girlfriend's children, whom he treated as his own.²⁶⁹ David Camm was convicted for murdering his wife Kim, and two his children, Brad and Jill.²⁷⁰

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.²⁷¹ Of the forty-four serial exonerees, twenty-six are African American (59%),

²⁶¹ *See id.*

²⁶² SEAN ROSENMERKEL ET AL., U.S. DEPT' JUSTICE, FELONY SENTENCES IN STATE COURTS, 2006—STATISTICAL TABLES (2010).

²⁶³ *See infra* Table 1.

²⁶⁴ *See infra* Table 1. In Rossmo's survey of 178 serial crime victims, 27.5% were male. ROSSMO, *supra* note 219, at 170.

²⁶⁵ *See infra* Table 1.

²⁶⁶ *See Kevin Green*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/kevin-green> (last visited Mar. 14, 2016); *see infra* Table 1.

²⁶⁷ *Clarence Elkins*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/clarence-elkins> (last visited Mar. 14, 2016); *see infra* Table 1.

²⁶⁸ *The Julie Rea Case*, ILLINOIS INNOCENCE PROJECT, <http://www.uis.edu/illinoisinnocenceproject/exonorees/jrea/> (last visited Mar. 14, 2016); *see infra* Table 1.

²⁶⁹ *Byron Halsey*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/byron-halsey> (last visited Mar. 14, 2016); *see infra* Table 1.

²⁷⁰ Maurice Possley, *David Camm*, NATIONAL REGISTRY OF EXONERATIONS (Oct. 25, 2013), <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=4291> [hereinafter *David Camm*].

²⁷¹ *See infra* Table 2.

thirteen white (29.5%), and five are Hispanic (11.4%).²⁷² This compares to NRE rates as of December 19, 2015: African American (46.8%); Caucasian (39.6%); Hispanic (11.7%); and other (0.7%).²⁷³ 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.²⁷⁴

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.²⁷⁵ 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.²⁷⁶ Fourteen of the exonerees had identifiable prior criminal histories.²⁷⁷ Most of the exonerees were convicted within a year or

²⁷² See *infra* Table 2.

²⁷³ *Recently Posted Cases*, THE NATIONAL REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/RecentlyAdded.aspx> (last visited Dec. 19, 2015) [hereinafter *Recently Posted Cases*]. On December 18, 2015 the NRE listed 1721 exonerees: 805 Black; 682 Caucasian; 202 Hispanic; and 32 other (Native American, 8; Asian, 11; Other, 12; Don't Know, 0; and Empty, 1). See *id.*

²⁷⁴ See *supra* note 222 and accompanying text.

²⁷⁵ *Six Years Later: The Central Park Jogger Case*, INNOCENCE PROJECT (Dec. 22, 2008), <http://www.innocenceproject.org/news-events-exonerations/2008/six-years-later-the-central-park-jogger-case>; Mike Krauser, *'Dixmoor 5' Settle Lawsuit Against State Police for \$40M*, CBS (June 25, 2014) <http://chicago.cbslocal.com/2014/06/25/dixmoor-5-settle-lawsuit-against-state-police-for-40m/>; see *infra* Table 2.

²⁷⁶ See *infra* Table 2; see also *supra* note 222 and accompanying text.

²⁷⁷ See *infra* Table 2. Rolando Cruz was a known gang member and had one prior conviction for property trespass. Sara Rimer, *Life After Death Row*, N.Y. TIMES MAGAZINE, (Dec. 10, 2000), <http://partners.nytimes.com/library/magazine/home/20001210mag-deathrow.html>. John Willis, Jr. was a self-described career tire thief. Steve Mills et al., *When Labs Falter, Defendants Pay*, CHI. TRIBUNE (Oct. 20, 2004), <http://www.chicagotribune.com/news/watchdog/chi-041020forensics-story.html>. Hubert Gerald, Jr. was a serial murderer. *Hubert Gerald, Jr.*, *supra* note 254. Carlos M. Lavernia was charged in 1982 for indecency with a child. Amy Smith, *Double Jeopardy: Carlos Lavernia Spent 16 Years in Prison for a Crime He Did Not Commit. Should We Now Send Him Back to Cuba?*, AUSTIN CHRONICLE (Feb. 23, 2001), <http://www.austinchronicle.com/news/2001-02-23/double-jeopardy/>. Frank Lee Smith had a prior murder conviction. Jeff Walsh, *Frank Lee Smith's Long Hard Life*, PBS <http://www.pbs.org/wgbh/pages/frontline/shows/smith/etc/longhard.html> (last visited Apr. 16, 2016). Larry Youngblood had a robbery conviction. Marc Bookman, *Does An Innocent Man Have the Right to Be Exonerated?*, ATLANTIC (Dec. 6, 2014), <http://www.theatlantic.com/national/archive/2014/12/does-an-innocent-man-have-the-right-to-be-exonerated/383343/>. Julius Ruffin had a criminal past of robbery and shoplifting. Tim McGlone, *Free, Finally. Persistence Pays Off With Proof of Innocence, But Justice Falls Short*, VIRGINIAN-PILOT, Feb. 9, 2004, at A1. Byron Halsey had a minor criminal record. Jonathan Casiano & Mark Mueller, *Verdict Overturned After DNA Links Another Man to Kids' Murders*, STAR-LEDGER (May 16, 2007), <http://www.nlada.org/DMS/Documents/1179347790.8/1179292986251190.xml&coll%3D1>. Ricardo Rachell had a burglary conviction. Paul B. Kennedy, *Anatomy of An Exoneration*, THE DEFENSE RESTS (Mar. 13, 2009), <http://kennedy-law.blogspot.com/2009/03/anatomy-of-exoneration.html>. Arthur Whitfield had served two prison terms for

two of the date of the crime.²⁷⁸ 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.²⁷⁹ 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 1986.²⁸⁰ 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.²⁸¹ They were posthumously exonerated.²⁸²

Table 2 also includes the methods by which the forty-four serial exonerees were exonerated.²⁸³ 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).²⁸⁴ Among the forty-four serial exonerees, the methods of exoneration and their numbers are:

prior robbery. Geoff Dutton, *High Cost of Freedom: Despite Innocence, He's Labeled A Sex Offender*, COLUMBUS DISPATCH (Sep. 9, 2011), <http://www.dispatch.com/content/stories/local/2008/01/30/dna4.html>. William Avery had a drug conviction. Maurice Possley, *William D. Avery*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/william-d-avery> (last visited Apr. 16, 2016). Charles Bunge had both assault and drug convictions. Maurice Possley, *Charles Bunge*, NATIONAL REGISTRY OF EXONERATIONS (July 1, 2013), <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=4213>. Jerry Lee Jenkins had been arrested for another crime at the time of the rape he was convicted of. *Jerry Lee Jenkins*, *supra* note 123. Michael McAlister had a past of indecent exposure. Frank Green, *Prosecutor Backs Man Believed Innocent of 1986 Sexual Assault*, RICHMOND TIMES-DISPATCH (Feb. 8, 2015), http://www.richmond.com/news/article_9adedc25-eba7-5167-aff2-dc65ae98a7fc.html.

²⁷⁸ See *infra* Table 2.

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

²⁸⁰ See *infra* Table 2.

²⁸¹ *Frank Lee Smith*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/frank-lee-smith> (last visited Mar. 3, 2016); *Timothy Cole*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/timothy-cole> (last visited Mar. 3, 2016); 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).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.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%.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].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).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

²⁸⁵ See *infra* Table 2.

²⁸⁶ See *infra* Table 2; *Virginia Court of Appeals Exonerates Richmond Man Who Served Nearly 27 Years for Sexual Assaults DNA and Other Evidence Prove He Didn't Commit*, INNOCENCE PROJECT (Dec. 6, 2011), <http://www.innocenceproject.org/news-events-exonerations/2011/virginia-court-of-appeals-exonerates-richmond-man-who-served-nearly-27-years-for-sexual-assaults-dna-and-other-evidence-prove-he-didnt-commit> (noting that the Virginia Court of Appeals issued a Writ of Actual Innocence). Haynesworth was soon after granted \$796,428 in compensation through a private bill passed by the Virginia Senate. See Jim Nolan, *Senate Approves Compensation for Haynesworth*, RICHMOND TIMES-DISPATCH (Feb. 14, 2012), <http://www2.timesdispatch.com/news/2012/feb/14/tdmain07-senate-approves-compensation-for-hayneswo-ar-1686637/>. The writ of innocence is authorized by statute; the law, its explanation, and filing requirements and forms are compiled in a packet. See *Instructions for Petition for a Writ of Actual Innocence based on Nonbiological Evidence*, THE COURT OF APPEALS OF VIRGINIA, http://www.courts.state.va.us/courts/cav/forms/petition_for_writ_packet.pdf (last visited Mar. 21, 2016).

²⁸⁷ See *infra* Table 2; *supra* notes 285, 286 and accompanying text.

²⁸⁸ See *infra* Table 1; *infra* Table 2.

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

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.

²⁹⁵ See MURDERPEDIA, <http://murderpedia.org> (last visited Dec. 19, 2015). Murderpedia included 5,799 male murderers as of December 18, 2015. *Id.* Murderpedia articles were found for Timothy Spencer, Brian Dugan, Keith Jesperson, Gerald Parker, Joseph Paul Franklin, Andre Crawford, Eddie Lee Mosley, Matias Reyes, Chester Turner, Matthew Macon, Tommy Lynn Sells, Altemio Sanchez, and Walter E. Ellis.

²⁹⁶ *Timothy Wilson Spencer*, MURDERPEDIA, <http://murderpedia.org/male.S/s1/spencer-timothy-wilson.htm> (last visited Dec. 19, 2015); *Brian James Dugan*, MURDERPEDIA, <http://murderpedia.org/male.D/d/dugan-brian-james.htm> (last visited Dec. 19, 2015); *Keith Hunter Jesperson*, MURDERPEDIA, <http://murderpedia.org/male.J/j/jesperson.htm> (last visited Dec. 19, 2015); *Gerald Parker*, MURDERPEDIA, <http://murderpedia.org/male.P/p/parker-gerald.htm> (last visited Dec. 19, 2015); *Joseph Paul Franklin*, MURDERPEDIA, <http://murderpedia.org/male.F/f/franklin-joseph.htm> (last visited Dec. 19, 2015); *Andre Crawford*, MURDERPEDIA, <http://murderpedia.org/male.C/c/crawford-andre.htm> (last visited Dec. 19, 2015); *Eddie Lee Mosley*, MURDERPEDIA, <http://murderpedia.org/male.M/m/mosley-eddie-lee.htm> (last visited Dec. 19, 2015); *Matias Reyes*, MURDERPEDIA, <http://murderpedia.org/male.R/r/reyes-matias.htm> (last visited Dec. 19, 2015); *Chester Dwayne Turner*, MURDERPEDIA, <http://murderpedia.org/male.T/t/turner-chester.htm> (last visited Dec. 19, 2015); *Matthew Emmanuel Macon*, MURDERPEDIA, <http://murderpedia.org/male.M/m/macon-matthew.htm> (last visited Dec. 19, 2015); *Tommy Lynn Sells*, MURDERPEDIA, <http://murderpedia.org/male.S/s/sells-tommy-lynn.htm> (last visited Dec. 19, 2015); *Altemio C.*

Forty-three of the cases fit the conventional serial crime profile of murder, murder/rape, or rape.²⁹⁷ One case in our sample, Charles Bunge, does not.²⁹⁸ The crime of attempted robbery is included in our sample because in the NRE Narrative the actual criminal, Manuel Viara, described himself as a “serial drive-by purse snatcher.”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.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.³⁰¹ He was also convicted of second degree murder under a California law that created a new crime of fetal homicide.³⁰²

As would be expected, the serial criminals were reported to have committed multiple crimes.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.³⁰⁴ The actual Central Park rapist, Matias Reyes, was only 18 at the time of the crime.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.³⁰⁶ Timothy Spencer, in his twenties, was responsible for a string of about nine rapes before graduating to gruesome rape-murders.³⁰⁷ His murder/rape career was interrupted by a prison term of a few years for burglary.³⁰⁸ Upon release he murdered four more women in a brief time-span

Sanchez, MURDERPEDIA, <http://murderpedia.org/male/S/s/sanchez-altemio.htm> (last visited Dec. 19, 2015); *Walter E. Ellis*, MURDERPEDIA, <http://murderpedia.org/male/E/e/ellis-walter.htm> (last visited Dec. 19, 2015).

²⁹⁷ See *infra* Table 3.

²⁹⁸ See *infra* Table 3.

²⁹⁹ See *infra* note 682 and accompanying text.

³⁰⁰ See *infra* notes 683–85 and accompanying text.

³⁰¹ *Kevin Lee Green*, NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3260> (last visited Dec. 19, 2016) [hereinafter *Kevin Lee Green*]; see *infra* Table 3.

³⁰² See *Kevin Lee Green*, *supra* note 301.

³⁰³ See *infra* Table 3.

³⁰⁴ See, e.g., *Matias Reyes*, *supra* note 296.

³⁰⁵ See *supra* Table 3.

³⁰⁶ See *Matias Reyes*, *supra* note 296.

³⁰⁷ See *Timothy Wilson Spencer*, *supra* note 296.

³⁰⁸ *Id.*

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.

³¹² See Michael Newton, *Brian James Dugan*, MURDERPEDIA, <http://murderpedia.org/male.D/d/dugan-brian-james.htm> (last visited Mar. 20, 2016) [hereinafter *Brian James Dugan*].

³¹³ See FRISBIE & GARRETT, *supra* note 121, at 139, 142, 148; *Brian James Dugan*, *supra* note 312.

³¹⁴ David Teibel, *Man Gets 24 Years in '83 Child-Sex Case*, TUCSON CITIZEN (Aug 20, 2002), <http://tucsoncitizen.com/morgue2/2002/08/20/104810-man-gets-24-years-in-83-child-sex-case/>.

³¹⁵ Maurice Possley, *Randall Lynn Ayers*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3006> (last visited Mar. 21, 2016).

³¹⁶ See *id.*

³¹⁷ Robert Nelson, *About Face*, PHOENIX NEW TIMES (Apr. 21, 2005), <http://www.phoenixnewtimes.com/news/about-face-6397896>; Innocence Project, *Ray Krone*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3365> (last updated Jan. 4, 2015) [hereinafter *Ray Krone*].

³¹⁸ Geoff Dutton, *High Cost of Freedom*, COLUMBUS DISPATCH (Jan. 30, 2008), http://www.dispatch.com/content/stories/local/2008/01/30/DNA_4.ART_ART_01-30-08_A1_U895110.html.

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.

³²² *David R. Camm*, MURDERPEDIA, <http://murderpedia.org/male.C/c/camm-david.htm> (last visited Mar. 21, 2016).

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*; Carrie Harned, *Charles Boney's First Media Interview*, WAVE 3 NEWS (Feb. 25, 2005), <http://www.wave3.com/story/3005735/charles-boneys-first-media-interview>.

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.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.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 1989.³²⁹ While in prison cold-case DNA testing led to additional convictions and life terms.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.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, 1984.³³² Leon Davis, Jr., “the self proclaimed ‘Black Ninja’ rapist” was arrested on December 19, and is serving seven life terms.³³³

Most of the serial killers and rapists in our sample were “locals,” staying in familiar, even confined, locales.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.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.³³⁶ The African American community in Fort Lauderdale, Florida was

³²⁷ *Michael McAlister*, *supra* note 123; *Thomas Haynesworth*, *supra* note 250.

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.

³²⁹ Green, *supra* note 328; *Michael McAlister*, *supra* note 327.

³³⁰ *Michael McAlister*, *supra* note 327.

³³¹ See *Thomas Haynesworth*, *supra* note 250; *Timeline of Events in the Case of Thomas Haynesworth*, INNOCENCE PROJECT (Feb. 3, 2011), <http://www.innocenceproject.org/news-events-exonerations/2011/timeline-of-events-in-the-case-of-thomas-haynesworth> [hereinafter *Thomas Haynesworth Timeline*].

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

³³³ *Id.*

³³⁴ See, e.g., *Chester Dwayne*, *supra* note 301.

³³⁵ *Id.*

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.³³⁷ When incarcerated these horrific crimes abated.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.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[.]”³⁴⁰ Matthew Macon confined his crimes to the Lansing, Michigan area.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.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.³⁴³ Macon had an extensive juvenile and adult criminal record and had been in and out of prison since 2001.³⁴⁴ 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.”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.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”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.³⁴⁸

³³⁷ See Simon, *supra* note 11, at 126, 130.

³³⁸ See *id.* at 130; *Eddie Lee Mosley*, *supra* note 296.

³³⁹ See Simon, *supra* note 11, at 126–27.

³⁴⁰ *Id.* at 125, 131, 133.

³⁴¹ See *Matthew Emmanuel Macon*, *supra* note 296.

³⁴² See *id.*

³⁴³ See *id.*

³⁴⁴ See *id.*

³⁴⁵ See *Walter E. Ellis*, *supra* note 296.

³⁴⁶ See Ctr. on Wrongful Convictions, *John Willis*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3756> (last visited Mar. 2, 2016) [hereinafter *John Willis*].

³⁴⁷ *Tommy Lynn Sells*, *supra* note 296. Sells murdered Joel Kirkpatrick, for which Julie Rea was wrongfully convicted. *Id.*

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 Jespersion, 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

³⁴⁹ See *Joseph Paul Franklin*, *supra* note 296; *Serial Killers Part 4: White Supremacist Joseph Franklin*, FBI (Jan. 14, 2014), <https://www.fbi.gov/news/stories/2014/january/serial-killers-part-4-joseph-paul-franklin> [hereinafter *Serial Killers*].

³⁵⁰ See *Keith Hunter Jespersion*, *supra* note 296.

³⁵¹ See *id.*; Michael S. Perry, *Laverne Pavlinac*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3526> (last visited May 15, 2016) [hereinafter *Laverne Pavlinac*].

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.³⁵⁶ 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.³⁵⁷

The sentences meted out were understandably high. Five exonerees were sentenced to death, at least in their initial trials.³⁵⁸ Nine received life or life without parole (LWOP).³⁵⁹ Another nine received what may be viewed as the equivalent of life terms: sentences or minimum sentences of fifty years or more.³⁶⁰ The remaining twenty-one exonerees received prison sentences or minimums of less than fifty years.³⁶¹

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.³⁶² 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 2015.³⁶³ 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.³⁶⁴ 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.

³⁵⁶ See *infra* Table 4.

³⁵⁷ See *infra* Table 4. Other data on victims are found in *supra* Part IV(B)(1).

³⁵⁸ See *infra* Table 4. The exonerees sentenced to death were Rolando Cruz, Alejandro Hernandez, Hubert Gerald, 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={faf6eddb-5a68-4f8f-8a522c61f5bf9ea7}&SortField=Title&SortDir=Asc&FilterField1=DNA&FilterValue1=8_DNA

(last visited Mar. 14, 2016) [hereinafter *Detail List-DNA*]; *Hubert Gerald, Jr.*, *supra* note 254.

³⁵⁹ 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.

³⁶⁰ 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 Rea, and David Camm. See *infra* Table 4; *Exoneration Detail List*, *supra* note 234.

³⁶¹ See *infra* Table 4.

³⁶² See *infra* Table 4.

³⁶³ 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.

³⁶⁴ 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.³⁶⁵ 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.³⁶⁶

1. Notorious “Mass-Teen” Wrongful Conviction Cases

Central Park 5—Matias Reyes

Dixmoor 5—Willie Randolph

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 Jogger³⁶⁷ and the Dixmoor Five cases,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.³⁶⁹ The victim in the Dixmoor case, fourteen-year-old Cateresa Matthews was raped and murdered.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.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.³⁷² This spree was preceded by another rape of his in Central Park and two attempts.³⁷³ Likewise, Willie Randolph, “went on to commit a number of other violent crimes throughout the Chicago area.”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.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.³⁷⁶ Another similarity is that in

³⁶⁷ Acker, *supra* note 236, at 1686; Innocence Project, *Korey Wise*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3761> (last updated Dec. 8, 2014) [hereinafter *Korey Wise*].

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*].

³⁶⁹ Acker, *supra* note 236, at 1682, 1684, 1686, 1687, 1688.

³⁷⁰ *James Harden*, *supra* note 368.

³⁷¹ *Korey Wise*, *supra* note 367.

³⁷² Acker, *supra* note 241, at 1689–90.

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>.

³⁷⁴ Complaint at 2, *Barr v. Kachiroubas*, No. 1:12-cv-08327 (N.D. Ill. Oct. 17, 2012).

³⁷⁵ Chris Smith, *Central Park Revisited*, N.Y. MAGAZINE (Oct. 21, 2002), http://nymag.com/nymetro/news/crimelaw/features/n_7836/.

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.

³⁷⁸ Joshua A. Tepfer & Laura H. Nirider, *Adjudicated Juveniles and Collateral Relief*, 64 ME. L. REV. 553, 570 (2012); Joshua A. Tepfer et al., *Convenient Scapegoats: Juvenile Confessions and Exculpatory DNA in Cook County, Illinois*, 18 CARDOZO J.L. & GENDER 631, 643 (2012); Rob Cooper, *Dixmore 5 Freed After 20 Years in Jail*, DAILY MAIL, <http://www.dailymail.co.uk/news/article-2057473/Dixmore-5-freed-20-years-jail-convictions-murder-rape-girl-14-overtuned-amid-new-DNA-evidence.html> (last updated Nov. 4, 2011); Ronald Koziol & Andrew Gottesman, *5 Teens Charged with Girl's Rape, Murder in Dixmoor*, CHICAGO TRIBUNE (Nov. 7, 1992), http://articles.chicagotribune.com/1992-11-07/news/9204100988_1_sexual-assault-matthews-grandmother-graves.

³⁷⁹ Cooper, *supra* note 378; Tepfer et al., *supra* note 378, at 638.

³⁸⁰ Rob Warden, *Jonathan Barr*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3840> (last updated June 28, 2014) [hereinafter *Jonathan Barr*].

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.

³⁸⁵ See Acker, *supra* note 236, at 1682–83; Tepfer & Nirider, *supra* note 378, at 570; *Background on Dixmoor and Englewood Cases*, INNOCENCE PROJECT (Aug. 9, 2011), <http://www.innocenceproject.org/news-events/exonerations/2011/background-on-dixmoor-and-englewood-cases>.

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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

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.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.”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.³⁹⁹ A rampage through Central Park that night by up to forty teens from Harlem created a media sensation and a massive police response.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.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.⁴⁰² Having swung into gear behind an *obvious* cause and effect,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.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,⁴⁰⁵ a ploy jocularly known as the “unindicted co-ejaculator.”⁴⁰⁶ Bad

³⁹⁷ Complaint, *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.”).

³⁹⁸ Acker, *supra* note 236, at 1683.

³⁹⁹ See SARAH BURNS, *THE CENTRAL PARK FIVE* 39 (2011); TIMOTHY SULLIVAN, *UNEQUAL VERDICTS: THE CENTRAL PARK JOGGER TRIALS* 57, 77 (1992); *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, *supra* note 236, at 1682; Smith, *supra* note 375; Warden, *supra* note 380.

⁴⁰⁰ N. Jeremi Duru, *The Central Park Five, The Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1316, 1348 (2004).

⁴⁰¹ *Id.* at 1316; Smith, *supra* note 375.

⁴⁰² Duru, *supra* note 400, at 1353.

⁴⁰³ A woeful example of the *post hoc ergo propter hoc* fallacy. For an explanation of this fallacy, see Philip D. Donohoe, *The Butterbaugh Fallacy*, 61 A.F. L. REV. 149, 172–73 (2008).

⁴⁰⁴ Duru, *supra* note 400, at 1357–60; see *supra* note 403 and accompanying text.

⁴⁰⁵ See SULLIVAN, *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.”).

⁴⁰⁶ *The Unindicted Co-Ejaculator*, SKEPTICAL JUROR (Nov. 10, 2010), <http://www.skepticaljuror.com/2010/11/unindicted-co-ejaculator.html>; *MI: Prosecution’s “Unindicted Co-Ejaculator Theory” Results in Exoneration After DNA Excludes Defendant*, OPENFILE (Sept. 8, 2014),

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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.⁴⁰⁷ Two attempted rapes, one just two days before April 19, focused some attention on Reyes by a Sex Crimes unit detective.⁴⁰⁸ The so-called "wilding" that night was investigated by the Central Park Precinct detective division, which began to investigate the rape.⁴⁰⁹ 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.⁴¹⁰ This lack of communication that *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."⁴¹¹ 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.⁴¹²

Why did it never occur to the investigators that these brutal murder/rapes may have been committed by serial killers? Was it

<http://www.prosecutorialaccountability.com/2014/09/08/mi-prosecutions-unindicted-co-ejaculator-theory-results-in-exoneration-after-dna-excludes-defendant/>. We believe that the term was originated by Peter Neufeld.

⁴⁰⁷ 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>.

⁴⁰⁸ 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.

⁴⁰⁹ 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).

⁴¹⁰ Dwyer, *supra* note 408.

⁴¹¹ Smith, *supra* note 375.

⁴¹² 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, *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, *The DNA Story, An Alternative View*, 88 J. CRIM. L. & CRIMINOLOGY 380, 383-84, 391 (1997).

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

⁴¹³ See *supra* Part III.D.

⁴¹⁴ See James Alan Fox & Jack Levin, *Multiple Homicide: Patterns of Serial and Mass Murder*, 23 CRIME & JUST. 407, 448 (1998).

⁴¹⁵ See Rosemary V. Barnett, *Helping Teens Answer the Question "Who am I": Physical Development in Adolescents*, U. FLA. INST. FOOD & AGRIC. SCI., 1–2 (revised July 2015), <http://edis.ifas.ufl.edu/pdffiles/FY/FY77000.pdf>.

⁴¹⁶ See Sharon L. Davies, *The Reality of False Confessions—Lessons of the Central Park Jogger*, 30 N.Y.U. REV. L. & SOC. CHANGE 209, 210, 252 (2006).

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).

⁴¹⁹ Steve Mills, *\$40M for Five Wrongly Convicted of Dixmoor Rape, Murder*, CHI. TRIB. (June 25, 2014), <http://www.chicagotribune.com/news/local/breaking/chi-isp-agrees-to-pay-40m-to-five-wrongly-convicted-of-dixmoor-rape-murder-20140624-story.html>; Benjamin Weiser, *Settlement Is Approved in Central Park Jogger Case, But New York Deflects Blame*, N.Y. TIMES (Sept. 5, 2014), http://www.nytimes.com/2014/09/06/nyregion/41-million-settlement-for-5-convicted-in-jogger-case-is-approved.html?_r=0.

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investigation caused a wrongful conviction.⁴²⁰ In the Dixmoor Five case, the plaintiff alleged that police did not just make bad judgments, but fabricated evidence.⁴²¹ By settling, both cities deflected the blame that would have come with trial verdicts.⁴²²

2. Wrongful Convictions Involving Murder of Street-Walking Prostitutes

David Allen Jones—Chester Turner

Chaunte Ott, William Avery—Walter Ellis

Hubert Gerald, 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 Gerald, Jr. in Chicago.⁴²³ All the exonerees and the serial killers—Chester Turner (Los Angeles), Walter Ellis (Milwaukee), and Andre Crawford (Chicago)—were African American.⁴²⁴ DNA contributed to three of the exonerations (Jones, Ott, Avery).⁴²⁵ Two of the exonerees, Gerald and Avery had prior criminal histories.⁴²⁶ Jones's case was investigated as a serial crime, indicating an error of wrongly identifying someone as a serial murder.⁴²⁷ 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.⁴²⁸

The Hubert Gerald–Avery Crawford case is truly odd, but on reflection quite understandable.⁴²⁹ In 1997, Gerald, a mentally retarded serial killer, was convicted in a jury trial for strangling

⁴²⁰ See *supra* Part III.B.

⁴²¹ See Mills, *supra* note 424.

⁴²² See *id.*; Weiser, *supra* note 419.

⁴²³ See *infra* Table 5.

⁴²⁴ See *infra* Tables 2, 3.

⁴²⁵ See *infra* Table 4.

⁴²⁶ See *infra* Table 2.

⁴²⁷ See *infra* Table 4.

⁴²⁸ *Id.*

⁴²⁹ See *Andre Crawford*, MURDERPEDIA, <http://murderpedia.org/male/C/c/crawford-andre.htm> (last visited Mar. 21 2016); *Hubert Gerald, Jr.*, *supra* note 254; *Hubert Gerald, Jr.*, MURDERPEDIA, <http://murderpedia.org/male/G/g/geralds-hubert.htm> (last visited Mar. 21, 2016) [hereinafter *Hubert Gerald, Jr. II*].

and murdering six drug-addicted prostitutes in Chicago between 1994 and 1995, including Rhonda King.⁴³⁰ The killings in the four cases were confirmed by DNA evidence and Gerald's confessions, with both regarded as critical evidence.⁴³¹ In 2000, Chicago police arrested Andre Crawford on suspicion of murder.⁴³² He confessed to murdering eleven, including Rhonda King.⁴³³ Crawford's confession was found to be accurate and prosecutors moved to vacate Gerald's conviction for murdering King.⁴³⁴ In 2009, Crawford was convicted for the eleven murders, including King's, and was sentenced to life imprisonment.⁴³⁵ 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 Gerald's arrest, for example, noted that some of the corpses killed by Gerald "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.⁴³⁶ 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.⁴³⁷ 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.⁴³⁸ Two weeks later police got confessions to all crimes from Jones, and proceeded with his prosecution.⁴³⁹ The prosecution was flawed. Serology

⁴³⁰ *Hubert Gerald's, Jr. II, supra* note 429.

⁴³¹ *Id.*

⁴³² *Andre Crawford, supra* note 429.

⁴³³ *Id.*

⁴³⁴ *Hubert Gerald's, Jr., supra* note 254.

⁴³⁵ *Andre Crawford, supra* note 429.

⁴³⁶ *Hubert Gerald's Jr. II, supra* note 429.

⁴³⁷ See The Innocence Project, *David Allen Jones*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=3335> (last updated Jan. 23, 2014) [hereinafter *David Allen Jones*]; Acker, *supra* note 241, at 1698–99.

⁴³⁸ Acker, *supra* note 236, at 1699.

⁴³⁹ *Id.*

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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.

⁴⁴⁷ *See* William S. Lofquist, *Whodunit?: An Examination of the Production of Wrongful Convictions*, in *WRONGLY CONVICTED: PERSPECTIVES ON FAILED JUSTICE 189–92* (Saundra D. Westervelt & John A. Humphrey eds., 2001); *see also* William S. Lofquist, *Finding the Causes in the Contexts: Structural Sources of Wrongful Convictions*, in *EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 19–33* (Allison D. Redlich et al., eds., 2014).

2007.⁴⁴⁸ 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

⁴⁴⁸ Ashley Colman, *Milwaukee’s Notorious North Side Strangler Dies of Natural Causes in Prison After Serving Just Three Years of his Seven Consecutive Life Sentences*, DAILYMAIL.COM, <http://www.dailymail.co.uk/news/article-2517092/Milwaukees-North-Side-Strangler-Walter-Ellis-dies-prison.html> (last updated Dec. 2, 2013); Maurice Possley, *William Avery*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3004> (last updated July 4, 2015) [hereinafter *William Avery*].

⁴⁴⁹ *William Avery*, *supra* note 448.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² First Amended Complaint at 6, *Avery v. City of Milwaukee*, No. 11-cv-408, 2012 WL 12502502, at *6 (E.D. Wis. July 28, 2013).

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.*

⁴⁵⁸ Gina Barton, *Milwaukee Must Pay Wrongfully Convicted Man \$1 Million, Jury Rules*, J. SENTINEL (June 11, 2015), <http://www.jsonline.com/news/crime/milwaukee-must-pay-wrongfully-convicted-man-1-million-jury-rules-b99518024z1-307044981.html>.

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slashed and her pants down around her ankles.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.⁴⁶⁰ There was virtually no physical evidence connecting Ott to the murder.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.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.⁴⁶³ On that basis a new trial was ordered and the prosecutor declined to prosecute, freeing Ott.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,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]

⁴⁵⁹ Bruce Vielmetti, *Milwaukee to Pay \$6.5 Million to Man Cleared After 13 Years in Prison*, J. SENTINEL (Mar. 31, 2015), <http://www.jsonline.com/news/crime/milwaukee-to-pay-65-million-to-man-cleared-after-13-years-in-prison-b99472841z1-298216201.html>; The Innocence Project, *Chaunte Ott*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3517> (last updated Apr. 7, 2015) [hereinafter *Chaunte Ott*].

⁴⁶⁰ *Chaunte Ott*, *supra* note 459.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

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.⁴⁶⁶ 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.⁴⁶⁷ Green had gone out for hamburgers and police noted that when they arrived on the scene the food was still warm.⁴⁶⁸ 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.⁴⁶⁹ Despite the lack of corroborating evidence, he was convicted for the attempted murder of his wife and second-degree murder of the fetus.⁴⁷⁰ He was not charged with rape, although the crime investigation detected and preserved the presence of sperm.⁴⁷¹ 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.⁴⁷² 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.⁴⁷³

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.⁴⁷⁴ In October 1997, an intruder entered the house at night and stabbed Joel to death.⁴⁷⁵ Julie, asleep in another room, awoke and

⁴⁶⁶ 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>.

⁴⁶⁷ 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.

⁴⁶⁸ Buchanan, *supra* note 466; *Kevin Lee Green*, *supra* note 301.

⁴⁶⁹ Ernie, *supra* note 467; *Kevin Lee Green*, *supra* note 301.

⁴⁷⁰ Ernie, *supra* note 467; *Kevin Lee Green*, *supra* note 301.

⁴⁷¹ See *Kevin Lee Green*, *supra* note 301.

⁴⁷² Ernie, *supra* note 467.

⁴⁷³ *Id.*; *Kevin Lee Green*, *supra* note 301.

⁴⁷⁴ 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.

⁴⁷⁵ *Julie Rea*, *supra* note 474.

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was knocked down by the masked intruder.⁴⁷⁶ She ran to a neighbor's house, confusedly thinking that Joel had been kidnapped.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.⁴⁷⁸ Possible local leads were investigated but did not pan out and the investigation was further poisoned by Julie's ex-husband's recriminations.⁴⁷⁹ Three years after the murder a new prosecutor obtained a grand jury indictment and Julie was convicted in 2002.⁴⁸⁰ 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.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 *20/20* broadcast.⁴⁸² To her surprise Sells plausibly admitted to the killing, having been in the vicinity of the crime.⁴⁸³ An appeal led to a retrial in which Julie Rea was acquitted.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."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

⁴⁷⁶ *Id.*; see Rhodes, *supra* note 474.

⁴⁷⁷ Rhodes, *supra* note 466; Rhodes, *supra* note 474.

⁴⁷⁸ See Lynn Sherr et al., *Untangling a Murder Mystery*, ABC NEWS (Mar. 8, 2007), <http://abcnews.go.com/2020/story?id=2931404&page=1>.

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).

⁴⁸⁰ Rhodes, *supra* note 466; *Julie Rea*, *supra* note 474.

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).

⁴⁸² Rhodes, *supra* note 466.

⁴⁸³ See Rhodes, *supra* note 474.

⁴⁸⁴ *Julie Rea*, *supra* note 474.

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.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.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.⁴⁸⁸ His wife's investigative perseverance of likely suspects identified Earl Mann as a likely suspect.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.⁴⁹⁰ By that time Brooke's story began to change, reviving pre-trial uncertainty.⁴⁹¹ Earl Mann was the common law husband of Tonia Brasiel, Judy Johnson's neighbor.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.⁴⁹³ It was Tonia who claimed that Brooke announced that Clarence Elkins killed her grandmother.⁴⁹⁴ Earl Mann "had a long violent criminal record" and was later convicted for raping his three daughters.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.⁴⁹⁶ He helped support the family and raised the children as his own.⁴⁹⁷ One evening in 1985, when Margaret was at work, Byron left the children unattended to party with friends, being driven by next-door

⁴⁸⁶ Maurice Possley, *Clarence Elkins*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3202> (last visited Mar. 9, 2016) [hereinafter *Clarence Elkins*].

⁴⁸⁷ *Id.*; Acker, *supra* note 236, at 1670.

⁴⁸⁸ JIM PETRO & NANCY PETRO, *FALSE JUSTICE: EIGHT MYTHS THAT CONVICT THE INNOCENT 23* (rev. ed., Rutledge 2015) (2010).

⁴⁸⁹ Acker, *supra* note 236, at 1671.

⁴⁹⁰ *Id.* at 1672.

⁴⁹¹ PETRO & PETRO, *supra* note 488, at 16.

⁴⁹² *Id.* at 21.

⁴⁹³ *Id.* at 11.

⁴⁹⁴ *Id.* at 21.

⁴⁹⁵ *Id.*

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*].

⁴⁹⁷ *Byron Halsey*, *supra* note 496.

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neighbor, Clifton Hall.⁴⁹⁸ Hall left Byron at the party and went home.⁴⁹⁹ Hall, in fact, went to Halsey's apartment and raped and murdered the children in a horrific and brutal manner.⁵⁰⁰ Suspicion fell on Halsey.⁵⁰¹ After a 30-hour interrogation Byron made guilty admissions.⁵⁰² He also failed a polygraph examination.⁵⁰³ Clifton Hall testified against him at the trial.⁵⁰⁴ Six years later Hall was convicted for three brutal sexual assaults.⁵⁰⁵ When Halsey obtained access to crime scene evidence, DNA testing of the semen and other biological excluded him and instead included Clifton Hall.⁵⁰⁶ 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.⁵⁰⁷

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.⁵⁰⁸ He attempted to resuscitate Brad, but to no avail.⁵⁰⁹ Camm was immediately targeted as the killer and his conviction was bolstered by blood spatter forensic evidence, although he had strong alibi witnesses.⁵¹⁰ His 2002 conviction was overturned because the prosecution introduced evidence of Camm's extramarital affairs.⁵¹¹ Before his second trial DNA evidence from Charles Boney, a serial criminal, was found on a sweatshirt tucked under Brad.⁵¹² 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.⁵¹³ 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.*

⁵¹⁰ *Id.*; *Camm v. State*, 812 N.E.2d 1127, 1137 (Ind. Ct. App. 2004).

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.⁵¹⁴ In his second trial, the prosecution introduced three prison snitches claiming that Camm admitted to the crimes.⁵¹⁵ Camm's second conviction was reversed on the grounds that the molestation claim was highly speculative.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.⁵¹⁷

Charles Boney had a long history of assaults on women and stealing their shoes due to a foot-fetish.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."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.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.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.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.

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*, Camm v. State, 908 N.E.2d 215, 221, 225 (Ind. 2009).

⁵¹⁷ *David Camm*, *supra* note 270.

⁵¹⁸ Katie Mettler, *Suspended Justice*, IND. DAILY STUDENT (last visited May 16, 2016), <http://specials.idsnews.com/suspended-justice/>.

⁵¹⁹ *Dateline: Mystery on Lockhart Road* (NBC television broadcast Jan. 31, 2014).

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

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4. Long Distance Serial Killer Wrongful Convictions

Laverne Pavlinac and John Sosnovske—Keith Jespersen (“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.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.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.⁵²⁵ The crimes were unsolved for years as rumors floated through the tight knit local community.⁵²⁶ Police reinvestigated the crime in 1991 and traced some previously unfollowed leads to a witness whose decade-old accusations led to further interviews.⁵²⁷ As a result, in 1992 Beard and six others were indicted.⁵²⁸ The indictments were dropped when the prime witness recanted, claiming police coercion.⁵²⁹ In 1993, Beard and four others were re-indicted.⁵³⁰ The others testified against him and Beard was convicted.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.⁵³² Beginning his

⁵²³ See, e.g., *Julie Rea*, *supra* note 474.

⁵²⁴ Maurice Possley, *Jacob Beard*, NAT’L REGISTRY EXONERATIONS (Jul. 30, 2012), <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=3963> [hereinafter *Jacob Beard*].

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² See *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.⁵³³ Included among his attempted murders were attacks on civil rights leader Vernon Jordan, Jr. and Larry Flynt, the outspoken publisher of *Penthouse* magazine.⁵³⁴ “He killed possibly more than 20 people and seriously injured six more.”⁵³⁵ 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.”⁵³⁶ His arrest in 1980 was followed by convictions and life sentences of the death penalty in different states.⁵³⁷ 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 investigating another case.⁵³⁸

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.⁵³⁹

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, 23.⁵⁴⁰ Bennett’s body was found in 1990 in a remote area of the Columbia Gorge, just outside Portland, Oregon.⁵⁴¹ He met Taunja in a bar; they left, had sex, and he then beat and strangled her to death.⁵⁴² He established an alibi by going out for drinks and conversing with people.⁵⁴³ The next day he disposed of the body at one place and

Benjamin Franklin and the Nazi leader, Joseph Goebbels. See *Serial Killers*, *supra* note 349.

⁵³³ *Serial Killers*, *supra* note 349.

⁵³⁴ *Id.*; See Nancy Dillon, *Hustler Founder Larry Flynt Against Execution of Serial Killer Who Paralyzed Him*, N.Y. DAILY NEWS (Oct. 17, 2013), <http://www.nydailynews.com/news/national/hustler-founder-larry-flynt-don-execute-man-paralyzed-article-1.1489133>.

⁵³⁵ *Serial Killers*, *supra* note 349.

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ Dan Horn, *Franklin’s Confession Frees Man: Judge Grants New Trial in W.Va. Slayings*, CINCINNATI ENQUIRER (Jan. 30, 1999), http://www.enquirer.com/editions/1999/01/30/loc_franklins_confession.html; Tyler Jett, *Confessions of a Chattanooga Serial Killer*, TIMES FREE PRESS (Nov. 19, 2013), <http://www.timesfreepress.com/news/local/story/2013/nov/19/confessions-of-a-hate-killertoo-many-deaths-to/124466/>.

⁵³⁹ See *infra* notes 572–75 and accompanying text.

⁵⁴⁰ Michael A. Fuoco, *Touching Evil: Getting to Know a Serial Killer*, PITTSBURGH POST-GAZETTE (Dec. 16, 2007), <http://www.post-gazette.com/frontpage/2007/12/16/Touching-Evil-Getting-to-know-a-serial-killer/stories/200712160226>.

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ *Id.*

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some of Taunja's belongings in another remote location, before leaving the area.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.⁵⁴⁵ Her story dissolved into a confession that Sosnovske forced her to assist in the murder.⁵⁴⁶ Despite some inconsistencies and a belated plea of innocence, Pavlinac was tried and found guilty.⁵⁴⁷ Sosnovske pleaded no contest to murder and kidnapping.⁵⁴⁸ They received life sentences in 1991 and remained in prison for four years.⁵⁴⁹ In 1995, Jespersen 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."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.⁵⁵¹ No incriminating evidence was found and Pavlinac's claim to have such evidence was determined by prosecutors to have been planted.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, Jespersen wrote letters, inscribed with a "happy face," to newspapers claiming to have killed Taunja Bennett.⁵⁵³ Ignoring such letters may be understandable because police often receive unsolicited and unfounded claims of guilt in

⁵⁴⁴ See *id.* ("[Jespersen] showed authorities where he had scattered the contents of Miss Bennett's purse.").

⁵⁴⁵ *Id.*

⁵⁴⁶ Michael S. Perry, *John Sosnovske*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3654> (last visited Mar. 19, 2016) [hereinafter *John Sosnovske*].

⁵⁴⁷ See *id.*

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.*

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-Jespersen-reveals-duct-tape.html> (last updated Nov. 6, 2014) ("The killer was finally caught in March 1995 after strangling long-time girlfriend.").

⁵⁵¹ See *John Sosnovske*, *supra* note 546.

⁵⁵² *Id.*

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.

⁵⁵⁶ JIM RIX, *JINGLE JANGLE: THE PERFECT CRIME TURNED INSIDE OUT* 16–17 (2007).

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.

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long sentence for molesting a seven-year old girl.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."⁵⁶⁶ Yet, Phillips was barely questioned about the crime while suspicion fell on Krone.⁵⁶⁷ While "fine upstanding citizens" do commit serious crimes, and ex-convicts are wrongfully targeted and convicted for crimes they did not commit,⁵⁶⁸ the odds of misconduct are aligned to a person's profile.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.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

⁵⁶⁵ *Id.* at 341, 405–06.

⁵⁶⁶ *Id.* at 12–13.

⁵⁶⁷ *See id.* at 170.

⁵⁶⁸ *See* CALVIN C. JOHNSON JR. & GREG HAMPIKIAN, *EXIT TO FREEDOM* 83, 127 (2003) (noting how a prior burglary crime led to wrongful rape charges and a conviction).

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.

⁵⁷⁰ Paul Davenport, *Phoenix Man Gets Prison in Slaying Previously Pinned on Wrong Man*, TUCSON CITIZEN (Aug. 18, 2006), <http://tucsoncitizen.com/morgue/2006/08/18/23213-phoenix-man-gets-prison-in-slaying-previously-pinned-on-wrong-man/>.

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.⁵⁷¹ 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.”⁵⁷² 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.⁵⁷³ David Vasquez possessed none of these qualities, and the investigators knew it.⁵⁷⁴ 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.⁵⁷⁵ As this was the first DNA exoneration in the United States,⁵⁷⁶ 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.⁵⁷⁷

Claude McCollum, a community college student with significant learning disabilities, was intensely interrogated for murdering Professor Carolyn Kronenberg, 60, in a classroom.⁵⁷⁸ 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.⁵⁷⁹ A reinvestigation of McCollum's 2006 conviction, instigated by serial rape-murderer Matthew Macon's admission to

⁵⁷¹ See *supra* Part IV.

⁵⁷² See James R. Acker & Rose Bellandi, *Deadly Errors ad Salutory Reforms, in WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 147, 272* (Marvin Zalman & Julia Carrano eds., 2014); Hilary S. Ritter, *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).

⁵⁷³ See PAUL MONES, *STALKING JUSTICE* 52, 86–87 (1995) (noting how Vasquez met none of these requirements); Zalman, *supra* note 366, at 148–49.

⁵⁷⁴ See MONES, *supra* note 573, at 52, 86–87; Acker, *supra* note 236, at 1695–96; Zalman, *supra* note 366, at 148–49; Jonah Horwitz & Rob Warden, *David Vasquez*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3705> (last updated Mar. 11, 2014) [hereinafter *David Vasquez*].

⁵⁷⁵ Acker, *supra* note 572, at 1694–96.

⁵⁷⁶ Ritter, *supra* note 572, at 835 n.57.

⁵⁷⁷ See *supra* Part 1; see, e.g., Giannelli, *supra* note 412, at 383–84.

⁵⁷⁸ Stephanie Denzel, *Claude McCollum*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3421> (last visited Mar. 9, 2016) [hereinafter *Claude McCollum*].

⁵⁷⁹ *Id.*

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the crime in 2007, revealed a number of errors.⁵⁸⁰ Most significant was a damaged surveillance videotape that showed McCollum to be in a different college building at the time of the murder.⁵⁸¹ A state police investigator saw the tape and wrote a report clearing McCollum, which the trial prosecutor claimed he gave to the defense attorney.⁵⁸² The defense, however, never received the report.⁵⁸³ On direct examination the prosecutor did not ask the detective about his exonerating conclusion.⁵⁸⁴ Also, a fingerprint on a plastic bag found near the crime scene that was examined during the post-conviction review came from Macon.⁵⁸⁵ This is a case where good police work could have prevented a miscarriage of justice, but prosecutorial misconduct led to a wrongful conviction.⁵⁸⁶ The trial prosecutor was fired for his misconduct.⁵⁸⁷ Aside from the clear misconduct in this case, including the tenuous nature of the confession, we note that the possibility of a serial killer was apparently not considered.⁵⁸⁸ 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.⁵⁸⁹ 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 1983.⁵⁹⁰ When facing the possibility of being called to testify for the prosecution, he resigned from his career.⁵⁹¹ After the first

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ See James R. Acker & Catherine L. Bonventre, *Protecting the Innocent in New York: Moving Beyond Changing Only Their Names*, 73 ALB. L. REV. 1245, 1257 (2010).

⁵⁸⁷ Christine Rook, *Ingham County: Prosecutor Fired, Accused of Misconduct*, DETROIT FREE PRESS, Aug. 21, 2008, at B1.

⁵⁸⁸ See Christine Rook, *Questions in McCollum Case Resonate in Community*, LANSING STATE JOURNAL, Oct. 28, 2007, at A1.

⁵⁸⁹ See Ctr. on Wrongful Convictions, *Rolando Cruz*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=3140> (last visited Mar. 20, 2016) [hereinafter *Rolando Cruz*]; Ctr. on Wrongful Convictions, *Alejandro Hernandez*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3292> (last visited Mar. 20, 2016) [hereinafter *Alejandro Hernandez*]; FRISBIE AND GARRETT, *supra* note 121, at 86–87 (describing mistakes made in the case as explained by the detectives who handled the case).

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.⁵⁹² The Cruz-Hernandez convictions were overturned on appeal in 1989, but the men were re-convicted.⁵⁹³ 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.⁵⁹⁴ 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.⁵⁹⁵ Cruz's ordeal ended with a directed verdict at his third trial, and charges against Hernandez were then dropped.⁵⁹⁶ 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.⁵⁹⁷

The Frank Lee Smith and Jerry Frank Townsend cases⁵⁹⁸ 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.⁵⁹⁹ 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.⁶⁰⁰ An ex-detective in the case saw the connection but was ignored.⁶⁰¹ In

Alejandro Hernandez, supra note 589.

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

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.*

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

⁵⁹⁷ Alden Long, *Illinois Prosecutors and Police Acquitted Despite Evidence They Framed Defendant*, WORLD SOCIALIST (June 16, 1999), <https://www.wsws.org/en/articles/1999/06/dupa-j16.html>.

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

⁵⁹⁹ See The Innocence Project, *Frank Lee Smith*, NAT'L REGISTRY EXONERATION, <http://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=3644> (last visited Mar. 20, 2016) [hereinafter *Frank Lee Smith*]; The Innocence Project, *Jerry Frank Townsend*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3697> (last visited Mar. 20, 2016) [hereinafter *Jerry Frank Townsend*]. On issues of race and justice, see MICHAEL TONRY, MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA 52 (1995).

⁶⁰⁰ Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95, J. CRIM. L. & CRIMINOLOGY 523, 526 (2005).

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).

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the Florida cases of Smith and Townsend, two experienced detectives who knew a serial killer was on the loose were virtually ignored of decades.⁶⁰² The errors in these cases included the failure of investigative bureaus to conduct their business in more systematic and professional ways.⁶⁰³ 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”)

⁶⁰² Dan Christensen, *Decades on, Kin of Serial Killer’s Victims After Wrongful Arrest Want Answers*, NBC NEWS (July 29, 2012), <http://investigations.nbcnews.com/news/2012/07/29/12995393-decades-on-kin-of-serial-killers-victims-after-wrongful-arrest-want-answers?lite>.

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

⁶⁰⁴ See *infra* Table 1.

⁶⁰⁵ Acker, *supra* note 236, at 1674; Ctr. on Wrongful Convictions, *John Willis*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3756> (last visited Mar. 20, 2016) [hereinafter *John Willis*].

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.

⁶¹⁰ *Id.*; Amy Smith, *Double Jeopardy: Carlos Lavernia Spent 16 Years in Prison for a Crime He Did Not Commit. Should We Now Send Him Back to Cuba?*, AUSTIN CHRON. (Feb. 23, 2001) <http://www.austinchronicle.com/news/2001-02-23/double-jeopardy/>.

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->

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Thomas Haynesworth was identified as a serial rapist by five victims, tried for four of the crimes, and convicted of three.⁶¹⁶ The rapes continued after he was arrested; the Richmond, Virginia assailant, Leon Davis, named himself the “Black Ninja.”⁶¹⁷ Nevertheless Haynesworth, incarcerated at age 18, spent 26 years in prison until exonerated by DNA testing in 2011.⁶¹⁸

Anthony Capozzi was convicted in 1987 for three 1984 rapes with similar modus operandi committed near Buffalo, New York.⁶¹⁹ 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.⁶²⁰ As Capozzi’s conviction, based on flawed identifications, did not end the signature crimes, his conviction should have been suspect.⁶²¹ 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.⁶²² 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.⁶²³

“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.”⁶²⁴ ⁶²⁵ A victim’s description generated a composite sketch.⁶²⁶ Police were on the lookout near the campus and an officer spotted Timothy Cole while entering a

imprisonment/carlos-lavernia (last visited Mar. 20, 2016).

⁶¹⁶ Acker, *supra* note 241, at 1646–47; *Thomas Haynesworth*, *supra* note 250.

⁶¹⁷ *Thomas Haynesworth*, *supra* note 250.

⁶¹⁸ Acker, *supra* note 236, at 1649.

⁶¹⁹ *Id.* at 1691; The Innocence Project, *Anthony Capozzi*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3085> (last visited Mar. 21, 2016) [hereinafter *Anthony Capozzi*].

⁶²⁰ Acker, *supra* note 236, at 1692–93.

⁶²¹ *See id.*

⁶²² *Altemio C. Sanchez*, *supra* note 296.

⁶²³ Acker, *supra* note 236, at 1694.

⁶²⁴ Erin Gray, Draft: Cole, Timothy Brian, Northwestern Law Center on Wrongful Convictions: Exoneration Data (on file with authors).

⁶²⁵ *See* Maurice Possley, *Timothy B. Cole*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3114> (last updated Mar. 10, 2015) [hereinafter *Timonthy B. Cole*]; Pat Graves, *Looking Back: Tech Rapist Convicted*, LUBBOCK AVALANCHE-J. (June 28, 2008), http://lubbockonline.com/stories/062808/cr_i_296892405.shtml#.Vu1qQjZsvdk; Aaron J. Lyttle, *Return of The Repressed: Coping With Post-Conviction Innocence Claims In Wyoming*, 14 WYO. L. REV. 555, 556 (2014).

⁶²⁶ *Id.*

restaurant as a possible look-alike.⁶²⁷ Flawed identification procedures compounded a mistaken identification.⁶²⁸ That, plus flawed forensic reporting and a disbelieved family alibi, contributed to Cole's wrongful conviction.⁶²⁹ Also, the trial judge barred evidence of continuing rapes proffered by Cole's attorney.⁶³⁰ 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.⁶³¹ He was posthumously exonerated when the perpetrator admitted to the crime and DNA testing excluded Cole.⁶³²

Two wrongful convictions were generated by Norman Derr's serial rapes in 1986 and 1987 that police pursued as possible serial crimes.⁶³³ Unfortunately, they missed the opportunity to nab the real assailant. Derr operated around Richmond, Virginia and into Maryland.⁶³⁴ In Virginia he had been suspected by police of raping women in apartment complex laundry rooms.⁶³⁵ 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.⁶³⁶ In fact, the victim was shown photographs of McAlister and Derr, who closely resembled one another, and picked McAlister.⁶³⁷ Although her ability to see the assailant was limited, the judge disbelieved the family alibi witnesses.⁶³⁸

A more egregious police decision occurred in the case of Jerry Lee Jenkins.⁶³⁹ Derr struck in Maryland at about the same time,

⁶²⁷ *Id.*; Paul Kix, *Recognition: How a Travesty Led to Criminal-Justice Innovation in Texas*, NEW YORKER (Jan. 18, 2016), <http://www.newyorker.com/magazine/2016/01/18/recognition-annals-of-justice-paul-kix>.

⁶²⁸ See *Timothy B. Cole*, *supra* note 625.

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ *Id.*; Amy Cunningham, *Petition Created for Timothy Cole to Earn Medal*, DAILY TOREADOR (Apr. 6, 2015), http://www.dailytoreador.com/news/petition-created-for-timothy-cole-to-earn-medal/article_decef6ec-dcbf-11e4-9b11-5b89cc6a941d.html; Kix, *supra* note 627.

⁶³² *Timothy B. Cole*, *supra* note 625.

⁶³³ *Michael McAlister*, *supra* note 123; *Jerry Lee Jenkins*, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/jerry-lee-jenkins> (last visited Mar. 20, 2016) [hereinafter *Jerry Lee Jenkins*].

⁶³⁴ *Michael McAlister*, *supra* note 123; *Jerry Lee Jenkins*, *supra* note 633.

⁶³⁵ *Michael McAlister*, *supra* note 123.

⁶³⁶ *Id.*

⁶³⁷ *Id.*

⁶³⁸ *Id.* As noted above, "having a family witness is associated with an increase in the likelihood of a erroneous conviction." Gould et al., *supra* note 137, at 68.

⁶³⁹ *Jerry Lee Jenkins*, *supra* note 633.

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attacking real estate agents alone in their properties.⁶⁴⁰ A victim in 1986 provided a partial description to investigators.⁶⁴¹ 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.⁶⁴² 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.⁶⁴³ A blood analysis of the 1984 rapist arrived and it excluded Jenkins.⁶⁴⁴ At that point the detective dropped the serial rape theory and pursued the case as an isolated crime.⁶⁴⁵ Jenkins was convicted despite the weak eyewitness identification.⁶⁴⁶ A DNA test was performed, but in 1988 the technique was in its infancy, and the result was inconclusive.⁶⁴⁷ Jenkins was sentenced to life imprisonment.⁶⁴⁸ He was ultimately exonerated by a more advanced DNA test linking the crime to Derr, following a convoluted procedural battle.⁶⁴⁹

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.⁶⁵⁰ In Rachell's Texas case, similar sexual assaults continued in the vicinity after he was incarcerated.⁶⁵¹ 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.⁶⁵² Furthermore, the same officers who had arrested Hawthorne arrested Rachell but failed to see any connection to the crime for which Rachell was convicted⁶⁵³ 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.*

⁶⁵⁰ See The Innocence Project, *Ricardo Rachell*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3559> (last visited Mar. 16, 2016) [hereinafter *Ricardo Rachell*]; The Innocent Project, *Larry Youngblood*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3774> (last visited Mar. 16, 2016) [hereinafter *Larry Youngblood*]; see also Acker, *supra* note 236, at 1640–42, 1662–63 (detailing the accounts of improper forensic testing and skewed identifications by eyewitnesses).

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.⁶⁵⁴ DNA testing helped exonerate both Rachell and Youngblood.⁶⁵⁵

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 1981.⁶⁵⁶ 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.⁶⁵⁷ 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.⁶⁵⁸

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.⁶⁵⁹ 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.⁶⁶⁰ Doxie's criminal career was cut short in 1984 with a sentence to life in prison.⁶⁶¹ Both Ruffin and Whitfield were convicted on mistaken identifications.⁶⁶²

⁶⁵⁴ See David L. Teibel, *Man Gets 24 Years in '83 Child-Sex Case*, TUCSON CITIZEN (Aug. 20, 2002), <http://tucsoncitizen.com/morgue2/2002/08/20/104810-man-gets-24-years-in-83-child-sex-case/>.

⁶⁵⁵ *Ricardo Rachell*, *supra* note 650; *Larry Youngblood*, *supra* note 650.

⁶⁵⁶ See Acker *supra* note 236, at 1701–03; 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; *Jerry Miller*, *supra* note 123.

⁶⁵⁷ Lydersen, *supra* note 656.

⁶⁵⁸ See Acker, *supra* note 236, at 1701–02; *Jerry Miller*, *supra* note 123.

⁶⁵⁹ *John Tingle, Jr.*, *supra* note 123.

⁶⁶⁰ Acker, *supra* note 236, at 1652; Geoff Dutton, *High Cost of Freedom: Despite Innocence, He's Labeled a Sex Offender*, COLUMBUS DISPATCH (Sept. 9, 2011, 4:50 PM), http://www.dispatch.com/content/stories/local/2008/01/30/DNA_4.ART_ART_01-30-08_A1_U895I10.html; The Innocence Project, *Julius Ruffin*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3599> (last updated May 20, 2015) [hereinafter *Julius Ruffin*]; The Innocence Project, *Arthur Lee Whitfield*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3738> (last updated May 20, 2015) [hereinafter *Arthur Lee Whitfield*].

⁶⁶¹ Acker, *supra* note 236, at 1651.

⁶⁶² *Id.* at 1649–50.

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In both cases alibis were disbelieved.⁶⁶³ 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.⁶⁶⁴ Later DNA testing of these samples excluded Whitfield and Ruffin and pointed to Aaron Doxie as the rapist.⁶⁶⁵

8. Wrongful Convictions Involving Other Kinds of Serial Crimes

Charles Bunge—Manuel Vieira

Bunge was convicted for a street robbery that was later admitted to by repeat offender Manuel Vieira.⁶⁶⁶ A woman thwarted an attempted purse snatching and the assailant drove off in a red car.⁶⁶⁷ Bunge had the misfortune of being stopped for a noisy muffler while driving a burgundy colored car nearby.⁶⁶⁸ The victim identified Bunge in a showup while he sat in the police cruiser.⁶⁶⁹ Before trial, Bunge, free on bail, noticed a Crime Stoppers reward poster for Manuel Vieira, who was wanted for several robberies.⁶⁷⁰ This evidence was disallowed at trial and Bunge was convicted.⁶⁷¹ The conviction was reversed on appeal on the ground that the reward poster should have been admitted into evidence.⁶⁷² On retrial, the reward poster was admitted and Bunge was acquitted.⁶⁷³ In a wrongful conviction lawsuit brought by Bunge, Vieira testified and admitted to the attempted robbery, saying “that he was a serial

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.

⁶⁶⁵ Acker, *supra* note 236, at 1652. The late Mary Jane Burton's samples have deservedly achieved legendary status in the annals of wrongful conviction litigation, leading to the exonerations of many Virginia prisoners including many on death row, and to a rare empirical study that helps confirm the significant rate of wrongful convictions at up to 5 percent. INNOCENCE COMM'N FOR VA., A VISION FOR JUSTICE: REPORT AND RECOMMENDATIONS REGARDING WRONGFUL CONVICTIONS IN THE COMMONWEALTH OF VIRGINIA 92 (2005), http://www.exonerate.org/ICVA/full_r.pdf; JON B. GOULD, THE INNOCENCE COMMISSION: PREVENTING WRONGFUL CONVICTIONS AND RESTORING THE CRIMINAL JUSTICE SYSTEM 20 (2008); JOHN ROMAN ET AL., POST-CONVICTION DNA TESTING AND WRONGFUL CONVICTION 8 (2012), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412589-Post-Conviction-DNA-Testing-and-Wrongful-Conviction.PDF>.

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.”⁶⁷⁴

As noted above, this case was included in our sample because of Vieira’s self-designate label as a serial criminal.⁶⁷⁵ The more conventional criminological nomenclature would be a professional or repeat criminal as opposed to an amateur, one-time, or episodic criminal.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 exonerations.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.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.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 exonerations.⁶⁸⁰

⁶⁷⁴ *Id.*

⁶⁷⁵ See *supra* note 299 and accompanying text.

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).

⁶⁷⁷ See *supra* note 261 and accompanying text.

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.

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*].

⁶⁸⁰ *Exoneration Detail List: Assault*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8%5FAssault> (last visited Dec. 19, 2015); *Exoneration Detail List: Burglary/Unlawful Entry*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8%5FBurglary%2FUnlawful%20Entry> (last visited Dec. 19, 2015); *Exoneration Detail List: Drug Possession or Sale*, NAT’L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8%5FDrug%20Possession%20or%20Sale> (last visited Dec. 19, 2015); *Recently Posted Cases*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/RecentlyAdded.aspx> (last visited Mar. 20, 2015); *Exoneration Detail List: Robbery*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&>

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Together these common crime categories amounted to 19.6% of 1,721 exonerations.⁶⁸¹ Yet, robberies and aggravated assaults constitute 91.6 percent of all violent felonies; burglary and theft constitute 91.7 percent of all property crimes.⁶⁸² As for drug offenses, the FBI reported 1,561,231 *arrests* for “drug abuse violations” in 2014.⁶⁸³ 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.⁶⁸⁴ 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

FilterField1=Crime&FilterValue1=8%5FRobbery (last visited Dec. 19, 2015); *Exoneration Detail List: Theft*, NAT’L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8%5FTheft> (last visited Dec. 19, 2015).

⁶⁸¹ See *supra* note 680 and accompanying text.

⁶⁸² *Latest FBI Crime Stats*, *supra* note 679.

⁶⁸³ *Table 29: Estimated Number of Arrests, United States 2014*, FBI, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-29> (last visited Mar. 2016).

⁶⁸⁴ See *supra* Part IV.C.

sense, of wrongful convictions.⁶⁸⁵ 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.⁶⁸⁶ 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.⁶⁸⁷ 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.⁶⁸⁸

We reiterate the caveats and limitations made above of our analysis of the wrongful conviction–serial crime cases.⁶⁸⁹ 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.⁶⁹⁰ 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

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").

⁶⁸⁶ See, e.g., ROSSMO, *supra* note 11, at 7. Police scholars, occupied for two generations on the patrol, crime reduction, and peace-keeping areas of police work, may be turning their attention to the investigative function. See ANTHONY A. BRAGA ET AL., NAT'L INST. JUSTICE, MOVING THE WORK OF CRIMINAL INVESTIGATION TOWARD CRIME CONTROL 3–4, 11 (2011), <https://www.ncjrs.gov/pdffiles1/nij/232994.pdf>.

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.

genetic testing.⁶⁹¹ 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.⁶⁹² This all-stakeholder, evidence driven, “normal accident,” learning-from-error approach borrows from error review and reduction in the airline industry and in medicine.⁶⁹³ 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.⁶⁹⁴ 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.⁶⁹⁵ This initiative has recently been advanced and supported by National Institute of Justice grants.⁶⁹⁶ Pilot projects are under way.⁶⁹⁷ 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

⁶⁹¹ See *supra* Part IV.B.1.

⁶⁹² MENDING JUSTICE: SENTINEL EVENT REVIEWS, NAT’L INST. JUSTICE 1 (2014), <https://www.ncjrs.gov/pdffiles1/nij/247141.pdf>.

⁶⁹³ See James Doyle, *Orwell’s Elephant and the Etiology of Wrongful Convictions*, 79 ALB. L. REV. 895 (2016); Jon Shame, *Reducing Failure: A View of Policing Through an Organizational Accident Lens*, in MENDING JUSTICE: SENTINEL EVENT REVIEWS, NAT’L INST. OF JUSTICE 50 (2014), <https://www.ncjrs.gov/pdffiles1/nij/247141.pdf>; Nancy Ritter, *Testing a Concept and Beyond: Can the Criminal Justice System Adopt a Nonblaming Practice?* 276 NAT’L INST. JUSTICE J. 1, 41, 43 (2015); Sangero & Halpert, *supra* note 93, at 1297.

⁶⁹⁴ Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of “Innocence Commissions” in America*, 86 JUDICATURE 98, 99 (2002).

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.

⁶⁹⁶ See, e.g., *NIJ’s Sentinel Events Initiative*, NAT’L INST. JUSTICE, <http://nij.gov/topics/justice-system/Pages/sentinel-events.aspx> (last updated Jan. 11, 2016).

⁶⁹⁷ NAT’L INST. OF JUSTICE, PAVING THE WAY: LESSONS LEARNED IN SENTINEL EVENT REVIEWS 3 (2015), <https://www.ncjrs.gov/pdffiles1/nij/249097.pdf>.

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.⁶⁹⁸ 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,⁶⁹⁹ Brandon Garrett organized his analysis of civil rights cases by the “canonical causes.”⁷⁰⁰ 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.⁷⁰¹ 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.⁷⁰² Legal scholars who study wrongful convictions appreciate the benefits of social science analysis,⁷⁰³ and social scientists analyzing wrongful convictions must understand legal institutions⁷⁰⁴ 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.

⁷⁰² Many criminologists apply essentially sociological methods and thinking; a smaller number see issues through policy analytic lenses. See, e.g., Michael Leo Owens & Elizabeth Griffiths, *Uneven Reparations for Wrongful Convictions: Examining the State Politics of Statutory Compensation Schemes*, 75 ALB. L. REV. 1283, 1285–86 (2012). For a further discussion, see Nancy Marion & Marvin Zalman, *Towards a Theory of Innocence Policy Reform*, in *CONTROVERSIES IN INNOCENCE CASES IN AMERICA* 175–76, 196 (Sarah Lucy Cooper, ed., 2014).

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.

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doctrine.⁷⁰⁵ 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).

APPENDIX⁷⁰⁶

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

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.

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| | | | | |
|----------------------|------|--|---------------------------------|---|
| Jerry Frank Townsend | 2001 | Eddie Lee Mosley | Murder/rape | Naomi Gamble, Barbara Brown, Sonja Marion, and four others |
| Ray Krone | 2002 | Kenneth Phillips | Murder | Kim Ancona, 36 |
| Julius Ruffin | 2003 | Aaron Doxie, III | Rape | Female, adult |
| David Allen Jones | 2004 | Chester D. Turner | Murder | Females, three adults |
| Clarence Elkins | 2005 | Earl Mann | Murder/rape | Judith Johnson, 58; Brook Sutton, 6 |
| Claude McCollum | 2007 | Matthew Macon | Murder/rape | Carolyn Kronenberg, 60 |
| Julie Rea | 2006 | Tommy Lynn Sells | Murder | Joel Kirkpatrick, 10 |
| Anthony Capozzi | 2007 | Altemio Sanchez | Rape | Female, three adults |
| Byron Halsey | 2007 | Clifton Hall | Murder/rape | Tina Urquhart, 7, Tyrone Urquhart, 8 |
| Jerry Miller | 2007 | Robert Weeks | Rape | Female, 44 |
| Timothy B. Cole | 2009 | Jerry Wayne Johnson ("Tech Rapist") | Rape | Michele Jean Murray, 20 |
| Chaunte Ott | 2009 | Walter Ellis | Murder | Jessica Payne, 16 |
| Ricardo Rachell | 2009 | Andrew Wayne Hawthorne | Rape | Male, 8 |
| Arthur Lee Whitfield | 2009 | Aaron Doxie, III | Rape | Female, two adults |
| William Avery | 2010 | Walter Ellis | Murder | Maryette Griffin, adult |
| Charles Bunge | 2010 | Manuel Vieara | Robbery | Female, adult |
| Jonathan Barr | 2011 | Willie Randolph – Dixmoor Five Case | Murder/rape | Cateresa Matthews, 14 |
| James Harden | 2011 | Willie Randolph – Dixmoor Five Case | Murder/rape | Cateresa Matthews, 14 |
| Shainnie Sharp | 2011 | Willie Randolph – Dixmoor Five Case | Murder/rape | Cateresa Matthews, 14 |
| Robert Taylor | 2011 | Willie Randolph – Dixmoor Five Case | Murder/rape | Cateresa Matthews, 14 |
| Robert Veal | 2011 | Willie Randolph – Dixmoor Five Case | Murder/rape | Cateresa Matthews, 14 |
| Thomas Haynesworth | 2011 | Leon Davis ("Black Ninja") | Rape, sodomy, attempted rape | Female, 5 adults |
| Jerry Lee Jenkins | 2013 | Norman Derr | Rape | Female, adult, 29 |
| David Camm | 2013 | Charles Boney | Murder | Kim Camm, (wife); Brad, 7 & Jill, 5 (children) |
| Michael McAlister | 2015 | Norman Derr | Attempted Rape | Female, adult, 22 |

| Exoneree | Race | Age | Sex | Crim. History | Crime | Conv. Date | Exon. Date | Years in Prison | Exon. Method | State | Crime |
|----------------------|------|-----|-----|---------------|-------|------------|------------|-----------------|--------------|-------|--|
| David Vasquez | H | 36 | M | N | 1984 | 1985 | 1989 | 4 | P | VA | Murder |
| Randall Lynn Ayers | W | 17 | M | N | 1981 | 1982 | 1990 | 8 | D | OH | Rape; aggravated robbery; attempted murder |
| John Tingle, Jr. | B | 25 | M | N | 1993 | 1993 | 1994 | 1 | D | VA | Assault, kidnapping |
| Rolando Cruz | H | 19 | M | Y | 1983 | 1985 | 1995 | 10 | A | IL | Murder/rape |
| Alejandro Hernandez | H | 19 | M | N | 1983 | 1985 | 1995 | 10 | D | IL | Murder/rape |
| Laverne Pavlinac | W | 57 | F | N | 1990 | 1991 | 1995 | 4 | D | OR | Murder/rape |
| John Sosnovske | W | 39 | M | N | 1990 | 1991 | 1995 | 4 | D | OR | Murder/rape |
| Kevin Lee Green | W | 20 | M | N | 1979 | 1980 | 1996 | 16 | D | CA | Attempted murder; fetal homicide |
| John Willis | B | 42 | M | Y | 1990 | 1993 | 1999 | 8½ | D | IL | Rape/robbery |
| Jacob Beard | W | 34 | M | N | 1980 | 1993 | 2000 | 7 | A | WV | Murder |
| Hubert Gerald, Jr. | B | 30 | M | Y | 1994 | 1997 | 2000 | 3 | D | IL | Murder |
| Carlos M. Lavernia | H | 29 | M | Y | 1983 | 1985 | 2000 | 15 | D | TX | Rape |
| Frank Lee Smith | B | 37 | M | Y | 1985 | 1986 | 2000 | 14 | Ph | FL | Murder/rape |
| Larry Youngblood | B | 30 | M | Y | 1983 | 1985 | 2000 | 9 | D | AZ | Rape |
| Antron McCray | B | 14 | M | N | 1989 | 1990 | 2002 | 6 | D | NY | Rape |
| Kevin Richardson | B | 14 | M | N | 1989 | 1990 | 2002 | 5½ | D | NY | Rape |
| Yusef Salaam | B | 14 | M | N | 1989 | 1990 | 2002 | 5½ | D | NY | Rape |
| Raymond Santana | B | 14 | M | N | 1989 | 1990 | 2002 | 5½ | D | NY | Rape |
| Korey Wise | B | 16 | M | N | 1989 | 1990 | 2002 | 11½ | D | NY | Rape |
| Jerry Frank Townsend | B | 26 | M | N | 1979 | 1980 | 2001 | 22 | D | FL | Murder/rape |
| Ray Krone | W | 34 | M | N | 1991 | 1992 | 2002 | 10 | D | AZ | Murder |
| Julius Ruffin | B | 28 | M | Y | 1981 | 1982 | 2003 | 21 | D | VA | Rape |
| David Allen Jones | B | 32 | M | N | 1992 | 1995 | 2004 | 9 | D | CA | Murder/rape |
| Clarence Elkins | W | 35 | M | N | 1998 | 1999 | 2005 | 6 | D | OH | Murder/rape |
| Claude McCollum | B | 26 | M | N | 2005 | 2006 | 2007 | 1½ | D | MI | Murder/rape |

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|--------------------|---|----|---|---|------|------|------|----|------|----|-------------|
| Julie Rea | W | 28 | F | N | 1997 | 2002 | 2006 | 4 | A | IL | Murder |
| Anthony Capozzi | W | 27 | M | N | 1984 | 1987 | 2007 | 20 | D | NY | Rape |
| Byron Halsey | B | 24 | M | Y | 1985 | 1988 | 2007 | 19 | D | NJ | Murder/rape |
| Jerry Miller | B | 23 | M | N | 1981 | 1982 | 2007 | 25 | P | IL | Rape |
| Timothy B. Cole | B | 24 | M | N | 1985 | 1986 | 2009 | 13 | Ph | TX | Rape |
| Chaunte Ott | B | 21 | M | N | 1995 | 1996 | 2009 | 13 | D | WI | Murder |
| Ricardo Rachell | H | 45 | M | Y | 2002 | 2003 | 2009 | 6 | D | TX | Rape |
| Arthur Whitfield | B | 26 | M | Y | 1981 | 1982 | 2009 | 22 | P | VA | Rape |
| William Avery | B | 25 | M | Y | 1998 | 2005 | 2010 | 5 | D | WI | Murder |
| Charles Bunge | W | 38 | M | Y | 2006 | 2007 | 2010 | 3 | A | NY | Robbery |
| Jonathan Barr | B | 14 | M | N | 1991 | 1997 | 2011 | 19 | C | IL | Murder/rape |
| James Harden | B | 16 | M | N | 1991 | 1995 | 2011 | 19 | C | IL | Murder/rape |
| Shainnie Sharp | B | 16 | M | N | 1991 | 1994 | 2011 | 19 | D | IL | Murder/rape |
| Robert Taylor | B | 14 | M | N | 1991 | 1997 | 2011 | 19 | C | IL | Murder/rape |
| Robert Veal | B | 14 | M | N | 1991 | 1994 | 2011 | 19 | C | IL | Murder/rape |
| Thomas Haynesworth | B | 18 | M | N | 1984 | 1984 | 2011 | 27 | D, C | VA | Rape |
| Jerry Lee Jenkins | W | 25 | M | Y | 1986 | 1987 | 2013 | 26 | D | MD | Rape |
| David Camm | W | 36 | M | N | 2000 | 2002 | 2013 | 13 | A | IN | Murder |
| Michael McAlister | W | 29 | M | Y | 1986 | 1986 | 2015 | 29 | P | VA | Rape |

Key:

Race: B = African American;

H = Hispanic;

W = White

Age = age at time of crime

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| Criminal | Age | Race | Sex | Number Victims | Crime | Victim(s) | Exoneree(s) | Exoneration Date |
|--|------------|-------------|------------|-----------------------|------------------------------|---|---------------------|-------------------------|
| Timothy Spencer | 21 | B | M | 10R/5M | Murder/rape | Carolyn Jean Hamm, 32 | Vasquez | 1989 |
| Robert Minton | 20 | W | M | 1R/2M | Rape | Female, teen | Ayers | 1990 |
| Kerri Charity ("North End Rapist") | 23 | B | M | 8+ | Rape | Melissa Hellstrom, 24 | Tingle | 1994 |
| Brian Dugan | 26 | W | M | 7R/3M | Murder/rape | Jeanine Nicarico, 10 | Cruz; Hernandez | 1995 |
| Keith Jespersion ("Happy Face Killer") | 35 | W | M | 8 | Murder | Taunja Bennett, 23 | Pavlinac; Sosnovske | 1995 |
| Gerald Parker ("Bedroom Basher") | 24 | B | M | 6+ M | Attempt murder; Fetal murder | Dianna Green; Fetus | Green | 1996 |
| Dennis McGruder ("Beauty Shop Rapist") | 33-34 | B | M | 10 | Rape /Armed Robbery | 2 Adult Females | Willis | 1999 |
| Joseph Paul Franklin ("The Racist Killer") | 30 | W | M | 22 | Murder | Nancy Santomero, 19; Vicki Durian, 26 | Beard | 2000 |
| Andre Crawford | 32 | B | M | 11 | Murder | 6 Adult Females | Geralds | 2000 |
| "Barton Creek Rapist" | ? | ? | ? | Many | 2 Murders/ 3Rapes | Various Women | Lavernia | 2000 |
| Eddie Lee Mosley | 26 | B | M | 8-16 | Murder/rape Murder/rape | Shandra Whitehead, 8; Naomi Gamble, 15; Loretta Young Brown, 29; and 5 Other Adults | Smith, Townsend | 2000 2001 |
| Walter Cruise | 26 | B | M | 2 | Rape | David Leon, 10 | Youngblood | 2000 |
| Matias Reyes ("Central Park Jogger case") | 18 | H | M | 3 | Rape | Trisha Meili, 28 | McCray | 2002 |
| Kenneth Phillips | 25 | NA | M | 1 | Murder | Kim Ancona, 36 | Krone | 2002 |
| Aaron Doxie III | 24 | B | M | 4 | Rape Rape/robber | 1 Female, adult 2 Female, adult | Ruffin Whitfield | 2003 2004 |
| Chester Turner | 26 | B | M | 13 | Murder | Females, 3 adults | Jones | 2004 |

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| | | | | | | | | |
|---|----------|---|---|--------|-----------------------|---|------------------------|--------------|
| Earl Mann | 25 | W | M | 4 | Murder/rape Rape | Judy Johnson, 58; Brooke Sutton, 6 | Elkins | 2005 |
| Matthew Macon | 26 | B | M | 6 | Murder/rape | Carolyn Kronenberg, 60 | McCollum | 2007 |
| Tommy Lynn Sells | 33 | W | M | 13+ | Murder | Joel Kirkpatrick, 10 | Rea | 2006 |
| Altemio Sanchez | 26 | H | M | 3+ | Rape | Females, 3 adult | Capozzi | 2007 |
| Clifton Hall | 28 | B | M | 5 | Murder/rape | Tina Urquhart, 7; Tyrone Urquhart, 8 | Halsey | 2007 |
| Robert Weeks | 51 | B | M | 5 to 9 | Rape | Female, 44 | Miller | 2007 |
| Jerry Wayne Johnson ("Tech Rapist") | 26 | B | M | 3 or 4 | Rape | Michelle JeanMurray, 20 | Cole | 2009 |
| Walter Ellis ("Milwaukee North Side Strangler") | 35 38 | B | M | 7 | Murder | Jessica Payne, 16; Maryette Griffin, adult | Ott/ Avery | 2009 2010 |
| Andrew Hawthorne ("Yellowstone Park Serial Rapist") | 48 | B | M | 3 | Child sexual abuse | Male, 8 | Rachell | 2009 |
| Manuel Vierea | - | H | M | Many | Robbery | Female, adult | Bunge | 2010 |
| Willie Randolph (Dixmoor Five Case) | 33 | B | M | 33 | Murder/rape | Cateresa Matthews, 14 | Barr | 2011 |
| Leon Davis ("Black Ninja Rapist") | 20 | B | M | 12 | Rape | Females, 5 adults | Haynesworth | 2011 |
| Norman Derr | 31 | W | M | Many | Rape | Females, 29 and 22 | Jenkins & McAlister | 2013 2015 |
| Charley Boney | 30 | B | M | Many | Murder/sex fetish | Kim Camm (wife), 35; Brad Camm, 7; Jill Camm, 5 | Camm | 2013 |

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 | | | | | | | | |
|--|---|-----------------|------------------------------|--------------------------------|------------------|-------------|------------|--|
| Date | Exoneree | Criminal | Crime | Victim type | No. Vict. | Inv. | DNA | Sentence |
| 1989 | Vasquez | Spencer | Murder/rape | Female, adult | 1 | N | Y | 35 y |
| 1990 | Ayers | Minton | Rape | Female, teen | 1 | N | N | 14–50 y |
| 1994 | Tingle | N/A | Assault/kidnapping | Female, adult | 1 | N | N | 10 y |
| 1995 | Cruz, Hernandez | Dugan | Murder/rape | Female, child | 1 | N | Y | DP DP |
| 1995 | Pavlinac; Sosnovske | Jesperon | Murder | Female, adult | 1 | N | N | L, 10 y min L |
| 1996 | Green | Parker | Att. Murder Murder, fetus | Female, adult Fetus | 1 1 | N | Y | 15 – L |
| 1999 | Willis | McGruder | Rape | Female, adult | 2 | Y | Y | 45, 100 y |
| 2000 | Beard | Franklin | Murder | Female, adult | 2 | N | N | LWOP |
| 2000 | Gerals, Jr. | Crawford | Murder | Female, adult | 6 | Y | N | DP |
| 2000 | Lavernia | “Barton Creek” | Rape | Female, adult | 1 | Y | Y | 99 y |
| 2000 | Smith | Mosley | Murder/rape | Female, child | 1 | N | Y | DP |
| 2000 | Youngblood | Cruise | Rape | Male, child | 1 | N | Y | 10.5 y |
| 2001 | Central Park 5 McCray Richardson Salaam Santana Wise | Reyes | Rape | Female, adult | 1 | N | Y | 5 – 10 y 5 – 10 y 5 – 10 y 5 – 10 y 5 – 15 y |
| 2001 | Townsend | Mosley | Murder | Female, adult | 7 | Y | Y | L |
| 2002 | Krone | Phillips | Murder | Female, adult | 1 | N | Y | DP |
| 2003 | Ruffin | Doxie | Rape | Female, adult | 1 | N | Y | L |
| 2004 | Jones | Turner | Murder | Female, adult | 3 | Y/N | Y | 36 – L |
| 2005 | Elkins | Mann | Murder Rape | Female, adult Female, child | 1 1 | N | Y | 55 – L |
| 2007 | McCollum | Macon | Murder/rape | Female, adult | 1 | N | N | L |
| 2006 | Rea | Sells | Murder | Male, child | 1 | N | N | 65 y |
| 2007 | Capozzi | Sanchez | Rape | Female, adult | 2 | Y | Y | 11 – 35 y |

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|------|---|-----------|------------------------------|--|-------------|-----|---|--------------------------------------|
| 2007 | Halsey | Hall | Murder/rape | Female, child Male, child | 1 1 | N | Y | L + 20 y |
| 2007 | Miller | Weeks | Rape | Female, adult | 1 | N | Y | 45 y |
| 2009 | Cole | Johnson | Rape | Female, adult | 1 | Y | Y | 25 y |
| 2009 | Ott | Ellis | Murder | Female, teen | 1 | N | Y | L |
| 2009 | Rachell | Hawthorne | Rape | Male, child | 1 | N | Y | 40 y |
| 2009 | Whitfield | Doxie | Rape | Female, adult | 2 | N | Y | 63 y |
| 2010 | Avery | Ellis | Murder | Female, adult | 1 | N | Y | 40 y |
| 2010 | Bunge | Viera | Attempted Robbery | Female, adult | 1 | N | N | 6 y |
| 2011 | Dixmoor Five Barr Harden Sharp Taylor Veal | Randolph | Murder/rape | Female, teen | 1 | N | Y | 85 y 80 y 20 y 80 y 20 y |
| 2011 | Haynesworth | Davis | Rape | Female, adult | 5 | Y | Y | 74 y |
| 2013 | Jenkins | Derr | Rape | Female, adult | 1 | Y/N | Y | L |
| 2013 | Camm | Boney | Murder | Female, adult 1 Female, child 1 Male, child | 1 1 1 | N | Y | L |
| 2015 | McAlister | Derr | Attempted Rape/ Abduction | Female, adult | 1 | Y | N | 35 y |

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***Notorious “Mass-Teen” Wrongful Convictions***

Central Park 5 — Matias Reyes

Dixmoor 5 — Willie Randolph

Wrongful Convictions Involving Murder of Street-Walking Prostitutes

David Allen Jones — Chester Turner

Chaunte Ott, William Avery — Walter Ellis

Hubert Gerald, Jr. — Andre Crawford

Family Member Wrongful Convictions

Kevin Green — Gerald Parker (“Bedroom Basher”) [one victim a fetus]

Clarence Elkins — Earl Mann [one child victim]

Julie Rae — Tommy Lynn Sells [child victim]

Byron Halsey — Clifton Hall [child victims]

David Camm — Charles Boney [two child victims]

Long Distance Serial Killer Wrongful Convictions

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

Jacob Beard — Joseph Paul Franklin

[Julie Rae — Tommy Lynn Sells]

Serial Murder Wrongful Convictions

Ray Krone — Kenneth Phillips

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

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”)

Jerry Lee Jenkins, Michael McAlister — Norman Derr

Wrongful Convictions Involving Other Kinds of Serial Crimes

Charles Bunge — Manuel Vieira

Note: Exonerees’ name followed by serial criminals.