Broadening the Community, Strengthening the Movement: An Introduction to the Innocence Project "Just Data" 2024 Scholarship Issue

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This special issue of *The Wrongful Conviction Law Review* features a collection of seven research papers presented at the Innocence Project's 2023 Just Data: Advancing the Innocence Movement conference. This annual event, organized by the Innocence Project and partners in the larger Innocence Network, brings together a diverse group of scholars and advocates, including those who have been wrongfully convicted themselves, to share the latest social science, discuss emerging issues, and make connections to inform our collective work and promote new applied research. Social science research, often conducted quietly and behind the scenes, is critical to data-driven litigation and policy work in courthouses and statehouses around the world. It informs social work and public education about wrongful convictions. Rigorous, robust research is an essential tool in the mission to free innocent people, prevent future wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone.

This year's scholarship builds directly on previous years (e.g., Kostyszyn and colleagues [this issue] citing Berube et al., 2023). Several broad themes emerged in this collection: place-based research, with studies uncovering and exploring wrongful convictions in Spain and across Texas; the ever-present role of race and ethnicity at points throughout the criminal legal system – from expert testimonies to exoneration trajectories; the unique power of interdisciplinary research in leveraging data to improve case evaluation and accountability in the system; and the persistent problems in the plea-bargaining process.

To complement the novel research on these topics, Just Data: Advancing the Innocence Movement 2023 featured a keynote address on race and bias by Stanford University Professor and

Innocence Project Board member Dr. Jennifer Eberhardt, and insights from Innocence Network representative, Valena Beety, as well as three exonerees working in the field: podcaster, writer, filmmaker, and founder of House of Renewed Hope, Christopher Scott; lawyer and consultant, Chris Ochoa; and Innocence Project Reentry Coach, Rodney Roberts. Additionally, leading thinkers Cierra Robson (Ida B. Wells Just Data Lab) and Mitha Nandagopalan (Innocence Project) joined moderator Ngozi Ndulue (Innocence Project) for a conversation about technology, how new frontiers (e.g., artificial intelligence) collide with race and racism, and implications for innocence work and for society. Together, this is how our knowledge grows and a movement advances.

To begin, two studies explore how wrongful convictions are influenced by location, showcasing place-based research in both the United States and abroad. These articles focus on the contrasting examples of wrongful convictions in Spain and in Texas.

Dr. Nuria Sánchez presented as lead author on *Wrongful Convictions with Prison Sentences in Spain: Exoneree Characteristics, Crime Types and Contributing Factors*, on behalf of her co-authors Guadalupe Blanco-Velasco of Ontario, Canada; Linda Geven, of Leiden, Netherlands; Jaume Masip of Salamanca, Spain; and Antonio L. Manzenro, of Madrid, Spain. This international team of researchers coded decisions made by the Spanish Supreme Court from 1996 to 2022, identifying 89 wrongful convictions.

Their research revealed that 92% of wrongly convicted people in Spain were male, and the majority had a prior conviction. In great contrast to the United States, 85% of the sentences were less than 5 years. Professional misconduct was the leading contributing factor for these wrongful convictions, followed by the same factors common in the United States: faulty forensic science, eyewitness misidentification, false confessions, and false testimony. This timely piece is being published just as the European Registry of Exonerations (EUREX) is launched, compiling data specific to European exonerations.

Dr. Matthew Barry Johnson presented his research on wrongful convictions in Texas, co-authored with Janquel D. Acevedo. They analyzed data from the National Registry of Exonerations (NRE) and found that the state of Texas has the most sexual assault wrongful convictions. In over half of the Texas cases, exculpatory DNA ultimately led to the exoneration, and false guilty pleas were a major contributing factor.

Their research also documented a prior drug analysis problem in Houston, where people were wrongly convicted of drug offenses after legal substances were misidentified and then misrepresented as illegal controlled substances. In over 97% of these cases, innocent defendants pled guilty. This article crucially emphasizes how, under pressure, a guilty plea can become the seemingly best action – even when the defendant is innocent of any crime. (Later in this issue Dr. Miko Wilford and colleagues present an in-depth analysis of the risk of false guilty pleas.)

Both of these papers document the importance of national and international registries, such as the U.S. NRE and the newly launched EUREX. These tools provide researchers with stepping stones to learn what leads to wrongful convictions, and strategies for changing our systems.

Christopher Scott, a leader in challenging wrongful convictions, commented on both papers. Mr. Scott was himself wrongly convicted in Dallas, Texas, and as an exoneree he works to free other wrongly convicted people. Scott shared the impact of race and wrongful convictions, where a majority of exonerees in Dallas County – like himself – were wrongly convicted by an all white jury. He believes the lack of sufficient compensation for jurors leads to fewer people of color serving on juries. Scott's real life experience parallels Dr. Johnson's research in the field: he was wrongly convicted by an eyewitness misidentification, and research demonstrates the accuracy issues with cross-racial identifications as well as the importance of double-blind presentation in line ups like the one used against Scott. Prosecutors failed to disclose all the evidence in Scott's case. Now, research on discovery has pushed for change and greater disclosure, including the Michael Morton Act in Texas named after another exoneree. Scott's insights share how the practical research of Dr. Johnson and Dr. Sánchez not only proves these issues occur, but can help change laws and assist innocent people fighting their own cases.

People of color are more likely to be wrongly convicted (Gross et al., 2022), and numerous factors such as jury composition and eyewitness misidentification can adversely impact case outcomes as evidenced by the experience of Christopher Scott and the work of Dr. Johnson and Janquel D. Acevedo. The structural inequities of the criminal legal system and wrongful convictions are well documented. Two studies in this issue add to the already impressive accumulation of research on disparate treatment and outcomes.

In an attempt to investigate more nuanced biases at play in the trial process, Dr. Jeff Kukucka and Oyinlola Famulegan explored varying the ethnicity and socioeconomic status of a woman on trial, the perceived certainty of medical examiner testimony on determinations of death, and whether these variables influenced case verdicts. The study revealed incongruence between what jurors determined to be scientific and what experts deemed scientific regarding determinations of death. More specifically, jurors believed that determinations of death were scientific evidence and if the death was determined accidental, it was not as convincing if the woman on trial was Latina and of low socioeconomic status as compared to an affluent white woman.

Along with evidence that legal and extralegal factors influence verdicts in a disparate manner (Kukucka & Famulegan [this issue]), scholars have found they also affect the time to exoneration for innocent people who have been wrongly convicted. The first of its kind using survival analysis, Dr. Virginia Braden's research revealed significant differences in time to exoneration across race/ethnicity. Analyzing a national sample of exonerees, the study found that Black people experienced significantly longer times to exoneration than their white and Hispanic/Latino/a/x counterparts. Further, factors such as inadequate legal defense and age resulted in longer times to exoneration for Hispanic/Latino/a/x people compared to white people. Where identifiable variables are responsible for the markedly longer times to exoneration for innocent Black people (e.g., inadequate defense, official misconduct, etc.) these disparities can be addressed by transparent changes in policy and practice.

The Just Data: Advancing the Innocence Movement 2023 conference further explored the role of race in wrongful convictions by examining the ways that new technology is fueling racially discriminatory investigation and outcomes in the criminal legal system. In "Digital Dilemmas:

Exploring the Intersection of Technology, Race, and Wrongful Conviction," panelists Cierra Robson, the Associate Director of the Ida B. Wells Just Data Lab at Princeton University, and Mitha Nandagopalan, Staff Attorney in the Innocence Project's Strategic Litigation Department, explained how technology shapes the criminal legal system. Robson discussed how technology that relies on historical patterns to predict future crime and target enforcement continues to entrench racial bias that has underlied the criminal legal system since its inception. She also shared how today's use of technology is actively reshaping policing, including the net widening effect of "proactive policing" that draws more people into law enforcement's orbit based on predictive algorithms. Robson observed that all of these practices "have implications for wrongful conviction primarily because many of them put more people in the process of police activity in ways that are not substantiated by an actual threat, but instead a risk of a threat."

Innocence Project Staff Attorney, Mitha Nandagopalan, discussed the way that technologies like facial recognition, ShotSpotter, and automated license plate readers could bring entire neighborhoods under surveillance, placing people on law enforcement's radar who would not otherwise have police contact. Nandagopalan noted that "algorithms, data, and technology reflect…the priorities, preferences, and often the prejudices of the people who generate them." Using ShotSpotter as an example, they emphasized the need to examine the accuracy of new technology and whether there is evidence that it is actually making people safer.

Both panelists saw both promise and challenges in research about how new technologies are transforming policing. Robson praised the excellent qualitative research being done in the field, and discussed her research on lawyers' use of risk assessments to advocate for their clients. Nandagopalan noted the importance of examining the intersection between human decision making and emerging technology, recognizing the transparency challenges with accessing policing-related data. They also underlined the importance of ensuring that any research is accountable to the communities affected by the practices being studied. Without including affected communities in research planning and execution, "the research itself can run the risk of just reinforcing the same inequities that the technology itself is furthering and … become a tool for that larger trend and historical pattern of racial bias."

Turning to the day-to-day work of addressing wrongful convictions, innocence organizations receive hundreds of intake applications yearly and face difficulties processing all of them. With the advancement of technology, algorithms or artificial intelligence (AI) systems may be used to facilitate and possibly accelerate the process. In the "Data to Deliverance: Leveraging Research to Inform Post-conviction Work" session of the conference, two studies were presented that demonstrated how algorithms can be utilized to aid the intake process of innocence organizations.

Kalina Kostyszyn and colleagues introduced a technique that uses decision trees to assist the intake process. They examined 3,284 exoneration cases to determine patterns or features associated with successful cases. This was done using two methods: the Berube et al. (2023) latent class analysis (LCA) method and decision trees. Using the LCA method, they found that a four-class model provided the best statistical fit, corroborating Berube et al. (2023) while using a larger data set. The four predicted classes are as follows: intentional errors, witness mistakes, investigative corruption, and failures to investigate. Next, decision trees were used to further

analyze the four classes. Using the "Six Canonical Factors," decision trees were used to predict classifications from the LCA methods (6-factor model). Additional trends within the four classes were examined by looking beyond the canonical factors (extended model). Several trees were generated to examine the data. The accuracy of each branch and the accuracy and precision of the entire tree were determined. Each model was run twice, using 10-fold cross-validation and 75/25 split. The 6-factor runs displayed the strongest trends.

Ayyub Ibrahim and colleagues discussed the Innocence Discovery Initiative, a collaborative effort between the Innocence Project New Orleans, Public Data Works, and the Human Rights Data Analysis Group, that provides an advanced methodology for reviewing potential wrongful conviction case files. The initiative consists of the following five stages:

1. The compilation of a CSV index of metadata
2. The evaluation of filenames to identify relevant case files
3. The utilization of FastAI to train an image classifier
4. The extraction of information from the files identified in the second phase
5. Cross-referencing of the extracted officer names and titles with the Louisiana Law Enforcement Accountability Database

Ultimately, this methodology can be used to assist in the identification of potential wrongful convictions.

Finally, Dr. Miko Wilford, Dr. Joseph E. Gonzales, and Dr. Annmarie Khairalla introduced their analysis of the plea-bargaining system in the United States. They noted that in most jurisdictions, prosecutors do not have to establish a reasonable basis for guilt before offering plea deals. In theory and practice, this means that the State could have very little concrete evidence against a person at the time they are offered a plea deal. Given the pressures (e.g., pretrial detention) and consequences (e.g., the "trial penalty"), there is a real risk of innocent people pleading guilty during this process. As a recent report from the American Bar Association's Plea Bargain Task Force articulates, "the state may induce the defendant to plead guilty with incentives that make it irrational for even an innocent person to turn down the deal" (p. 15). Indeed, nearly a quarter (839 of 3,466) of the wrongful convictions captured in the NRE database to date involved false guilty pleas.

During this year's conference, Rodney Roberts offered a description highlighting the dilemma that innocent people face based on his personal experience. He shared that the choice between taking your chances at trial and facing a life sentence or falsely pleading guilty to guarantee freedom in a few years feels like a choice "between lucifer and satan." Chris Ochoa described being threatened with the death penalty if he went to trial and the way in which the stress of his pre-trial detention impacted his mother's health. When she had a stroke, Mr. Ochoa made "the hardest decision I have ever had to make in my life; I had to plead guilty to something I know I didn't do…there was no way out."

Recognizing that everyone is legally innocent until proven guilty, Wilford and colleagues took a statistical approach to investigating the risk of wrongful conviction via guilty plea by those who are factually innocent and factually guilty. They used Bayesian analyses, which they note are

uniquely suited to illuminate the impact of prior probability of guilt on the informativeness of a particular outcome (i.e., a guilty plea). As the authors expected, results revealed that when plea offers are accepted at lower prior probabilities of guilt, the probability that a plea is actually false is significantly higher than when prior probabilities of guilt are higher. Thus, demonstrating the risks of plea offers that precede concrete evidence, the research team concluded that until prosecutors are 85% confident in the accused's guilt, one in 20 guilty pleas will be false. They conclude by offering policy recommendations for open file discovery, which allows everyone involved to fully evaluate the evidence in a criminal case and, hopefully, avoid the impossible choices that Rodney Roberts and Chris Ochoa were forced to make.

This collection of studies underscores the pertinence of ongoing research in the realm of wrongful convictions. The articles are a staunch reminder that wrongful convictions are a global issue, structural racism profoundly affects people of color who are wrongly convicted, we must be mindful of and act against the implicit and explicit power of pleas for vulnerable people ensnared in the legal system, and we must deliberately monitor the use of technology and statistics to expand the number of people that can be assisted while carefully balancing the biases that can impact those seeking help.

Although consistent themes have been identified in known innocence cases, there is still action to be taken and much to learn from social science scholars. The authors in this issue have provided numerous recommendations for policy and future studies. Additionally, innocence practitioners have identified numerous research questions and unaddressed topics that can be found on the Innocence Project's website (i.e., A Call to Action, Innocence Project, n.d.) and implore the research community to continue endeavors that will continue to influence policy and practice. We encourage researchers to contact the Innocence Project and the Innocence Network for guidance and collaboration on work that will continue to support the efforts of the innocence movement and make meaningful progress to eradicate wrongful convictions.

References

American Bar Association Criminal Justice Section. (2023.) 2023 Plea Bargain Task Force Report. https://www.americanbar.org/content/dam/aba/publications/criminaljustice/plea-bargain-tf-report.pdf

Berube, R., Wilford, M. M., Redlich A. D., & Wang, Y. (2023). Identifying patterns across the six canonical factors underlying wrongful convictions. The Wrongful Conviction Law Review, 3(3), 166-195. https://doi.org/10.29173/wclawr82

Gross, S. R., Possley, M. Otterbourg, K., Stephens, K., Weinstock Paredes, J., & O'Brien, B. (2022). Race and wrongful convictions in the United States. National Registry of Exonerations (NRE). https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf

Innocence Project (n.d.). A Call to Action: Applied Research Questions. https://innocenceproject.org/wp-content/uploads/2023/06/A-Call-to-Action.pdf

Innocence Project. (2019, April 1). Breakthrough Discovery Law Passes, Repealing State's "Blindfold Law," Leading to Greater Transparency and Fewer Wrongful Convictions. https://innocenceproject.org/breakthrough-discovery-law-passes-repealing-states-blindfold-law-leading-to-greater-transparency-and-fewer-wrongful-convictions/

National Association of Criminal Defense Lawyers (NACDL). (2018.) The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It. https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf

National Registry of Exonerations (NRE). (n.d.). Exoneration detail list. https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View=%7BFAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=Group&FilterValue1=P