Just Data: Advancing the Innocence Movement

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The *Innocence Project Scholarship Issue* features four research projects that the Innocence Project's Data Science and Research department determined were poignant studies that should be shared widely to both educate and inspire scholars interested in contributing to the innocence movement. Wrongful convictions, once thought to be rare, have been documented across the United States and throughout the world, and illuminate fundamental problems in the criminal legal system which affect everyone. To date, the Innocence Project counts 241 victories (DNA exonerations, exonerations with other evidence, post-conviction Alford pleas, resentencing and release in cases with evidence of innocence), while the National Registry of Exoneration has recorded 3,343 exonerations nationwide. Of course, these are only the cases that have been identified. The best estimate of the rate of wrongful convictions to date comes from a study by Gross et al. (2014), which reported a wrongful conviction rate of about 4% for capital cases. The injustice of any innocent person's incarceration is intolerable, as are the systemic issues which these individual cases reveal, including disparate treatment by race, class, gender, sexual orientation, and more. The need to rebuild the criminal legal system based on humanity, equity, science, and justice is as strong now as ever.

Since its inception, the Innocence Project's work has always been guided by science; using DNA testing to prove innocence was an innovation. Thirty years later, the organization has grown and evolved, and an innocence *movement* has emerged. An Innocence Network of over 70 independent organizations around the world are righting wrongful convictions and reforming the criminal legal system. And we still rely on science. Not only the physical science of DNA testing but also social science. We cite research in our legal briefs, call on experts to testify in court, use rigorously collected data to inform our policy advocacy, educate the public, and inform our day-to-day duties.

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[1] The Innocence Project works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. Founded in 1992 by Barry C Scheck and Peter J Neufeld at the Benjamin N Cardozo School of Law at Yeshiva University, New York. The organization is now an independent nonprofit. Our work is guided by science and grounded in anti-racism.

Each of the social science articles in this special issue were featured in the Innocence Project's first ever virtual gathering dedicated to research, *Just Data: Advancing the Innocence Movement*. Hosted by the Data Science and Research department, this event was unique, featuring new research, as well as the perspective of a scholar with expertise in Post-Traumatic Stress Disorder who was once wrongfully convicted, Ginny LeFever, and a panel of practitioners brainstorming publicly about gaps in research and new areas to explore. By connecting a variety of academic experts, impacted people who have direct knowledge of the system, and practitioners within the innocence movement, we believe we can leverage complementary expertise and catalyze practically actionable research to bolster legal and policy work nationwide.

The following studies showcase the wide variety of methodologies and subjects that contribute to our collective understanding of flaws in the criminal legal system and their impacts on peoples' lives. From the underlying causes to the lifetime of consequences, these scholars shed new light on unexplored elements of wrongful convictions. They also leave the door open for further inquiry, including longitudinal exploration of the effects of incarceration, the related topics of guilty pleas and "the trial penalty" (noted differences between sentences stemming from a guilty plea vs. those who do not accept pleas), and the recurring issues surrounding criminal investigations and trials.

Berube et al. provided us with a novel statistical exploration of commonly cited factors known to contribute to wrongful convictions. Those concerned with wrongful convictions have long recognized what have become known as "canonical factors" that contribute to wrongful convictions: mistaken witness identification, perjury or false accusations, false confessions, false or misleading forensic evidence, official misconduct, and inadequate legal defense. This classification system has helped identify and prove wrongful convictions and has led to reforms, yet does not capture the nuances of these stories. Berube et al. set out to investigate relationships between these six canonical factors using data from the National Registry of Exonerations and latent class analysis. Based on 2,880 exoneration cases, they found four distinct patterns of wrongful conviction: Investigative Corruption (high probability of official misconduct followed by a high probability of perjury or false accusation), Failures to Investigate (characterized by low probabilities across the six factors but the highest probability of false or misleading forensic evidence), Witness Mistakes (the highest probability of mistaken eyewitness identification), and Intentional Errors (characterized by the highest probability of perjury or false accusation and the second-highest probability of official misconduct, plus a relatively low probability for the other four factors). Notably, Investigative Corruption and Intentional Errors accounted for more than half of exonerations.

Helm took a deep dive into some of the factors that have contributed to recent wrongful convictions in England and Wales and introduced us to a series of overturned convictions of postal workers which provided unique insights into the use of digital evidence in modern law enforcement. This analysis of cases from the Miscarriages of Justice Registry suggested a shift from the evidence more traditionally understood as forensic science (e.g., medical, biological, chemical, and feature comparison) to digital evidence driving the majority of identified wrongful convictions in the area in recent years. As with other forensic sciences, digital evidence is seen as objective and trustworthy, with the power to convince attorneys, judges, and jurors, and to induce guilty pleas from the accused. However, the "Post Office Scandal" revealed that in reality this type of evidence is prone to bias and error, and that system actors, including defense attorneys, fail to

critically evaluate it. Helm situated these vulnerabilities in the context of broader system issues including backlogs and limited funding and suggested educating attorneys on digital evidence and increased judicial scrutiny in guilty plea cases.

The power and fallibility of eyewitness testimony is well recognized. Though we know the types of actions that can contaminate eyewitness memory (e.g., non-blind lineup administration, post-identification feedback and its ability to inflate a witness' confidence), it is unclear whether jurors can determine whether a witness' testimony is reliable. Lebensfeld and Smalarz relied on hundreds of mock jurors to explore how courtroom cross-examination can impact jurors' impressions and discernment of the original, recorded eyewitness identifications. Their work revealed that, surprisingly, cross-examination had no significant impact on evaluations of eyewitness accuracy and failed to safeguard against the way in which feedback can distort a witness' memory for the original event and the identification decision.

Panuccio et al. focused on an under-researched area - life after exoneration. Through semi-structured, in-depth interviews, they explored the experiences of 26 exonerated people, and constructed a powerful picture of the challenges they faced re-entering communities, along with strategies for success that have led, in some cases, to extraordinary, transformative personal growth. The post-traumatic growth uncovered in this research is an important demonstration of exoneree strength. This research also revealed the heterogeneity of exoneree experiences, with some different patterns among men and women (with male respondents describing growing more patient and calm and female respondents describing becoming more vocal and tougher in a positive way) and the need for further research exploring differences by other identities (e.g., race, ethnicity).

These studies amplify the need to explore recurring themes underlying wrongful convictions: the role of personal biases of system actors, the various ways in which the trial penalty surfaces in the life of a case, structural racism, differences across race/ethnicity and gender, and the substantial needs of people who have been wrongfully convicted who are re-entering society. It is our hope that this research encourages scholars to contact the Innocence Project for guidance on empirical endeavors that will yield impactful change to the criminal legal system, thereby reducing the prevalence of wrongful convictions. Please receive this as your call to action and invitation to collaboration as we strive to provide sound scientific evidence that advances meaningful transformation. And lastly, we end on a note of gratitude for the Wrongful Conviction Law Review's Editor-in-Chief - Dr. Myles McLellan - for this special issue that highlights the work of social scientists exploring wrongful convictions.

References

Samuel R Gross, Barbara O'Brien , Chen Hu , & Edward H Kennedy "Rate Of False Conviction of Criminal Defendants Who Are Sentenced to Death", (2014) 111:20 Proceedings of the National Academy of Sciences of the United States of America 7230.