

**Addressing Official Misconduct:  
Increasing Accountability in Reducing Wrongful Convictions**

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*Currently, the National Registry of Exonerations (NRE) states that official misconduct has been a contributing factor in 1,404 of 2,601 exonerations. The term “official” includes criminal justice professionals such as prosecutors, judicial officials, and law enforcement. Analyzing official misconduct and inadequate legal defense cases in the NRE, the goal of this article is to identify (1) officials who commit misconduct in murder exonerations, (2) types of misconduct conducted, and (3) impact on race of the exoneree. The findings of the study indicated that police and prosecutors committed more acts of misconduct than the number of exonerees included in the study. Additionally, African American exonerees were found to be disproportionately victimized by official misconduct. Policy implications and future research provide insight on how the findings reinforce calls for social justice and police accountability in wake of the killing of George Floyd and the shooting of Jacob Blake.*

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## I Introduction

Erroneous convictions are grasping the attention of those in America as information becomes more prevalent. Documentaries on large streaming platforms and investigative podcasts are sparking conversations about wrongful convictions amongst the general population, bringing new faces to advocacy, scholarship, and change. Though the stories of exonerees are being told in movies, documentaries, and literary works, there is still much to be known about the occurrence of wrongful convictions. This includes the factors that contribute to wrongful convictions, as well as frequencies, characteristics, and themes of cases in which these factors exist. The National Registry of Exonerations (NRE) is a public database for known wrongful conviction exonerations in the U.S., serving as a comprehensive source for accomplishing the mission of furthering wrongful conviction scholarship. As of April 2020, the NRE recognized a total of 2,601 exonerations (2020a). Based on these cases of wrongful conviction, the NRE has composed a list of contributing factors, including mistaken witness identification, perjury, false confession, false/misleading forensic science, and official misconduct (2020b).

Though each of the five contributing factors listed by the NRE are of vast influence, both perjury and official misconduct are marginally more frequently occurring than the others. More specifically, the problematic nature of official misconduct provides support for analysis of the current study. Of the listed 2,601 exonerations, 1,404 cases consisted of factors related to official misconduct (54%). This is the second highest contributing factor following perjury (58%), both of which are nearly double the next highest factor (mistaken witness identification, 28%). Further, approximately 70 percent of all known exonerations of homicide cases involved official misconduct. The current study sought to identify (1) which officials are committing misconduct, (2) what types of misconduct are being committing, and (3) what racial disparities, if any, are present using the NRE database.

Defining official misconduct requires examination from several sources, which stem from legal and wrongful convictions research. First, there are more formal definitions for misconduct. The Cornell Legal Information Institute defined official misconduct as “when a public official act improperly or illegally in connection with their duties” (p.149). The NRE defined official misconduct as when “police, prosecutors, or other government officials significantly abused their authority or the judicial process in a manner that contributed to the exoneree’s conviction” (NRE Glossary, para. 15).

Second, some scholars have sought to identify how misconduct occurs in the criminal justice profession. Norris, Bonventre, and Acker (2018) stated that competition can give way to three components of criminal justice error: mistakes, malpractice, or misconduct. Though all three factors may provide explanation for error, there is still much debate as to what is considered misconduct in wrongful conviction cases in comparison to how law inscribes official misconduct. Recent studies have examined official misconduct in cases of wrongful conviction, specifically addressing the overall misconduct that occurs in NRE exonerations. Gross, Possley, Roll, and Stephens (2020) published a report that addresses misconduct by police and prosecutors, including race of exonerees affected. The current study seeks to provide further evidence for official misconduct in wrongful convictions in murder cases. With the stakes being higher in murder cases, the misconduct in this study is analyzed by the officials involved, including causes of inadequate legal defense and the racial impact of the exoneree.

## II Literature Review

To better understand official misconduct, it is important to recognize decision-making from the position of the individuals of power such as investigators, attorneys, and judges. Criminal justice professionals are faced with a variety of difficult tasks, which require long hours on the job and increased stress (Manzoni & Eisner, 2006). Notably, the American criminal justice system incarcerates more people than all other countries, reinforcing the growing debate on mass incarceration (The Sentencing Project). The age of mass incarceration is devastating for both civilians and criminal justice professionals, who are dealing with a higher case volume than preceding years. According to Sawyer and Wagner (2019), there are almost 2.3 million people in the American criminal justice system in prisons, jails, detention facilities, civil commitment centers, and state psychiatric hospitals. Perry and Banks (2011) stated that there were 43 state prosecutors' offices that served over one million people in 2007. Such caseloads, however, do not validate or give substance to any reasoning with misconduct among justice professionals. In order to better understand misconduct among criminal justice professionals, the literature on police and prosecutorial misconduct will be discussed, as well as inadequate legal defenses, judicial misconduct, and forensic misconduct.

### Police Misconduct

Police misconduct has become a topic of immense debate in response to the killing of George Floyd, the shooting of Jacob Blake, and others unnamed yet as similar incidents continuously occurs in one of America's cities. Such actions of misconduct not only cast a shadow over the good work done by law enforcement agencies, but it sparks widespread doubt in trusting law enforcement. A recent study found police misconduct extends to acts such as improper searches, detaining without probable cause, and racial disparities in policing strategies (D'Souza, Weitzer, & Brunson, 2019).

Scholars have sought to identify the extent in which police misconduct contributes to wrongful convictions. Covey (2013) examined police misconduct in group exoneration cases. The data for the study came from two noteworthy cases of organizational police misconduct, the (1) Tulia and (2) Rampart incidents. Over 150 people were exonerated from the Rampart incident, and 37 due to the Tulia incident. Most of the data for the Rampart scandal in this study came from files within the Los Angeles District Attorney's office (Covey, 2013). Files included information relating to developments in cases, extending to writs by both the district attorney and the defense seeking relief on the basis of innocence. The remaining data was collected through articles and official reports. For the Rampart incident, the District Attorney's office had files containing case-specific data for 97 cases and detailed-case data for 87 of the 97. Not all of the individuals exonerated in the Rampart scandal were proven factually innocent, rather relief was sought based on the misconduct of the police involved.

The two cases analyzed for the Covey (2013) study provided insight on police misconduct in cases that resulted in a wrongful conviction. Notably, the Rampart case displayed how misconduct can directly influence the chain of events that follow innocent defendants. The data for the Tulia incident provided less variety in the circumstances of conviction, primarily due to almost all of the Tulia defendants being convicted on the testimony of a corrupt undercover agent

(Covey, 2013). The primary basis for exoneration in the Rampart scandal was due to misconduct unrelated to factual guilt or innocence of the defendant. Officers had lied about obtaining probable cause, location of searches, and suspect's consent to search. In 38 cases, police misconduct directly implicated the determination of guilt or innocence (Covey, 2013). These cases included the planting of drugs or guns on the suspect(s), lying about the observation of crime, or coercing confessions from innocent defendants. Of the 37 Tulia cases, 35 were pardoned by Rick Perry, who was governor of Texas and two convictions were vacated following writs of habeas corpus. There were other defendants wrongfully charged or convicted but were never pardoned (Covey, 2013). About six defendants in the Tulia cases stated they helped an undercover agent purchase crack cocaine, but none helped the agent purchase powder cocaine, which was the premise for their convictions. A sting that resulted in the arrest of 47 people found no evidence of drugs, and the subsequent investigation found no evidence to corroborate the alleged crimes.

An initial arrest of the officer and two terminations of employment were carried out in the Rampart case (Covey, 2013). Additionally, three officers were convicted of conspiracy to obstruct justice and filing false police reports, but their convictions were overturned (PBS, 2020a). One of the victims was awarded 15 million dollars, the largest recorded settlement in a police misconduct case (PBS, 2020a). Many officers involved in Rampart took plea deals in cooperation with law enforcement. A total of 132 indictments were made for 46 people in the Tulia case as a result of the undercover work of Thomas Coleman (PBS, 2020b). Coleman was later indicted on felony perjury charges and convicted, where he was sentenced to ten years of probation (Covey, 2013).

Scholarship on police misconduct has also included research on how the public views such misconduct when innocence is considered. Donovan and Klahm (2018) explored public perceptions of police misconduct, using innocence as a primer. An online survey was distributed to participants. The 2,119 respondents were a random sample of respondents, with a survey completion rate of 58 percent. Respondents were randomly assigned to receive one of the two versions of the survey, with half of the respondents receiving the primer on innocence. The primer included a statement on *The Innocence Project* and a summary of their mission. All respondents, regardless if they received the primer, were asked about the frequency of police misconduct (e.g., excessive use of force to obtain a confession, etc.) in their city (Donovan & Klahm, 2018). Questions also included how much time respondents spent consuming media (e.g., news, crime dramas), their political ideology, experiences with police, and residency information (i.e., urban or rural). Findings from the study suggest that those primed on innocence were significantly more inclined to believe that police misconduct influences wrongful convictions than those without the primer. When the issue of wrongful convictions was presented, respondents were seven percentage points more likely to believe police misconduct harms the administration of justice and eight percentage points less likely to say it never happens when reminded of wrongful convictions. Therefore, the role of police misconduct in the American criminal justice system has garnered some attention of the public in regards to its impact on wrongful conviction.

Studies have shown that police misconduct plays a role in racial disparities in the legal system and wrongful convictions. Such actions of misconduct harm the reputation of law and order by law enforcement agencies while the community suffers by an entity with the purpose of protecting. Recent public demonstrations have called for transparency by law enforcement officers along with the continued debate over the safety of American citizens. Police, however, are not the

only officials who have committed misconduct and been found to contribute to a wrongful conviction.

### **Prosecutorial Misconduct**

Prosecutors have vast amounts of discretion and power in the American legal system. One of these powers is turning suspects into defendants (Norris et al., 2018). Forms of prosecutorial misconduct include the failure to disclose exculpatory evidence (or *Brady* violations), introducing false evidence, improper arguments, discrimination in selecting juries, interfering with a defendant's right to legal representation, improper communication with judges or jurors, improper use of media, failure to maintain systems of compliance, and failure to report violations to bar (The Open File).

In *Brady v. Maryland* (1963), the Court held that withholding exculpatory evidence violates the right to due process where the evidence is of substance regarding guilt or punishment. The petitioner Brady and companion Boblit were found guilty of murder and sentenced to death in two separate trials. It was later discovered that a confession by Boblit who admitted to the homicide was "withheld by the prosecution and not come to petitioner's notice until after he had been tried, convicted, and sentenced, and after his conviction had been affirmed" (*Brady*, 1963, p. 84). On appeal to the Court of Appeals, Brady was denied a federal right when the Court of Appeals denied a new trial on the question of punishment. The Court found "that suppression of this confession was a violation of the Due Process Clause of the Fourteenth Amendment" (*Brady*, 1963, p. 86). *Brady* violations have been found to be among the leading causes of prosecutorial misconduct in wrongful conviction cases (Gross et al., 2020).

Court cases have also addressed improper statements by prosecutors, although the burden of proof for depriving due process or fair trial has proven quite difficult. For example, *Darden v. Wainwright* (1986) held that the weight of the evidence against the defendant was heavy enough for jurors to not be swayed by improper closing arguments. This finding by the Court came despite statements by the prosecutor that included the death penalty would be the only way to prevent these acts from recurring and calling the defendant an "animal," all of which the Court acknowledged as improper. Both due process (14<sup>th</sup> Amendment) and fair trial (Sixth Amendment) are meant to uphold the rights of U.S. citizens and the accused, though each pose issues among prosecutors and defense attorneys when confronting justice.

Recent research regarding how prosecutors and defense attorneys contribute to wrongful convictions have shed light on organizational issues. Webster (2020) conducted semi-structured interviews with 20 prosecutors who played an instrumental role in an exoneration post-2005. Nineteen defense attorneys who worked with cooperating prosecutors in exoneration cases post-2005 were also interviewed. The cases and attorneys were identified through the NRE and contacted through online access information. Attorneys were eliminated from the study if they had worked together on the same case and oversampling by state or case type (i.e., DNA exonerations) were also a cause of elimination. The interviews took place from April 2016 to November 2018, primarily by phone. Prosecutors and defense attorneys were interviewed concurrently. The total 39 respondents were asked about their experiences, decision-making practices, and view of postconviction practices in distinct exoneration cases. Findings of the study indicated issues that

occur during the postconviction process, including handling *Brady* violations, or the requirement that prosecutors must disclose all exculpatory evidence to the defense. Two prosecutors stated that innocence claims are directed to the prosecuting attorney who handled the original conviction (Webster, 2020). Five defense attorneys reported that the trial prosecutor had been the one responsible for responding to the claim of innocence. A public defense attorney addressed challenges that are present when working with the trial prosecutor on a claim of innocence, stating “the original trial prosecutor, who didn’t turn over the *Brady* material, who made arguments that were not supported by the evidence, was the one who was tasked to respond. Now that’s number one bad practice” (Webster, 2020, p. 283).

Notably, prosecutorial misconduct that is not on the trial record is considered new evidence and must be submitted in the postconviction process if it is to be appealed (Webster, 2020). One third of the respondents noted they had handled postconviction innocence claims that included alleged *Brady* violations. Four prosecuting attorneys reported the review of cases that involved forensic error or police misconduct (Webster, 2020). As a result of the findings, Webster (2020) addressed a potential conflict of interest with prosecutorial misconduct, including *Brady* allegations, in the event that the trial prosecutor so chooses to invest in denying misconduct allegations and upholding the conviction. This same conflict may arise if the trial prosecutor is consulted about a case involving a claim of innocence (Webster, 2020). Moving forward, prosecutors reviewing postconviction innocence claims could be trained to identify factors of false convictions and should embrace the role of safeguard. This includes utilizing the advantageous positioning to recognize misconduct actors, conduct internal reviews, and create a list of actors who are not to testify (Webster, 2020).

One of the more troubling issues stemming from a wrongful conviction is identifying the true perpetrator of the crime. Recent research has highlighted the association between identifying the true perpetrator and prosecutorial misconduct. Weintraub (2020) used DNA-based exonerations for identifying this association, including true perpetrator identifications by postconviction DNA testing. A total of 335 DNA exonerations were analyzed through collection from innocence organizations and independent collection. There were 172 cases where the true perpetrator had been identified in comparison to 163 cases where no true perpetrator had been identified. Cases were coded from the NRE for actual or alleged prosecutorial misconduct, which included 43 cases. Innocence databases, academic resources, data sources for academic articles, news pieces, and appellate transcripts were also coded, consisting of an additional 43 cases. A total of 86 cases (26%) contained alleged or proven types of prosecutorial misconduct and 231 contained no misconduct.

The results of the study by Weintraub (2020) indicated that prosecutorial misconduct can obstruct postconviction procedures, which more so favor the exoneree than the true perpetrator. Further, the presence of prosecutorial misconduct at trial was discovered to be associated with fewer odds that a true perpetrator would be identified in postconviction than cases in which no misconduct was discovered. Such association is not only detrimental to the pursuit of justice, but serves as a threat to the public in that true perpetrators still walk the streets when someone is wrongfully convicted.

### **Inadequate Legal Defense**

One of the many challenges facing the accused is having an adequate legal defense. The Sixth Amendment states the right to speedy trial, an impartial jury, right to know one's accusers, and the right to an attorney (U.S. Const. amend. VI). Though the U.S. Constitution does not directly address the demand for an "adequate" defense, the Supreme Court has attempted to clarify standards of inadequate defense. *Strickland v. Washington* (1984) established that the court must prove: (1) deficient performance by the defense, and (2) that the outcome of the case would have been different had the performance not been deficient. Although standards have been established by the Court, many still suffer the consequences as exonerations continue to uncover the truth eventually.

In a study conducted by Gould, Hail-Jares, and Carrano (2014), cases of wrongful conviction were compared with cases where a factually innocent defendant was released prior to any convictions based on innocence, otherwise known as a "near miss" (p. 168). The sample included 460 total cases from the year range 1980 to 2012, each case involving a factually innocent defendant who was convicted of a felony crime against a person at the state level. Cases were also distinguished by "easy" and "hard" based on perceptions of guilt (p. 168). Bivariate and logistical regressions were used, in addition to a panel of criminal justice professionals to review 39 of the total 460 cases.

The study was able to identify ten significant factors that either harm or assist the innocent and found that a stronger legal defense minimized the chance of a wrongful conviction, with such cases tending to conclude in a dismissal or acquittal (Gould et al., 2014). The expert panel used for the study noted that "good lawyering" was a positive factor for the "near miss" cases (Gould et al., 2014, p. 169). Overall, poor representation (regardless of lawyer type) influenced the outcome. Cases that relied on family or friends as alibi witnesses were more likely to provide a wrongful conviction. The results of the study concluded that the occurrence of a wrongful conviction is a systematic failure, illustrating that "near misses" occurred because an individual stopped a wrongful conviction from occurring (including defense attorneys).

Prosecutorial misconduct and inadequate legal defenses are a recipe for disaster in the legal system. Research has revealed that both are proven contributors to wrongful convictions, thus providing that prosecutorial ethics and competent defense attorneys present a key issue in combating miscarriages of justice. It is possible, however, that a higher-ranked court official will engage in misconduct.

### **Judicial Misconduct**

While judicial misconduct can vastly impact the outcome of a case, its place in wrongful convictions scholarship is less dense than other forms of misconduct research. It has, however, become the subject of increased oversight over recent years. As of 2007, all 50 states have formed a judicial conduct commission (Gray, 2007). The goal of the conduct commissions is to maintain and restore confidence in the "integrity, independence, and impartiality" of the judiciary (Gray, 2007, p. 405). Each state has different names for their commissions, which may be interchangeable by state with terms such as "board, council, court, or committee" (Gray, 2007, p. 405).

Nonetheless, their role is to investigate, prosecute, and rule on complains of judicial misconduct. Sanctions may be privately dispersed or made public, depending on the severity of the case and the state/jurisdiction in which it occurred. Sanctions may range from fines and reprimands to removal from office, required retirement, or disbarment. Though their presence is somewhat more obscure, the procedures that each commission utilizes differ and vary based on the state's experiences (Gray, 2007).

Wrongful conviction scholars have investigated judicial misconduct as a contributor to miscarriages of justice. Preceding the study conducted by Gould et al. (2014), "near misses" and cases of wrongful convictions were compared by Gould, Carrano, Leo, and Hail-Jares (2013). The 2013 study established factual innocence based on two parts: (1) judicial, legislative, or executive acknowledgement that the crime was not committed by the defendant, and (2) convincing evidence that a reasonable person would believe the crime was not committed by the defendant. A total of 260 wrongful convictions and 200 near misses made up the sample for the 2013 study. According to Gould et al. (2013), judicial error was alleged in five percent of cases and proven in five percent of wrongful conviction cases. The "near misses" had a rate of two and a half percent for alleged judicial error and less than one percent for proven cases. The results of the study showed that the sample of cases rarely contained any recognizable judicial misconduct or error.

Tunnel vision was mentioned in both the 2013 study and the updated 2014 version, which was found to be a factor for judges. Gould et al. (2014) used the definition of tunnel vision that is stated as "social, organizational, and psychological tendencies "that lead actors in the criminal justice system to 'focus on a suspect, select and filter the evidence that will 'build a case' for conviction, while ignoring or suppressing evidence that points away from guilt" (p. 504). According to Gould et al. (2013), judges fall prey to tunnel vision (like prosecutors). In multiple cases studied, judges failed to exercise their powers of discretion to examine the facts of the case and/or failed to actively protect the innocent. Though standards of proof are immensely high and make detecting judicial misconduct or error difficult, cases showed that judges failed to perform their function of "gatekeeping to prevent further injustice" when misconduct was earlier committed by police, prosecutors, defense attorneys, or eyewitnesses (Gould et al., 2013, p. 506). As the literature illustrates, accountability measures are in place for judges, but detecting it and establishing its occurrence provide many obstacles for legal professionals.

### **Forensic Misconduct**

Acts of forensic misconduct have tremendously affected wrongful convictions on both in exonerating the innocent and convicting them. While forensic science exonerates some of their alleged crimes, it also convicts others. According to the NRE (2020b), 24 percent of known exonerations have occurred due to false or misleading forensic evidence. A multitude of factors influence the use of forensic science in criminal cases. Academic literature spans across these components, including forensic misconduct in wrongful convictions.

Garrett and Neufeld (2009) composed one of the earliest studies on forensic science testimony by experts of the prosecution in the trials of the wrongfully convicted. Trial transcripts were examined for 156 exonerees who had trial testimony by forensic experts, with 137 total cases being reviewed for the study. Cases had testimony involving serological (antibody) tests, hair



comparisons, bitemark, fibers, shoeprints, soil, fingerprints, and physical DNA testing. Findings of the study indicated that 60 percent of trials ( $n = 82$ ) had invalid testimony from forensic experts, where the results from the forensic analyst were misstated or entirely unsupported empirically (Garrett & Neufeld, 2009). The defense counsel for the innocent defendant was found to have rarely cross-examined the analysts regarding their statements and failing to obtain a forensic expert for their defense team. As a result, Garrett and Neufeld (2009) suggested that oversight is not needed just for forensic analysts, but clear standards need to be set in place for reviewing forensic testimony.

Recent studies have looked further into the role of forensics in wrongfully conviction, specifically with decision-making. Scherr and Dror (2020) assessed ingroup bias of forensic experts as associated with more exonerations than wrongful convictions. The study's examination of ingroup bias stems from favoritism of those they consider similar, or "similar others" (p. 3). The participants in the study were 93 practicing forensic experts from the U.S., Canada, and the United Kingdom who work for government labs, mostly for the prosecution. Experts had an average of about 13 years of experience and included pathologists, criminalists, fingerprint analysts, DNA analysts, forensic lab technicians, identification technicians, forensic anthropologists, digital forensics, forensic investigators, and crime scene investigators (Scherr & Dror, 2020). Questions were asked pertaining to perceptions of (1) wrongful convictions and (2) exonerations in a survey format. The findings of the study indicated that forensic analysts perceive their work, and the work of those around them (prosecutors) are associated with more exonerations than wrongful convictions, despite base rate data showing that the opposite is true (Scherr & Dror, 2020). Overall, the study was able to conclude that an "inherent bias" exists in forensic analysis, which provide a further understanding of how forensic analysts can contribute to a wrongful conviction.

The review of the literature displays that official misconduct is a troublesome aspect of wrongful convictions that needs further research. The current study sought to fill the gaps in the literature by translating what was found through case analysis of known exonerations. The objective of this study is to identify the officials who have committed misconduct in murder exonerations, the types of misconduct being committed, types of inadequate legal defense in murder exonerations where official misconduct is present, and the racial implications of these cases. It is important to have a better understanding of official misconduct because little is known about its role in wrongful convictions, yet it has affected more than 50 percent of known exonerations.

### **III Methodology**

This study analyzed cases of official misconduct and inadequate legal defense for murder exonerations recognized by the NRE. These cases were further analyzed through crosstabulations based on the impact of race of the exoneree. Murder cases were included in the analysis based on severity, punishment, and higher stakes when the death penalty is a factor. Gould et al. (2013) described this factor as "death penalty culture" or traits that potentially influence officials and the community to seek convictions regardless of innocence claims (p. 486). Exonerations by inadequate legal defense were also examined. According to Norris et al. (2018), defendants facing the death penalty are placed in a more critical situation for effective legal defense. Further, Gould

et al. (2013) stated that the presence of a poor legal defense increases the likelihood of a conviction. The inclusion of inadequate legal defense is pivotal, as this study serves to analyze the concept through the lens of misconduct. That is, inadequate legal defenses are studied as a parallel to misconduct based on (a) whether they mimic or correspond with official misconduct by act and (b) their frequency in cases of official misconduct, thereby reinforcing the need for adequate defense to combat misconduct. Scholars have shown that its role in wrongful convictions has become evident, thus supporting its inclusion in the current study.

The sample was collected in April 2020 from the NRE database as an Excel file. As of April 2020, there are a total 2,571 exonerations. Official misconduct contributed to 1,388 of 2,571 (54%). At the time the data was collected, 987 exonerations had a worst crime display of murder (38%). The 987 exonerations were filtered for (1) murder and (2) inadequate legal defenses, resulting in a final sample of 215. The spreadsheet includes the first and last name of the exoneree, their race, gender, and age. The descriptive table for age, race, and gender of the sample is included below.

**Table 1.** Age, Race, and Gender of Exonerees

Age	<i>f</i>	%
11 to 18	55	26
19 to 25	89	41
26 to 35	48	22
36 to 44	17	8
45 and older	6	3
Total	215	
Race	<i>f</i>	%
Asian	1	.50
Black	132	61
Caucasian	48	22
Hispanic	25	12
Native American	1	.50
Other	1	.50
Total	215	
Gender	<i>f</i>	%
Male	199	93
Female	16	7
Total	215	

The descriptive table of the sample indicates that 25 percent of exonerees were juveniles at the time of their conviction. Most exonerees were convicted between the ages of 19 and 25 (41%). Only six exonerees (3%) were convicted at the ages of 45 or older. More than 60 percent (61%; 132) of the exonerees included in the sample were Black, 48 (22%) were Caucasian, and 25 (11%) were Hispanic. Of the total 215 exonerees, 199 (93%) were male and 16 (7%) were female.

### A. Content Analysis

The total sample for the study was 215, with the NRE no longer being classifying one case as official misconduct and 10 cases coded as *unknown*. Therefore, there are 204 applicable cases of exoneration involving misconduct. Using the case summaries of each exoneration included in the sample, a content analysis was conducted. The summaries were accessed on the NRE website and coded across five different variables for officials, comprising of a total 12 officials who committed misconduct either alone or in collaboration with other officials. The five variables for included (1) police misconduct, (2) prosecutorial misconduct, (3) judicial misconduct, (4) forensic misconduct, and (5) acts of inadequate legal defense. Official(s) responsible for the misconduct in this study were coded based on their role at the time the misconduct occurred as written in the NRE case summaries. These categories included (1) Not official misconduct (OM), (2) police, (3) police, forensic, (4) police, judicial, (5) police, judicial, forensic, (6) police, prosecutor, (7) police, prosecutor, forensic, (8) police, prosecutor, judicial, (9) prosecutor, (10) prosecutor, forensic, (11) prosecutor, judicial, and (12) unknown. The frequencies for this variable are as followed.

**Table 2.** Official(s) Responsible

Official	<i>f</i>	Percent	Cumulative Percent
Not OM	1	.5	.5
Police	62	28.8	29.3
Police, Forensic	4	1.9	31.2
Police, Judicial	6	2.8	34.0
Police, Judicial, Forensic	2	.9	34.9
Police, Prosecutor	63	29.3	64.2
Police, Prosecutor, Forensic	11	5.1	69.3
Police, Prosecutor, Judicial	3	1.4	70.7
Prosecutor	42	19.5	90.2
Prosecutor, Forensic	8	3.7	94.0
Prosecutor, Judicial	3	1.4	95.3
Unknown	10	4.7	100.0
Total	215	100.0	

### B. Definitions

Each act of misconduct included in this study was defined based on the findings within the case summaries on the NRE website. The comprehensive definitions for each act can be found in the appendix. There are five acts coded for police misconduct, including (1) *witness or suspect tampering*, (2) *exculpatory evidence*, (3) *false information*, (4) *interrogation techniques*, and (5) *lineup procedure*. Acts of prosecutorial misconduct consisted of (1) *evidence or trial manipulation*, (2) *exchange for testimony*, (3) *exculpatory evidence*, (4) *improper statements*, (5) *interrogation techniques*, (6) *lineup procedure*, (7) *misrepresenting evidence*, (8) *presenting contradictory evidence*, and (9) *utilizing false evidence or testimony*. There were five types of judicial misconduct indicated, (1) *bribery*, (2) *conflict of interest*, (3) *erroneous finding or*

*procedure*, (4) *improper intervention*, and (5) *under the influence*. Forensic misconduct occurred as three acts, comprising of (1) *false observations or testimony*, (2) *misstated evidence*, and (3) *suggestive methods*. Inadequate legal defenses included eight acts, (1) *conflict of interest*, (2) *deficient performance*, (3) *failure to call witnesses*, (4) *failure to present challenges or dismissals*, (5) *failure to propose objections*, (6) *failure to sufficiently investigate*, (7) *ineffective witness examination*, and (8) *unknown*. Cases coded as *unknown* were listed as cases of inadequate legal defense in the NRE database but did not contain enough information to meet the criteria of coding.

The results section outlines the frequencies of each act of misconduct and the distribution of each act on the race of the exonerees included in this sample. This will consist of crosstabulations for (1) police misconduct, (2) prosecutorial misconduct, and (3) inadequate legal defense, as these are the only officials in this study to have committed more than one act of misconduct in an official misconduct exoneration. Crosstabulations are used for showing the frequency of two variables simultaneously, in this case race and type of misconduct.

## IV Results and Discussion

The events of 2020 have called many social justice issues to light, two of which being police misconduct in the wake of the killing of George Floyd and shooting of Jacob Blake. Among the types of misconduct identified in this study, inadequate legal defenses were the most frequently occurring, followed by police and prosecutorial misconduct. Both judicial and forensic misconduct were observed at a considerably lower rate. First, police and prosecutorial misconduct crosstabulations will be shown and discussed. Next, judicial misconduct and forensic misconduct will be examined. A similar structure of frequency and racial impact will be presented for inadequate legal defenses.

### A. Police Misconduct

Police misconduct was the second most frequently occurring form of misconduct among exonerees. Notably, the number of acts of police misconduct ( $n = 301$ ) outweigh the number of applicable exoneration cases ( $n = 204$ ) included in the sample. Thus, an average of 1.5 forms of police misconduct occur per exoneree where police misconduct is present. Five types of police misconduct were coded, *interrogation techniques* being the most persistent at 99 (33% of police misconduct). Some interrogation techniques were extremely harmful to exonerees, including physical/psychological torture and manipulation. *Lineup procedure* occurred in 31 cases. Examples of *lineup procedures* included law enforcement officials implicating suspects in lineups by making suggestions to lineup viewers. Therefore, 130 acts of misconduct were conducted prior to both trial or plea bargains (43% of police misconduct). It is noteworthy to point out that 200 acts of police misconduct were indicated among 132 African American exonerees. The frequencies for police misconduct are listed in Table 3 which includes the impact on race of exoneree by police misconduct.

**Table 3.** Race and Police Misconduct Crosstabulation

Race	Witness or Suspect Tampering	Exculpatory Evidence	False Information	Interrogation Techniques	Lineup Procedure	Total
Asian	1	0	1	1	0	3
African American	51	24	38	64	23	200
Caucasian	13	8	12	19	1	53
Hispanic	11	4	7	13	6	41
Native American	0	0	1	1	0	2
Other	0	0	0	1	1	2
Total	76	36	59	99	31	301

This analysis not only reinforces the large-scale issue of police misconduct, but it reveals the disproportionate rate of police misconduct victimization among African Americans. The total number of police misconduct acts ( $n = 301$ ) outweighs the total sample ( $n = 204$ ) in the study, bearing fruit to an increased demand in more education among law enforcement personnel, revisiting policies, and the unwritten practices of policing that may potentially harm citizens. More specifically, 200 of the 301 acts discovered (66%) victimized African American exonerees, outweighing other races near two-fold. Within the recognized acts of police misconduct, African American exonerees were mostly impacted by *interrogation techniques* ( $n = 64$ ), which is 65 percent of the total acts of interrogation misconduct identified. Police misconduct impacted African American exonerees at least three times as more in each category in the study. This finding is immensely burdensome to American criminal justice, thereby providing supporting evidence for calls of police misconduct reform.

### B. Prosecutorial Misconduct

Findings from the study indicated nine types of prosecutorial misconduct in a total 209 acts. Like the outcome of police misconduct, there are more acts of prosecutorial misconduct than applicable cases of exoneration. *Exculpatory evidence* (i.e. *Brady* violations) was found to be the most frequently recurring at 77, or 37% of prosecutorial misconduct. Withholding *exculpatory evidence* occurred higher than other acts of prosecutorial misconduct, the next most frequent being *exchange for testimony* ( $n = 32$ ). The act of *exchange for testimony* included the exchange of leniency of other incentives for testimony in a case that helped convict the innocent. Prosecutorial misconduct also was found to affect African American exonerees more than any other race ( $n = 114$ ). Table 4 displays the findings of prosecutorial misconduct, as well as the crosstabulation of impact on race by prosecutorial misconduct.

**Table 4.** Race and Prosecutorial Misconduct Crosstabulation

Act of Misconduct	Asian	African American	Caucasian	Hispanic	Native American	Other	Total
Evidence or trial manipulation	0	6	4	1	0	0	11
Exchange for testimony	0	22	7	3	0	0	32

Exculpatory evidence	0	45	24	7	1	0	77
Improper statements	0	12	12	4	1	0	29
Interrogation techniques	0	6	4	2	0	0	12
Lineup procedure	0	0	1	0	0	0	1
Misrepresenting evidence	0	5	4	1	0	0	10
Presenting contradictory evidence	0	3	3	2	0	0	8
Utilizing false evidence or testimony	0	15	9	5	0	0	29
Total	0	114	68	25	2	0	209

In similar fashion to the police misconduct results, acts of prosecutorial misconduct ( $n = 209$ ) exceeded the study's sample. *Exculpatory evidence*, or *Brady* violations, present(s) many issues in the trial process comprehensively but serve as another hoop exonerees must jump through to obtain their freedom. While its frequency ( $n = 77$ ) in this study is merely troubling based simply on its occurrence, the existence of this form of misconduct in capital cases constitutes accountability as a potential concern for prosecutors. Not only are those who fall victim to prosecutorial misconduct most often African American ( $n = 114$ , 55%), but the same can be said to those victimized by the withholding of exculpatory evidence ( $n = 45$ , 58%). In contrast to police misconduct, seven forms of prosecutorial misconduct (*improper statements, evidence or trial manipulation, interrogation techniques, misrepresenting evidence, presenting contradictory evidence, utilizing false evidence or testimony*) are near equal or marginally more proportionate across races. While this may give additional substance to the issue of police misconduct, it should not erode the idea that *exculpatory evidence* among prosecutors presents helpless obstacles at the trial level, especially for African American defendants.

### C. Judicial Misconduct

There are a total of 14 acts (14 of applicable 204; 7%) of judicial misconduct present in cases of murder exonerations. Five acts of judicial misconduct are identified, *erroneous finding or procedure* being the most frequent. Such findings or procedures included judges applying incorrect decisions, misinterpreting the law, etc. The frequencies for judicial misconduct can be seen in Table 5.

**Table 5.** Judicial Misconduct

Act of Misconduct	<i>f</i>
Erroneous finding or procedure	8
Improper intervention	3
Bribery	1
Conflict of interest	1
Under the influence	1
Total	14

### D. Forensic Misconduct

While forensic misconduct was observed more than judicial misconduct, it is still considered substantially less frequent than other forms of misconduct in this study. Three acts of misconduct were indicated, with *false observations or testimony* occurring most frequently in the category. *False observations or testimony* were problematic for exoneree's cases, including making observation statements during trial that were later not supported by science or false testimony entirely. Table 6 displays the forensic misconduct found in exoneree's cases.

**Table 6.** Forensic Misconduct

Act of Misconduct	<i>f</i>
False observations or testimony	20
Misstated or invalid evidence	4
Suggestive methods	1
Total	25

Though judicial and forensic misconduct appear in the findings, their occurrence on murder exonerees are not as frequent. This, however, does not constitute valid reasoning for undermining the effect it has on the cases being studied. The most common form of forensic misconduct discovered was *false observations or testimony* ( $n = 20$ ), speaking to a bigger issue at hand: the rationality of using forensic experts in capital cases must come with careful consideration. Equally, miscarriages of justice carried out by judicial officials present a dilemma of both ethical reasoning and competency at the highest level in each given case. The most identified form of judicial misconduct in this study was *erroneous finding or procedure* ( $n = 8$ , 57%), thereby providing a need for assessing capability in positions proven to contribute to wrongful convictions.

### E. Inadequate Legal Defense

Inadequate legal defenses were the most recurring form of misconduct found in this study ( $n = 313$ ). As present in both police and prosecutorial misconduct, the inadequate legal defenses found outweigh the number of applicable cases ( $n = 204$ ). *Failure to call witnesses* was the most common type of inadequate legal defense discovered ( $n = 75$ ), followed by *deficient performance* ( $n = 58$ ). The *failure to call witnesses* included not calling alibi, character, or expert witnesses. *Conflict of interest* ( $n = 14$ ) and *failure to propose objections* ( $n = 10$ ) were the least frequently occurring. *Conflict of interest* consisted of attorney's who had represented a relative of the defendant or victim, the attorney was also facing charges in a separate case, etc. Table 7 outlines the frequencies of inadequate legal defenses, including the crosstabulation of impact on race by inadequate legal defenses.

**Table 7.** Race and Inadequate Legal Defense Crosstabulation

Inadequate Legal Defense	Asian	African American	Caucasian	Hispanic	Native American	Other	Total
Conflict of interest	0	7	5	2	0	0	14
Deficient performance	1	28	19	10	0	0	58

Failure to call witnesses	0	47	17	11	0	0	75
Failure to present challenges or dismissals	1	23	8	3	0	1	36
Failure to propose objections	0	5	4	1	0	0	10
Failure to sufficiently investigate	0	27	12	7	0	0	46
Ineffective witness examination	0	16	5	3	1	0	25
Unknown	0	36	12	1	0	0	49
Total	2	189	82	38	1	1	313

This study was able to identify varying inadequate legal defenses among those wrongfully convicted of murder. Adequate legal defenses are not only a constitutional right, but they are crucial to the defendant's opportunity to clear their name. Following suit with prosecutorial and police misconduct, the occurrence of inadequate legal defenses ( $n = 313$ ) surpassed the total sample (though 49 cases are unknown). *Failure to call witnesses* was the most recurring inadequate legal defense ( $n = 75$ , 24%) followed closely by *deficient performance* ( $n = 58$ , 19%). The distribution of inadequate legal defenses was much more marginal than police and prosecutorial misconduct. Despite this margin, African American exonerees were still disproportionately more likely to have inadequate legal defenses ( $n = 189$ , 60%) than all other races. The disproportionality of African American exonerees again exceeds other races two-fold in total, but also across acts, including (1) *failure to call witnesses*, (2) *failure to present challenges or dismissals*, (3) *failure to sufficiently investigate*, and (4) *ineffective witness examination*. Inadequate legal defenses are yet another challenge for innocent African American defendants to overcome when claiming their innocence when on trial for capital crimes.

This study is not without limitation. The cases analyzed only included those that are considered known exonerations. As exonerations become more prevalent, it has become increasingly evident that more innocent people will or will not be exonerated and not included in this study. Further, case summaries through the NRE were used to analyze and code exonerations. These summaries, while thorough, do not tell the full story of the exoneration and details may not be present. In addition, murder exonerations are potentially not representative of misconduct comprehensively, as more law enforcement resources are focused on these cases and can skew error rates. Such error could be more extensive based on pressure to solve and obtain a conviction or lower due to more oversight and awareness.

Using the NRE, the findings of this study indicated (1) officials committing misconduct in murder exoneration cases, (2) types of misconduct that officials are committing, and (3) the frequency in which misconduct impacts exonerees by race. Police and prosecutorial misconduct, as well as inadequate legal defenses, were found to disproportionately impact African American exonerees, presenting an additional disservice to an unjust system for minority groups. This study contributes to social science research significantly in breaking ground on misconduct in murder exonerations. In addition, the study further supports the firm differences in the experiences of African Americans in the criminal justice system. The future research and conclusion section will discuss policy implications and future research.



## V Future Research and Conclusion

The year 2020 has made way for many calls in support of social justice. The killing of George Floyd and shooting of Jacob Blake have sparked nationwide cries for police reform. The findings of this study reinforce the need for reform among American policing. A key aspect of progress in policing comes from educating officers on the current issue: misconduct. Department resources should be allocated to further educating officials on their ethical decision making and correcting error. Next, error must come with accountability. Unpunished misconduct has the potential to lead to catastrophe, providing a demand for enforcement. Some jurisdictions have taken on approaches such as civilian complaint review boards, where the element of “officer policing other officers” is less impactful on accountability. Such review boards have value across all criminal justice professions, where civilians who are not affiliated with police, prosecutors, judges, or forensic analysts can provide input on accountability judgements.

The George Floyd Justice in Policing Act was proposed in June 2020 outlining increased accountability for law enforcement officials. This includes lowering the standard of criminal intent to convict officers for misconduct in federal prosecutions from willful to knowing and reckless. In addition, the act limits qualified immunity (a protection of officials based on discretion in civil actions) and give authorization to the Department of Justice to issue subpoenas to investigate police departments for patterns or practice of discrimination. The act also (1) established a framework to prohibit racial profiling practices, (2) creates the National Police Misconduct Registry, a database on complaints and records of misconduct, and (3) new policing procedures such as data reporting on use of force incidents, trainings on bias and racial profiling, and wearing body cameras.

The George Floyd Justice in Policing Act provides a framework that can apply to other forms of misconduct with criteria for policy changing based on the type of misconduct. Future research discusses this possibility, including those specific to wrongful convictions such as post-conviction review process.

### Future Research

The three variables within this study in which race was evaluated provide that African American exonerees are more likely to be victimized by police misconduct, prosecutorial misconduct, and inadequate legal defenses. Though this study has achieved results that are significant to progress, a continuance of wrongful conviction research is needed to advance our knowledge of injustice. The public disclosure of police disciplinary records is a pivotal starting point in the pursuit of ending injustice. Such disclosure would not only provide for the further safety of American citizens, but it provides a multitude of opportunities for scholarship in the social sciences and beyond. In turn, reform can be an action taken to make police accountability a truth that holds its weight. Accountability measures should also be considered for prosecutors and judges, where citizens are at risk of being victimized when entering the process of criminal procedure at the trial level. Webster (2019) stated that if “prosecutorial ambivalence or resistance” is still motivated by police misconduct, forensic misconduct, violent crimes, or inadequate legal defenses, postconviction review can potentially address such insufficiencies (p. 346). The findings

of this study back Webster's (2019) conclusion, providing a demand for post-conviction reviews to continuously be utilized in restoring the integrity of justice when it fell short.

Future studies should consider analyzing misconduct at the individual and organizational level, raising question as to why professionals choose to engage in misconduct. Though there are many approaches to this form of research, many contributions have been made by scholars across many disciplines that have application towards the study of criminal justice professionals. In doing so, administration within each criminal justice profession can see to it that proper ethical and unbiased procedures are used across decision-making circumstances, allowing for equal justice to prevail over prejudice. Further, the findings of this study support that more weight should be given to the prospect of analyzing inadequate legal defenses as a contributor to both wrongful convictions and official misconduct. Inadequate legal defenses outweighed all other categories of misconduct, hence their occurrence in murder cases provides further opportunity to address trial outcomes with effective counsel regardless of innocence.

The results of this study echo the cry for social justice reform in wake of the killing of George Floyd, including scientific evidence that constitutes many calls for change, specifically addressing the African American experience with criminal justice professionals. The findings present the opportunity to bring change and social justice to form a more ethical legal system that does not judge by demographics. In order to advance American criminal justice and each of the respected professions of professionals, it is vital for leaders to consider accountability and competence when it comes to professions in criminal justice. Such considerations should resonate through the entire justice system, particularly to those involved in criminal procedure. When these considerations extend further than just mere deliberation and make way to organizational change, a more just and unbiased pursuit to justice awaits.

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## Appendix

### *Definitions of Acts by Official:*

#### **Police Misconduct**

- (1) Witness or suspect tampering: feeding information, regardless of its validity, about the case to witnesses or suspects, including posing threats, exchange for testimony, refusing one's right to have a lawyer present, coaching, and prior involvement with defendants that present a conflict in the case.
- (2) Exculpatory evidence: proven by court that evidence was withheld by police that could have potentially exonerated the accused.
- (3) False information: includes when witnesses indicate someone other than the defendant committed the crime, false or misleading testimony by police personnel, errored reporting or cover-ups by police, collection of unrelated evidence, utilizing unlawful or unreliable techniques such as interrogating without proper *Miranda* procedure, and fabricating evidence.
- (4) Interrogation techniques: abusive, coercive, or flawed practices are used to obtain confession or drive implication towards specific individual(s), such as continuing to interview suspects after they request a lawyer though one is not present.
- (5) Lineup procedure: An erroneous or flawed procedure was used for lineup.

#### **Prosecutorial Misconduct**

- (1) Evidence or trial manipulation: The prosecutor tampers or manipulates with the trial or any relevant evidence in a case. This can include improper jury selection, trying defendants separately to prevent potentially exonerating statements, or coaching witnesses.
- (2) Exchange for testimony: leniency or other initiatives were offered to those testifying.
- (3) Exculpatory evidence: withholding, destroying, or failing to disclose evidence that can be revealing of one's innocence or depriving of their rights.
- (4) Improper statements: Comments, statements, or arguments made by the prosecution that have a negative impact on the exoneree's case.
- (5) Interrogation techniques: The prosecutor is abusive, coercive, or uses flawed practices to obtain a confession. *Can include influencing witnesses not to recant, threatening suspects,*
- (6) Lineup procedure: Prosecutor uses suggestive methods for lineups to influence identification.
- (7) Misrepresenting evidence: hand-picking evidence contradictory to its true nature for usage in prosecutorial arguments.
- (8) Presenting contradictory evidence: prosecutor presents differing evidence or theories across multiple trials, establishing a narrative that convicts the individual based more-so on impression rather than factual arguments.

- (9) Utilizing false evidence or testimony: the prosecutor knowingly utilizes evidence or testimony that is incorrect or erroneous.

### **Judicial Misconduct**

- (1) Bribery: the judge accepted something of value for the purpose of an exchange during the trial's proceedings.
- (2) Conflict of interest: a COI is present when judges have prior experience coinciding with participants in the current case,
- (3) Erroneous finding or procedure: Court finds that the judge made an error in a finding or the procedure in which the case was conducted that contributed to the wrongful conviction.
- (4) Improper intervention: the judge intervenes improperly and negatively impacts the case in terms of the defendant's guilt or innocence, including harming the defense's arguments and allowing evidence that, by standards set forth by the Court of Appeals, should not have been allowed.
- (5) Under the influence: the judge was under the influence of a substance during the trial, thus limiting their competency.

### **Forensic Misconduct**

- (1) False observations or testimony: the forensic professional made an incorrect observation that was used to convict the exoneree.
- (2) Misstated evidence: errors are present in the way in which evidence is stated by the forensic official.
- (3) Suggestive methods: the forensic professional was found to have used suggestive methods in producing or examining evidence for trial.

### **Inadequate Legal Defense**

- (1) Conflict of interest: the defense attorney represented the exoneree with a conflict of interest present, such as prior relations with the exoneree, those involved in the case, or family.
- (2) Deficient performance: can include withdrawing claim of innocence, failing to point out inconsistencies in testimony, allowing incriminating evidence, not providing information of client's mental incompetence, being unprepared, not presenting potentially exonerating evidence, provisions for material witnesses, or attempting bribery.
- (3) Failure to call witnesses: the failure to call proper witnesses for defendant's case, including those who can confirm character, an alibi, or experts.
- (4) Failure to present challenges or dismissals: the defense attorney does not adequately challenge or move to dismiss or suppress accounts/statements made during trial, including the failure to impeach testimony.
- (5) Failure to propose objections: defense attorney fails to propose objections during trial.
- (6) Failure to sufficiently investigate: defense does not adequately investigate on behalf of the defendant.
- (7) Ineffective witness examination: the defense attorney does not sufficiently or adequately examine witnesses, including cross-examinations.
- (8) Unknown