



## Volume 3, Issue 1

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**The Plausibility of Being Wrongly Convicted for A Sexual Offence:  
Accounts From Former Prisoners**

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*This article reports the findings from a study of ex-prisoners convicted for sexual offences, while maintaining their innocence ('CMIs') and their relatives. While the researchers obviously cannot vouch for the CMIs' innocence, cautiously listening to the dire experiences reported by participants gives insight into what innocent people who remain convicted must endure. The CMIs' accounts, and justifications for researching unexonerated prisoners maintaining innocence, are set out against the backdrop of policy and legal developments in the UK and in other countries that might have increased the possibility of wrongful convictions for alleged sexual offences, particularly in the case of alleged historical (non-recent) abuse.*

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**I Introduction**

**A. The purpose and importance of listening to prisoners maintaining innocence**

For those who are guilty of child abuse and sexual offending, imprisonment may be experienced as more punitive than it is for other offenders: sex offenders are loathed by other prisoners; members of the public call for their execution and want them to ‘rot in hell’.<sup>1</sup> It follows that anyone wrongly convicted of such detested offences is treated to the same.

It is an unavoidable fact that a small proportion of people convicted as sex offenders will have been wrongly convicted. Despite this, research on those convicted maintaining innocence (whom we term ‘CMIs’) focuses almost exclusively on them as ‘deniers’ (in the sense of being ‘in denial’). We as authors accept and understand natural inclinations to give complainants the benefit of the doubt, both before and after jury decisions – after all, research on sex offenders in prison shows that a very high proportion deny guilt, and reveals various motivations for denial.<sup>2</sup> However, those who deny guilt because they are actually innocent are difficult to distinguish from those who are ‘deniers’ but are actually guilty.

This article reports on accounts from participants who were convicted and served prison sentences but persistently maintained their innocence, and/or their close family members. Because of their convictions, their accounts were excluded from an earlier study undertaken at the University of Oxford, which focused on the impact of false<sup>3</sup> allegations for abuse, including child and sexual offences.<sup>4</sup> In the present article, following discussion of why such wrongful convictions are increasingly feasible, we share their accounts of their harrowing journey.

The authors recognize of course that some of the former prisoners with whom we spoke during the course of this research may be guilty or partly guilty. However, given the evidence of errors of justice that can (and have) occurred, the authors are committed to giving a voice to those CMIs who may be innocent, and their families, as an under-researched, largely ignored or discounted population. If they are universally labeled ‘deniers’, they themselves are denied a voice, despite the known possibility of error. The value of researching this (seemingly ‘untouchable’) group - which might be seen as unethical in the context of concerns about justice for victims of sexual abuse, albeit ethical in the context of revealing neglected miscarriages of justice - is underpinned by the importance of exploring the plausibility of wrongful conviction. Thus, for the purposes of undertaking this study, we are prepared to report the accounts as indicative of the experience of genuine cases of actual innocence unless evidence to the contrary emerges.

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<sup>1</sup> Thomas Baker, Kristen Zgoba, & Jill A Gordon, “Incarcerated for a Sex Offense: In-prison Experiences and Concerns About Reentry” (2021) 33 (2) Sex Abuse 135.

<sup>2</sup> Nicholas Blagden, Belinda Winder, Karen Thorne, & Mick Gregson, “Making Sense of Denial in Sexual Offenders: A Qualitative Phenomenological and Repertory Grid Analysis” (2014) 29 (9) J Interpers Violence 1698; Alice Ievins & Ben Crewe, “‘Nobody’s Better Than You, Nobody’s Worse Than You’: Moral Community Among Prisoners Convicted of Sexual Offences” (2015) 17 (4) Punishment & Society 482; Jill Levenson, “‘But I Didn’t do it!’: Ethical Treatment of Sex Offenders in Denial” (2011) 23 (3) Sex Abuse 346.

<sup>3</sup> Knowingly and unknowingly false.

<sup>4</sup> Carolyn Hoyle, Naomi-ellen Speechley & Ros Burnett, *The Impact of Being Wrongly Accused of Abuse in Occupations of Trust* (2016), University of Oxford Centre for Criminology, online:

[https://www.law.ox.ac.uk/sites/files/oxlaw/the\\_impact\\_of\\_being\\_wrongly\\_accused\\_of\\_abuse\\_hoyle\\_speechley\\_burnett\\_final\\_26\\_may.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/the_impact_of_being_wrongly_accused_of_abuse_hoyle_speechley_burnett_final_26_may.pdf).

## B. The plausibility of wrongful convictions for sexual offences

Wrongful convictions are rare. Yet they have occurred often enough for criminal justice systems all over the world to include a Court of Appeal. In a growing number of countries, coordinated *pro bono* projects, Criminal Case Review Commissions ('CCRCs') and similar organizations have further been established to set up to review the safety of convictions. Wrongful convictions for sexual offences inevitably make up part of their caseload. In the United States, the National Registry of Exonerations maintains a detailed record of exonerations. Figures as of February 2022 show that, since 1989 in the US from a total of 2961 exonerations, there have been 298 exonerations for 'Child Sexual Abuse' and 349 exonerations for 'Sexual Assault'.<sup>5</sup> In England and Wales, between April 1997 (when the CCRC was created) up to April 2019, 127 (19%) of the cases it referred back to appeal courts were sexual offences.<sup>6</sup> Of these, 84 (66% of those referred) were overturned or partly overturned. Though those with convictions found to be wrongful (or 'unsafe') are not necessarily all innocent, these figures (based on convincing DNA evidence) give a clear indication that erroneous sexual offence convictions are a regular occurrence.

There are numerous reasons why a false allegation might be deliberately or mistakenly made. Of the 298 exonerations for 'Child Sexual Abuse' in the US registry example above, '*perjury or false allegations*' were contributing factors to the wrongful allegation in 85% of the cases; and of the 349 exonerations for sexual assault, '*perjury or false allegations*' were contributing factors in 44% of cases while 'mistaken identity' contributed to 67% of the cases.<sup>7</sup> Behind known cases of false allegations of abuse, motives of revenge, covering up affairs or retaliation in disputes have been revealed.<sup>8</sup> In wrongful historical<sup>9</sup> allegations, factors could

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<sup>5</sup> The National Registry of Exonerations cumulative record is divided into five categories including 'Child Sexual Abuse' and 'Sexual Assault'. See *Our Mission*, National Registry of Exonerations, online: <[www.law.umich.edu/special/exoneration/Pages/mission.aspx](http://www.law.umich.edu/special/exoneration/Pages/mission.aspx)>. Figures checked 14 Feb 2022.

<sup>6</sup> CCRC annual reports and Court published data only record numbers of case referrals (counting conviction and sentence combined). See *Corporate information and governance*, Criminal Cases Review Commission, online: <<https://ccrc.gov.uk/corporate-information-and-publications/>>; Naomi-Ellen Speechley, *Can the Justice System Adequately Rectify Wrongful Convictions for Historical Sexual Abuse?* (2016), University of Manchester, online: <[www.research.manchester.ac.uk/portal/files/189881813/FULL\\_TEXT.PDF](http://www.research.manchester.ac.uk/portal/files/189881813/FULL_TEXT.PDF)>.

<sup>7</sup> *Percentage Exoneration by Contributing Factor and Type of Crime*, National Registry of Exonerations, online: <<http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>>. Figure checked 14 Feb 2022.

<sup>8</sup> Revenge, as in the case of Sandra Danevska, see: "Stalker Sandra Danevska jailed for trying to frame ex" *BBC News* (27 Aug 2016), online: <[www.bbc.co.uk/news/uk-england-london-37202346](http://www.bbc.co.uk/news/uk-england-london-37202346)>; covering up affairs, as in the case of Jessica Gore, see: Tim Collins, "Cry-rape Ashford woman Jessica Gore spared jail after making up alley attack in South Willesborough" *Kent Online* (29 Jan 2014), online: <[www.kentonline.co.uk/ashford/news/rape-lies-12002](http://www.kentonline.co.uk/ashford/news/rape-lies-12002)>; disputes as in the case of PC Hitesh Lakhani, see: *Police officer jailed, lying about Uxbridge sex assault*, Crown Prosecution Service, online: <[www.cps.gov.uk/london-south/news/police-officer-jailed-lying-about-uxbridge-child-sex-assault](http://www.cps.gov.uk/london-south/news/police-officer-jailed-lying-about-uxbridge-child-sex-assault)>.

<sup>9</sup> 'Historical abuse' is defined vaguely, to refer to past offences occurring from one or more years from allegations or charges being brought. The term 'non-recent' is now more commonly used than 'historical'

include desire for attention, support, clinical help or praise for courage, mistaken memories and perceptions of events,<sup>10</sup> or bearing a grudge against someone who punished them in childhood.<sup>11</sup> A combination rather than any single factor is likely to apply. Accusers who are fantasists, pathological liars, or who have genuinely been abused (just not by the accused) may become convinced of the truth of their claims, and present as credible witnesses. There have even been cases where false accusations were detected after accusers had sent items to themselves, that they claimed to be from the person they report,<sup>12</sup> or because their accounts draw closely on details in fictional cases,<sup>13</sup> exposing the allegations as false.<sup>14</sup>

Cases featuring allegations made by a number of claimants against the same individual often look particularly damning for those accused. However, such ‘corroboration by numbers’ cases have on occasion been found to conceal a bandwagon effect, whereby compensation has been advertised as an ‘inducement for giving false or exaggerated evidence during investigations of this kind’.<sup>15</sup> Though exceptional, accounts of this are evident – in 2013 a former UK prisoner publicly admitted that he joined a ‘class action’ for compensation against a member of staff at a school he had attended, after seeing an advert from a personal injury solicitor. He later withdrew

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in policy documents but that is equally vague – the NSPCC for example defines ‘non-recent’ as ‘a year or 70 years ago’. See *Non-recent abuse*, National Society for the Prevention of Cruelty to Children, online: <[www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/non-recent-abuse/](http://www.nspcc.org.uk/what-is-child-abuse/types-of-abuse/non-recent-abuse/)>.

<sup>10</sup> See Ros Burnett (ed) *Wrongful Allegations of Sexual and Child Abuse*. (Oxford: Oxford University Press, 2016).

<sup>11</sup> As may have applied in the case of former head teacher, James Bird. See Martin Robinson, “Headteacher who was arrested at his desk on child sex abuse charges and endured year-long court ordeal is cleared by jury in just 15 minutes” *Daily Mail* (14 Nov 2014), online: <[www.dailymail.co.uk/news/article-2834519/Headteacher-arrested-desk-child-sex-abuse-charges-endured-year-long-court-ordeal-cleared-jury-just-15-minutes.html](http://www.dailymail.co.uk/news/article-2834519/Headteacher-arrested-desk-child-sex-abuse-charges-endured-year-long-court-ordeal-cleared-jury-just-15-minutes.html)>.

<sup>12</sup> The anonymous complainant who accused 5 men of raping her claimed that one had sent her a parcel containing wires similar to ones which were tied to her wrists when she was abused. She later admitted sending the item to herself. See David Brown, “CPS failings: Paedophile trial collapses over lurid claims of ‘serial fantasist’” *The Times* (19 Jan 2018), online: <[www.thetimes.co.uk/article/cps-failings-paedophile-trial-collapses-over-lurid-claims-of-serial-fantasist-dv7dzd5r2](http://www.thetimes.co.uk/article/cps-failings-paedophile-trial-collapses-over-lurid-claims-of-serial-fantasist-dv7dzd5r2)>.

<sup>13</sup> Scenes from the film *Vera Drake* and the TV show *Call the Midwife* were drawn to describe a false claim of an illegal abortion. In another case passages from *Fifty Shades of Grey* matched the complainant’s allegation of incest by her father; see Adam Lusher, “Girl uses *Fifty Shades of Grey* as basis for false rape claims against her father” *Independent* (16 Aug 2016), online: <[www.independent.co.uk/news/uk/home-news/fifty-shades-grey-50-shades-false-rape-claim-false-accusation-incest-rape-a7189786.html](http://www.independent.co.uk/news/uk/home-news/fifty-shades-grey-50-shades-false-rape-claim-false-accusation-incest-rape-a7189786.html)>.

<sup>14</sup> Philip Rumney & Kieran McCartan, “Purported False Allegations of Rape, Child Abuse and Non-Sexual Violence: Nature, Characteristics and Implications” (2017) 81 (6) *J of Crim L* 497; André De Zutter, Robert Horselenberg & Peter J Van Koppen, “Motives for Filing a False Allegation of Rape” (2018) 47 (2) *Arch Sex Behav* 457.

<sup>15</sup> *The Conduct of Investigations into Past Cases of Abuse in Children’s Homes: Fourth Report of Session 2001-02* (Oct 2002), Home Affairs Select Committee, online: <<https://publications.parliament.uk/pa/cm200102/cmselect/cmhaff/836/83602.htm>> [“Fourth Report”].



his claim because he did not think the staff member concerned was guilty and his conscience was troubling him.<sup>16</sup>

There are further cases where financial motivation for false allegations became evident. For example, in Scotland, the case of a former football coach where one of his accusers admitted that he had been approached by another accuser who asked him to lie in order to gain compensation.<sup>17</sup> In San Antonio, Texas a dermatologist was falsely accused by a patient with a history of false claims for compensation who eventually admitted she had fabricated the allegation.<sup>18</sup> Another example is that of Carl Chatman, a homeless Army veteran, wrongly convicted and eventually exonerated. His accuser, a County Circuit Court aide, heavily in debt, within days of the alleged rape sued the County and settled for a six-figure sum. Later it was found that this was the second time that she had reported being raped on work premises early in the morning before other staff arrived and had successfully sued building management for a substantial sum.<sup>19</sup> Similarly there was a financial motivation behind allegations leading to the wrongful conviction of football star Brian Banks, whose experience has been conveyed in a Netflix film.<sup>20</sup>

More broadly, the cultural and socio-legal context has gradually become more conducive to making allegations of abuse, true or false, with greater confidence than in the past that they will be believed, including delayed complaints relating to events in childhood. In the US, UK, Canada and many other countries, the final decades of the last century brought a new consciousness about the prevalence of sexual and physical abuse in both domestic and institutional settings as a hidden social problem, for decades a hidden social problem but now manifest in highly publicized reports of numerous national inquiries into historical abuse, in children's residential schools, the Catholic Church, the Scouts, various sports and other settings. While reforms have been too slow for many victims, there have been incremental developments aimed at rebalancing justice in favour of victims. These developments include anonymity for complainants (for life, in the UK, even after a defendant has been acquitted); encouraging victims of childhood abuse to report cases irrespective of the intervening length of time (and removal of statutes of limitation); police and lawyers' advertisements for victims to come forward; and taking a presumptive victim status of complainants in the provisions made for supporting and questioning them during investigations and trials. The typical absence of forensic evidence in historical cases other than witness testimony,

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<sup>16</sup> Ben Gunn, "The compensation carrot and false allegations of abuse" (2013) 4 (1) *FACTion* 10.

<sup>17</sup> See Rory Cassidy, "Paisley footy coach accused of abusing young players CLEARED after alleged victim admitted lying to get a bigger compo payout" *The Scottish Sun* (7 Feb 2018), online: <[www.thescottishsun.co.uk/news/scottish-news/2200203/paisley-football-coach-kilmarnock-sheriff-court-abuse-victim-lied-compo](http://www.thescottishsun.co.uk/news/scottish-news/2200203/paisley-football-coach-kilmarnock-sheriff-court-abuse-victim-lied-compo)>.

<sup>18</sup> See *Calvin Day* (2016), National Registry of Exonerations, online: <[www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4826](http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4826)>.

<sup>19</sup> See *Carl Chatman* (2013), National Registry of Exonerations, online: <[www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4268](http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4268)>.

<sup>20</sup> See *Brian Banks*, California Innocence Project, online: <<https://californiainnocenceproject.org/read-their-stories/brian-banks/>>.



combined with the possibility of convictions without corroboration,<sup>21</sup> mean that conditions are ripe for innocent people to find themselves on trial.

Difficulties faced by those accused of historical abuse are well-documented. Evaluating the reliability of historic or delayed witness testimony is inherently problematic for investigators and fact-finders because of “the (usually exclusive) reliance placed upon the complainant’s evidence and the vagueness or inconsistency that may accompany genuine historic recall.”<sup>22</sup> Investigators’ expectations that the complainants are credible, especially if they go into detail, may limit the lines of inquiry and lead to biased prosecution decisions.<sup>23</sup>

If there is no crime scene, no physical evidence and no witnesses, it can be extremely hard to produce any exculpatory evidence. As a UK Parliamentary Select Committee noted during an inquiry into investigations into abuse cases at children’s homes:

in contested cases, the defence team will usually face an onerous task. The passage of time since the offence was said to have taken place creates enormous evidential problems. [...] In most trials, the principal evidence is testimonial, with little – if any – medical or other objective evidence to go on. Memories have faded, potential witnesses may be dead or untraceable, crucial social services or care home records may have been lost or destroyed and the care home itself may have closed or been demolished.<sup>24</sup>

The 2002 Select Committee concluded that, ‘set in the context of a growing compensation culture and a shift in the law of “similar fact” evidence, the risks of effecting a miscarriage of justice in these cases are said to be unusually high’.<sup>25</sup>

English barrister Matthew Scott, one of the few practitioners who have taken to writing about defendants who have been accused of sexual abuse, has set out ways in which victim-focused justice system developments have impacted on the fairness of trials. These include,

the discretion of a trial judge to declare a prosecution an “abuse of process” because of the passage of time has almost entirely disappeared; [...] the mandatory judicial instruction to look for corroboration in sexual cases has been abolished; while the scope of cross-examination of complainants in such cases has been severely restricted; evidence of a defendant’s bad character is now commonly allowed, the

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<sup>21</sup> In most common-law countries, the requirement for a judicial warning, if there is no corroborative evidence for child sexual abuse, has been removed. This was previously a barrier to prosecutions. See Deborah Connolly, Patricia Coburn, & Kristin Chong, “Twenty-six Years Prosecuting Historic Child Sexual Abuse Cases: Has Anything Changed?” (2017) 23 (2) *Psychol, Public Policy, and L* 166.

<sup>22</sup> Pamela Radcliffe, Gisli Gudjonsson, Anthony Heaton-Armstrong, & David Wolchover (eds) *Witness Testimony in Sexual Cases: Evidential, Investigative and Scientific Perspectives* (Oxford: Oxford University Press, 2016) at 15.

<sup>23</sup> *Ibid* at 42.

<sup>24</sup> Fourth Report, *supra* note 15 at 26.

<sup>25</sup> *Ibid*.

admissibility of “similar fact” evidence has become easier; hearsay evidence is now permitted much more readily.<sup>26</sup>

Lawyers writing about the incremental effect of changes providing a context for false allegations and wrongful convictions, have referred to the absence of a time limit in England and Wales<sup>27</sup> for prosecuting suspects in sexual cases set against the pressure to gain more prosecutions and convictions.<sup>28</sup> They further observe, it is “a numbers game, where the greater the quantity of accusers or offences the more difficult it is to challenge and ultimately, this seals the fate of the accused”.<sup>29</sup> Extensive newspaper coverage of trials, going into the horrific details of complainants’ testimony and speculating on the prevalence of the hidden scandal of institutional child abuse can lead to highly charged atmospheres, whereby, as historian Richard Webster (who chronicled child abuse investigations) put it,

by the time the prosecution opening has been completed, both the jury and the judge may have been caught up in a current of prejudice so powerful that they are swept together toward a guilty verdict without being able properly to assess the evidence which is presented to them.<sup>30</sup>

It follows that sexual offence cases (especially historical) also have manifest disadvantages when seeking to appeal against conviction, such as: reliance on verbal testimony from the complainants, with an absence of any forensic evidence that a crime was committed; and no probative or exculpatory DNA evidence of wrongful conviction in cases where, in reality, the alleged crime did not take place. The Innocence Project<sup>31</sup> found that a high number of sexual offence wrongful convictions involved false testimony but could only expose convictions as wrongful where DNA evidence revealed the identity of the offenders.<sup>32</sup> Hence, it is easy to see why these cases can slip through the safety net of appeals.

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<sup>26</sup> Matthew Scott, “Kicking criminals is easy, but who will speak for the accused?” *The Spectator* (16 Aug 2019), online: <<https://blogs.spectator.co.uk/2019/08/kicking-criminals-is-easy-but-who-will-speak-up-for-the-accused/>>.

<sup>27</sup> There is no statute of limitation for prosecuting sexual offenders in majority of common-law countries including, and more recently, the majority of the states in America. See: Penney Lewis, *Delayed Prosecution for Childhood Sexual Abuse* (Oxford: Oxford University Press, 2006); see also *2021 National Overview of Statutes of Limitation for Child Sex Abuse*, Child USA, online: <<https://childusa.org/2021sol/>>.

<sup>28</sup> Chris Saltrese, *The rise of false allegations* (2015), Chris Saltrese Solicitors, online: <[www.chrissaltrese.co.uk/false-allegations/](http://www.chrissaltrese.co.uk/false-allegations/)>.

<sup>29</sup> Mark Barlow & Mark Newby, *The Challenges of Past Historical Allegations of Sexual Abuse* (2009), online: <<https://crimejottings.com/2011/01/27/the-challenges-of-past-historical-allegations-of-sexual-abuse/>>.

<sup>30</sup> Richard Webster, *The Secret of Bryn Estyn: The Making of a Modern Witch Hunt* (Oxford: The Orwell Press, 2005) at 18.

<sup>31</sup> The Innocence Project, founded in 1992 by Peter Neufeld and Barry Scheck at Cardozo School of Law, exonerates the wrongly convicted through DNA testing and reforms the criminal justice system to prevent future injustice. See *About*, The Innocence Project, online: <<https://innocenceproject.org/about/>>.

<sup>32</sup> *Exonerate the Innocent*, The Innocence Project, online: <[www.innocenceproject.org/exonerate/](http://www.innocenceproject.org/exonerate/)>.

## II Method

This article focuses on accounts from participants who have been convicted but persistently maintained their innocence, and close family members. Their accounts, however, had been gathered as part of – though ultimately excluded from – a wider study undertaken at the University of Oxford, entitled *The Impact of Being Wrongly Accused of Abuse in Occupations of Trust: Victims Voices* (2016).<sup>33</sup> In that 2016 study, narrative accounts were collected from participants who had been accused but had not been charged or who had been acquitted or exonerated.<sup>34</sup> Given that the focus of that study was on the impact and damage caused to people who had been wrongly accused, the researchers also collected data from participants who were convicted but had persistently maintained innocence and sought to appeal. This was in order to achieve a representative sample of those claiming to have been falsely accused of abuse, and on the basis that anyone who remains wrongfully convicted and identified as a sex offender would be the worst affected.

However, prior to the analysis and publication of the 2016 study, the decision was taken to split the findings from participants who remained ‘legally innocent’ and those who were still fighting convictions and publish the latter in a separate study. Thus, the 2016 study report drew public attention to the lasting harms done to individuals by false (erroneous or fabricated) allegations of abuse, and as such was well received.<sup>35</sup> In the present article, we discuss the findings from an analysis of the accounts by the excluded sub-group of participants: those who claim they were falsely accused and wrongly convicted and who have steadfastly maintained their innocence. This subsidiary study shares the same research background and methodological procedure as the 2016 study, but has been written independently and *pro bono*.<sup>36</sup>

This project was established in cooperation with FACT (Falsely Accused Carers, Teachers and others), a voluntary organization established in 1999 to support people wrongly accused of abuse in occupational contexts.<sup>37</sup> FACT has been commended for its evidence-based and professional approach to its work and has received the backing of several MPs who have raised parliamentary discussions and interventions. Membership has widened from carers and teachers to include other occupations where staff and volunteers who work in positions of trust with children or adults can be vulnerable to false allegations. FACT provided a small donation towards the costs of the research and circulated requests for research participants among its members. The University of Oxford Centre for Criminology developed and conducted the research, with full ethical clearance from the Central University Research Ethics Committee. Despite working in cooperation with FACT to hear the accounts of its members, the research team remained fully

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<sup>33</sup> Hoyle, *supra* note 4.

<sup>34</sup> We refer to them as NCEs (Not Charged, or were Exonerated), while the subjects of the present article are referred to as CMIs (Convicted and Maintaining Innocence).

<sup>35</sup> The report was praised in national UK newspaper *The Times*, noted during discussion in the House of Lords and the Canadian House of Commons, disseminated among Police and Crime Commissioners, and drawn upon in the course of journalist research for the BBC’s *Victoria Derbyshire Programme*.

<sup>36</sup> The long timespan between the two reports was also due to one author taking time out to do a PhD; another was set back by a recurring illness.

<sup>37</sup> See *Supporting Victims of Unfounded Allegations of Abuse*, FACT UK, online: <[www.factuk.org/](http://www.factuk.org/)>.

independent in all decisions about how to conduct the research, how to analyze the data and what to produce by way of reports.

FACT members were notified of the study, its aims, methods and strict criteria for inclusion. No incentive to participate was offered. Where participants were happy to proceed, they were then interviewed or invited to submit a written account, using a template listing questions about the impact on various aspects of life. Each participant signed a consent form stating that they have never committed offences of sexual or physical abuse and have consistently maintained innocence.

Accounts from participants were collected via interviews carried out in person, by phone, or in a focus group. Several participants also provided written material. The focus group was held at FACT's annual conference. Prior to self-selection, attendees were informed of the participation criteria, what the question topics were and the format of the session. The group discussion operated as a group interview, each participant answering in turn, with ensuing cross-discussion. Signed consent forms were collected, and the discussion digitally recorded. For each data collection method, an open-ended questionnaire was used to frame responses from participants in 6 key aspects of life: financial situations and employment, self-concept and reputation, psychological and physical health, significant relationships, beliefs and outlook on life, and coping mechanisms. Pseudonyms have been used and identifying details have been edited.

### **A. Participant Description**

17 participants gave accounts as part of the study. 10 of these participants had been convicted but maintained innocence ('CMI'), and 7 were close family members of someone convicted who maintained innocence ('FamCMI'). Of the 7 FamCMI accounts, 4 pertained to convicted persons who did not (or were unable to) give an account themselves (1 was in prison and 3 were deceased). The remaining 3 FamCMI accounts were given by the partner or former partner of the convicted person, who experience the strains of the situation differently. In total, the 17 accounts collected pertain to 13 convicted individuals, who have consistently maintained innocence.

**Table 1: Characteristics and experiences of those convicted**

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Gender:

12 male, 1 female (all 7 of the family members giving accounts were female. 6 of these were partners or former partners of the convicted person, and 1 was a sister.)

Occupation:

9 residential school (for young offenders and children 'in care') staff, including social workers, case workers, teachers, principals

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1 teacher in a boarding school

1 member of the clergy

1 support worker in a centre for vulnerable adults

1 founder of an overseas charity

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Time between offence(s) and allegations made:

Unknown: 1

0-1 year: 1

1-5 years: 1

5-10 years: 2

10-20 years: 3

20-50 years: 5

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## **B. Efforts to Appeal**

Most of these participants were tried for historical sexual offences, the evidence against them being primarily the testimony of their accusers, and their employment in institutions where abuse had occurred. In the course of writing up these findings, the researchers followed up on participants' efforts to get their conviction overturned. None had succeeded, most remained hopeful though some had stopped trying. It is initially difficult to understand why someone wrongly convicted (and especially of such reviled offences) would not spend everything they had fighting to clear their name. However, detailed discussion with those in this position paint a picture of common barriers that, in reality, make it infeasible to achieve the steps necessary for appeal.

Once convicted in England and Wales, those wishing to appeal must apply for permission (termed 'leave'), within 28 days of conviction. In doing so, they must establish that something was seriously wrong with the trial process which makes the guilty verdict unsafe. The convicted person is usually reliant upon their lawyer who advises on the merits of this. Several participants did not appeal immediately after conviction, having either been advised against doing so by lawyers due to the unavailability of evidence or no clear grounds on the facts. Others failed to lodge appeal grounds in time due to the traumatic adjustment of going to prison. The costs required for legal representation proved another barrier for participants, many of whom had just spent all available funds on legal representation at trial or simply could not afford to risk further losses having been convicted, and consequently unable to find regular income or employment.

Despite there being the recourse of a CCRC in England, Wales and Northern Ireland – an independent organization set up to investigate suspected miscarriages of justice – chances of successful case investigation and referral largely depend on it finding a real possibility that the Court of Appeal will quash the original conviction.<sup>38</sup> This real possibility must be due to fresh evidence or a new argument, not available at previous trial(s) (unless there are exceptional circumstances), that could provide reasons for the Court to doubt the safety of conviction. Although CCRC applications do not require legal representation and incur no fee to make, participants were in a position where they felt it would be better to save for a lawyer and find some fresh evidence before applying, as opposed to making an application without all the help they could get. Some had sought help from a solicitor and/or *pro bono* student law clinic, but after years little progress had been made. They then felt they had wasted time reaching a dead-end.

Most had not yet submitted an application to the CCRC because they had been firmly told it is near-impossible for them to succeed (very few applications to CCRC result in the conviction

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<sup>38</sup> *Criminal Appeal Act 1995* (UK), 1995 c 35, s 13.

being overturned), and they want to make the best of what life is still left for them. Moreover, they anticipated further negative publicity should the case be referred and published in the press, putting their family and themselves at risk of being attacked or ostracised (already a serious and persistent health concern for participants). Others simply stopped trying because they are aged, have numerous health problems, and could not cope with the upheaval and extreme stress.

### III Findings

#### A. Effects on financial situations and employment

##### *Financial detriment and legal costs.*

Those who are innocent of all charges do not expect to be convicted – so when this occurs, they are severely ill-prepared.<sup>39</sup> Though we do not equate their responses with direct evidence of innocence (in accordance with the nature of this study), nine participants spoke about their failure to anticipate being sent to prison,<sup>40</sup> either because their lawyers had stated that the charges would likely be dropped, or that the verdict was so unlikely to be guilty. Some were even asked for their story by reporters before the verdict came out, who assumed that they would be acquitted. Consequently, they failed to make adequate financial preparation.

Most of those convicted of historical abuse were nearing retirement age. Almost all the participants were in this category. Although this means that they had many years of employment and financial management practice before prison, it also means that participants often needed to take money from pensions or obtain loans to pay for the high legal costs and appeals. For the convicted person and their family, facing such sudden demands and major changes to their financial situation is particularly difficult – especially considering their advanced years when prison sentences are served. Charles described needing to cash in his pension at 52 to pay £30,000 in legal costs – without success. Of course, those maintaining innocence generally seek to appeal, incurring further legal fees.<sup>41</sup> One participant, Joshua, sold his house and spent his life savings trying to get further with his appeal. Yet, even where a conviction can successfully be established as wrongful, recent UK and Canada studies have identified the low likelihood (and amount) of compensation.<sup>42</sup>

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<sup>39</sup> John Wilson, “A Perpetual Battle of the Mind” *PBS Frontline* (31 Oct 2002), online: <[www.pbs.org/wgbh/pages/frontline/shows/burden/cameras/memo.html](http://www.pbs.org/wgbh/pages/frontline/shows/burden/cameras/memo.html)>. See also Adrian T Grounds, “Understanding the Effects of Wrongful Imprisonment” (2005) 32 *Crime & Just* 1.

<sup>40</sup> Note: Not all participants answered all questions or gave information for direct numerical comparison/grouping.

<sup>41</sup> More generally, anyone with savings may have used them all for on legal fees for the trial. With the reduced availability of legal aid it is becoming harder for people to cover the legal costs for a good defence. See Rosa Ellis & Jonathan Ames, “Innocent are left with enormous bills after cutbacks in legal aid” *The Times* (3 Feb 2020), online: Error! Hyperlink reference not valid.>.

<sup>42</sup> Carolyn Hoyle & Laura Tilt, “The Benefits of Social Capital for the Wrongfully Convicted: Considering the Promise of a Resettlement Model” (2018) 57 (4) *Howard J Crime & Just* 495; Hannah Quirk, “Compensation for Miscarriages of Justice: Degrees of Innocence” (2020) 79 (1) *Camb L J* 4; Myles

The financial impact was not delimited to those accused, but a burden shared by partners. Camille recalled, “I was basically working from 8 o’clock in the morning to 9 o’clock at night to pay the bills but then it became a struggle... I [took] my pension when I was 60 to reduce my hours... obviously having no regular income has been quite worrying.” Hannah also stated that, “following the trial I went off sick ... After 6 months I was without any income and had bills and a mortgage to pay ... I struggled [and] had no savings left.”

### *Barriers to finding work post-conviction*

In England and Wales, as in many other countries, those convicted of sexual offences are required by law to register their address with the police, receive regular visits from assigned officers, and to report to the police any planned visits away from their home address.<sup>43</sup> Notification requirements are typically for life if the prison sentence was 30 months or more.<sup>44</sup> It is extremely difficult for anyone convicted of this kind of offence to find work following a conviction and prison sentence. Even some of the organizations that welcome applications from ex-prisoners (such as Timpson, a popular high street shoe repair company) will not accept applications from convicted sex offenders.

Of the convicted participants not in custody, deceased or retired, four stated they were able to find employment since. But this has been low-paid, manual, and casual work, or in the case of Charles as a registered carer for his disabled partner. No other participants have been able to work for regular income since, due in part (but not predominantly) to the required criminal records checks, and lack of reference from their former employer. As most participants were close to retirement age upon leaving prison (and had held senior roles previously), this too decreased their likelihood of being taken on in new posts or voluntary roles.

Graham, Irene, Matt and Chris explicitly mentioned (though all accounts imply this) ruling out the prospect of applying for jobs as this would put themselves in a position where colleagues would ask what they had done previously, why they had left prior employment and so on. It seems commonsensical that a convicted sex offender would seek to avoid this attention. However, participants expressed such fragile mental health that, despite the huge benefits of employment, they had to protect themselves against the depression, anxiety and stigma that would be triggered by the practicalities of attempts to seek re-employment.

When an innocent person has worked a long time in a vocation that involves the care or supervision of others (especially younger or vulnerable people), and then becomes barred from this occupation for life (even if their conviction is overturned), the effect can be highly detrimental, and difficult to adjust to on release. In the related Oxford study with participants who were never charged or who had been exonerated, we found a far greater likelihood of unemployment upon release for those accused of abusing someone in their professional care. Despite those allegations not leading to prosecution or to convictions, the immediate effects of the allegations meant that

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McLellan, “Innocence Compensation: The Success Rate of Actions for Negligent Investigation” (2020) 98 (1) Can B Rev 34.

<sup>43</sup> The official name is the Violent and Sex Offender Register (ViSOR).

<sup>44</sup> Since 2012 it has been possible to apply for removal from the register after 15 years.



only two of the 26 participants employed at the time were able to continue working in the same jobs. Arguably, those same effects were at play here.

*Detriment to partners and families*

With the convicted person not in steady employment, and the prospect of future legal fees to pay for, a huge financial burden is placed on partners. This affects the whole family. Almost all FamCMI participants stated that they had suffered significant financial losses.

To begin with, for those convicted of child or sexual abuse that have children, there may be housing issues when leaving prison. Temporary accommodation is difficult for those required to register as a sex offender to secure, as one participant found. For those whose residence is connected to the job (such as a vicarage or residential school accommodation), finding separate accommodation brings additional costs. Angela described how, when her partner comes out of prison, they probably would not be allowed to live together. Even if this was permitted, she would likely have to move out from their church accommodation.

Partners also need to deal with administrative matters raised by the return of the convicted person, after a long time in their absence. Camille explained that “a lot of people’s attitude is that; you’re out of prison, therefore that’s it. But it’s not with sex offences. We can’t change to cheaper car insurance or house insurance policies because of these convictions.” Over and above the issues that release from prison presents for their relationship (discussed later), FamCMI participants identified wide-ranging financial burdens - administration of regular bills, bank orders, insurance, property maintenance were all affected. These repercussions touch their everyday lives and future finances going forward, for the whole family.

All but one of the FamCMI participants experienced difficulties in the workplace as a result of the support they gave to their partners, in the firm belief that they were innocent of all charges. At least three<sup>45</sup> partners of those convicted left their job or could not work due to stress. A further two who also worked in social service roles lost their jobs, dismissed because of the extent they were deemed to be supporting their partners. They too suffered the indignities discussed previously, of being unable to speak to colleague friends about their situation and to obtain references for future employment. Of course, financial burdens are doubled where the partner (as sole breadwinner) cannot themselves work. As Hannah recounted:

at the time of the allegations I was employed by the local authority as a senior child protection social worker. They disapproved of my support for my husband and subjected me to several difficult meetings in which they challenged that support. After a few months they suspended me saying I was seeking support for my husband, which was totally false... Following the trial I went off sick because at that time I could not deal with a disciplinary hearing. After 6 months I was without any income and had bills and a mortgage to pay. A year later they approved my early ill-health retirement.

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<sup>45</sup> Not all information was established about every partner, hence this figure is not expressed as ‘of the 7 FamCMI’ participants.

Irene lost her job as a team manager in the social services after choosing to remain with her partner due to belief in his innocence. She communicated her frustration at being deemed guilty by association as follows:

...the fact that we are partners meant that I was suspended, disciplined, all my work was checked... [At a disciplinary hearing] they said that it wasn't my work that was an issue at all – they'd gone through all of that, there was no fault found in my work, but the letter reads that because of my personal choice in a relationship I made, I can't have a job... I was dismissed in June 2010, so no reference, no wages, nothing... I never got chance to pick up things or say goodbye to anybody.

Hannah and Irene's experiences highlight the adjacent effect of uninvolved partners leaving their jobs as trained and dedicated carers or teachers. Irene reflected that,

if I was going to have impaired judgment as a social worker, because I know someone with a conviction, I'm sure the impaired judgment would have shown itself... I had worked for them for 32 years. I was good at my job, I've been trained inside out over more than three decades in social work. All of that now is wasted because I can't do it anymore, I'm banned for no reason.

#### **A. Effects on self-concept and reputation**

##### *Beyond a destroyed professional identity*

Every convicted participant (and most partners) suffered irreparable damage to their professional reputations as a result of the allegations and convictions. Two participants, Royston and Graham, noted that, even if acquitted or able to overturn the conviction, their professional caring and teaching reputations would remain severely undermined (or 'poisoned') in the eyes of society. As Graham explained,

even if they had released me without a conviction, the damage would have been done, the reputation, the story had gone to the press and the internet and everything else, and would be there forevermore. So just the making of the allegation was enough to result in destruction of people's lives.

However, those convicted of abuse in the context of their career lose much more than their job. As people's social and career achievements are so frequently tied to their sense of self, reputation and identity, any damage to their professional reputation necessitates a crippling blow for self-concept.

##### *Being labeled as an offender: a 'psychologically devastating' process*

Every participant claimed to have held a firm belief that no charges would be brought or the case would be dropped. Though some felt they were able to retain some self-belief and identity while the investigation and trial occurred, almost all the CMI participants described a crushing loss of confidence when the realization set in that the case was leading to conviction. Charles described

the process as ‘*psychologically devastating*’, realizing when led to his cell, that his identity was to be ‘stripped away’ beginning with being dressed the same as hundreds of others. In his words, when handcuffed and led to prison transport he realized he ‘*was a number*’ and had become trapped and powerless.

Graham recalled the psychological effects of this experience as follows:

You’ve gone overnight from one planet to another. You’ve changed worlds. You’ve gone from a situation where you are well established in a senior position in a respected profession and overnight that’s all gone. You are suddenly plunged from being important... to being nothing. At first – the first period of time, a few days, a couple of weeks – you can’t believe that it has happened. You still believe that justice is there and that it is going to change. So you are in this state of mind at the beginning where you are thinking, ‘this is all a huge mistake, it’s only a matter of days and I’m going to be released and we’ll get back to normal’. Then, as each day went by I started to realize that wasn’t the case... At first there was hope, and then after a while you realize there isn’t, and that everything has gone, and that your whole life has been destroyed. And then you start to realize the extent of that destruction... and that it is going to be the rest of your life moving on.

*A ‘broken’ life, damaged beyond repair*

To be associated with abuse – worse, convicted – is described by participants as a violation of their sense of self, their history and identity. They described feeling that their lives had become broken or permanently damaged by the association with the offence(s). For Lily, “being innocent is meaningless, as you can’t live the life you want.” Hannah stated that, “My husband spent 8 ½ years in prison. Whilst there he was optimistic and appeared strong. He was released on parole and I realized he was a broken man. He was incredibly angry and mistrustful.”

The participants also made frequent referrals to part of them dying, or there being a ‘new’ person now that their ‘old’ self is gone, or that they could not get back to being their former selves. Chris expressed that, “My life stopped when I was 47 because that’s how old I was when these allegations came out and I don’t feel I’ve lived again since – in fact, I haven’t. I haven’t lived a life because... I’ve never felt that same person again, at all. People say to me, “I wish we could have the real Chris back again.”” Lily simply summarized, “You are not the same person and never will be. That person has been destroyed. A new identity is formed.”

The theme of an old persona being replaced by a new one is stronger amongst CMI participants, than those not convicted or who successfully appealed.<sup>46</sup> In part, this could be because of the identity changes that result from being locked away in an institution. Through his conceptualization of a ‘mortification process’, Goffman<sup>47</sup> highlights the pain and grief associated with being inducted into such an institution, whereby an inmate’s former identity is both literally

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<sup>46</sup> Hoyle, *supra* note 4 at 31.

<sup>47</sup> Erving Goffman, *Stigma: notes on the management of spoiled identity*. (Englewood Cliffs: Prentice-Hall, 1961).

and figuratively stripped away and, in turn, the inmate is forced to take on an identity provided by the institution. This mortification process is clearly evident for those respondents wrongly convicted of sexual offences.<sup>48</sup> Westervelt and Cook found that participants exonerated after being on death row felt they had lost their ‘old’ self-identity when entering prison, and could not rebuild it on release.<sup>49</sup> Jamieson and Grounds similarly documented permanent changes in personality in wrongfully convicted and political prisoners.<sup>50</sup>

However, almost all participants felt their former selves had been corrupted by the allegations, investigation, trial and conviction – not the years spent separated from society. Therefore, it is likely that the identity loss or crisis is also (if not more) strongly tied to the sexual nature of the offence and social abhorrence of this. Graham explained this well:

You’ve lost all your confidence, your self-esteem and everything. It’s all totally gone because you’ve been declared a leper. You’re a leper to society. And so, whilst you’ve got this hope that you can expose what happened and the people that did it to you, you still know that the damage has been done. I will never be the same as I was before it all happened; I’ll never be the same person, I’ll never be as confident, as able to get things done as I used to.

Thus, it is arguable that the participants experienced an identity crisis far more lasting and pervasive than those with convictions for non-sexual offences.

Almost all participants discussed feeling broken, depressed, anxious and despondent, but also trying to remain strong in public. Chris shared his feelings of being “a strong character, I can fight... a tough nut, my feet are well on the ground.” However, he later stated that, “A lot of it is a front, underneath I’m very, very shaky and very, very weak. Now and again something will raise its head... I’m very fragile inside. Those allegations have done that.” Lily similarly stated that, “People see me as level headed strong and well balanced, having common sense. I class myself as weak and inferior.” Overall, a strong theme in the participants’ accounts was that of building a defensive, protective veneer as a coping mechanism. The dichotomy between how they try to present to the world and how they feel inside (often broken) is poignant.

#### *The stigma and stain of being labeled an abuser by society*

For those wrongfully convicted, a particular source of anguish is the shame they feel from being associated with the crime. Shame is felt as a result of participants’ – and their families’ – names becoming muddied, through association with convictions for abuse. Chris, for example, expressed feeling utterly ashamed that the accusations and conviction could happen; stating “Your name’s everything... it stained my name. It stained my family. It stained everything I’d done.”

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<sup>48</sup> See also Ruth Jamieson & Adrian Grounds, “Release and adjustment: perspectives from studies of wrongly convicted and politically motivated prisoners” in Alison Liebling & Shadd Maruna, eds, *The Effects of Imprisonment* (London: Routledge, 2005) 33.

<sup>49</sup> Sandra Westervelt & Kimberley Cook, “Framing innocents: The wrongly convicted as victims of state harm” (2010) 53 (3) *Crime, L & Soc Change* 268.

<sup>50</sup> Jamieson, *supra* note 48 at 50.

Yet, the ‘why’ was very hard to put into words. Hannah similarly explained that, “Initially it was so shameful that my husband was charged with such horrific offences. We had both worked with children and all the past work we thought was good was taken away from us. We suddenly had no past.”

Knowing that their ruined reputation affects the lives of others connected with them further lowered participants’ perceived self-worth. Chris spoke of the burden that his convictions presented to those around him, in not wanting the ‘stain’ to be picked up by other people. He recalled feeling unable to let a romantic relationship develop, due to the woman in question having children, whom the police would have placed on the ‘at risk’ register. This shows a clear sense of identity-loss on behalf of the participant, which in turn has adversely affected their self-concept going forward. Four others also described feeling responsible for strain and breakdown in relationships with others, which negatively affected their self-confidence and feelings of shame.

Some would argue that a deep sense of shame would be expected from those who are guilty and have been found out for their wrongdoings. Participants in the CMI group and their relatives, as well as those in the Oxford study who were not charged or were exonerated (NCE) both spoke of shame. What they describe, though, is a sense of shame that they could be associated with such crimes in others’ minds - as opposed to *being ashamed* of having done wrong. The two are at first difficult to separate. Self-concepts and reputations are built not just from how the individual sees themselves, but how others see them (and by how an individual *believes* others see them). This is partly why participants described feeling acute shame when maintaining innocence.<sup>51</sup>

#### *Devalued in society*

A coping mechanism for those experiencing an identity crisis having been devalued by society, is clinging onto their former value. Many participants discussed the benefit they or their partner brought to disadvantaged children or vulnerable adults prior to the allegations. Chris for example stated that,

I was very good with kids; I was excellent. And other people have said this to me both at Church and people in the community, that they’ve deprived the kids in the community of [my help]. I ran an organization with hundreds in it, and I did Duke of Edinburgh work – I was very, very good, and I’ve worked with the difficult ones.

This sentiment, one of many similar examples, shows that the participants feel a deep personal loss of their reputation and societal worth. This is unsurprising, given the circumstances of being accused by someone where there had previously been a relationship of trust. To go from a socially valued position, to being named as guilty of abuse, foreshadows an identity crisis. Participants needed to assert that, at their core is a once-valued person who contributed to the community despite being covered by stigma or ‘mud’, on the outside. This was done as a means to rebuild damaged self-confidence in the face of a decimated reputation. Remarkably, though, the effect was pronounced enough to extend to partners of those convicted. Camille, the partner of

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<sup>51</sup> Sandra Westervelt and Kimberley Cook (2010) also found participants felt acute stigma and fear.

someone convicted, explains that “we were always people who would be the first people to help somebody, and now... I don’t care. I have no optimism.”

## **B. Effects on psychological and physical health<sup>52</sup>**

### *Going into shock and shutdown*

As those who are innocent are likely to feel confident that ‘the truth will out’, that police will discern between someone who is lying (or mistaken) and someone telling the truth, and that innocent people simply do not end up in prison,<sup>53</sup> they are in no fit mental state to adjust where this does happen. Early on, participants frequently stated that they simply could not believe that allegations of abuse had been credibly made, or that there was any possibility they could lead to a criminal trial. Several were assured that the case would not reach court or would be thrown out immediately. Royston commented that, “I didn’t honestly think I would get convicted. I thought it was ridiculous at the time. ... I thought that once they could understand how the place had operated they would see this was implausible.” Emily too stated that “I was in a state of denial, I couldn’t believe it was going to happen, that he would be convicted and sent to prison, because he was so obviously innocent, so I don’t think it affected me initially.”

Participants’ accounts vividly portray how their initial feelings of bewilderment, incredulity and disbelief spiraled quickly into a state of acute stress and fear, facing a criminal trial in a state of shock and unpreparedness, on charges of abuse. Angela described her husband going through “Shock. Disbelief. Incredulity. And fear... For at least two or three weeks he hardly spoke.” Camille recalled that “when Matt was first accused we were both in shock. We were stunned. I struggled to motivate myself but had to motivate Matt. Also this put added pressure on me, which was hard.” Of course, it is not just the accused who feels the effects – their partners are also dealing with shock, acute stress, anxiety and possible doubts about their partner’s innocence or deceit (itself an unimaginable mental strain). They too share the trauma of a trial – and conviction – having their worlds turned upside down when it happens. This is discussed in further detail in the section on Relationships.

### *Depression, sorrow, and a sense of loss*

After initial shock, numbness and incomprehension at the possibility of a conviction, participants described feelings of intense and chronic stress, sorrow and depressive states. Several participants compared the experience to bereavement. As Angela (herself a trained bereavement counselor) described it, “It’s very much like bereavement, but you can’t, you don’t move on. You are actually stuck in it. I have had in the last few weeks these overwhelming feelings of sadness and loss. Sadness for what we have lost: we’ve lost our whole life.” It is almost impossible for

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<sup>52</sup> Participants’ health conditions and ailments were self-reported. Signals of mental health problems exhibited in responses were also noted, and are mentioned in that capacity where appropriate.

<sup>53</sup> A large-scale survey of public confidence in the British justice system found that 75% agree that those who have been accused of a crime will be treated as innocent until proven guilty. See Krista Jansson, *Public confidence in the Criminal Justice System – findings from the Crime Survey for England and Wales (2013/14)* (London: Ministry of Justice, 2015).

those believing they or their partners have been wrongly convicted to accept this fate - to draw a line under being wronged by the State and justice system, in such a way that removes liberty, permanently blighting their reputation and life moving forward.

Depression and anxiety were overwhelmingly prevalent in the responses. If not named outright, clear symptoms were alluded to in every account. Lily described the effects on her health as feeling “demoralized, disillusioned, depressed... loss of interest, appetite, confidence, motivation, concentration, sleep deprivation,” others described feeling angry and tense, and suffering deep mistrust of others, fearing that they will find out about the accusations or that other accusations will be made and the process repeats. Participants disclosed the use of counselling, taking anti-depressants, and suicidal thoughts (on their own behalf or concerns for their accused partners). Angela described her husband, who was accused,

retreating into himself... For at least two or three weeks he hardly spoke. I really was concerned about whether he would harm himself.’ [Interviewer: Had he suffered from depression previously?] No, no. He was in good health previously. He thinks that suicide is wrong and no one has a right to take their life - but I felt that at that time it was a distinct possibility.

For Graham,

From a mental point of view, it was almost like a slow motion; like when you watch those films where everything goes into slow motion, and you realise that you can’t do anything; you’ve just got to sit there and wait... it’s like being a hostage. You are suddenly captured by someone and you cannot do absolutely anything about it, and you just don’t know what the outcome is going to be. Mentally, you go through all the things: you know, ‘should I commit suicide?’ ... ‘what can I do about it?’ You know, it was just absolutely devastating. From a physical point of view... the trauma that you are suffering from means that you lose your appetite, you lose weight, and so you’ve got all of that.... Even if you were later cleared... you still can’t get rid of that trauma and the way that your life has been changed by it. It’s devastating.

#### *Sustained stress, anger and anxiety*

Between arrest and trial, participants described feeling numb, processing it as a traumatic experience.<sup>54</sup> At the same time, they described intense turmoil when trying to cope privately with an uncertain future, removing themselves from others as a coping behaviour. Many participants detailed stress-related health concerns such as shaking, sleeplessness, panic, paranoia and flashbacks of being arrested. Camille recalled high stress levels caused by keeping the situation secret for the year between allegations and trial, as well as her partner drinking heavily, but trying

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<sup>54</sup> The emotional toll of criminal trial participation is documented by the numerous and extensive measures brought in for witnesses and accusers to mitigate against trauma and upset caused. Yet, psychological distress experienced by the accused person is consistently overlooked, likely due to the probability of them being guilty. However, for those who are innocent, serious health detriments are clearly possible.



to keep busy with exercise – until he was charged and the local sports centre barred him, which “took away [their] supply of oxygen.”

Once convicted, the accused is suddenly and publicly removed from their family, home and community. Depression and anxiety when facing a long period in prison are well-documented<sup>55</sup> – but the mental anguish at being innocent of what was alleged must make this process even more unbearable. Participants reported feeling acute stress, anger, obsession with clearing their name and feelings of hopelessness when faced with the task of doing so.

Upon release, however, the convicted person must adjust to life back in society labelled as an abuser, presenting a fresh set of health concerns. Chris explained that,

When I left prison, I was very, very anxious. I was fearful of walking anywhere. I was very conscious of myself, and in fact I went and got – in fact, we still use them in the winter – we put it down to being SAD [seasonal affective disorder] but it’s not really the SAD syndrome that I have... so I use fluoxetine [an antidepressant] during the winter months and probably it spreads into about June now. So that was sort of anxiety, depression.

Regarding anxiety, Matt mentioned, “Every time I go out in public, I fully expect to be physically or verbally abused.”

In addition, those with convictions can be shut out from social activities that would otherwise have contributed to their health and wellbeing. Participants’ examples include being banned from sports facilities, church groups, allotments or other community activities, and interacting with young people. This loss of social interaction (and standing as a valued community member) affects the whole family, the strain of which is multiplied when the accused sees their loved ones suffer in this way, and vice versa.

Longer term, several participants developed a fixation on the case and trial, and how they could clear their names. Charles discussed moving forward with his life by becoming occupied with other interests but admitted to thinking about his case every single day. For others, such as Toby, these thoughts are obsessive and their predominant occupation. He stated,

Anger is the only surviving thing... I don't remember a time in my life when this wasn't my life. It is my life when I wake up in the morning, until I go to sleep at night. I will go home tonight and get papers out and work on them [to establish his innocence] until I go to bed, and it's been 20 years. I never, ever, ever stop. [Interviewer: What about sleep?] Oh, if I get 40 mins at a time.

It is hard to know whether this preoccupation has caused, or is a result of, depression, anxiety, trauma or stress-related problems, and the associated impaired physical health, loss of

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<sup>55</sup> Shaoling Zhong, Morwenna Senior, Rongqin Yu, Amanda Perry, Keith Hawton, Jenny Shaw, & Seena Fazel, “Risk factors for suicide in prisons: a systematic review and meta-analysis” (2021) 6 (3) *Lancet Public Health* 164.

sleep and poor self-care. Social and mental isolation was a recurrent theme in the participants' accounts. Underpinning this, of course, is the contributing factor of being treated as a sex offender and consequently being barred and excluded from society.

### *Prison-related health issues*

Charles and Matt summarized their experience of prison as 'psychologically devastating', being 'just a number', and described how mental health deterioration was inevitable in an environment where, "windows are blacked out, non-stop noise 24 hours a day, with artificial light, appalling food and being surrounded by people that would make your skin crawl." Vincent stated that he was attacked and threatened with death, in prison, beaten and left bleeding. Several participants also discussed the difficulties obtaining medicine, treatment with opticians and dentists or being able to maintain health in prison. Lyn and Marie recalled that,

"It definitely shortened Arthur's life. When he was first imprisoned he wasn't given any medication for about 10 days. This was treatment for high blood pressure, essential to take daily. At this point he was in a poor state health-wise... His sleep patterns were affected, he had bad dreams, would fall out of bed, shout out and show unrest. After 3 years at home he died suddenly."

Matt and Toby also recounted sleep difficulties – Matt stating that, "I still don't sleep properly... I spend every night in prison. I dream in prison. Always." Joshua developed apnoea since leaving prison due to the conditions there. Upon release, weight gain, loss and conditions such as anaemia were mentioned by five participants, who had developed poor relationships with food, some using it as a crutch or comfort.

Many health concerns reported by participants were as a result of their treatment in prison rather than being wrongfully convicted specifically. It is sometimes difficult to disaggregate the effects of imprisonment from wrongful conviction if it has led to imprisonment. Though not all issues discussed related to being *wrongfully* convicted, the participants describe real suffering caused by the prison environment. As such, we have chosen to include the pains of imprisonment, given that they would not have endured this had they not been accused. These effects should be recognized as part of what may be unjustly inflicted on the wrongfully convicted and their families.

### *Effects on partners' health*

Partners of those accused shared the stress and anxiety during the arrest and trial, and their health suffered when their life partner is convicted (particularly of sexual or child abuse). Hannah recalled, "When the trial was over I had lost weight and developed anxiety attacks. I was angry and frustrated and felt very isolated and helpless as there seemed no way to rectify the atrocities. I felt I had no control." Charles described the traumatic effect of the allegations and conviction on his partner, who stockpiled medication and had a nervous breakdown, eventually becoming hospitalized for severe mental health problems.

The family of those convicted also experience the social stigma of being related to a convicted abuser, which makes them vulnerable to bullying, harassment, unsavoury actions, and

even violent attacks. Emily recalled that, when her partner was convicted,

I was in pieces, I couldn't go to work for two weeks... I would burst into tears. It did affect my work... I just didn't want to talk to people... Yet I have to talk to people... [I] would constantly have to put on a brave face... It affected me physically as well as mentally. I wasn't sleeping. I was just trying to hold it together for the kids really.

She experienced a smear campaign in the neighbourhood, and a brick thrown at the windows. Another, Irene, endured a group making threats outside the house.

Fighting the conviction (both legally and publicly, facing daily social prejudices) can also consume partners of the accused, which takes its toll on their wellbeing over time. As Camille reflected, "I used to always jump out of bed on sunny days to welcome the sun into my home. Now each day is just another day in our fight for justice. Each day feels like a year and time moves slowly." The implications for partners' mental ill-health are vivid in each of these accounts.

### **C. Effects on relationships**

#### *Effects on relationships with a significant other*

A partner's conviction is enough to create strain on any long-term relationship. As the convicted person in prison is distanced from negative social reactions in their local community, it is the spouse that has to deal with answering questions and managing contact with others in society (as well as coping with the finances and social consequences).<sup>56</sup> When neither partner accepts the validity of that conviction and both maintain the convicted person's innocence, there is obviously a far greater sense of wrongdoing and anger at the injustice. Loyal partners of prisoners maintaining innocence and convicted for sexual offences are likely to face verbal abuse and ostracism, as detailed above.

The majority of participants had partners who had stuck by them, believing in their innocence. As Hannah put it: "As a couple we fought the whole thing together." Matt reflected that, "In lots of ways it's probably made us stronger because we closed ranks." His partner, Camille, explained that there was no difficulty supporting him despite significant negative repercussions, because "We all know him, and we know he would never, could never do the things that he was being charged with, and that makes it easier to support somebody - whereas had there been anything where you doubted somebody, then that would have been hard." The concept of a couple 'closing ranks' was echoed in several other accounts.

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<sup>56</sup> Anna Kotova, "He has a life sentence, but I have a life sentence to cope with as well": The experiences of intimate partners of offenders serving long sentences in the United Kingdom" in Joyce A Arditti & Tessa le Roux, eds, *And Justice for All: Families & the Criminal Justice System* (Michigan Publishing, 2015) at 85; Rachel Condry, Anna Kotova, & Shona Minson, "Social Injustice and Collateral Damage: The Families and Children of Prisoners" in Yvonne Jewkes et al, eds, *Handbook on Prisons*, 2<sup>nd</sup> ed (Abingdon: Routledge, 2016).

Some of the participants' partners worked in similar roles of responsibility and care. Lyn explained that "Arthur and Marie were a very strong couple. As Marie had worked in the childcare profession too she understood the type of people the accusers were." This would assist partners greatly in understanding how false allegations or a wrongful conviction could occur and believing that their partner could well be innocent of all charges. Irene too stated that, "I used to work with Vincent at the centre, so I knew the children who had made the allegations... [because of this], I've always taken the view that it was complete rubbish."

#### *Effects on relationships with children and grandchildren*

Understandably, the conviction of a parent for child and/or sexual offences has the capacity to be catastrophic for their relationship with any children in the family. Of those participants who discussed children and grandchildren, several spoke of difficulties seeing their own children. Even where participants' children are adults for whom there is no restriction to see, they may choose to distance themselves from their convicted parent, which can cause emotional pain. Similarly, the conviction of a parent for child or sexual offences creates a barrier for those convicted when seeing their grandchildren. Angela recalled that their grandchildren were interviewed at school, and described the hurt felt by her and her husband at his ban on contact with children, not knowing if he would be allowed to see their grandchildren again. Though not convicted of offences against children, Matt restricted time spent with his grandchildren, fearing social worker visits despite his family supporting him.

For some of those convicted, there was little lasting damage to the relationship between themselves and their children. Instead, the significant difficulty was in having to inform them of the charge against them (and the consequent anger and mistrust felt on behalf of the children). Matt recalled, "it was hard, but they instantly said: 'No way'." His partner Camille added that, "Our son was angry [about the allegations and prosecution], and he never came to court because he would have been very angry, so he kept himself away. Our daughter came once to the trial, didn't she? And stormed out because of the vulgarity of the questioning."

Sadly, the children of those accused can suffer greatly. Royston described this in detail:

The person most affected was our daughter who was still at school, just coming up to GCSEs. She got some abuse in the street. But a lot of it was anonymous Facebook messages on her mobile phone, some referring to what she was doing or wearing which could only be from someone in their classroom... So she was getting persecuted that way. So, she left that school and moved to another – bad timing when you are struggling to pass your exams... But it was in the newspaper and we share the same surname. So there was no hiding place for our children... [our daughter] ended up on anti-depressants... The local newspaper never missed a chance to print our address, and that continued three or four years after [the allegation]. The supposed victims went to court for compensation, and this was very heftily reported by the [newspaper]. And again, even though I'd been in prison for 3½ to 4 years by then, they printed our address. [My partner] wrote to them saying 'Why are you punishing us? He's in prison.' ... What is the point of them printing

our address when I haven't been there for 3½ to 4 years? I'm here, supposedly for the protection of children. Does my child not matter?

Like many others, Royston's partner Emily was faced with the sole upbringing of their children while he was in prison. She described this situation as "very difficult, to put it mildly. There isn't a self-help manual for dealing with this unfortunately." Reflecting on the unfairness of this suffering, Royston commented, "It's so remote from our son and daughter. They weren't born or even thought of at the time this is supposed to have happened. It was already 24 years on."

The problems caused and harms felt by children are not limited to the period between arrest, conviction, incarceration and release. They continue to affect the lives of the children of those convicted far beyond this. Lyn recalled that, "A sad outcome for [Arthur] was that his situation affected the relationship between two of his children and this has continued. This was triggered by one of them [working in in the police service] and another not understanding the position the other was faced with." Royston reflected that, "Even now, our son cannot comfortably invite home friends who have children. And both have a burden of explanation in any new relationship when mutual disclosure is a natural part of developing the relationship."

#### *Effects on relationships with other relatives*

Almost all participants were able to cite their family as a source of support, standing by them and believing in their innocence. Some were surprised at how much support they received as some family members fought their corner. Toby found that, "It actually strengthened certain relationships, for example I haven't been estranged but I... haven't had much contact with my brother for many, many years and he was an absolute brick through all of this." Despite family support, some of those convicted withdraw from extended family, becoming obsessed with researching false allegations and finding information that would help prove their innocence. Toby stated that,

I had recently an experience of - a partner of a nephew died – and I found it inconvenient that I had to go to the funeral. I know that sounds awful, but it – this is my life. And if the last 20 years are to mean anything, I have to win... The truth is my family are now an impediment – they get in the way of this. I have a [sibling with a severe medical condition] who I know I could go and look after, but this is more important. I have to win this. And I'm sorry but my [sibling] will have to cope.

In light of the personal trauma and mental health difficulties experienced by those wrongfully convicted, this is unsurprising.

#### *Effects on friendships*

As with family relationships, most participants felt well supported by friends. Angela recalled that friends were supportive through court attendance, letters, visits, and fundraising to help pay for a solicitor. Vincent reflected that, "We have a very loyal, supportive pair of friends ... they testified in court for me, and still regard us as one of their very best, loyal friends." Matt

stated, “I’m not aware of losing friends through it. In fact, we gained friends.” He reflected that in relation to some friends, he and his partner had actually gone up in their estimation because of their resilience. Echoing sentiments expressed by other participants, he reflected on the experience that, “I didn’t realize until it happened how important I was to some people and what I meant to people.” Joshua explained, “I lost one or two friends who’ve since come to me and said, I appreciate because of your fight that you must’ve been innocent all along.”

For other participants, friendships were lost. Following her husband’s conviction, Hannah lost “a friend of many years, [who] terminated our friendship.” Predominantly though, the loss of friendships was tied to the nature of the conviction and the place of work (where friends overlap with colleagues). Bernard described how one friend had chosen not to see him while the court situation was resolved, because of his professional position. Charles distinguished long-term friends who were supportive, from acquaintances and work colleagues who jumped to conclusions and cut contact.

Several participants described despondency at being unable to explain their situation and sides of the story to colleagues, who overlap in their social circles as friends. He did not have a chance to say goodbye. While under investigation, these participants had not been allowed to contact friends who were also colleagues. Contact had not been re-established during or after their prison sentence. As Royston recalls,

I was immediately cut off from my colleagues in [the place] where I was employed at the time. I was forbidden to have any contact with them. They were my main contacts, my friends although professional friends, and they simply weren’t allowed to have any contact with me... to this day I’ve not spoken to those people.

#### *Effects on community relationships*

Some participants discussed support within their close community. Emily reflected that, “People who knew [the person convicted] in the neighbourhood – none of them believed it. Those who knew him just couldn’t believe it, which is encouraging.” Lyn and Marie recalled that, “After seven years in prison, he [Arthur] did lose confidence in himself and was wary about going out by himself. He eventually overcame this and he was welcomed back into his community with open arms. He was never shunned. He was determined to keep his dignity and get his life back on track.” Although an uncommon outcome in the accounts, this at least is indicative that, for those claiming that they have been wrongfully convicted, there are sources of support amongst those who believe in their innocence.

Many more of the participants disclosed being shunned by community groups in one form or other, even experiencing violent and threatening episodes. Despite his statement of community support above, Chris reflected that, “I still appear reasonably confident, but I am not reasonably confident any longer. I did take a big knock. I was a well-known figure in the town.... When I’d left prison, I was very, very anxious; I was fearful of walking anywhere.” He describes this drip effect over time when leaving prison to reintegrate into the community as being the worst part of his experience. Similarly, Emily commented in relation to her partner that, “The bad things started

happening when he came out of prison.” She spoke of people in the community getting police involved and banning her husband from certain social spaces, and damage to their house.

Vincent described one of his experiences as follows,

Members of the community found out, and I had to face there and then, not only the church turning its back against me and telling me not to come to the service... but there was worse to come. When a piece came out in the local newspapers, I woke up one morning, and two of my great supporters today, woke me up early one Saturday morning and they said “My God, you don’t know what was across your front door”. [It] was a great poster about of 3’2, which says “Child abuser”, “Rapist” and other unpleasant remarks. They took it off and presented it to me, and... that’s what I woke up to.

Vincent also recalled an incident where, “Close to midnight my front door was kicked and banged and banged, and I was threatened: “Come out. We’re going to do you in.” A very frightening situation.”

Discussing rejection from the community during her husband’s trial, Angela recalled:

We were told that we were no longer allowed to go to our parish church. We were no longer allowed to worship there. The safeguarding officer for the Diocese came to see us with the priest of the parish where we live, and she brought a contract for my husband to sign: he was only allowed to go to one particular church, and he was not allowed to speak to anybody ... it was really, when you read it, an admission of guilt. He didn’t sign it. It’s never been signed ... [consequently] I am barred from my own parish church. I feel as if I’ve been driven from the church, and they’ve turned their back on me.

Damaging social responses (actualized or feared) can cause the convicted person and their family to distrust and withdraw from the community. Matt spoke of the effects of this on him: “[I] feel very vulnerable. I mean I get a bit paranoid... It’s made me very cautious of things.” For Camille, as the wife of someone convicted, the fact that their shared address was printed in the newspaper caused her to fear community retaliation. Withdrawal from the community or a wider social circle was a common theme in each account. Hannah stated that her (now deceased) husband left prison incredibly angry and mistrustful – and that she had no wish to become close or involved with anyone who does not know about their situation. The defense mechanism of putting distance between themselves and others appears as a form of self-preservation for those convicted and their close ones. Almost all participants spoke of a deep mistrust of others (and the justice system), contributing to social withdrawal. Several spoke of an ‘*us versus them*’ mentality, whereby they would avoid integrating with the public to avoid being shunned and stigmatized.

### *Forming new relationships*

The decision to remove oneself from social life in order to avoid being stigmatized and harmed makes it difficult to form new relationships. Meeting new people is an inescapable part of



life. Participants described being fearful or anxious about meeting new people or even going to public places. Lily voiced feelings of apprehension when meeting people, as her “conviction is always lurking in the background.” Similarly, Irene commented “For anyone that we don’t know or may meet, it could never be a discussion piece ... while we have a nucleus of people with whom we are at ease, it is not something that we could talk about to others, so in some senses we reinvent ourselves if we’ve got to deal with neighbours, etcetera.”

Participants expressed misery at how fear of entering the public realm obstructed desires and ability to fight the allegations publicly. This forms a new problem for those claiming to be wrongfully convicted: they are unable to avoid negative social repercussions if they choose to publicly fight the conviction and allegations, yet, participants choosing to slip into anonymity and social withdrawal cannot then continue to protest loudly. This catch-22 makes it almost impossible for those convicted to publicly assert and maintain innocence whilst at the same time putting the ordeal behind them and choosing a quieter life to avoid (at best) social stigma and gossip, and (at worst) threatening, violent altercations.

#### **D. Effects on beliefs and outlook on life**

##### *Faith in the justice system*

Unsurprisingly, all participants discussed a loss or lack of faith in the justice system. This pertained to their experiences at each stage - arrest, trial, and conviction. Chris summarized his experience as a comprehensive failure of justice, “The justice system didn’t work. I can tell you now, that my lawyer quit the profession because of my case. He was completely disillusioned – he couldn’t believe what had happened.” Graham summarized how his perspective had been changed: “You start off in this world believing there is justice and then when you’ve gone through this you understand that there isn’t. And it’s very much politically controlled. And that is the issue that faces everybody who has been falsely accused.” Marie, speaking on behalf of her deceased husband, commented that, “Arthur’s faith in British justice was sorely tried, in fact he lost faith in it totally... He felt it was like theatre and his life was being decided by this “game”. He felt that the real truth was unimportant.”

Many of their comments related specifically to deficiencies in justice for innocent people accused of non-recent sexual abuse where the ‘evidence’ is limited to complainants’ testimony (and presumed guilt-by-association with others found guilty). Chris held the view that, “The system is not fit for purpose in these kinds of trials.” Angela too stated that she was left with the feeling that, in relation to the investigation, the most important thing was to get a conviction, as opposed to testing the veracity and likelihood of the claims. Camille reflected, “I don’t think the jury system is the right thing. You either need a professional jury or you should have a lawyer in with the jury who says you cannot do this, you can’t convict somebody when there is no evidence. I think it is hugely dangerous.” Bernard explained his experience of this as follows:

I did believe the adversarial system would mean that I would at least be heard. I was wrong! The lawyers... convinced me that the prosecution had to make a strong case and, as there were no facts that could be substantiated, that it would be unable to do this. I believed them - perhaps because I wanted to. They were wrong! In a

case like mine, as has been shown time and again since, the burden of proof has been reversed. I no longer have any confidence in its ability to deal with such cases fairly.

It is obvious that those protesting innocence but receiving a guilty verdict would feel an injustice has occurred. But, going beyond their own cases, some participants experienced a much more profound shift in their beliefs or outlook. Charles explained that as a result of his experience, prison made him perceive authority figures differently and reassess his attitude to the rule of law. Despite having family members working for the police and prison services, and himself having given evidence in trials for them, Charles described having far less confidence in the police than he used to and commented that he has since taken up a serious interest in miscarriages of justice, becoming an activist in relation to false allegations. He now perceives others' beliefs that all allegations of abuse must be true as a blinkered world-view. Similar sentiments were echoed in almost all of the accounts.

Specific incidents damaging participants' beliefs in the integrity of the criminal justice process were pinpointed in five of the accounts. Emily stated that, "What really made me angry was when the police and a social worker interviewed me, and tried to get me to say that [her partner] was guilty. And then, interviewing my daughter who was twelve or thirteen - they lied to me about [whether or not] I could be there." Many more participants felt that police records and statements had been changed, papers 'lost' or inaccurate information given, in order to strengthen the prosecution case against them, and that these steps had been taken as result of them standing up to allegations or kicking up a fuss about how the investigation was handled. Joshua relayed his experience of being offered a deal to plead guilty and felt that this was a ploy. He recalled that, unusually, he hadn't been given papers from the police, and that the reason given was that they had been lost. He expressed cynicism at how they had all 'conveniently disappeared'. Toby commented that, "What has always plagued me is that the police said to me, when the tape was off, in interview, that they knew I hadn't done it." Referring to his later experience in court when facing trial, he added: "I was offered a deal just before I went to trial whereby, if I pleaded guilty to some of the physical allegations they guaranteed that I would not go to prison. I told them where to stick their deal and I went to prison for 15 years."

#### *Outlook on society and human nature*

Damaged trust of others was a key theme in the responses. As Hannah explained, "My whole belief system was destroyed. I no longer trusted anyone. I didn't and still don't want to become close or involved with anyone who doesn't know about our situation." Matt added that this situation left him feeling: "[...] very vulnerable. I get a bit paranoid [...]" This loss of trust extends to wariness about helping others, curbing instinctive generosity in case it is misperceived. Similarly to 5 others, Matt stated, "I wouldn't help anyone now: if someone fell down in the street I'd step over them."

Chris, Charles, Angela, and Graham all expressed a deep-seated shaken belief in human nature. This stemmed from the fact that false allegations do occur, that juries and justice system personnel make mistakes, and from the societal reactions and vilification that they have endured.

Charles stated that he felt that false allegations could be used as a weapon to settle scores, and that people have a plethora of unacknowledged motives. He attributed his shaken belief in human nature to having met people in prison he believed to be innocent. Royston described his shock at a reputedly kind prison officer stating that he was quite sure he had never turned a key on an innocent man – which, to Royston, defies belief as juries are demonstrably not infallible. For Graham, “the big picture of being wrongfully accused of something is unfortunately part of the psychology of human beings - where they almost love to hear somebody has done something even if they haven’t.”

Five participants explicitly mentioned skepticism in relation to media reports of abuse scandals and allegations. Hannah explained that, as a result of her husband’s ordeal, “I don’t believe the police or media and certainly do not accept jury verdicts as reliable.” Matt described his and his wife’s outlook as one of mistrust: “I don’t trust anybody. Anything we hear about allegations on the news, we don’t believe any of it. We automatically take the stance that we don’t believe any of it because of what happened to me. I was described as having a [physical description that is visibly inaccurate]. So how can you believe anything?” Emily recorded her change in outlook as follows: “Up to [the allegations], if I’d read about a sex abuse case in the paper I’d be sort of thinking, oh dirty beasts, at least they’re caught and now I read them and think, well actually this sounds like a load of lies.”

### **E. Coping mechanisms**

#### *Support from friends, family, and campaigning*

Participants said that their knowledge they were innocent, and their hopes of exoneration, were what was stopping them from falling apart. They also referenced the support of others who believed in their innocence and took steps to help them appeal – such as MPs, lawyers (in several cases working *pro bono*) and local campaign groups. Lyn, sister of Arthur, told us that, “Support for Arthur started from Day 1. His local MP and her team worked tirelessly for his cause both locally and in Parliament. She visited Arthur and others in the same situation in the prison setting.” After his death, “Friends and family continued to write to the powers that be in the hope that someone would see the wrong that had been done.” Knowing somebody was fighting their corner, participants were assisted to think positively while incarcerated. Chris summed up the significance of such support: “I was very fortunate to have the love and support of friends, family and community. But those people who haven’t... I can see how they become suicidal very, very quickly. I’ve had the same feelings, but I’ve had the support to help me cope with those feelings.”

#### *Using support services*

In the UK, support is normally made available to those convicted and their families. Official support via the probation service, prison staff and post-release resettlement are combined with offender management and supervision. For many, the surveillance, checks and restrictions are likely to override any supportive potential. In fact, none of the participants named these officers as sources of support. Some of the relatives explained that they would have found their situation too painful to discuss, anticipating that counsellors would presume their partner guilty. As Lyn put

it, “How do you go to counselling knowing that the counsellor will believe you are misguided. I have no wish to bare my soul to any such person. The whole nightmare is too private.”

In contrast, many participants cited the grassroots organization FACT<sup>57</sup> as an important source of support. This is unsurprising given that FACT facilitated the recruitment of participants – but unlike formal support services, participants received information, emotional support and regular events specifically for people wrongly accused and their relatives. They “appreciated going into a room where everyone understood her situation and knew what she was going through” (as Marie summarized). However, others felt disappointed with FACT’s failure to campaign for greater recognition of false allegations of abuse and for legal changes to guard due process and facilitate appeals in such cases.

#### *Focusing on new interests and helping others*

Developing new interests or reviving previous interests were among ways in which the respondents had made their lives more bearable. Being busy helped take their minds off their predicament and helped their self-esteem. Some, where available, took courses in prison that could be useful to them after release, or to learn new skills. Several CMIs took up opportunities to support other prisoners, formally or informally.

A particular interest taken up by more of the participants was, not surprisingly, campaigning against false allegations and miscarriages. More than half of our sample had at some stage been active in supporting others in the same situation and trying to raise awareness of miscarriages of justice linked to false allegations of abuse. Bernard said that he simply could not let go and threw himself into campaigning with FACT and Merseyside Against Injustice. Hannah, whose husband Len had died, spoke about her role in supporting others: “Since my husband was accused I have worked with the legal people to expose such miscarriages. I collated all the details and developed the database. I am still involved ... supporting and offering practical support.”

Graham shared his thoughts on this: “Do I just forget it, as much as I ever could, and move on with a new life? Do I change my name? Do I try and get a job etc.? Or do I go the other extreme and fight? I can say ‘I’m not accepting this, because it’s not right’. I chose that I needed to fight it. I thought I can’t live with myself long-term if I let these people get away with it – because it wasn’t just me who was affected, it wasn’t just like revenge because they weren’t just doing it to me. It is still happening. There was another case last week. It is still happening all the time.”

#### *Self-care*

Participants mentioned the importance of better diet and medical care, as well as going for walks and activities such as gardening and socializing with friends. Carrying on with normal life as far as possible was frequently mentioned as a coping strategy. However, pursuing hobbies, outdoor activities and pastimes (rather than staying indoors) necessitates facing up to people who

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<sup>57</sup> Formed in 1999 to support falsely accused teachers and carers, FACT has since expanded to include others falsely accused in an occupational context.

might have heard about their case and who might be contemptuous – of the relatives as well as the CMIs - especially if there had been local media coverage of the trial and conviction.

The disruption of their previous life, and the loss involved, led to a necessary reassessment of their values and priorities. Several participants coped by assessing and recognizing their own value. Matt said he hadn't realized, until after it all happened, how many people valued his friendship. Others chose to appreciate the simple pleasures of life, such as food, drink, leisure, and the sense of freedom. Lyn and Marie recalled Arthur's enjoyment of his "being able to walk through a door without it being slammed behind you." Charles identified some ways in which he felt he had become a better person, becoming more aware of the needs of people in prison and questioning the importance of material things. He looked back on his prior high-flying career as a 'dog eat dog' world in which he had lost a bit of humanity.

#### IV Discussion and Conclusion

It seems obvious that anyone innocent but wrongly accused of a sexual offence will endure a traumatic experience. Less obvious is the lasting suspicion, ostracism and stigma that continue to haunt those accused, unless unshakeable proof is found of their innocence. This is so even for those who are not prosecuted or who are acquitted, as the Oxford study found.<sup>58</sup> Thus, when someone is wrongly convicted of sexual offences, particularly where they have not (yet) been exonerated, injustice and suffering are inevitably taken to another level. This was the starting point for our study.

For the CMI participants, the most onerous consequences were imprisonment, the burden of remaining subject to sex offender notification requirements (indefinitely if their sentence was 30 months or longer), the change to their public identity and stigma of being labelled a sex offender, and the resulting exclusion from social opportunity. They spoke of how hard it is to live with such a stigma especially when they had no way of proving it to be false.

Health effects in particular were dramatic and chronic for CMIs, not only due to conditions in prison, but the mental trauma of being convicted and locked away as a sex offender. A dominant theme recurrent in participants' accounts was periods of great despair, when they considered taking their own lives, or when they have not been able to sleep or function. For some, symptoms of PTSD continue. For those with no criminal record, and from positions in caring or teaching vocations or volunteering, it is a long way for them to fall. Depression and acute stress-related ailments were also prevalent among partners – and as our study established, their relatives experience 'secondary punishment'<sup>59</sup> through each phase of the process.

If they didn't withdraw into isolation and poor health, participants were more likely to narrow down to leisure pursuits that bring them comfort, or to get involved with groups raising awareness of miscarriages of justice arising from false allegations. Many participants mentioned

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<sup>58</sup> Hoyle, *supra* note 4.

<sup>59</sup> Rachel Condry & Shona Minson, "Conceptualizing the effects of imprisonment on families: Collateral consequences, secondary punishment, or symbiotic harms?" (2021) 25 (4) *Theoretical Crim* 540.

being sustained by their self-knowledge that they were innocent, and determined to stand by their own integrity and to psychologically resist the potential demoralizing effects of anyone treating them as guilty. Several also showed strength in their decision to continue the ‘fight to get justice’ by either working towards a further appeal, or sharing their story of what happened to them, and by assisting others in a similar plight.

The effects were all-enveloping, including a change to their identity. Using participants’ own expressions, they felt ‘*wiped out, in every way*’, ‘*diminished, as a person*’ and that they would ‘*never be the same person as before it happened*’. To use Erving Goffman’s term, they have a ‘spoiled identity’.<sup>60</sup> This was in the sense of not being able to return to the life they had before and also because of the stigma and how they would be seen by others who knew of their conviction.<sup>61</sup> Those convicted of sexual offences have no anonymity, so their cases (often widely covered in the media) are accessible via Google – and participants felt that their, and their families’, names had been permanently stained. In facing an ongoing fight for a return to their normal life, participants presented themselves as strong and coping, but were evidently fragile. As one put it, he felt broken inside but had become good at being a ‘great pretender’. Some seemed unlikely to recover.

Even those who are exonerated cannot get back what they have lost – research shows that they feel ‘robbed’ and ‘betrayed’,<sup>62</sup> that a society in which they were once constructive players has removed them from positive roles, and has now barred them from many jobs. The same feelings were strongly conveyed by our respondents, who felt robbed of their livelihood, their income and savings, of friends and colleagues, of their past identity and social standing, working life, and of sound physical and mental health. A sense of betrayal was linked to being shunned or excluded from places that they had previously frequented – notably their church, workplace, or voluntary work. People in this predicament can never return to their former occupations.

Collectively, this is a great deal of social punishment to endure - *even for those who are guilty*. Yet, guilty offenders can still ‘redeem’ themselves through acceptance of their responsibility and desistance goals to help them make sense of their incarceration and supervision following release.<sup>63</sup> For those who were innocent all along, a prison sentence and life upon release can be extremely painful to bear (as identified in research on former prisoners who were exonerated, by Grounds,<sup>64</sup> Campbell and Denov,<sup>65</sup> and Scott.<sup>66</sup>). In response to the layers of anguish and the cumulative damage to their lives, one of the CMI’s wryly referred to false allegations as ‘*the gift that keeps on giving*’.

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<sup>60</sup> Goffman, *supra* note 47.

<sup>61</sup> Jon Ronson, *So You’ve Been Publicly Shamed* (New York: Riverhead Books, 2015).

<sup>62</sup> Leslie Scott, “‘It Never, Ever Ends’: The Psychological Impact of Wrongful Conviction” (2010) 5 (2) *Am U Crim L Brief* 10; Wilson, *supra* note 39.

<sup>63</sup> Anne-Marie McAlinden, Mark Farmer, & Shadd Maruna, “Desistance from sexual offending: Do the mainstream theories apply?” (2017) 17 (3) *Criminology & Crim Just* 266.

<sup>64</sup> Grounds, *supra* note 39.

<sup>65</sup> Kathryn Campbell & Miriam Denov, “The burden of innocence: Coping with a wrongful imprisonment” (2004) 46 (2) *Can J Criminology & Crim Just* 139.

<sup>66</sup> Scott, *supra* note 62.

Aside from the small number of participants in this study, which limit its generalizability, the most obvious limitation of this study is that none of the participants have yet been exonerated. As such, we have taken care to present their accounts not as evidence of an innocent person who remains wrongly convicted, but as indications of what this situation must be like, as far as we can access such a population. We are fully aware of the sensitive nature of research on this subject, and the implications for victims if unwarranted doubts are raised about the guilt of perpetrators. As the introduction discussed, many sex offenders are ‘deniers’. Moreover, this has prevented sexual offence victims from being believed for generations. We have been acutely conscious of such concerns while undertaking this research. Despite care taken to recruit participants who had been ‘vetted’ by a reputable support group, we understand why readers may take pause. Researching the impact of wrongful convictions using a cohort who had not yet gained exoneration can be challenged as unethical and as unconvincing as a contribution to knowledge about wrongful convictions.

However, this acknowledged limitation to the present study is intrinsic to its value. Research on wrongful convictions is typically focused on those who have been exonerated. Allowing for the fact that some of those convicted for sexual offences will be ‘false positives’ among the total of jury guilty verdicts, it becomes important to address this possibility. The recognition that a population exists who are trapped in a lifelong wrongful conviction lacking evidence to prove their innocence, precludes a moral imperative to take notice of this, particularly in a dearth of research on this topic. There are ethical implications if some people suspected to be trapped in the aftermath of wrongful conviction are left unheard. If we choose to ignore their existence - especially those convicted of the abhorrent offences of child/sexual abuse - we are blind to the suffering of people who are arguably the greatest victims of the system’s fallibilities. That is a cruel fate.



**“You Are Not the Tenant I Am Looking For:” An Analysis of Landlords’ Responses to  
Rental Inquiries from Wrongfully Convicted Individuals**

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*Research suggests that formerly incarcerated individuals, and individuals belonging to racial minority groups, experience stigma and housing discrimination. The current study explored landlords’ attitudes and differential communications toward formerly incarcerated individuals – particularly wrongfully convicted individuals – of varying races. Using data from an experimental audit study, we examined the content of landlords’ email responses to rental inquiries from fictitious convicted and wrongfully convicted individuals, and members of the general public (i.e., control), who were either Black, Indigenous, or White. A content analysis revealed three main themes: 1) responding with courtesy; 2) probing for additional information; and 3) willingness to set up a viewing. Logistic regressions revealed that landlords were more likely to justify the rental’s unavailability, inquire about the renter’s financial stability and references, and to say they would follow up later when corresponding with convicted and wrongfully convicted individuals compared to control. Landlords were also more likely to ask White renters about their criminal history compared to Black and Indigenous renters. Surprisingly, individuals belonging to racial minority groups were not disadvantaged further in this data. The findings are discussed in the context of post-incarceration support.*

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## I Introduction

Although being released from prison is considered a triumph for wrongfully convicted individuals and their families, an exoneree's post-release experience is often fraught with new challenges and struggles, which ultimately impair their ability to successfully reintegrate into their communities (Westervelt & Cook, 2010). In addition to adjusting to technological and cultural changes, dealing with strained relationships and gaps in their work history, and working through feelings of frustration and injustice, exonerees typically do not receive services or programs to assist them with their reintegration (Clow, 2017; Weigand, 2008; Westervelt & Cook, 2010). This is in contrast to other formerly incarcerated individuals who often have access to post-release services such as psychological counseling, job training, and housing support - some of the most important services to ensure a successful reintegration (Seiter & Kadela, 2003). Moreover, many exonerees are individuals who belong to racial minority groups (National Registry of Exonerations, 2021). In the U.S., Black individuals represent 13% of the U.S. population, but 33% of its prison population and 48% of the proportion of exonerees (Carson, 2018). Similarly, Indigenous individuals represent 4.3% of the Canadian population, but 27% of its prison population (Department of Justice Canada, 2017) and approximately 20% of the proportion of exonerees (Schuller et al., 2021). Due to the over-representation of Black and Indigenous individuals in the criminal justice system, the impact and intersectionality of race and criminal history cannot be overlooked.

### **A. Stigma**

The reintegration struggles that wrongfully convicted individuals face are further compounded by stigma, which hinders their ability to secure employment and housing post-release (Grounds, 2004; Roberts & Stanton, 2007; Westervelt & Cook, 2010). Goffman (1963) defined stigma as a discrediting attribute that reduces perceptions of an individual to the negativity surrounding this presumed flaw. Stigma is often discussed as a broad, all-encompassing attack on one's identity (Goffman, 1963), whereas prejudice refers to an attitude toward, or an evaluation about, an individual because they belong to a specific social category (Brewer & Brown, 1998), and is typically accompanied by feelings of dislike, fear, or contempt (Pager, 2003). Discrimination refers to the unequal and unjust treatment of groups, or members of a group, due to their social category or stigmatizing attribute (Heckman, 1998).

Scholars have suggested that a key component of prejudice is not merely negative emotional responses, but the intent to support power-based relations between stigmatized and non-stigmatized groups (i.e., prejudice leading to discrimination; Dovidio et al., 2010). This purported power imbalance is relevant to wrongfully convicted individuals who – due to their undeserved criminal label – may become the targets of prejudice in much the same way as their guilty counterparts (Clow et al., 2012).

### **B. Aversive Racism**

In contrast to blatant racism (i.e., direct threat or abuse), aversive racism leads to more indirect, socially adapted forms of prejudice that still disadvantage racial minorities (Dovidio et al., 2002). Racial stigma has been deeply ingrained in Canada and the U.S. for centuries, and through racism and other enactments of social inequity, individuals belonging to racial minority groups have long been placed in a subordinate role (Quillian, 2006). For example, a meta-analysis examining helping behaviour toward White and Black individuals revealed that discrimination against Black individuals was higher when participants could rationalize decisions not to help with reasons that were unrelated to race (e.g., when helping was lengthier, riskier, and more inconvenient; Saucier et al., 2005). These justifications were only implemented when the target was Black, however, suggesting that the true reason for the lack of helping behaviour was race (Saucier et al., 2005). In sum, stigma toward individuals from racial minority groups is often expressed in indirect ways that allow the prejudiced individual the illusion of being well-intentioned (Dovidio et al., 2002).

### **C. Criminal History Stigma**

Research has also demonstrated that criminal convictions are stigmatizing (e.g., Clow et al., 2012; Moore et al., 2016; Pager, 2003). Formerly incarcerated individuals find their identity reduced to the label of “offender,” and consequently find that community members are distrustful of, and prefer a larger social distance from, them (Clear et al., 2001; Clow et al., 2012). Although there is far less literature on exoneree reintegration, the extant research suggests that wrongfully convicted individuals may encounter the same prejudices post-release (Clow et al., 2012; Vollen & Eggers, 2005). For example, Clow and Leach (2015) found that participants reported more negative evaluations of, and a stronger desire for social distance from, both convicted and

wrongfully convicted individuals compared to members of the general public. Moreover, Blandisi et al. (2015) found that some interviewees – who claimed not to be prejudiced – used language indicative of othering and out-grouping when speaking about wrongfully convicted individuals. Thompson et al. (2011), however, found that wrongfully convicted individuals were more stigmatized compared to the average individual, but that convicted individuals were stigmatized most of all. Thus, it is unclear whether the prejudices directed toward convicted individuals are similarly applied to wrongfully convicted individuals, or if these groups encounter different levels or types of prejudice. The current study examined whether rightfully and wrongfully convicted individuals of varying races experience similar stigmatization and prejudices in their attempts to obtain housing post-release.

#### **D. Housing Difficulties**

Having a stable place to live ensures one's safety and security and is considered a basic human need (Maslow, 1943). Unfortunately, racial minority groups experience discrimination in their attempts to obtain housing (e.g., Doble & Lindsay, 2003; Novac et al., 2004; Ondrich et al., 2003; Pager & Shepherd, 2008; Yinger, 1998). Studies conducted in Canada have found evidence of landlords who are less willing to rent to Indigenous and Black renters, compared to White renters (Novac et al., 2004). Similarly, research has demonstrated widespread housing discrimination in the U.S. against Black, Hispanic, and Asian renters, compared to White renters (Ondrich et al., 1999). For example, the Department of Housing and Urban Development applied a paired-testing methodology in 28 metropolitan areas in the U.S. and found that – in comparison to White renters – Black, Asian, and Hispanic renters were informed about, and shown, fewer homes and apartments by real-estate agents and rental property owners (Turner et al., 2013). Moreover, in experimental audit studies, email inquiries sent to landlords received significantly fewer positive responses when the emails were sent from renters with stereotypical Black names, compared to stereotypical White names (e.g., Carpusor & Loges, 2006; Ewens et al., 2014). These findings suggest that landlords avoid renting to individuals from racial minority groups, or at the very least, minimize interactions with racial minority members, consequently reducing their opportunities to obtain housing.

Individuals with a criminal history also face housing discrimination (e.g., Dum et al., 2017). Research has demonstrated that, along with employment, housing is the strongest predictor of successful reintegration for those who were formerly incarcerated (LeBel, 2017). Yet, these individuals are often required to disclose their criminal history on housing applications, thereby increasing the visibility of their stigmatized status (Jacobs & Larrauri, 2012; Thacher, 2008). Evans and Porter (2015) had researchers pose as prospective tenants, either with or without a criminal record (child molestation, statutory rape, or drug trafficking), and call landlords to inquire about the availability of an apartment. Results demonstrated that landlords were significantly less likely to offer a viewing to individuals with a criminal record, particularly those convicted of child molestation, compared to those without a criminal record. In addition, Major et al. (2002) found that 64.3% of formerly incarcerated individuals reported being rejected for housing sometimes or often. Together, these studies demonstrate that acquiring housing post-release is indeed an issue for individuals with a criminal history.

Wrongfully convicted individuals similarly report difficulties securing housing post-release (Chunias & Aufgang, 2008). As financial compensation is not immediately (if ever) accessible to wrongfully convicted individuals, many experience financial difficulties that preclude home ownership (Weigand 2008; Westervelt & Cook, 2010). Moreover, because their criminal records are neither immediately nor automatically expunged, many wrongfully convicted individuals must seek housing with an erroneous criminal record (Shlosberg et al., 2014). In interviews with 115 wrongfully convicted individuals, approximately half reported that they were dependent upon families, friends – or even lawyers – for housing support (Roberts & Stanton, 2007). In a recent study by Kukucka et al. (2021), researchers sent rental email inquiries across the U.S. from individuals who were supposedly either convicted, wrongfully convicted (self-described as “exonerated,” “wrongfully convicted,” or “innocent”) or had no criminal history. Results revealed that both convicted and wrongfully convicted individuals (regardless of label) were less likely to receive a response from landlords than those without a criminal history. Similarly in Canada, across two studies, Zannella et al. (2020) found that fictitious renters who were convicted and wrongfully convicted individuals were significantly less likely to receive a response from a landlord in comparison to those without a criminal record.

The consequences of having a criminal history – whether one actually committed a crime or not – may be compounded for individuals belonging to racial minority groups who have historically faced additional hardships (Pager, 2003). In particular, research suggests that Black individuals may pay a higher penalty for having a criminal record compared to White individuals (e.g., Pager, 2007; Pager et al., 2009). For example, Pager et al. (2009) had pairs of Black and White individuals apply for low-wage jobs, with one of the two applicants having a criminal record. Results demonstrated that employers strongly disfavoured applicants with a criminal record, and that the penalty of the criminal record was especially large (i.e., roughly double the size) for Black applicants. Moreover, they found that Black applicants were less often invited to interview and were therefore disadvantaged in their ability to establish an in-person rapport with the employer. In contrast, Evans et al. (2019) asked Black, Latinx and White male and female researchers to pose as prospective tenants with or without a criminal history (drug trafficking, statutory rape, or child molestation) and to call landlords and property managers to inquire about renting an apartment. Although the prospective tenants’ race did not significantly impact landlords’ decisions in the study, the authors hypothesized that the criminal records – which did impact responses – might have outweighed any potential effects of race (Evans et al., 2019).

Although research has established that landlords are less willing to rent to individuals with a criminal history (e.g., Doble & Lindsay 2003; Ondrich et al., 2003) and to individuals from racial minority groups (e.g., Carpusor & Loges, 2006; Ewens et al., 2014), research has only begun to explore the intersectionality of these stigmas (e.g., Evans et al., 2019) and how wrongful conviction fits in (Kukucka et al., 2021). Quantitative audit studies that rely on dichotomous outcome variables (e.g., Hanson et al., 2011) are valuable, however they risk underestimating the amount of prejudice and discrimination that stigmatized groups face insofar as they do not account for instances of subtle discrimination. Accordingly, our aim is to look beyond the general patterns of housing discrimination to investigate the communication patterns that precede a landlords’ rental decision. Research by Kukucka et al. (2021) demonstrated that landlords were less likely to tell convicted and wrongfully convicted individuals that an apartment was available, and more likely to mention a background check. Relatedly, Hanson et al. (2011) found that the same

landlords replied more quickly, were more likely to use descriptive, formal, and polite language when describing the unit, and were more likely to invite further correspondence and opportunities for viewing, when replying to emails from someone with a stereotypical White name than a stereotypical Black name. Evidently, these email communications represent a rich source of qualitative data that can shed light on landlords' attitudes toward stigmatized renters. The current study examines landlords' responses to rental inquiries from wrongfully convicted individuals, compared to convicted and non-convicted individuals of various races, in the hopes of gaining a nuanced insight into landlords' housing discrimination toward these groups.

## II Current Study

The current study builds upon these initial forays into landlords' communications with stigmatized renters. Specifically, we conducted an inductive content analysis of the e-mail discourse between landlords and prospective tenants (White, Black, Indigenous; convicted, wrongfully convicted, no criminal history) obtained through an experimental audit design (see Zannella et al., 2020). We had two goals: first, to gain a more nuanced understanding of the difficulties that convicted and wrongfully convicted individuals – particularly those who are Black and Indigenous – face in their attempts to secure housing post-release; and second, to examine whether our themes significantly differed across our groups, demonstrating differential prejudices toward these groups. To accomplish this goal, we tested whether our control groups (no criminal history; White) were advantaged over our stigmatized groups (convicted and wrongfully convicted; Black and Indigenous). Next, we tested whether landlords responded differently to our stigmatized groups (i.e., general prejudiced responses vs. specific prejudiced responses) by comparing landlords' responses to convicted versus wrongfully convicted renters, and Black versus Indigenous renters.

## III Method

The current paper is a content analysis of data collected as part of a larger experimental audit study (Zannella et al., 2020). Researchers responded to a total of 1,107 Kijiji (analogous to Craigslist) apartment listings across Canada to inquire about the availability of a one-bedroom apartment. The design was a 3 (criminal history: wrongfully convicted, convicted, control) x 3 race (Black, Indigenous, White) between-subjects design. Email inquiries were ostensibly written from an individual who was convicted, wrongfully convicted, or had no criminal history, who was either Black, Indigenous, or White. Cities were chosen to represent the overall population of Canada (Statistics Canada, 2016), with more emails sent to larger cities than smaller cities in proportion to their populations. Using systematic random sampling, we responded to every third listing aside from the following exclusion criteria: listings posted by property management and real estate companies (i.e., because of policies to respond to all inquiries; Hogan & Berry, 2011); listings with explicit renter preferences (e.g., “students only”); and listings that would not respond to email inquiries (e.g., “call to set up a viewing”). The 3x3 design of the study necessitated that we contact at least nine apartment postings in each location. We inquired in multiples of nine to ensure equal representation of our conditions within each location – based on each location's percentage of the Canadian population. For example, if a city represented 0.5% or less of the

Canadian population, we sent an inquiry to nine apartment listings; for locations that represented 0.5-1% of the population, we sent 18 e-mail inquiries. We repeated this pattern for every 0.5% increase in the population. For example, our largest city, the Greater Toronto Area, which represents 15.4% of the Canadian population, equated to sending 279 rental inquiries in this location.

The content of the email inquiry was identical across conditions (“Hello, my name is [insert name], and I am interested in your rental at [insert location]. I do have a job and can pay first and last month’s rent. Is the place still available? Thanks, [insert name]”) with the exception of our independent variables. The names of the prospective renters served as the race manipulation, with each name appearing twice in the email, as well as in the email address itself.<sup>1</sup> For criminal history, we added an additional sentence to convey that the tenant was either convicted (“I want to tell you up front, I have a criminal record, I did something stupid, served my time, and finished parole”) or wrongfully convicted (“I want to tell you up front, I have a criminal record, I didn’t do it, I was wrongfully convicted, and DNA has exonerated me”).

### A. Content Analysis

Of the 1,107 listings that we responded to, we received a total of 554 replies (50.2%; see Table 1 for landlord response rates by group). We first conducted an inductive content analysis (i.e., a flexible analytic coding method that emphasizes emergent themes and patterns in qualitative data; Thomas & Harden, 2008) of all the landlords’ responses. One coder, unaware of the research goals, independently coded the landlords’ replies, such that each phrase or idea in each of the responses was coded into mutually exclusive and exhaustive codes. Then, through discussions with one of the researchers, the initial codes were grouped into more manageable sub-themes. Afterward, the coders sorted the data into three final overarching themes (each with respective sub-themes): 1) responding with courtesy; 2) probing for additional information; and 3) willingness to set up a viewing.

**Table 1.** Number of landlord responses per group

		Criminal History			Total
		Control	Convicted	Wrongfully convicted	
Race	White	98	71	40	209
	Black	89	55	41	185
	Indigenous	83	41	36	160
Total		270	117	167	554

<sup>1</sup> Pilot participants ( $n = 28$ ) rated, on a scale from 1 (*not at all*) to 5 (*extremely*), the stereotypicality of 15 names. We used the names with the highest means for the intended racial group (Black: Tyrone Lewis,  $M = 4.93$ ; Indigenous: Downhowee Musquash,  $M = 4.5$ ; White: Matthew Smith,  $M = 4.96$ ).

Under the *responding with courtesy* theme, coders noted the presence or absence of: (a) landlords' justifying why the rental was not available (e.g., stating that the rental was pending or that they were reviewing or waiting on another application, providing detailed explanations about who the unit was rented to or why it was no longer available, noting that there were many other prospective renters interested in the unit); (b) landlords' expressing empathy (e.g., mentioning that the criminal record was not a problem, thanking the renter for being upfront about their criminal history); and (c) landlords' communicating politely and professionally (e.g., with a greeting, sign off, thank you, apology). Under the *probing for additional information* theme, coders noted whether landlords asked the prospective tenants about their: (a) criminal history, (b) financial stability, or (c) references. Under the *willingness to set up a viewing* theme, coders noted whether (a) landlords set up a viewing, (b) offered an accommodating time to visit (e.g., provided numerous times slots to view the apartment or asked the renter what time works best for them), or (c) suggested that they would follow up with the renter at a later date. See Table 2 for descriptions of the initial codes, sub-themes, themes, quotes, and inter-rater reliability scores.

**Table 2.** Themes, sub-themes, and codes, quotes, and inter-rater agreement

Themes	Sub-themes	Codes	Quotes	Inter-rater agreement (Cohen's kappa)
Responding with courtesy	Justifying unavailability	Did the landlord: -State that the rental is pending? -Mention that they are another application? -Mention other interested tenants? -State that the rental has already been rented out to another tenant? -Say that they would let the renter know if the apartment becomes available	-"Looks like it may be rented by someone who came last night to view it. I am just waiting on the deposit" -"My niece just moved into the unit today and not sure how long she will be here, as she is having cancer surgery tomorrow... So no idea when it will be available now." -"I have about 5 people ahead of you and it looks like it may be rented by someone who came last night to view it"	$\kappa = .970$



Expressing empathy	Did the landlord: -Say that a criminal record is not an issue? -Thank the renter for being upfront and honest about their criminal history? -Say that they were sorry for what the renter went through? -Express that people deserve second chances?	-“A criminal record is not an issue for me” -“Thank you for being totally open and upfront with your background” -“Everyone makes mistakes and I believe we all need second chances!” -“Good luck in your search, I am sure it is not easy”	$\kappa = .992$
Professional communication	Did the landlord: -Say hello / good morning / good afternoon? -Include a sign off? -Includes the renter’s name in the response? -Wish the renter well? -Thank the renter for the email inquiry?	-“Hi there!” -“Good morning!” -“Kind regards” -“Warmest regards!” -“Thank you for your interest,” -“Sorry for not getting back to you sooner”	$\kappa = .984$
Probing for additional information	Criminal history Did the landlord: -Ask for a background check? -Ask for details about the renter’s criminal history?	-“Can I ask what your offence was for?” -“Can I ask how long you served” -“A criminal record check is required to secure the apartment”	$\kappa = 1.000$
Financial stability	Did the landlord -Inquire about the renter’s job? -Mention a security deposit? -Mention a credit report? -Ask for proof of income?	-“It is required that you have 10 posted dated cheques” -“I require an employment confirmation and proof of income”	$\kappa = 1.000$
References	- Did the landlord request references?	-“I require a rental reference. Can you provide those?”	$\kappa = 1.000$

Willingness to set up a viewing	Offering an accommodating time frame	<ul style="list-style-type: none"> <li>- Did the landlord ask the renter what time works best for a viewing?</li> <li>- Did the landlord suggest numerous availabilities for a viewing?</li> </ul>	<p>- "I will be showing it on Saturday between noon-2pm - would a time in that window work for you? If not, are there other times / days that would work for you? After 5:30 most evenings, and some time on Sunday after 2pm"</p> <p>- "Do you want to schedule a viewing? Let me know your availability."</p>	$\kappa = .953$
	Suggesting a follow-up	<ul style="list-style-type: none"> <li>- Did the landlord suggest that they would get back to the renter at another time?</li> </ul>	<p>- "I will know around 6:30pm today if she's taking it... I can let you know as soon as I find out"</p> <p>- "We are currently screening a potential tenant right now, but if that falls through, we will be going down the list of people we have seen. If none of them work out, I will send you a message"</p>	$\kappa = 1.000$

#### IV Results

We conducted a series of logistic regressions to determine whether the presence of these nine sub-themes varied among our groups. We conducted logistic regression analyses on each sub-theme, using criminal history, race, and a possible criminal history by race interaction, as predictors. We used Helmert contrasts to examine whether landlords communicated differently with our stigmatized groups (convicted and wrongfully convicted; Black and Indigenous) compared to our controls (no criminal history; White). We also examined whether landlords responded differently to our stigmatized groups by comparing their responses to convicted versus wrongfully convicted renters, and Black versus Indigenous renters. The criminal history by race interaction terms did not improve the overall model fit. The interaction term was only significant

is one of the analyses;<sup>2</sup> therefore, we interpreted the models with main effects only. See Table 3 for a summary of the results.

**Table 3.** Qualitative and quantitative data

Final Themes	Sub-themes	# of present codes	Percentages	Logistic regression statistics
Responding with courtesy	Justifying unavailability			
	Control	29	10.7%	(1) $X^2(1, N = 554) = 22.67$ , $\text{Exp}(B) = .321$ , $p < .001$
	Convicted	33	26.3%	
	Wrongfully convicted	44	28.2%	(2) $X^2(1, N = 554) = .120$ , $p = .729$
	White	42	20.1%	$X^2(1, N = 554) = .208$ , $p = .901$
	Black	34	18.4%	
	Indigenous	30	18.8%	
	Expressing empathy			
	Convicted	37	37.7%	$X^2(1, N = 284) = 1.120$ , $p = .290$
	Wrongfully convicted	63	31.6%	
White	36	32.4%	$X^2(1, N = 554) = 3.376$ , $p = .159$	
Black	41	42%		
Indigenous	36	29.8%		
Professional communication				
Control	180	66.7%	$X^2(1, N = 554) = 4.783$ , $p = .092$	
Convicted	126	75.5%		
Wrongfully convicted	76	64.9%	$X^2(1, N = 554) = 10.783$ , $p = .088$	
White	153	73.2%		
Black	135	72.9%		
Indigenous	94	58.7%		

<sup>2</sup> The criminal history by race interaction was significant for professional communication, Wald's  $X^2(4, N = 553) = 9.582$ ,  $p < .05$ .

Probing for additional information	Financial stability			
	Control	20	7.4%	(1) $X^2(1, N = 554) = 4.58$ , $\text{Exp}(B) = .501$ , $p < .05$
	Convicted	23	13.8%	
	Wrongfully convicted	20	17.1%	(2) $X^2(1, N = 554) = .589$ , $p = .443$
	White	28	13.4%	$X^2(1, N = 554) = 1.53$ , $p = .465$
	Black	20	10.8%	
	Indigenous	15	9.4%	
	Criminal history			
	Convicted	12	7.8%	$X^2(1, N = 284) = 3.161$ , $p = .075$
	Wrongfully convicted	16	13.6%	
White	19	17.1%	(1) $X^2(1, N = 284) = 9.85$ , $\text{Exp}(B) = 7.745$ , $p < .05$	
Black	7	7.3%		
Indigenous	2	2.6%	(2) $X^2(1, N = 554) = 1.75$ , $p = .186$	
References				
Control		1.1%	$X^2(1, N = 554) = 9.93$ , $\text{Exp}(B) = .145$ , $p < .05$	
Convicted		7.2%		
Wrongfully convicted		7.7%		
White		6.2%	$X^2(1, N = 554) = 2.788$ , $p = .248$	
Black		3.2%		
Indigenous		3.1%		
Willingness to set up a viewing	Offering an accommodating time frame			
	Control	52	19.2%	(1) $X^2(1, N = 554) = 17.42$ , $\text{Exp}(B) = 3.269$ , $p < .001$
	Convicted	9	5.3%	
	Wrongfully convicted	10	8.5%	(2) $X^2(1, N = 554) = 1.08$ , $p = .298$
White	27	12.9%		

Black	25	13.5%	$X^2 (1, N = 554) = .209, p = .901.$
Indigenous	19	11.8%	
Suggesting a follow-up			
Control	8	3%	(1) $X^2 (1, N = 554) = 7.961, \text{Exp}(B) = .306, p < .05$
Convicted	8	12%	
Wrongfully convicted	20	6.8%	(2) $X^2 (1, N = 554) = 1.99, p = .158$
White	11	5.3%	$X^2 (1, N = 554) = 1.315, p = .518$
Black	15	8.1%	
Indigenous	10	6.2%	

Note: We conducted logistic regression with Helmert contrasts. For criminal history, we compared control versus wrongfully convicted and convicted individuals (contrast 1) and wrongfully convicted versus convicted individuals (contrast 2). For race, we compared White renters versus Black and Indigenous renters (contrast 1) and Black versus Indigenous renters (contrast 2).

### A. Justifying Unavailability

Some landlords noted that they were unable to rent the apartment to the prospective renter and provided a justification for why the rental was not available. Results demonstrated that justifying unavailability differed across the criminal history groups. Landlords were 3.12 times more likely to justify the rental's unavailability to wrongfully convicted individuals (28.2%) and convicted individuals (26.3%), compared to control (10.7%),  $X^2 (1, N = 554) = 22.67, \text{Exp}(B) = .321, p < .001, 95\% \text{ CI } [.20, .51]$ ; convicted and wrongfully convicted individuals did not significantly differ from one another,  $X^2 (1, N = 284) = .120, p = .729$ . Race, however, did not significantly impact landlords' likelihood of justifying the rental's unavailability (White: 20.1%; Black: 18.4%; Indigenous: 18.8%),  $X^2 (1, N = 554) = .208, p = .901$ .

### B. Expressing Empathy<sup>3</sup>

Some landlords expressed empathy toward the renter's experience with the criminal justice system, acknowledging that what the renter had gone through was difficult or thanking them for their transparency. Neither criminal history (wrongfully convicted: 31.6%; convicted: 37.7%),  $X^2 (1, N = 284) = 1.120, p = .290$ , nor race (White: 32.4%, Black: 42%; Indigenous: 29.8%),  $X^2 (1, N = 554) = 3.376, p = .159$ , impacted landlords' expression of empathy.

### C. Professional Communication

<sup>3</sup> Because rental inquiries from control did not mention involvement with the criminal justice system, the control group was excluded from this analysis.

Some landlords replied to the prospective renter in a professional and polite manner, including greetings, sign offs, thank yous and apologies in their responses. Criminal history (wrongfully convicted: 64.9%; convicted: 75.5%; control: 66.7%) did not impact landlords' professional communication,  $X^2(1, N = 554) = 4.783, p = .092$ . Race, however, did impact landlords' professional communication. Although there was no difference between landlords' professional communication with White (73.2%) and Black renters (72.9%),  $X^2(1, N = 554) = 2.918, p = .088$ , landlords were more likely to communicate professionally with Black and White renters compared to Indigenous renters (58.7%),  $X^2(1, N = 554) = 7.69, p < .05$ .

#### **D. Questions About Criminal History<sup>4</sup>**

Some landlords inquired further about the renter's criminal history, asking the renter specific questions about the crime and time spent in prison. Landlords did not probe wrongfully convicted individuals (13.6%) for information about criminal history significantly more often than convicted individuals (7.8%),  $X^2(1, N = 284) = 3.161, p = .075$ . Unexpectedly, however, landlords were 7.7 times more likely to ask White renters (17.1%) about their criminal history, compared to Black (7.3%) and Indigenous (2.6%) renters,  $X^2(1, N = 284) = 9.85, \text{Exp}(B) = 7.745, p < .05, 95\% \text{ CI } [1.76, 11.55]$ ; Black and Indigenous renters did not significantly differ from one another,  $X^2(1, N = 284) = 1.75, p = .186$ .

#### **E. Questions About Financial Stability**

Despite the fact that our emails specifically stated that the renter had a job and could pay first and last month's rent, some landlords inquired about the prospective renter's financial stability. Landlords' tendency to probe for information about financial stability differed across the criminal history groups. Landlords were 1.9 times more likely to ask wrongfully convicted individuals (17.1%) and convicted individuals (13.8%) about their financial stability, compared to control (7.4%),  $X^2(1, N = 554) = 4.58, \text{Exp}(B) = .501, p < .05, 95\% \text{ CI } [.25, .77]$ ; convicted and wrongfully convicted individuals did not significantly differ from one another,  $X^2(1, N = 284) = .589, p = .443$ . Race did not impact landlords' probing for information about financial stability (White: 13.4%; Black: 10.8%; Indigenous: 9.4%),  $X^2(1, N = 554) = 1.53, p = .465$ .

#### **F. Questions About References**

Some landlords asked the prospective renter to provide personal or professional references. Criminal history impacted landlords' decision to ask for references from prospective renters. Landlords were 6.9 times more likely to ask wrongfully convicted individuals (7.7%) and convicted individuals (7.2%) for references, compared to control (1.1%),  $X^2(1, N = 554) = 9.93, \text{Exp}(B) = .145, p < .05, 95\% \text{ CI } [.04, .48]$ ; convicted and wrongfully convicted individuals did not significantly differ,  $X^2(1, N = 284) = .026, p = .872$ . Race did not impact landlords' asking for references (White: 6.2%; Black: 3.2%, Indigenous: 3.1%),  $X^2(1, N = 554) = 2.79, p = .248$ .

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<sup>4</sup> Because rental inquiries from control did not mention involvement with the criminal justice system, the control group was excluded from this analysis.

### G. Setting Up a Viewing

Some landlords expressed a willingness to set up a viewing of the apartment. We found that landlords were 2.2 times less likely to offer a viewing to wrongfully convicted (19.7%) and convicted (22.8%) individuals compared to control (36.3%),  $X^2(1, N = 554) = 14.88$ ,  $\text{Exp}(B) = 2.12$ ,  $p < .001$ , 95% CI [1.45, 3.11]; convicted and wrongfully convicted individuals did not differ from one another,  $X^2(1, N = 284) = .391$ ,  $p = .532$ . Race did not impact landlords' willingness to offer a viewing (White: 30.1%; Black: 26.5%; Indigenous: 29.4%),  $X^2(1, N = 554) = .691$ ,  $p = .708$ .

### H. Offering an Accommodating Time Frame

Some landlords provided prospective renters with flexible time frames to view the rental, offering several options and time slots or asking the renter what worked best for them. Criminal history impacted landlords' willingness to offer prospective renters an accommodating time frame. Landlords were 3.3 times more likely to offer an accommodating time frame to control (19.2%), compared to wrongfully convicted (8.5%) and convicted (5.3%) individuals,  $X^2(1, N = 554) = 17.42$ ,  $\text{Exp}(B) = 3.269$ ,  $p < .001$ , 95% CI [1.88, 5.701], but wrongfully convicted and convicted individuals did not significantly differ from one another,  $X^2(1, N = 284) = 1.08$ ,  $p = .298$ . Race did not impact landlords' willingness to offer prospective renters an accommodating time frame (White: 12.9%; Black: 13.5%; Indigenous: 11.8%),  $X^2(1, N = 554) = .209$ ,  $p = .901$ .

### I. Suggesting a Follow-Up

Some landlords stated that they would get back to the renter at a later date (i.e., implying that they would have an answer about the rental then). Landlords were 3.3 times more likely to suggest a follow up to wrongfully convicted (6.8%) and convicted (12%) individuals, compared to control (3%),  $X^2(1, N = 554) = 7.961$ ,  $\text{Exp}(B) = .306$ ,  $p < .05$ , 95% CI [.134, .696]; convicted and wrongfully convicted individuals did not significantly differ from each other,  $X^2(1, N = 284) = 1.99$ ,  $p = .158$ . Race did not impact landlords' willingness to suggest a follow-up to prospective renters (White: 5.3%; Black: 8.1%; Indigenous: 6.2%),  $X^2(1, N = 554) = 1.315$ ,  $p = .518$ . It is worth noting that, although some landlords suggested that they would follow up with the renter, none of the landlords did.

## V Discussion

Prior research has demonstrated housing discrimination toward individuals with a criminal history (e.g., Evans & Porter, 2015; Kukucka et al., 2021) and individuals belonging to racial minority groups (e.g., Carpusor & Loges, 2006; Hanson et al., 2011). The current findings extend this research by analyzing landlords' initial written correspondence with potential renters. Despite a number of messages that were written without greetings (e.g., "it's rented") or which were short and abrupt ("phone number please?"), other messages were more personable and empathetic. For example, many landlords thanked individuals who were convicted and wrongfully convicted for their honesty (e.g., "Thank you for your honesty and sorry to hear about the problem you had")

and some went so far as to say things like “everyone makes mistakes” and “we all need second chances.” Landlords were equally empathetic to convicted and wrongly convicted renters, and landlords did not respond significantly differently to convicted and wrongfully convicted individuals across all of our analyses.

Unexpectedly, landlords were equally likely to correspond professionally with convicted, wrongfully convicted individuals and those without a criminal record. This might reflect a general belief that all people should be treated with a basic level of respect. Alternatively, landlords might be using email templates that include polite and professional verbiage. If that is the case, removing polite phrases from a response might represent a more blatant form of prejudice than landlords were willing to show as they would have to confront their own prejudices. We did, however, find that landlords were more likely to provide lengthy justifications for why the rental was not available (e.g., explain who the rental was being rented to, or emphasize the number of other interested renters), and less likely to mention viewing the unit (and to provide fewer flexible options for viewing), when the renter mentioned being convicted or wrongfully convicted. Landlords rarely indicated the prospective renter’s criminal history as the reason for this (though a few did); however, because this theme emerged significantly more often for convicted and wrongfully convicted individuals compared to control, it can be inferred that criminal history was indeed a factor for these differences in communication. Perhaps as landlords felt they could attribute the unavailability to something else, they did not feel they were being prejudiced; and yet, these excuses did not emerge in the control condition.

Furst and Evans (2016) reported that the majority of the real estate agents in their study disclosed criminal history as the reason why the owner or landlord was less likely to consider renting to the prospective tenant. Moreover, they found that, when interacting with convicted individuals, real estate agents tended to defer the rental decision to the landlord. Real estate agents, who act as a liaison between a renter and a property owner, can shift blame onto the landlord if the rental inquiry is denied. Landlords, on the other hand, are solely responsible for providing a rental decision to prospective renters and may therefore be more motivated to provide socially acceptable justifications for the rental’s unavailability. Contemporary forms of prejudice are typically expressed in indirect ways that can be explained away as unrelated to the actual stigma (Dovidio et al., 2002), perhaps by claiming a family member wants to rent the unit or that the landlord is waiting on a deposit from another interested renter -- whether or not that is actually the case. In addition, most individuals believe themselves to be fair and just, and may therefore make excuses that seem reasonable to disguise their prejudicial attitudes (Sedikides & Strube, 1995). We are not purporting that every landlord who provided an excuse was lying (though none of the landlords who promised to follow-up later did) or prejudiced; however, several landlords, when responding to individuals with a criminal record – even a wrongful conviction – clearly felt motivated to explain why their apartments were no longer available and/or to provide very few viewing options.

Moreover, we found that landlords were more likely to ask convicted and wrongfully convicted individuals about their financial stability and references, compared to control. Previous research suggests that individuals perceive convicted and wrongfully convicted individuals more negatively and as less competent and sincere than others (Clow & Leach, 2015). This may account for why landlords questioned these prospective renters more about their ability to pay rent – even though our initial inquiry explicitly stated that the individual could pay first and last month’s rent.



It is also possible that landlords' probing for additional information may be a result of comprehension goals, which encompass the need to understand events (Jones & Thibaut, 1958) and form coherent and educated impressions of others (Heider, 1958). Comprehension goals predict that individuals who are motivated to control their prejudice may work to gain more information about a target in order to make an informed decision that is not based on stigmatized group information, but rather on individuated knowledge garnered from a specific person. For example, DeWitt and Denver (2020) found that a supportive reference letter from a former employer mitigated much of the stigma from a criminal record, suggesting that asking prospective tenants for this information can provide relief from the negative consequences of a criminal record. Accordingly, the landlords in our study may have probed convicted and wrongfully convicted individuals for additional individuating information in order to make more informed and individuated (and less biased) rental decisions, which was not necessary in the control condition, as individuals were not characterized by a stigmatized status.

Surprisingly, we only found two significant differences driven by race. First, we found that landlords were more likely to ask White renters about their criminal history compared to Black and Indigenous renters. As posited by Pager et al. (2009), positive interactions and conversations are key to establishing a positive rapport between a candidate and employer. These conversations provide an opportunity to present personalizing information about the applicant's work ethic and commitment to rehabilitation and open the door for the employer to generate new perceptions of the candidate (Pager et al., 2009). In Pager et al.'s (2009) study, they found that employers were reluctant to discuss criminal history with any of the candidates; however, the penalty associated with the lack of discussion was far more consequential for the Black candidates (75% fewer callbacks) compared to the White candidates (30% fewer callbacks). In our study, landlords were more likely to ask White renters about their criminal history compared to Black and Indigenous renters, providing White renters with more opportunities to provide individuating information and provide context for their criminal involvement. If landlords who are concerned about the criminal record among Black and Indigenous renters choose to remain silent about the issue, these applicants will ultimately have fewer opportunities to address or defuse the employer's concerns (Pager et al., 2009). Relatedly, it is possible that the landlords in our study refrained from asking the Black and Indigenous renters about their criminal history to avoid appearing racist. This line of reasoning is consistent with previous research suggesting that individuals ask fewer questions of stereotyped targets (Trobe & Thompson, 1997).

Alternatively, it is possible that our landlords were more willing to consider renting their units to White individuals with criminal histories – contingent upon the nature of the crime. This is consistent with Pager (2003) who found that employers favored White individuals with criminal records over Black individuals without criminal records. Research suggests that the public is less punitive toward non-violent offenders and those they view as 'redeemable' (Cullen et al., 2000), but our findings may suggest that this applies to White individuals more than others. Moreover, it is possible that, compared to Black and Indigenous renters (Mitchell et al., 2005), White renters may not fit landlords' stereotypes of 'offenders,' and that landlords may be more willing to discount their criminal records, viewing them more as isolated incidents rather than as evidence of their internal disposition (Pager, 2003).

We also found that landlords were less likely to communicate professionally with Indigenous renters compared to Black and White renters. This result is consistent with theories of aversive racism which suggests that individuals may disadvantage racial minorities in more indirect and subtle forms (Dovidio et al., 2002). Because many aversive racists are unaware of their implicit biases, these biases can affect subtle behaviours, such as communication patterns, that they may not recognize as discriminatory (Dovidio et al., 2002). Accordingly, instead of being outwardly prejudicial or rude, landlords in our study were more likely to communicate in a harsher and less polite manner when interacting with Indigenous renters, compared to Black and White renters. In doing so, landlords may leave a negative impression with the renter or stifle the opportunity for further conversation altogether, in turn reducing the chances for the Indigenous renter to ultimately rent the unit.

The paucity of significant race findings was surprising, but consistent with Evans et al. (2019) who found no differences in housing discrimination between racial minority and non-minority renters when taking criminal history into account. It is also consistent with the idea that the effect of a criminal history may be more disadvantaging than racial stigma because of its direct association with negative traits and behaviours (e.g., violence, incompetence, dishonesty; Pager et al., 2009). Alternatively, it is possible that the brief, written nature of e-mail communications were an insufficient medium to detect racial prejudice, or that in-person or verbal interactions (which do not leave a paper trail) might yield more flagrant instances of racial prejudice.

Because race was almost completely overshadowed by criminal history, we were not able to explore potential effects of intersectionality. It is possible that criminal history was the more aversive stigma, or that racial prejudices might emerge later in the rental process. Moreover, as individuals express prejudice to the extent that they see it as appropriate or normative within their social context (Crandall et al., 2002), landlords may feel more comfortable displaying prejudice toward individuals with a criminal history, compared to renters belonging to racial minority groups (e.g., one is covered by anti-discrimination laws whereas the other is not).

### **A. Policy Implications**

Our findings suggest that convicted and wrongfully convicted individuals experience prejudice and discrimination in their attempts to secure housing upon release. In an effort to reduce barriers to reintegration for individuals with a criminal history, many jurisdictions in the U.S. have passed the 'Ban the Box' initiative, which is designed to remove the check box on job applications that ask applicants to disclose whether they have a criminal record (Agan & Starr, 2018). These policies are intended to end the cycle of incarceration by promoting access to employment for formerly incarcerated individuals (Agan & Starr, 2018). At this time, The Fair Housing Act prohibits discrimination in housing based on categories such as race and disability, but not criminal history. Accordingly, criminal background checks are often used as screening criteria for rental housing and have become a significant barrier to obtaining housing. As such, the findings from the research, and others, might suggest expanding the Ban the Box initiative to rental applications as well.

Prejudice reduction and anti-stigma approaches aim to expose individuals to counter-stereotypical information about a stigmatized group with the goal of correcting misinformation or

challenging negative attitudes (McBride, 2015). Facilitating contact between in-group and out-group members can also improve attitudes by replacing in-group ignorance with first-hand knowledge that disconfirms stereotypes (Lee et al., 2004). Allport's (1954) contact hypothesis emphasizes face-to-face interaction and positive cooperation under optimal conditions of shared goals, equal status, and the absence of competition to reduce prejudice (Pettigrew & Tropp, 2006). Thus, facilitating the public's – and by extension landlords' – positive interactions with individuals with a criminal history, particularly wrongfully convicted individuals, should reduce their level of prejudice, and ultimately reduce housing discrimination.

### **B. Limitations and Future Directions**

There are a few limitations to this study that should be acknowledged. First, our study focuses on the responses of landlords in Canada who chose to list their rental unit on a particular online classified website (i.e., Kijiji). Accordingly, it is unclear whether our findings would generalize to larger property management companies or other landlords who do not use classified advertising to find tenants for their properties. Although our sample was representative of the Canadian population, our sample was not large enough to explore population differences across provinces and territories, and future research in this area could offer a more well-rounded understanding of the discrimination that formerly incarcerated individuals experience in their attempts to secure housing. Our findings are consistent with Kukucka et al.'s (2021) research on housing discrimination toward exonerates conducted in the U.S., as well as Evans and Porter's (2015) research investigating housing discrimination against racial minorities with criminal histories in the U.S. That said, given that cultural norms and housing policies vary across jurisdictions and countries, further research and replication in this area is warranted.

Past research has demonstrated greater racial discrimination during in-person interactions compared to online interactions (e.g., Decker et al., 2015). Because our study was conducted online via Kijiji, it is possible that our race manipulation was not as salient as it might have been had the study been conducted over the phone or in person. Although the tenant names were pilot tested for racial stereotypicality, it is possible that the many null results of race could be attributed to the subtle way that race was manipulated in the present study (i.e., via email addresses and signatures). Future research could explore the existence of greater housing discrimination when convicted and wrongfully convicted individuals of different racial backgrounds meet landlords in-person to view the apartment.

Moreover, the present study manipulated criminal history by explicitly disclosing the prospective tenant's criminal past in the initial rental inquiry sent to landlords. In real-world settings, however, individuals with a criminal record may choose to disclose information at a different stage in the rental process: for example, when asked directly by a landlord, once a background check is requested, or alternatively, they may choose not to disclose this information at all. As such, it is possible that the decision to introduce this information within the prospective tenant's first interaction with a landlord may somewhat compromise the ecological validity of the study. With this said, research supports that landlord often request information such as a background check or credit score within the first instances of communication (Thacher, 2008) and therefore, attempts to intentionally conceal a criminal record would likely be counterproductive, as it would reasonably exacerbate landlords' concerns about a prospective tenant's moral

ineptitude (Anazodo et al., 2017). In the wrongful conviction condition, in particular, the prospective renter asserted their innocence without providing any formal documentation – a scenario which mirrors the real-life struggle that many wrongfully convicted individuals face when attempting to secure housing. Because a majority of wrongfully convicted individuals do not receive documented proof of their innocence (Campbell, 2018) and often do not have their convictions expunged (Shlosberg et al., 2014), they are often required to assert their innocence without any formal documentation in housing and employment settings. Providing such documentation might be an interesting avenue for future work in this area. However, given the lack of proof of innocence currently in Canada, we feel that the way that criminal history was manipulated in the current study allowed us to maintain a high degree of experimental control while also approximating the experience of formerly incarcerated individuals.

In addition, while our study provides insight into the nature of landlords' responses to prospective renters, it is limited to analyzing the communication patterns that demonstrate prejudice, but not why this prejudice exists in the first place. Further, we cannot speak to any demographics or individual differences that contribute to this prejudice, as we did not collect identifying information from prospective landlords. Having said this, future researchers may wish to include measures designed to assess the intentions behind landlords' responses to prospective renters, and to collect landlord demographics, though doing so might reduce the ecological validity of the study.

## VI Conclusion

Apart from employment, securing housing is the most important component of successful reintegration for individuals post-incarceration (Seiter & Kadela, 2003). In an attempt to obtain housing, a landlord in our study told a supposedly prospective renter who disclosed being wrongfully convicted that “you are not the tenant I am looking for.” A content analysis of landlords' email responses demonstrated that they were more likely to justify the apartment not being available and less likely to offer a viewing to convicted and wrongfully convicted individuals. Despite their innocence, wrongfully convicted individuals are stigmatized and in need of housing support – as well as additional reintegration support that they currently lack in Canada and elsewhere – to rebuild their lives after the atrocities of these miscarriages of justice. Although the effects of race are well-documented in the housing literature, we found few differences in landlords' communication patterns based on tenants' race in our study, possibly suggesting that racial discrimination occurs later in the rental process or that it is more effectively disguised by landlords compared to their reactions to individuals with a criminal history.

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## **“It’s Really Hard Making Up for All of That Lost Time”: Providing Reentry Support After Wrongful Incarceration**

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*The scientific study of wrongful convictions has been ongoing for the past few decades. These studies have worked to quantify wrongful convictions, identify contributing factors, and understand the negative implications to society and the individuals who experience a wrongful incarceration. The majority of existing studies focus on what leads to a wrongful conviction, with fewer studies examining the community reentry processes of wrongfully convicted individuals. Those studies that do specifically focus on after-release experiences among wrongfully convicted individuals generally focus on the wide range of experiences that wrongfully convicted individuals have in terms of community reentry. The current study aims to contribute to these existing conversations on post-release experiences of wrongfully convicted individuals by focusing on a very specific aspect of community reentry, employment. Utilizing qualitative interviews with innocence organizational employees, individuals who work closely with wrongfully convicted individuals before their release and often maintain relationships after their release as well, this study examines how wrongful convictions impact employment. Findings show that obtaining innocence is often a long and complex process, resulting in numerous barriers that individuals must navigate in the job market. Organizational employees discuss the many barriers that their clients often encounter and the ways in which they, their organization, and wider society can assist wrongfully convicted individuals in the community reentry efforts more broadly. Policy implications are also discussed to aid wrongfully convicted individuals after their release.*

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## I Introduction and Literature Review

The study of wrongful convictions is not a new phenomenon and due to increased media coverage and public awareness, wrongful convictions are an increasingly salient topic within society. Most media outlets commonly focus on details leading up to a wrongful conviction trial and the day of release, leaving aspects of community reentry after wrongful conviction largely absent. Furthermore, the majority of academic research related to wrongful convictions focuses on attempting to quantify their occurrence, the main contributing factors, and the negative societal consequences. Extant research shows alarming rates of wrongful convictions (Acker, 2017; Baumgartner, Westervelt, & Cook, 2014) along with a variety of negative societal implications (Forst, 2013; Huff & Killias, 2013; Norris et al., 2020; Smith and Hattery 2011). Despite this incredible work about the incidence of wrongful convictions, few studies examine how individuals reintegrate into the community once they have been released from a wrongful conviction. Therefore, scholars should develop lines of inquiry to better understand the day-to-day experiences that wrongfully convicted individuals (WCI) have following their release.

Very little research focuses on the processes of reentering the community after serving time for a wrongful conviction (for an exception, see DeShay, 2016; Shlosberg et al., 2020; Westervelt & Cook 2012, 2008). Nonetheless, existing studies show that community reintegration after wrongful incarceration can be extremely difficult, as wrongfully convicted individuals are dealing with trauma and mental health issues produced by their wrongful incarceration (Alexander-Bloch et al., 2020; DeShay, 2016; Grounds, 2004; Scott, 2010), experience numerous barriers in their community reentry efforts (Shlosberg et al., 2020; Weigand, 2009), and often have access to fewer resources than individuals released on probation or parole (Westervelt & Cook, 2008). While these studies have been critically important to understanding how wrongfully convicted individuals experience community reentry, they often lack specificity due to a focus on the wide range of issues that wrongfully convicted individuals encounter. The current study aims to provide a more detailed understanding of community reentry by focusing on a very important facet of these dynamics, employment.

The current paper is part of a larger study that examined the various impacts of wrongful convictions on experiences related to employment and education, before and after wrongful incarceration. Employment has been shown to be a critical component of successful community reentry after incarceration (Berg & Huebner, 2011; Cherney & Fitzgerald, 2016; Opsal, 2012; Visher, Debus-Sherrill, & Yahner, 2011), with the majority of studies focusing on populations incarcerated for crimes they did commit. Because experiences of incarceration are unique for WCI (Campbell & Denov, 2004; Grounds, 2004; Wildeman, Costelloe, & Schehr, 2011), their experiences with community reentry and employment are potentially altered as well. Principles of community based participatory research (CBPR) were used to build relationships with innocence organizations, recruit participants, and disseminate project results. The study was initially designed to examine the following question: How does being wrongfully convicted impact employment? However, due to the qualitative nature of the project and the interconnectedness of the many components of community reentry, participants provided information beyond education and employment. The present study combines the sociological frameworks of life-course perspective and stigma to qualitatively examine the proposed question from the perspectives of innocence organization (IO) employees – a group that works closely with WCI before and after their release

from incarceration. Thus, the present study provides a more comprehensive understanding of the negative implications that wrongful convictions have on employment and the difficulties wrongfully convicted individuals experience in their community reentry efforts.

The following paper will first review the current literature broadly related to wrongful convictions before narrowing in scope to focus specifically on experiences of WCI in obtaining employment post-release. I then discuss the theoretical frameworks of life-course perspective and stigma which are used throughout the study. Next, I give an in-depth examination of the methodological procedures utilized in this study. Then, I provide the main findings of the study which indicate being released from a wrongful incarceration is a wonderful moment, but also often the first step to a long and difficult path to community reentry. The findings are presented in three main themes: the many needs and challenges after wrongful incarceration, barriers to achieving those needs which impact successful community reentry, and the ways in which IO employees provide support and resources to aid in the community reentry of wrongfully convicted individuals. Considering this analysis, I discuss policy suggestions to support wrongfully convicted individuals throughout their community reentry journey. Finally, I discuss limitations for the current study while also providing avenues for future scholarly research.

### **A. Wrongful Convictions**

The exact number of wrongful convictions remains unknown. By their nature, only known occurrences can be quantified. Conservative estimates indicate that approximately 1% of felony convictions are the result of a wrongful conviction (Gross, 2013). These estimates suggest that of the 2 million people currently incarcerated in the United States (Kaeble & Cowhig, 2018), 10,000-20,000 of them were wrongfully convicted (Gross, 2013). While only conservative estimates exist for wrongful convictions, rates of exoneration are much more concrete. For example, according to the National Registry of Exonerations, which is the biggest and most up to date collection of information on all known exonerations within the United States (Norris, 2017), as of 2021, 2,849 individuals have been exonerated (National Registry of Exonerations, 2021). Additionally, the Death Penalty Information Center (2021), indicates that 185 individuals have been exonerated from death row since 1973.

Wrongful convictions create numerous problems for society. First, they waste valuable and limited resources (Huff & Killias, 2013) and create distrust within the criminal legal system (Forst, 2013). Wrongful convictions allow the person who actually committed the crime to remain free and commit additional crimes (Norris et al., 2020). Also, victims in wrongful conviction cases are traumatized over and over through the retelling of their story and reliving traumatic events when trying multiple offenders in wrongful conviction cases (Smith & Hattery, 2011). Finally, WCI are themselves negatively impacted in numerous ways. For example, wrongfully convicted individuals are removed from their families, friends, and communities; subjected to unjust trauma of being wrongfully incarcerated; and provided few (if any) services to try and get their lives back on track once released (Westervelt & Cook, 2012). After release, WCI have many needs and few resources for meeting them (Mandery et al., 2013; Shlosberg et al., 2020; Weigand, 2009; Westervelt & Cook, 2008). Ultimately, finding employment after release from wrongful incarceration is critical, but many barriers, including their time out of the labor market and the stigma of being incarcerated, make securing employment a constant struggle for WCI.

## **B. Obtaining Employment after Wrongful Incarceration**

Upon release from incarceration, individuals have many needs. For successful community reentry, all such identified needs should be met (Lattimore, Steffey, & Visher, 2010; Wright et al., 2014), whether an individual was wrongfully incarcerated or not. One of the critical ways that a previously incarcerated individual achieves community reintegration is through employment (Berg & Huebner, 2011; Opsal, 2012). Employment provides many benefits in individuals' lives. For example, employment allows individuals to contribute to the financial well-being of their families, add structure and meaning to their lives, and establish an independent household of their own (Berg & Huebner, 2011; Cherney & Fitzgerald, 2016), all of which reduce the rates of recidivism (Opsal, 2012; Visher et al., 2011).

While finding employment is crucial when reentering society, many individuals who have experienced incarceration, wrongful or not, encounter barriers to accessing employment (Deshay, 2016; Westervelt & Cook, 2012, 2008). For example, previously incarcerated individuals lose time on the job market, job skills, and connection with friends and family, all of which act as obstacles in obtaining employment (Cherney & Fitzgerald, 2016; Wakefield & Uggen, 2010). Additionally, the lack of job training and educational programs provided within criminal legal institutions contribute to the challenges of securing employment once individuals have been released (Petersilia, 2003). Although innocent, being released from wrongful incarceration does not automatically erase or eliminate the experiences of previous incarceration and the barriers to gaining employment. The current study aims to contribute to existing conversations on wrongful convictions by highlighting the specific ways in which WCI experience and navigate barriers of the job market.

Particular services exist to assist formerly incarcerated individuals with gaining employment. However, WCI often do not qualify for the same services as other released individuals (Mandery et al., 2013; Weigand, 2009; Westervelt & Cook, 2008), including "no time in a halfway house; no access to drug rehabilitation; no help with job skills, housing, or employment; and no bus fare, not even pocket change to make a phone call from the prison lobby for a ride home" (Westervelt & Cook, 2008: p. 37). This indicates that WCI may encounter additional barriers and less support to finding employment in comparison to other individuals who have been released on probation or parole. For example, WCI may be released with no community reentry plan, no access to services, and little to no notice of their release, making it difficult for them to contact friends or family (Westervelt & Cook, 2012). Therefore, release from a wrongful conviction does not immediately remove barriers to securing employment and may make it even more difficult in obtaining a job. In turn, wrongful convictions adversely impact WCI's life-course and the stigma of being incarcerated creates perpetual difficulties in the employment process.

## **II Theoretical Framework**

Theories specific to after-release experiences of WCI are at best underdeveloped and at worst virtually non-existent. Therefore, two theoretical frameworks were chosen strategically to better understand how wrongful convictions impact employment, life-course perspective, and stigma. First, both frameworks have been utilized to examine how incarceration impacts

employment. Second, stigma specifically has been used to understand the post-release experiences of WCI. Here, I discuss explicit details of each framework and how they apply to the current study.

### **A. Life-Course Perspective**

According to the life-course perspective, there are life patterns, referred to as trajectories, that people follow throughout their lives. Trajectories are often marked by transitions, which are events or milestones embedded within a trajectory, such as completing one's education, obtaining employment, and getting married (Elder, Modell, & Parke, 1993). The criteria for achieving adulthood typically includes some variation of being independent in decision making and financial endeavors (Arnett & Tanner, 2006), and more specifically completing one's education, gaining full-time employment, getting married, and starting a family (Graber, Brooks-Gunn, & Petersen, 1996).

Incarceration can negatively impact the life-course in numerous ways. By disrupting the timing of transitions, incarceration has the potential to alter life trajectories and ultimately have negative implications for individuals successfully achieving adulthood. For example, individuals who have been wrongfully convicted spend on average anywhere from nine (National Registry of Exonerations, 2022) to fourteen years incarcerated before they are released, which results in over a decade of lost time, experience, labor, and social ties in employment settings, immensely altering that individuals' life-course. However, it is important to note, not only do some individuals experience shorter periods of wrongful incarceration, but some individuals also experience extremely longer periods of incarceration. The National Registry of Exonerations notes the longest wrongful incarceration was 47 years and two months (National Registry of Exonerations, 2022). Additionally, the age at which an individual is wrongfully incarcerated and released impacts their life-course transitions and post-release experiences with community reentry and employment.

### **B. Stigma**

In its early origins Goffman (1963) noted three types of stigma, one of which referred to "blemishes of individual character" such as that experienced by those who have been previously incarcerated. Since its initial conception, stigma has been used to study a wide variety of groups in diverse contexts, with some studies specifically utilizing the concept to examine employment after incarceration (Pager, 2003). Contemporary scholars have begun to develop the concept of structural stigma. Structural stigma refers to processes "when stigmatic assumptions become embedded in social policies and practices. Through the language of risk, particular groups are identified as 'dangerous' which in turn legitimizes myriad forms of surveillance and intervention" (Hannem & Bruckert, 2012, p. 5).

Previously incarcerated individuals, again whether wrongfully incarcerated or not, are subjected to the same procedures as other released individuals when accessing employment such as completing job applications that inquire about previous criminal history with no space to provide an explanation for their unique experiences indicating that structural level policies and procedures negatively impact individuals post-exoneration. Therefore, examining the manifestation of structural stigma among WCI is imperative to better understand their day-to-day experiences in navigating the job market.

### III Methods

The current study utilizes principles of CBPR, a research design framework that involves collaboration between researchers and community members at multiple stages of the research process (Mayan & Daum, 2016; Minkler & Wallerstein, 2008). CBPR facilitated recruitment of innocence organizations and allowed for community-based dissemination of the study results. Semi-structured interviews were conducted with organization employees, giving participants some control over the research and interview process (Corbin & Morse, 2003), a core principle of CBPR (Minkler & Wallerstein, 2008).

Data for this study come from semi-structured interviews conducted with individuals who work for innocence organizations. Innocence organizations, defined by the Innocence Network are “organizations dedicated to combating wrongful convictions worldwide and reforming the criminal legal system. Most members of the Innocence Network provide legal representation to people who have been wrongfully convicted, though a few exclusively offer support to freed and exonerated people” (Innocence Network, 2022).

Recruitment began in mid-July of 2019. At that time, the innocence network included 53 innocence organizations located throughout the United States. Recruitment materials were sent to all organizations within the network inviting them to participate in the research project. Eligibility for participation included being at least 18 years of age and having been employed by an innocence organization for at least one year. Interested and eligible participants contacted me to learn more about the project and to schedule interviews. All research procedures were approved by the university institutional review board and the Innocence Organization Research Review Committee before any participant recruitment or data collection began.

Interviews were conducted with a total of 15 individuals who work for innocence organizations throughout the United States. Employment with the innocence organization ranged from just over one year to over 16 years. Job titles and accompanying responsibilities varied. Three individuals were employed as staff attorneys, five as social workers, and seven as executive directors or assistants within the innocence organization. To help preserve confidentiality, specific organizational names and locations are not provided. However, I will note that in 2019 the states with the highest number of exonerations included Illinois, Pennsylvania, Texas, New York, Michigan, California, Florida, and Maryland (Selby, 2020) and I was able to interview employees from five of these eight states. Each participant was given a pseudonym and any innocence organization identifying information was removed to ensure confidentiality. Participants characteristics are presented in Table 1. Due to geographical location, 14 interviews took place over the phone and one utilizing Skype. Interviews ranged from thirty minutes to seventy minutes with an average interview time of sixty minutes. Interviews were conducted in a private conference room, and were audio recorded. Interviews were transcribed verbatim and uploaded into NVivo 12 for analysis.

**Table 1.** Innocence Organizational Employees: Participant Characteristics

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Name	Age	Race	Gender	Job Title	Time with Organization
Caitlyn	28	White	F	Director of Social Work	3 Years
Ann Marie	32	White	F	Client Services Specialist	1 Year
Amelia	44	Hispanic	F	Director of Outreach and Education	3 Years
Daniel	56	White	M	Director of Innocence Clinic/Staff Attorney	10 Years
Meredith	30	White	F	Staff Social Worker	1 Year
Stella	36	White	F	Operations Director	5 Years
Bethany	34	White	F	Director of Innocence Clinic/Staff Attorney	2 Years
Maretta	33	White	F	Clinic Fellow/Staff Attorney	1 Year
Brian	47	White	M	Executive Director	3 Years
Katie	57	White	F	Social Worker	13 Years
Samantha	43	Arab-American	F	Social Worker	1 Year
Charlene	63	White	F	Legal Administrator	2 Years
Amanda	50	White	F	Legal Director	1 Year
Jackie	54	White	F	Legal Director	16 Years
James	49	White	M	Executive Director	5 Years

I began with a broad coding frame that included codes from the previously mentioned theoretical frameworks of life-course perspective and stigma, while also including codes for the exoneration and compensation processes of innocence organizations and employment. I read and reread transcripts numerous times to add in additional codes to make sure each line of text was coded in an exhaustive manner. Throughout data analysis, I collapsed codes into more refined categories that more succinctly organized the data for analysis. Collapsed categories were revised into main themes. These coding procedures resulted in three main themes identified as *the many needs and challenges after wrongful incarceration, barriers to achieving successful community reentry, and providing support and resources to aid in community reentry of WCI*, all of which are discussed in more detail below.

In addition to including the previous principles of CBPR into the current study, project results were shared with all IO participants. More specifically, after interviews were completed, each IO participant was contacted and given the opportunity to provide feedback on the structure and content of the interview guide that was to be utilized in interviewing wrongfully convicted individuals. Upon completion of data collection and analysis, IO participants were provided with an outline detailing the main findings for each phase.

## IV Findings

To provide the most comprehensive understanding of employment and community reentry, interviews were conducted with Innocence Organization employees, those that work closely with WCI and attempt to get their clients released from incarceration. IO employees often maintain relationships with their clients after release and aid in community reentry processes. Here, I present findings from interviews with IO employees. A manuscript detailing the experiences of wrongfully convicted individuals is forthcoming. The main themes for the first phase include: *the many needs and challenges after wrongful incarceration, barriers to achieving successful community reentry, and providing support and resources to aid in community reentry.*

Results indicated that upon their release, WCI have many needs that must be met for a successful community reentry experience. However, WCI also encounter numerous barriers to achieving successful community reentry. Finally, the last theme focuses on bringing attention and awareness to the unique experiences of WCI and notes the unique ways in which IO employees aid and support their clients in their community reentry efforts.

### A. The Many Needs and Challenges after Wrongful Incarceration

The path to release for WCI is extremely complex and can take years to navigate, and while being released is critically important, there are many needs that wrongfully convicted individuals have to successfully reenter the community after their incarceration. Innocence organizational employees noted a number of needs their clients have and indicated that some needs are immediate, and others are long term. James, who is the executive director of an innocence organization that he created himself to specifically address community reentry for WCI, discussed the ways his organization helps to prepare WCI for release:

We should have their medical file already ordered from the department of corrections before they leave...We should make sure that they not only have the prescription in hand, but they should have a seven to hopefully 30-day supply of any meds that they're on when they leave so that they don't have to struggle right when they get out with that kind of problem. We should also for example if they have a social security card in their file which some of them do or a photo ID or birth certificate, we should know that, get it or we should be able to order it.

Here, James noted that the immediate needs that his organizations attempt to address relates to identification and medication. These are two things that WCI need on day one of their release, and without identification and/or medication other reentry needs cannot be achieved. James also highlighted that having identification and/or medication on the day of release is important due to the fact that gaining access to these things may be time consuming, which once again impedes successful, efficient, and timely community reentry.

IO employees work with WCI in numerous other ways to identify and address the needs of their clients. For example, Meredith, a staff social worker who has worked in her position with the innocence organization for just over a year, described many needs that their clients have once they are released and how she works to address them:

I have a form that I use, a needs assessment, that I assess what they need, what they have. Identification is a big one...Our clients have all identified home plans before they come out, they wouldn't be coming out if they didn't have a home plan. But I do identify or talk to them about financial resources, and employment and healthcare and social stability and hobbies and benefits, I try to do like a whole assessment of what they have, what they need, what they're interested in, what their timeline is, how we can help them, and just referring them to different organizations if that is what is helpful.

Meredith highlighted the many needs that WCI have and described the process of not only identifying those needs but addressing them as well. One main need Meredith noted, and other IO employees did as well, was housing. Here she stated that all their clients have identified housing, which is critical, because not all WCI have housing upon release.

While WCI must work to gain access to medication, identification, and housing, they also must learn to navigate society once again. Wrongfully convicted individuals face the hurdle of navigating day-to-day, taken for granted experiences and interactions within a society that is drastically different than when they were first incarcerated. Samantha, an IO social worker said:

I'll go to the store with them to get them toiletries and you just notice the things you take for granted. So, you go down the aisle and you're like "you want this?" "You want this?" And they're like "what are all [of] these choices?" "What is this place?" "Why are there so many people?" "I don't know, just give me soap." And you just start to notice these things that you have not had to deal with and just how much joy they have.

Incarcerated individuals, wrongly or not, have limited agentic capacity in the choices they make, whether that be regarding toiletries, food, general movement, and many other aspects of day-to-day life that are controlled within criminal legal institutions. Once released, individuals must relearn basic societal behaviors in order to successfully navigate each day and move forward with reentry. Additionally, wrongfully convicted individuals commonly must also navigate a society that is completely different than when they were first incarcerated. Ann Marie, a client services specialist who has been working with an innocence organization for just over a year, described those difficulties in this way:

You come out into a completely different world. So, in addition to just the general difficulties around actually adjusting, you know what does a job look like? What does a time clock look like now? How are interactions with coworkers different? How are you going to get there? Are there still buses that you're familiar with? Can you drive? Can you afford car insurance?

Ann Marie, described the difficulties of navigating a society that can be completely different for WCI, specifically focusing on employment but addressing broader social issues as well. Due to the average length of wrongful incarceration, the societal changes WCI must navigate

can be grave and drastic, and individuals must learn how to function in this new society if successful community reentry is to be achieved.

By far, the biggest issue according to interviewees that wrongfully convicted individuals must deal with is managing the trauma of being wrongfully convicted and incarcerated. This manifests in every aspect of their community reentry. Organizational employees noted various aspects of trauma that their clients experience such as post-traumatic stress disorder (PTSD), anxiety, and depression. What exactly that trauma entails for each WCI varies, but organizational employees noted that acknowledging and addressing that trauma is critical. Maretta, a staff attorney with an innocence organization for just over a year, described:

It's a traumatic experience to be wrongfully convicted and have to fight for your freedom in that way and to be in such a high-pressure environment and to survive prison. Like that is not easy. And so often-times even just that reentry process I think requires a need for therapy and a need to slow yourself back into things, and time to really process what just happened to you and where you are now.

Later in her interview, Maretta elaborated on this point by linking trauma with day-to-day experiences in general, and employment more specifically:

When you're wrongfully convicted I think you've experienced a massive injustice that is traumatic and going to affect your state of mind, your well-being, it's going to affect your trust in the system, it's going to affect your ability to trust everyone around you. I think it creates missed opportunities for training and education and networking and all those other things that are so important in building a career. And I think that it also creates all this trauma to you and your family and your community...and then I think that it's just impossible for that to not have affected your ability to find a job, your ability to work, it's just all of these things are so interlinked.

Maretta noted the unique trauma that WCI can experience and the distinct ways in which it can manifest in terms of employment. The grave injustice that WCI experience may impact their ability to trust individuals and institutions, both within and outside of the criminal legal system, which can make it difficult not only to obtain but maintain employment as well. Twelve of the fifteen organizational employee noted trauma among their clients and discussed how addressing and managing it is key for successful community reentry.

## **B. Barriers to Achieving Successful Community Reentry**

While wrongfully convicted individuals have many needs that should be addressed once they are released, they often experience barriers to meeting those needs when trying to access services to help them in the community reentry process. Due to their unique circumstances, WCI may have a more difficult time accessing reentry services compared to other individuals released on probation or parole. This is a distinct challenge that both organizational employees and WCI discussed when referencing not only community reentry, but also access to programs while incarcerated and preparation for release. Caitlyn, an organizational social worker employed with

the innocence organization for three years, described accessing services for community reentry among her clients:

The availability of resources for exonerees is significantly lower than for people who actually did what they did and for people who are being paroled or released on probation. There are hundreds of employment programs across the country for people with records, for people who have gone through the system, for people who are coming out...But if you're exonerated, you are there one day and out the next and none of those things, none of those programs support you, because you are not on probation or parole. You are not an ex-felon because you might have your record expunged and then you're ineligible for any of those programs. So, in that way, you lose the support opportunities, and you lose the jobs that come with those things.

Caitlyn described the many services that are available to help individuals who are on probation or parole reenter the community; however, those same services may not be available for individuals who are officially exonerated. WCI are often released quickly with little or no time to put together a reentry plan. Once released, they may not have access to certain services to aid them in meeting the many needs they have. This indicates that WCI may have less community support and a more complicated experience with community reintegration in comparison to other individuals released on probation or parole, making their overall community reentry experience significantly more challenging.

At times, wrongfully convicted individuals need to obtain employment to comply with the terms of their release, or they risk being in violation of those terms and could experience reincarceration. However, like other aspects of community reentry, they experience many barriers in trying to gain employment. These barriers include dealing with mental and physical health issues and being ready and able to work, checking the 'box' that inquires about one's criminal history, discussing their experience of being wrongfully convicted, explaining large gaps in their work history all while trying to use technology that may be foreign to them and navigate a society that looks completely different than before they were incarcerated. Maretta, staff attorney, summed up barriers to employment here:

I have an exoneree from last April who has really kind of struggled to find a job and I can tell he's really trying. But when you've been wrongfully convicted for nine years, and those nine years are during your 20's, you're taken out of your freshmen year courses, and wrongfully convicted of a crime and spent 9-10 years fighting for your freedom. He doesn't have the educational background that he would have otherwise. And so, it's been really hard for him to find work and to make up for all of that lost time. I mean, its job training, its resources, its references, its networking, those are all things you build over time and they [WCI] haven't had that time.

Maretta provided a detailed example of how being wrongfully incarcerated negatively impacts WCI life course, and specifically their employment trajectory. They lose educational opportunities, job training and work experience, networking opportunities in what are considered significant time periods for employment, which ultimately heavily impacts their transitions to

adulthood. Spending time incarcerated does not give WCI the same employment opportunities as those who never experience incarceration and has grave long term impacts. Furthermore, being wrongfully convicted and incarcerated completely derails the employment routes of some individuals, a route that is not put back on track after release. Experiencing wrongful incarceration, impacts lifetime earnings, wage growth, and wealth accumulation, and it can completely disrupt employment paths. For example, Caitlyn, a director of social work, employed with an innocence organization for just over three years, discussed how being wrongfully convicted and incarcerated can seriously impact the work opportunities for some WCI:

When it comes to exonerees who have had higher education and were working in higher level jobs, they have a very hard time getting back into the same fields. Especially business administration. We've had a couple who were chefs or homecare workers beforehand, they are *totally* disqualified from those jobs. They're not finding any work in those fields. So, it's been a lot of them coming back and saying "ok, that's what I did before, what am I willing to do now?" And "what kind of places will take me?" and by and large, it's tricky.

Employment opportunities may be completely different after release from a wrongful conviction. WCI must figure out not only what types of jobs they are qualified for, but also what types of jobs they are allowed to perform and obtain. This has the potential to be a source of frustration if they had spent time and money training and educating for one job that they enjoyed performing but are no longer allowed to do that job anymore.

Beyond navigating the challenges of finding employment with disruptions to their life course in terms of education and training, wrongfully convicted individuals must also deal with stigma that is often attached to incarceration. Although WCI were incarcerated for crimes they did not commit, they still spent time in an institution that society has largely constructed as a negative environment. For example, James, who runs a non-profit particularly focused on providing community reentry services, described it in this way:

The fact that they were in prison at all makes it extremely difficult. So, what happened when they were in prison, they weren't out having a work history that would be helpful to them in finding a job, and much more detrimental than that, they were in a place which many members of our society rightly understand to have been a not good place for most of them and for most people, even if you can get over the question of why they were there, generally you still have the issue of that they were in a bad environment. So, there is a taint of prison for sure that implies to people that this is a risky person to employ...and what you find and I hear this from folks all the time, is just the fact that I was in prison was enough.

The stigma of incarceration attached to wrongfully convicted individuals can essentially follow them throughout their lives and immensely alter their opportunities for obtaining employment. This is especially true when considering the status of one's criminal record. Organizational employees indicated that the policy for addressing the status of WCI criminal records can vary from state to state, but overall, their criminal record can be a barrier when searching for employment. Being released does not automatically clear an individual's criminal

record, and their wrongful conviction charge can remain on their criminal record for years, making the employment process arduous. Stella, who has been the operations director for an innocence organization for over five years discussed the barriers with client's criminal record in this way:

Here in [name of state] we don't have an expungement and so, even if you are exonerated and you have the paperwork for it, if anyone does a background check it still pops up. In [name of state] that's a major issue, even our exonerees where their conviction was overturned, when people do background checks that still comes back.

A background check that still shows a criminal record despite exoneration has important and negative implications for WCI when trying to access employment, because many employers run some sort of background check on potential employees. Furthermore, advances in technology make a quick internet search very easy for employers to conduct, and if an individual's case has received any media attention, which most have, the employer will be able to uncover the information of their wrongful conviction.

In addition to the challenges that WCI face when trying to obtain employment, once again, the trauma of being wrongfully convicted and incarcerated can manifest in workplace environments and impact their overall employment experiences. Meredith, staff social worker, made this claim:

These are people [WCI] with usually PTSD symptoms. So, dealing with other people is really hard, and dealing with authority can be hard, and you know [situations] getting escalated quickly, having flashbacks, having panic attacks, having aggressive outbursts based on PTSD can definitely be a barrier for people.

This example indicates that even if WCI are able to navigate the previously mentioned challenges to obtaining employment, the trauma of being wrongfully convicted and incarcerated can penetrate their workplace environment and behavior, which has the potential to make it difficult for them to maintain a job long term.

Contributing to the trauma of wrongful conviction, even if individuals are freed, receive criminal record expungement, and exonerated, they are continuously questioned about their actual innocence throughout their community reentry experience. Charlene, a legal administrator who has worked with an innocence organization for two years, describes this experience regarding her clients:

[Society needs] to understand that there are people that are incarcerated that are innocent, I think that's the number one. Until people really realize that, there's still this black cloud over people that have been exonerated. So, I think that's the number one thing, understand that there are people that are wrongfully convicted, and understand what happens to them after they prove their innocence.

This notion of believing innocence was prevalent throughout organizational employee interviews. There continues to be this common idea within society that the criminal legal system

remains flawless and if someone has spent time incarcerated, on some level, that incarceration was justified. Charlene highlighted the importance of understanding that this idea remains, and it is something society must overcome in addition to learning more about post-release experiences among WCI. Furthermore, Charlene claimed that until society acknowledges the reality of wrongful convictions, a “black cloud” will continue to hang over WCI. This is an interesting point mentioned by Amelia. Amelia is unique in that she currently works for an innocence organization as the director of outreach and education, but she is also an exoneree. During her interview, she alluded to Charlene’s idea of the “black cloud.” Amelia stated:

A lot of people believe, well you went to prison, maybe you didn’t do the crime, but maybe you took a little part in it. You know sometimes they think “oh you got off on a technicality.” And so, still you’re going through those judgements.

Amelia’s statement provides evidence for the fact that although she has achieved exoneration, some individuals may not believe that she is actually innocent, and the stigma of incarceration continues to remain. This of course has the potential to impact community reentry among WCI. It is important to address the fact that innocent people do spend time incarcerated in order to help them overcome barriers and move forward with their community reintegration.

### **C. Providing Support and Resources to Aid in Community Reentry of WCI**

Organizational employees appeared to be well-informed of the many challenges that wrongfully convicted individuals may experience when reentering the community; therefore, they devised strategies to aid their clients in their reentry endeavors. The level of support depends on the size and structure of the individual organization. For example, those organizations that employ social workers or social work programs have the time and resources to provide more support in comparison to those organizations that only include staff attorneys. However, regardless of the size of the organization and the particular skills and personnel available to that organization, all provided at minimum some support in obtaining employment and aiding in community reentry for their clients. One overarching strategy that organizational employees utilized in WCI employment search included writing letters and making phone calls to potential employers on behalf of WCI. Organizational employees invoked this strategy to explain the unique circumstances of their clients to help WCI gain access to employment or other needed services. Brian, an IO executive director for over three years, described how their organization tries to explain the distinctive situations of WCI:

We are happy to reach out to whoever we need to inform them of this situation and at that point it really depends on how receptive the person on the other end of the phone is. If they’re willing to take a few minutes to learn, “oh, this means that the judge declared them completely innocent and they were wronged by the state and the system, wow!” If someone can get to that point then usually they’re willing to go to some length to try and help somebody out.

Brian indicated that individuals at their organization can provide a key reference when their clients are trying to gain employment. His example shows that not all employers are aware of what being wrongfully convicted actually means and providing that critical insight can aid WCI in



obtaining employment. Another strategy that organizational employees utilized in helping clients find employment entails cultivating relationships with other entities that can help WCI obtain employment. These include organizational connections with facilities and businesses within communities or through friends and families of WCI. Katie, a social worker at an innocence organization for over 13 years described how “connections” help clients gain employment:

We have to kind of look online or by calling people or finding out if we have any contacts, which we will do and which I do. Sometimes they [WCI] have connections, either through family members, and sometimes the local attorneys that work with us have connections. So, a lot of times the only way that these people [WCI] can get jobs is by somebody who knows somebody, and I mean that’s the case in the regular job world too. A lot of who you know.

Knowing someone who can help you find a job is critical for wrongfully convicted individuals when trying to access employment. It is very often through connections that WCI are able to obtain a job. What can be challenging with this particular strategy is that WCI may lose contact with friends and family while incarcerated or be unconnected to an innocence organization, and therefore, unable to rely on this network for employment opportunities once they are released.

IO employees acknowledge that their clients need immediate and long term support, not only with employment, but with other aspects of their community reentry as well. They also note the unique position that their clients are often in as wrongfully convicted individuals; therefore, organizational employees have devised creative strategies to provide support and resources to aid in the overarching community reentry of their clients. Bethany, a deputy director and staff attorney, stated:

It’s difficult [providing reentry support] because every client is different, and every circumstance is different, but I’m trying to develop a rolodex, a database, of like all these different things and just provide like a resource manual.

Bethany noted that providing reentry support can be difficult due to each unique circumstance of the wrongfully convicted individuals. However, she was working to develop a general “database” of various resources that WCI can access. This is a strategy that other organizations and communities at large could work to put together. This collaborative approach could work to overcome barriers mentioned in the previous section and aid in the overall community reentry of WCI. In addition to developing a resource manual for WCI, community members and businesses have the opportunity to provide support as well. Charlene, legal administrator of an innocence organization, noted how their organization has utilized this strategy:

There are people that are willing to help exonerees get on their feet and we have had universities agree to pay tuition to help them. There are a lot of people that are willing to offer services, there’s doctors that will offer free services, dentists that will offer free services, social workers that will offer free services. We have a list of all of those that will do that type of thing and so we obviously give that information to them [WCI].

Charlene highlighted how their organization has developed relationships with a variety of individuals throughout society that will offer free services to their clients. This example shows that community members have diverse opportunities in aiding WCI throughout their community reentry experience.

## V Discussion

Existing scholarship indicates that wrongful convictions continue to occur and create negative implications for society and those individuals who are wrongfully convicted (Forst, 2013; Huff & Killias, 2013; Norris et al., 2020; Shlosberg et al., 2020; Smith & Hattery, 2011; Weigand, 2009; Westervelt & Cook, 2012). The majority of attention is often given to experiences leading up to release from a wrongful conviction and fail to follow individuals long term to examine how being wrongfully convicted can impact individuals for many years after their release.

The current study was designed to more specifically examine the impacts of being wrongfully convicted and explore the community reentry experiences particularly pertaining to gaining and maintaining employment. Through the use of qualitative interviews with those who work closely with wrongfully convicted individuals, innocence organizational employees provided a wealth of information detailing many of the challenges that wrongfully convicted individuals encounter as they attempt to rebuild their lives. Furthermore, this study worked to apply the use of traditional theoretical perspectives among a novel group, providing support for the continued use of life course perspective and stigma when examining any group that has experienced incarceration, wrongful or not.

Findings reveal that WCI must navigate a lengthy complex process to receive their release, and while being released from a wrongful conviction is a critical element, it is only the beginning of a difficult journey that individuals must undergo. Some of the experiences that wrongfully convicted individuals encounter are similar to those of other individuals released from incarceration. They experience challenges of finding housing, reconnecting with loved ones, gaining employment, and managing trauma, all while attempting to reenter a community and society that may be drastically different than when they were first incarcerated (Alexander-Bloch et al., 2020; DeShay, 2016; Grounds, 2004; Scott, 2010; Shlosberg et al., 2020; Weigand, 2009; Westervelt & Cook, 2012).

Although wrongfully convicted individuals may have some experiences that mirror other formerly incarcerated individuals, they also have some experiences that are explicitly unique. For example, wrongfully convicted individuals may experience a quick release removing any community reentry preparation before their release and lack access to certain services that could benefit them in their reentry processes (Westervelt & Cook, 2008). Additionally, wrongfully convicted individuals may receive much support through media attention and community support before their release. Once WCI are released, these avenues of support may disappear as attention is diverted to other cases. Oftentimes, WCI must navigate unique forms of trauma directly produced by their wrongful conviction. Not only are they managing various psychological issues produced by their wrongful conviction, but many participants discussed how wrongful convictions created distrust in WCI making it challenging to broadly reenter the community and more

specifically, secure employment. Overall, wrongfully convicted individuals may have to navigate community reintegration largely on their own, creating a more difficult path in comparison to other formerly incarcerated individuals.

Each of the aforementioned negative consequences are thrust upon wrongfully convicted individuals and upon release, they often encounter a number of barriers that complicate their community reentry processes. Due to their unique status as WCI, various reentry programs and services may not be available, lending additional support that community reentry among this group may be a sole endeavor. The lack of resources provided to WCI is just the beginning of the challenges that must be overcome to achieve successful community reentry. Findings show that WCI must also navigate difficulty gaining employment, disruptions to their life-course, stigma, trauma, and carrying a criminal record. More specifically, experiencing a wrongful conviction has negative implications for the life course, as individuals are pulled from their current employment or educational institutions, and once released, may not qualify for previous jobs that they use to perform. This indicates that any resources previously put into their education and employment are essentially erased and individuals must start over. While incarcerated, WCI are not in the labor market with the ability to plan and work toward retirement, which has the potential to increase the overall time they must spend within the labor market. These named consequences not only disrupt life course trajectories for individuals, but also have the potential to divert and lengthen (re)achieving markers of adulthood. Furthermore, the “black cloud” continues to follow WCI long after their release, which is a challenge individuals must endure throughout their community reentry experience.

Findings also show that IO employees are aware their clients encounter a variety of challenges when reentering the community; therefore, they have devised different strategies to assist in the community reentry processes. Innocence organizational employees speak to employers or contact community connections to try and aid their clients in gaining employment. They also have begun to develop a resource manual to share with their clients to help overcome the lack of programs and services often provided to their clients. Additionally, participants from the current study highlight a myriad of ways in which communities—and society more broadly—can support WCI. One initial way to support WCI is for society to acknowledge that wrongful convictions do occur. WCI may be expected to prove their innocence over and over to employers, criminal legal actors, and wider society, years after their release, which creates challenges for WCI but also reinforces the assumption that our criminal legal system is flawless. But as the statistics for wrongful convictions indicate, our criminal legal system is not flawless and mistakes do occur, resulting in innocent individuals spending time incarcerated (Acker, 2017; Baumgartner, Westervelt, & Cook, 2014). If society can acknowledge this reality, we can all work to reduce wrongful convictions as well as provide more support to WCI. Wider societal knowledge and acknowledgement of wrongful convictions can also work to reduce the stigma that WCI may experience, by creating a better understanding of the ways in which individuals can get swept into the criminal legal system by no fault of their own.

There are numerous policy implications that could be put into place to better support WCI. First, WCI should have access to the same reentry services as those individuals released on probation and parole. Denying WCI resources to reentry is yet another way that the criminal legal system harms these individuals (Westervelt & Cook, 2010). Allowing them to access similar

services is one way to better support WCI. Additionally, WCI may experience a quick release with no plan or preparation for that release. To better aid WCI in their reentry efforts in terms of quick releases, their community reentry preparation should begin as soon as their case is taken on by an innocence organization. While not all cases may go through an innocence organization, this is a small step in trying to support WCI in their community reentry journey. Although some cases are involved in litigation for many years, this would give ample time to provide education, training, counseling, and various services that individuals need to successfully reenter the community.

Findings presented here also show how WCI need long term support. Therefore, policy and lawmakers should devise specific strategies in aiding WCI long term. This could include financial support, education and training opportunities, assistance in gaining employment, providing housing, and counseling support to help manage the trauma caused by wrongful conviction. Long term support mechanisms should be implemented in combination with existing compensation statutes. Furthermore, existing compensation statutes should be reevaluated to allow for a smoother and quicker receipt of funds. Currently, processes of compensation are complex, lengthy, and have many limitations, making it extremely difficult for WCI to receive compensation (Mandery et al., 2013). The lack of financial support through compensation contributes to arduous community reentry process.

Finally, I align with other scholars who have recommended immediate criminal record expungement upon release for a wrongful conviction (Shlosberg et al., 2014). This could be particularly beneficial when searching for employment, because it would allow WCI access to occupations that require clean criminal histories. This could also prevent WCI from disclosing their wrongful conviction if they chose to keep that information private.

### **A. Limitations and Directions for Future Research**

Findings from this study should be considered within the context of some limitations. First, while the current study attempted to recruit a larger and more diverse sample of IO employees, only a modest number of individuals were available to participate. A larger, more diverse sample may reveal additional challenges that WCI may experience or provide other best practices for IO to better address the needs of WCI. The perspectives of the current sample may also differ from those who were unable to participate. The current study also lacks the direct experiences from wrongfully convicted individuals themselves. Including the perspectives of WCI can provide a more detailed understanding of community reentry experiences (a manuscript addressing this limitation is forthcoming).

Future studies should work to include those voices of wrongfully convicted individuals to examine their lived experiences in community reentry after release from a wrongful conviction. Again, this will provide a better understanding of WCI experiences and provide unique ways to assist them in their community reentry efforts.

Moreover, there are many aspects to community reintegration beyond finding and securing employment. And while employment is a critical aspect to successful community reentry, future studies should also work to examine other aspects of community reentry to provide a more holistic understanding of how community reentry may differ for WCI in comparison to other formerly

incarcerated individuals. Once again, this will aid in tailoring resources to address the unique needs of WCI.

Additionally, the findings from this study should be considered within the geographical context of the United States. All participants worked for U.S. based organizations and only discussed the community reentry of their clients in communities throughout the United States. Furthermore, concepts of stigma, community reentry experiences, and other negative consequences of wrongful conviction may manifest differently in various geographical locations. Future studies should work to overcome these limitations by focusing on organizations and community reentry experiences of WCI in areas throughout the world to see if the findings are similar or different than those presented here.

## **B. Conclusion**

Wrongful convictions continue to produce a wide variety of negative implications. More specifically, individuals who are wrongfully convicted experience a massive injustice and have their lives completely disrupted. The majority of attention often resides prior to release from imprisonment; however, community reentry after wrongful incarceration is challenging and continues long term.

One critical aspect of successful community reentry includes finding and securing employment. Wrongfully convicted individuals encounter numerous barriers in navigating the job market due to consequences produced by their wrongful conviction. WCI must deal with large gaps in their employment history and the stigma attached to incarceration and criminal records, all within a society that may be completely different than when they were first incarcerated.

Furthermore, WCI must address these challenges with fewer resources than those offered to other individuals released on probation and parole, indicating that the community reintegration journey of WCI can be even more difficult. Despite committing no crime, WCI are subjected to the harsh treatment of the criminal legal system and then offered little or no support upon their release. Therefore, it is imperative that we work to reduce the instances of wrongful convictions but also attempt to provide services to help alleviate the harms caused to innocent individuals.

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**The Reliability of Expert Evidence in Canada:  
Safeguarding Against Wrongful Convictions**

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**Faculty Endorsement** – Mark Green, Professor (PT), University of Ottawa, Faculty of Law (Common Law). I endorse this article for publication in the *Wrongful Conviction Law Review*.

*This paper analyzes Canada's common law as it currently stands regarding expert evidence and key inquiries and reports on expert evidence and wrongful convictions done in Canada and on forensic science. The analysis will demonstrate how Canada's laws, inquiries, and reports have not gone far enough to ensure expert evidence is reliable in order to protect innocent citizens from wrongful conviction. I propose that to truly safeguard against the admission of improper expert evidence in trials Canada must (1) heighten the standard expert evidence must meet to be considered reliable (2) foster a system of peer-reviewed research, training, accreditation, and accountability in forensic science disciplines in Canada, and (3) ensure that all legal actors (i.e., police, lawyers, and judges) receive continued training on best forensic science practices and their limits and have free access to information and education on forensic science disciplines when needed. This paper will discuss how systemic changes in forensic science disciplines in Canada, continued education in forensic sciences for legal actors, and changes in the law of reliability of evidence are necessary to prevent improper expert evidence from continuing to contribute to wrongful convictions.*

- I. Introduction
- II. The Law of Expert Witnesses in Canada
- III. Canadian Inquiries
- IV. The Hart House Report
- V. Preventing Wrongful Convictions: Systemic Reforms
- VI. Preventing Wrongful Convictions: Trial Reforms
- VII. Conclusion

## I Introduction

Wrongful convictions are a reality in any justice system. In Canada, the main recourse for the wrongfully convicted is Ministerial review by the Minister of Justice but Ministerial review is only available after all other appeal routes have been exhausted. In past decades, there have been many inquiries on wrongful convictions in Canada that have resulted in practical and systemic

recommendations to better the criminal justice system. It is my view that Canadian common law, judicial review, and these inquiries have not done enough to safeguard against wrongful convictions. Judicial review for miscarriages of justice is rare and inquiries are infrequent and tend to come about because of grave wrongdoings on the part of the justice system. Inquiries also produce recommendations, not law.

Inquiries in Canada have shed light on issues involving expert witnesses and expert evidence. There is a growing understanding in the legal world that much forensic science and medical evidence presented by experts in courts is not reliable.<sup>1</sup> Forensic science is a highly respected discipline. Science is relied upon to reveal truths about the world and humanity. It saves lives and improves the world. In the legal world, however, science has the power to save or destroy lives. Forensic science evidence is a common feature in criminal trials. While expert evidence in criminal trials is meant to aid in the fact-finding process, the seemingly infallible nature of expert witnesses and evidence—as implied by the title “expert”—can lead to miscarriages of justice. Lawyers and judges often struggle to understand and apply basic scientific concepts which inhibits judges in their role as gatekeepers of admitted evidence and lawyers in their role as advocates. Canadian inquiries and data on exonerations have shown that forensic science has played a role in a large percentage of wrongful convictions. In most cases where forensic science was a contributing factor to a miscarriage of justice, the forensic science evidence admitted at trial was either wrong or exaggerated.<sup>2</sup> The issue with improper expert evidence cases is always that the admitted evidence was unreliable and the checks and balances we have in place in our legal system were unable to show that the evidence was unreliable. Admissibility standards, judicial discretion to exclude evidence, and appeals did not work to reveal that the expert evidence was unreliable. Unreliable evidence being used to falsely corroborate a false narrative in trials is a problem. The admission or belief in unreliable evidence or the qualification of an unqualified expert witness invalidates the trial process and subsequent appeals. Admitting unreliable evidence invalidates a verdict. As addressed in *R v. Mohan*,

There is a danger that expert evidence will be misused and will distort the fact-finding process. Dressed up in scientific language which the jury does not easily understand and submitted through a witness of impressive antecedents, this evidence is apt to be accepted by the jury as being virtually infallible and as having more weight than it deserves.<sup>3</sup>

The infallibility of expert evidence is one aspect of the issue. Numerous systemic issues increase the risk that expert evidence admitted at trial may not be reliable. For instance, the underfunding of legal aid and a lack of independent oversight on the handling of expert evidence can lead to unreliable evidence getting past the system’s checks and balances.<sup>4</sup> Retaining an expert witness costs much time and money. Accordingly, a wrongfully accused person may not have the resources needed to defend themselves against an expert.

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<sup>1</sup> Gary Emond & Kent Roach, “A Contextual Approach to the Admissibility of the State’s Forensic Science and Medical Evidence” (2011) 61 U Toronto LJ 343 at 344 (*Emond & Roach*).

<sup>2</sup> *Ibid* at 360.

<sup>3</sup> *R v Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9, at para 23, online: <<https://canlii.ca/t/1frt1>> [*Mohan*].

<sup>4</sup> Gary Emond & Emma Cunliffe, “Reviewing Wrongful Convictions in Canada” (2017) 64 C.L.Q. 473.

My paper will analyze Canada's common law as it currently stands on expert evidence and key Canadian inquiries and reports on expert evidence, forensic science, and wrongful convictions. From this analysis, I will demonstrate that our current legal standards have not gone far enough to ensure expert evidence is reliable to protect innocent citizens from wrongful convictions. I will propose that to truly safeguard against improper expert evidence being admitted in trials we must (1) heighten the standard that expert evidence must meet to be considered reliable, (2) foster a system of peer-reviewed research, training, accreditation, and accountability in forensic science disciplines in Canada, and (3) ensure that all legal actors (i.e., police, lawyers, and judges) receive continued training on best forensic science practices and their limits and have free access to information and education on forensic science disciplines. I propose that these systemic changes in forensic science disciplines in Canada, along with continued education in forensic sciences for legal actors, and changes in the law of reliability of evidence are necessary to prevent wrongful convictions.

## II The Law of Expert Witnesses in Canada:

The Criminal Code and the Canada Evidence Act<sup>5</sup> govern expert witness rules in Canada. The common law governs expert evidence legal rules in all provinces where these statutes are silent. Under criminal law in Canada, there must be enough evidence to convict beyond a reasonable doubt. Expert testimony and expert forensic science testimony is admissible in Canada, but there are limits. The trial judge must ensure that throughout the expert's testimony, the testimony remains within the proper scope of expert evidence and that the evidence itself is properly the subject of the expert evidence. The trial judge must not assign any weight to expert evidence that goes beyond its proper scope.<sup>6</sup> Lawyers should critically assess the opinion, properly present the opinion, relate the opinion to the issue, and recognize and respect the limits of the opinion and the expert. Science is also constantly evolving; therefore, all participants of the justice system must be diligent in considering those advancements and their impact on prior theories.<sup>7</sup>

Established in *Mohan*, the four criteria necessary for expert evidence to be admitted at trial are: (1) relevance, (2) necessity in assisting the trier of fact, (3) the absence of any exclusionary rule and (4) a properly qualified expert.<sup>8</sup>

Evidence is relevant if it is logically relevant. Judges must weigh what the evidence is worth versus its cost, its reliability versus its effect on the trial process, whether the time spent on the expert evidence is worth it, and whether it would mislead the jury more than it would be helpful and reliable to them. In other words, the trial judge must consider whether the evidence is likely

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<sup>5</sup> *Criminal Code*, RSC 1985, c C-46, s 696.1, online: <<https://laws-lois.justice.gc.ca/eng/acts/c-46/page-107.html#h-130261>>; *Canada Evidence Act*, (R.S.C., 1985, c. C-5), s. 7, online: <<https://laws-lois.justice.gc.ca/eng/acts/c-5/page-1.html#h-137457>>.

<sup>6</sup> *R. v Sekhon*, 2014 SCC 15, at paras 47-48, online: <<https://canlii.ca/t/g35qf#par47>> [Sekhon].

<sup>7</sup> For example, see *Truscott (Re)*, 2007 ONCA 575 at para 777, online: <<https://canlii.ca/t/1snwd#par777>> [Truscott].

<sup>8</sup> *Mohan*, *supra* note 3 at paras 17-22.

to assist the jury in the fact-finding mission of the trial or distort the fact-finding mission. The weight society gives to expert evidence is also considered in its relevance assessment. The weight society gives to the expert evidence is determined based on whether the jury is likely to be able to keep an open mind and objectively assess the evidence or whether they will be overwhelmed by the mystic infallibility of the evidence. In society, labelling evidence as “expert” and “science” incidentally assigns a heightened value to that evidence. The pursuit of science and expertise is noble and generally trustworthy. Hence, it makes sense that people often see scientific evidence as infallible, concrete proof. Accordingly, Mohan identifies the high-value society sometimes assigns expert evidence as a criterion for admission evaluation.

Finding the expert evidence necessary means that the information is likely to be outside the experience and knowledge of a judge or jury. The “necessary” criterion demonstrates that despite the risks involved in admitting expert evidence, it is often necessary. Experts are considered experts for a reason. Countless disciplines would be outside of the expertise of the average legal professional or jury member. Because much expert evidence can be considered outside the experience of a judge or jury, judges must further evaluate the evidence based on how it might distort the fact-finding process. The expert evidence can be wholly outside of the experience of a judge or jury, but if that evidence gets in the way of the fact-finding process of the trial, it must not be admitted. The entire purpose of admitting evidence in a trial is to aid in fact-finding.

There are also exclusionary rules to consider when evaluating the admission of expert evidence. Some such exclusionary rules include, but are not limited to, credibility, character evidence, legal opinions regarding domestic laws, and privilege. Finally, you need a properly qualified expert for the expert testimony and evidence to be admitted.<sup>9</sup> A properly qualified expert is shown to have acquired special or peculiar knowledge through study or experience in respect of matters on which they undertake to testify. As mentioned, the trial judge must ensure that throughout the expert’s testimony, the testimony remains within the proper scope of the expert evidence and that the evidence itself is properly the subject of the expert.<sup>10</sup> The trial judge must not assign any weight to expert evidence that goes beyond its proper scope. As soon as an expert’s testimony goes beyond the bounds of their expertise, the expert becomes unqualified (in that area), and the evidence, if admitted, invalidates the entire trial process and its goal towards finding the truth. Accordingly, all evidence admissibility is conditional on the fact that its impact on the trial process must not be greater than its value.<sup>11</sup> Hence, novel scientific evidence, that has not had as much research establishing its validity, requires special scrutiny.

White Burgess Langille Inman v Abbott and Haliburton Co, (“White Burgess”) added on the criteria that a properly qualified expert must also be impartial, independent, and unbiased.<sup>12</sup> Expert witnesses have a duty to the Court to give fair, objective, and non-partisan opinion evidence. They must be aware of their duty and be able and willing to carry it out. If an expert

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<sup>9</sup> *Ibid.*

<sup>10</sup> Sekhon, *supra* note 6 at para 47.

<sup>11</sup> Mohan, *supra* note 3 at para 22.

<sup>12</sup> White Burgess Langille Inman v Abbott and Haliburton Co, 2015 SCC 23, at para 54, online: <<https://canlii.ca/t/ghd4f#par54>>. [*White Burgess*].

witness does not meet this threshold requirement, their evidence should not be admitted. Once this threshold is met, concerns about an expert witness's independence or impartiality should be considered as part of the overall weighing of the costs and benefits of admitting the evidence. The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained them or the outcome of the litigation. It must also be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test referenced in *White Burgess* is the common law test used for considering bias.<sup>13</sup> The acid test evaluates whether the expert's opinion would change depending on which side they were retained by (i.e., the Crown or the accused in a criminal trial). The consideration of an expert's bias is an important factor in the admissibility of expert evidence. Expert witnesses are brought into trials to provide information and understanding on areas unfamiliar to the judge or jury. Experts do not testify in a trial to advocate for whichever party they were retained by.

Nonetheless, it is easy for people to become entrenched in the position of the side that retained them as an expert witness. Additionally, in some scientific fields, there are a limited number of experts qualified to testify or who might have been available to work on a case. This gives rise to the issue of experts being called to testify in a trial they are too close to and thus, cannot help but be biased about. At the least, an expert's suspected bias can affect the admissibility of the evidence or the weight that evidence is given.

One other case of note on the law of expert evidence is the American case, *Daubert v Merrill Dow Pharmaceuticals Inc*, (“*Daubert*”)<sup>14</sup> In *Daubert*, the majority found that scientific evidence must be both relevant and reliable. In determining relevancy and reliability, the Court must consider whether the theory or technique has been (1) tested, (2) published or peer-reviewed, (3) has a known rate of error, and (4) is generally accepted in the forensic science discipline's community. In meeting these criteria, known colloquially as the *Daubert* criteria, expert scientific evidence is considered to be demonstrably reliable. Although *Daubert* is an American case, recent Canadian decisions in the wake of *Daubert* and high-profile public inquiries into wrongful convictions have begun to accept the idea that judges should play a more pronounced gate-keeping role in determining threshold reliability and admissibility of expert scientific evidence.<sup>15</sup>

### III Canadian Inquiries

In addition to the law that governs expert witnesses and expert evidence in Canada, there have been inquiries and reports over the years providing recommendations to ensure experts and expert evidence are used appropriately.

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Daubert v Merrill Dow Pharmaceuticals Inc*, 113 S Ct 2768 (USSC 1993), online: <<https://supreme.justia.com/cases/federal/us/509/579/>> [*Daubert*].

<sup>15</sup> Emond & Roach, *supra* note 1 at 345.

The Kaufman Report,<sup>16</sup> released in 1998, was a report headed by the Honourable Fred Kaufman to address the wrongful conviction of Guy Paul Morin in 1992. The Kaufmann Report set out several recommendations for expert witnesses such as: using appropriate language, avoiding overstating opinions, ensuring opinions are understandable, enhancing communication with justice system participants, and preserving evidence.

The most notable inquiry into expert witnesses and wrongful convictions in Canada is the Ontario-based Goudge Inquiry.<sup>17</sup> The Goudge Inquiry, headed by the Honourable Stephen T. Goudge, was the third public inquiry in a decade to examine the role of forensic science and medicine in wrongful convictions. The Goudge Inquiry recommended better training, research and governance for forensic science and medicine, and it also recommended that judges should assume a more robust gate-keeping role for all forensic sciences in a trial context. Further, experts must ensure the level of certainty is clear and that controversial opinions are not oversold and stay within their limits of expertise. Experts must accurately and fairly communicate their opinion, remain objective and detached from the investigation, and stay within the limits of their expertise. Lawyers must accurately present opinions in a manner that will assist the jury in being able to accept or reject them and be prepared, educated, vigilant against weaknesses, errors, and omissions and must not exploit witnesses.

The Goudge Inquiry was created to find out what went wrong in the practice and oversight of pediatric forensic pathology in Ontario between 1981 and 2001, especially as it related to the criminal justice system and recommendations to restore and enhance public confidence in pediatric forensic pathology. The Goudge Inquiry arose after a number of evidence issues came to light in cases that involved Dr. Charles Smith as an expert witness in pediatric forensic pathology. Dr. Smith was a renowned expert in child pathology in Ontario who turned out to have lied about the extent of his qualifications. His improper expert evidence and testimony lead to numerous miscarriages of justice.

The case of William Mullins-Johnson brought Dr. Smith's improper conduct to light. William Mullins-Johnson was convicted of the first-degree murder of his niece. Dr. Smith testified that the girl had been strangled and sexually assaulted when Mullins-Johnson was babysitting her. Mullins-Johnson spent 12 years in jail and was later found to have been wrongfully convicted due to Dr. Smith's improper expert evidence. The Goudge Inquiry revealed that in all but one of Dr. Smith's 45 cases where he acted as an expert witness, the results of the examinations were highly suspect. The Inquiry resulted in 169 Recommendations that led to the redesign of the Forensic Pathology and Coroner Systems in Ontario as well as a significant review by the Police.

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<sup>16</sup> Fred Kaufman, The Honourable, *Searching for Justice: An Independent Review of Nova Scotia's Response to Reports of Institutional Abuse*, (Nova Scotia, CA: Province of Nova Scotia, 2002), online: <<https://novascotia.ca/just/kaufmanreport/fullreport.pdf>>.

<sup>17</sup> Stephen T Goudge, The Honourable, *Inquiry into Pediatric Forensic Pathology in Ontario*, (Ontario, CA: Ontario Ministry of the Attorney General, 2008), online: <<https://wayback.archive-it.org/16312/20211208090616/>> <<https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/report/index.html>> [Goudge].



The Goudge Inquiry found that Forensic pathologists should avoid misleading language, such as the phrase “consistent with” and adopt neutral language that clearly reflects the limitation of the opinion expressed. Judges should consider whether there are parts of the proposed expert evidence that are sufficiently reliable to be admitted and others that are not or must be modified to be admitted. There must also be a reliability threshold ensuring the expert has adequately considered alternative explanations, used appropriate language, and determined whether the opinion can be expressed in a manner allowing the judge to reach an independent opinion as to reliability. All participants in the criminal justice system must recognize that they have an important role to play in ensuring the reliability of expert medical evidence in criminal proceedings. Judges, lawyers, police officers and expert witnesses must be as rigorous as possible when dealing with expert medical evidence. In summary, the Goudge Inquiry resulted in the following important recommendations for the use of expert evidence: (1) the opinion should be set out in writing in clear, plain language; (2) the expert should state the facts on which the opinion is based, and the reasoning process used to reach it; (3) it should be determined whether the expert relied on the views of other experts when arriving at their opinion; (4) the expert should identify and evaluate other alternative explanations associated with the medical findings and reported history; (5) alternative explanations should be identified and evaluated; (6) the expert should identify any area of controversy and how it factors into the opinion — if there is controversy in the science, it needs to be explained in the circumstances of the case; (7) the expert should articulate limitations; (8) Crown counsel should not ask questions of expert witnesses that would make them stray outside of the limits of their expertise; (9) the expert should articulate their degree of confidence; (10) and finally, it was proposed that the National Judicial Institute consider developing additional programs for judicial education on scientific reliability and scientific method, and for the Canadian Judicial Council to prepare a Canadian equivalent to the Reference Manual on Scientific Evidence that exists in the United States.<sup>18</sup>

#### IV The Hart House Report

After the Goudge Inquiry, another inquiry, referred to as the Hart House Report, was conducted.<sup>19</sup> While the Hart House Report was not intended to make recommendations to State agencies, medical examiners, or courts, but it did raise issues and suggestions for stakeholders involved in forensic science in Canada. The Hart House Report supported critical analysis of the forensic sciences and its service delivery systems, an evidence-based approach to the disciplines, and a healthy intellectual climate of service, teaching, and research. The report found that the science underpinning many Canadian court cases requires scrutiny and that bad science cannot be the foundation for a just peace, where establishing and maintaining a just peace is the core mission of the Canadian government. The Hart House Report determined that the expert-knows-best paradigm of expert witness testimony is obsolete. As mentioned, the “expert knows best” mystic infallibility is a concern when admitting expert evidence and can lead to the admission of improper forensic evidence and wrongful convictions. The report also asserts that a way to better forensic

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<sup>18</sup> *Ibid.*

<sup>19</sup> Michael Pollanen, (ed) et al. *Forensic Science in Canada: A Report of Multidisciplinary Discussion*, (Ontario, CA: Centre for Forensic Science and Medicine, University of Toronto), online: <https://www.crime-scene-investigator.net/forensic-science-in-canada.pdf> [Hart House Report].

science in Canada is for forensic experts to give as much attention to teaching and research as they do to service. Thus, teaching and research should be a bigger focus for forensic experts. If forensic scientists keep up with research in their field, it will better ensure the validity of the science as well as their qualifications in their field. If forensic science actors also focused on informing State actors and lawyers about their discipline, it would help judges in their gatekeeper role and allow attorneys to have the knowledge and understanding to do their due diligence when selecting experts to testify.

The Hart House Report also acknowledges that forensic science lacks a national granting agency. In other words, many forensic disciplines are unregulated or do not have an overarching qualifying agency. Thus, ensuring an expert is properly qualified can be difficult. Canada's vast geographic ranges and federal and provincial divides also make forensic science funding and regulation difficult—all to the detriment of the criminal justice system that relies on expert evidence. The Report notes that the credentialing of forensic scientists in Canada is absent for some disciplines, fragmented in others, not universally accepted as necessary in some, and is not lawfully mandated for most disciplines in Canada. The report concludes that “volunteerism, good intentions, and ad hoc organizational efforts of Canada's forensic scientists are no substitute for a thoughtfully designed system of service delivery.”<sup>20</sup> This conclusion can be applied to the admission of expert evidence in Canadian trials. An inadequate system of service delivery of forensic science in Canada makes it exceedingly difficult to ensure an expert witness is properly qualified and expert evidence is sound. Thus, we have a system where unqualified experts like Dr. Charles Smith can appear qualified when they are not.

Hence, the report suggests that organizations that provide forensic science services should develop accreditation. Systemically revamping forensic science practices and accreditation in Canada is an important and necessary step towards preventing wrongful convictions. If forensic science is scrutinized, evidence-based, objective, peer-reviewed, and researched before even being considered as admissible in court, it would go a long way towards ensuring the validity of expert evidence and that experts are properly qualified. Further, the education of judges, lawyers, police, and other forensic science service users would ensure that other justice system actors have the understanding necessary to evaluate expert witnesses and expert evidence—all necessary steps for preventing miscarriages of justice.

Although the recommendations in the Hart Report are not directed at expert evidence in the criminal justice system context, their recommendations could be used to ensure expert evidence is used correctly which would prevent miscarriages of justice. Specifically, the recommendations that more funding should be allocated, a research culture fostered, researchers should be encouraged to publish their findings in peer-reviewed journals, and research methodologies should be objective, and evidence-based. If the starting place for forensic science research rests in a system where research is objective, evidence-based, and peer-reviewed, the amount of invalid or unqualified expert evidence being presented and/or admitted in courts would decrease.

The final set of recommendations in the Hart House Report involves education and training. Multidisciplinary cross-training should be encouraged between police, scientists,

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<sup>20</sup> *Ibid* at 105.



lawyers, and judges. Scientists should also obtain training and continuing education in best practices in writing reports and giving expert witness testimony. Finally, judges should also receive continuing education in forensic science, forensic pathology, and forensic psychiatry, including training in scientific literacy. In terms of practical changes that should be made to improve forensic science practises and reduce wrongful convictions, the report advocates for the following: peer review and quality management systems, accreditation programs and standards for each forensic science discipline, a systemic response to errors when they occur, and memoranda of understanding developed between forensic experts who testify in courts and the lawyers, judges, and clients, who use those services.<sup>21</sup>

## V Preventing Wrongful Convictions: Systemic Reforms

Despite several reports and recommendations on forensic science practices and expert witnesses and evidence, the Canadian government has proven reluctant to adopt recommendations, particularly ones from provincial inquires.<sup>22</sup> Furthermore, Canadian judges, lawyers, and other legal actors have been slow to learn lessons from wrongful conviction reports and to adjust their behaviour to prevent systemic failures from reoccurring. One way to prevent improper expert evidence from contributing to miscarriages of justice would be to address the Hart House Report findings to focus on issues in forensic science and forensic science education before it enters a courtroom. As the Hart House Report revealed, forensic science disciplines in Canada suffer from a lack of funding and structure. In addition, it is difficult for those who use forensic science evidence to find a way to be educated on the evidence they are using. Although having appropriate funding, structured accreditation programs, peer-reviewed research, and education programs for all forensic science disciplines in Canada would be ideal, it is an impractical solution to address the issues in our system in the interim. Instead, Gary Emond and Emma Cunliffe propose the creation of a separate justice and science commission alongside reforms to criminal case review to address the failings of our current system.<sup>23</sup> The role of this commission would be to continue research, suggest systemic reforms, and monitor the effectiveness of reforms. It would incorporate legal and scientific research experts with an advisory committee of prosecutors, police, forensic scientists, scientists, and academic lawyers. For the sake of education and access to justice, its reports should be accessible to all and directly admissible in Canadian courts without the need to call expert witnesses. These reports would include published research or disseminate suitably rigorous new research. Over time, the commission's work would also provide courts and other legal institutions with information about empirical evidence supporting forensic science procedures and the way limitations and error rates should be reported to enhance judge and jury comprehension. Emond and Cunliffe propose that fostering expertise in a stable interdisciplinary institution would allow Canadian legal actors and scientists to work together to generate evidence-based policies and procedures.<sup>24</sup> Such a commission would give structure to and allow for accountability and positive changes in our disorganized, rigid system. The most effective way to ensure that expert evidence being presented in Canadian courts is sound is to ensure the theory is

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<sup>21</sup> *Ibid.*

<sup>22</sup> Emond & Cunliffe, *supra* note 4, at 482.

<sup>23</sup> *Ibid* at 484.

<sup>24</sup> *Ibid* at 485.

sound in a systemic sense before it is presented in courts. For scientific evidence to be sound, Canada must, in some way, work towards better forensic science practises that insist on best practices and accreditation, reveal errors and limitations, and reprimand and reveal any wrongdoings. One would hope that with a more structured and accountable system, unqualified experts like Dr. Charles Smith would be stopped before ruining dozens of lives and jeopardizing the integrity of Canada's criminal justice system.

## VI Preventing Wrongful Convictions: Trial Reforms

Due to the lack of structure in forensic science systems in Canada, the reliability of expert evidence being admitted in criminal trials is an issue. Though implementing Hart House Report recommendations into our forensic science practices in Canada would resolve many evidence reliability issues, the current state of our system runs a greater risk of unreliable expert evidence being admitted and used in criminal trials. The Goudge Inquiry gave several recommendations for trial reforms that should be implemented to better ensure the reliability of expert evidence.<sup>25</sup> While helpful, I would argue that the Goudge recommendations do not go far enough. To truly safeguard against improper expert evidence and its contribution to wrongful convictions, it is imperative that certain Goudge recommendations be applied to Canada's common law or statutory law such as the Criminal Code. One of the many issues with Dr. Smith as an expert witness was that he was permitted to give opinions beyond the scope of his expertise. Thus, Justice Goudge recommended that the scope of an expert's expertise be carefully evaluated in consideration with the Mohan criteria at the admissibility stage and diligently policed during the admissibility stage and then throughout the rest of the trial. Thus, at the admission stage, judges should further their role as gatekeepers by considering the reliability of the evidence. In their gatekeeper role, the judge should continue evaluating the reliability of the evidence versus its prejudicial effect on the accused throughout the entire trial. The standard reliability of the evidence should also be improved to truly protect against wrongful convictions. If expert evidence is in any way unreliable, it is prejudicial and should not be admitted. The Goudge Inquiry recommends the Daubert criteria to evaluate the reliability of expert evidence.<sup>26</sup> Entrenching the Daubert criteria in Canadian law would guarantee that courts consider additional reliability criteria throughout the admission analysis for expert evidence. Hence, for every piece of expert evidence to be admitted, the trial judge would evaluate whether the evidence has been (1) tested, (2) published or peer-reviewed, (3) has a known rate of error, and (4) is generally accepted in the forensic science discipline's community.

Legal Scholars Kent Roach and Gary Emond are also supportive of more demanding standards for the admissibility of incriminating expert evidence. Under Emond and Roach's contextual approach to the admissibility of scientific evidence in criminal trials, where the state tenders incriminating expert evidence, its admissibility would be subject to a demonstrable reliability standard by applying the Daubert criteria,<sup>27</sup> while defence expert evidence would be subject to a lesser standard. This would be an asymmetrical admissibility approach. At the heart of Roach and Emond's proposed admissibility revisions is the aim to prevent wrongful

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<sup>25</sup> Goudge, *supra* note 17.

<sup>26</sup> Daubert, *supra* note 14.

<sup>27</sup> Emond & Roach, *supra* note 1 at 345

convictions. Roach and Emond's approach addresses two areas of concern in criminal trials: (1) the lack of scientific literacy among judges and lawyers; and (2) the Crown having better access to experts than the defence. The economic and resource imbalance that favours the Crown combined with a lack of scientific literacy results in a lack of protection for an accused when faced with improper expert evidence. This highly prejudicial systemic effect consequently lessens the probative value of the evidence. Creating an asymmetry in the admissibility onuses of the Crown and defence would provide a novel solution to address the practical inequalities that exist in criminal trials. An asymmetrical system that requires state actors to prove the demonstrable reliability of their expert evidence imposes significant burdens on state actors but would ultimately require that state actors, lawyers, and judges be given the tools, information, and education necessary to conduct such a reliability analysis. These more demanding standards are grounded in the presumption of innocence and the Crown having to prove guilt beyond a reasonable doubt, thus preventing wrongful convictions.<sup>28</sup> Therefore, I argue that in the effort to prevent wrongful convictions and ensure expert evidence remains more probative than prejudicial, Canada must go beyond recommendations and implement legal changes to our expert evidence reliability standards and the trial process when it comes to weighing expert evidence. Roach and Emond's contextual approach of a system applying the Daubert criteria and addressing systemic imbalances—so long as it is codified or entrenched in the common law—is a sound solution for how to apply Justice Goudge's recommendations in a practical sense to prevent wrongful convictions.

It should be noted that not all types of valid expert evidence disciplines are conducive to the Daubert criteria. Expert witnesses can be required in countless areas, some of which cannot be tested empirically.<sup>29</sup> Sociological fields and novel sciences for instance. In such cases, I argue that an amended threshold reliability be applied as recommended by the Goudge Inquiry:

Whether [the scientific theory or technique] is generally accepted; whether there are meaningful peer review, professional standards, and quality assurance processes; and whether the expert can relate his or her opinion in the case to a theory or technique that has been or can be tested, including substitutes for testing that are tailored to the particular discipline.<sup>30</sup>

To prevent expert witness testimony from continuing to contribute to miscarriages of justice, we must take the recommendations from inquiries like the Goudge Inquiry and apply them to the justice system practically, in a way the justice system is legally bound to follow.

## VII Conclusion

Without more structure and education in forensic science fields and greater standards for expert evidence reliability in criminal trials, accused Canadians remain vulnerable to wrongful convictions. Expert evidence has been proven as a common contributing factor to wrongful convictions, but it remains an essential part of Canada's justice system. Despite established

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<sup>28</sup> *Ibid.*

<sup>29</sup> Nayha Acharya, "Law's Treatment of Science: From Idealization to Understanding" (2013) 36 *Dalhousie LJ* 1 at 31.

<sup>30</sup> Goudge, *supra* note 17 at 495.

common law principles and inquiry recommendations, expert witnesses still pose too great a risk in contributing to miscarriages of justice. I suggest that the way to truly safeguard against improper expert evidence and testimony contributing to wrongful convictions is through changes in the law that reflect inquiry recommendations and systemic and structural overhauls of forensic science disciplines in Canada. The Goudge inquiry and others have proposed that heightened standards to ensure expert evidence reliability, such as the Daubert criteria, is one way to ensure expert evidence is reliable to prevent wrongful convictions. Further, to prevent wrongful convictions, these recommendations must be incorporated into Canada's statutory or common law to ensure the practice is adhered to.

The other necessary step to make sure expert evidence admitted in trials is reliable is to ensure the forensic or other science is sound before it gets to trial and to guarantee that legal actors can educate themselves on the science and its limitations. Forensic science disciplines in Canada are often unstructured, underfunded, and lack accreditation processes and oversight. Additionally, legal actors are often ignorant of scientific concepts and have limited opportunities to become educated before trials. By ensuring forensic science in Canada adheres to best practices and accreditation processes and experts have oversight, there would be a much higher likelihood that the expert evidence evaluated in trials is sound. Ensuring legal actors are educated in forensic sciences would also protect against wrongful convictions by ensuring that lawyers and judges are aware of any limitations to a science and do not perceive expert witnesses as infallible. Consequently, to truly safeguard against improper expert evidence being admitted in Canadian trials we must (1) heighten the standard expert evidence must meet to be considered reliable, (2) foster a system of peer-reviewed research, training, accreditation, and accountability in forensic science disciplines in Canada, and (3) ensure that all justice system participants receive continued training on best forensic science practises and their limits and have free access to information and education on forensic science disciplines when needed. Safeguarding our justice system against unreliable expert evidence is necessary in order to prevent miscarriages of justice.

### **When Justice Fails: Causes and Consequences of Wrongful Convictions (2<sup>nd</sup> Edition)**

By Robert J. Norris, Catherine L. Bonventre, James R. Acker  
(Durham, North Carolina, Carolina Academic Press, 2021)

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As thousands of wrongly convicted persons have been exonerated in the United States over the past several decades, there has been growing research examining factors which contribute to this miscarriage of justice. Wrongful conviction is an important field of study which highlights how the American criminal justice system is fallible. Scholars have shed light on how innocent people have been wrongly targeted, arrested, convicted, and incarcerated for crimes they did not commit. This is important for a variety of reasons particularly the fact that an innocent person is being unjustly punished while the real perpetrator remains unpunished. Equally important, it sheds light on the fact that wrongful convictions do happen and while we are all susceptible, some people are more vulnerable than others. *When Justice Fails: Causes and Consequences of Wrongful Convictions* is one such book that proposes to offer readers insight into how wrongful convictions are borne and their consequences.

The authors, Norris, Bonventre, and Acker are well positioned to write this book as they are leading scholars in the area of wrongful conviction. Collectively, they have published extensively on wrongful conviction issues. As expected, the breadth of information provided in this book would be welcome to any wrongful conviction, social justice, or miscarriage of justice course, to name a few. It would also be appropriate for law students not only to provide education on how the system fails, but also how inadequate defense lawyering and overzealous prosecutors contribute to wrongful convictions. The roles prosecutors and defense attorneys play impacting the outcome of a criminal case are addressed in chapters 8 and 9. The authors clearly explain that prosecutors should never attempt to secure a guilty verdict at any cost. They inform the reader that prosecutors have a duty to present all evidence to the defense, even evidence which is favorable to their opposition. Norris, Bonventre, and Acker also address the challenges of defense attorneys, particularly public defenders with overwhelming caseloads and a lack of appropriate financial resources. These are especially important points of information for future lawyers in preparing them for the realities of these professions.

*When Justice Fails: Causes and Consequences of Wrongful Convictions* is an important addition to wrongful conviction scholarship. The subtitle, however, may be a bit misleading as the authors do not clearly convey the consequences of a wrongful conviction. Rather, they examine policy implications within the chapters. If the policy implications are the consequences that are being addressed, the subtitle should reflect this with clarity. The term ‘consequences’ implies that

the book will address the effects of a wrongful conviction, but the book falls short in this area. Only one chapter in the book, Chapter 12, provides a detailed look at the consequences of a wrongful conviction through the case study of Kirk Bloodworth, a death row exoneree, who spent nearly a decade wrongly incarcerated for the rape and murder of a child. Bloodworth's post-exoneration struggles are addressed and the authors do an excellent job illustrating the consequences of his wrongful conviction. Even so, discussions of the consequences of a wrongful conviction are absent throughout the book as the title suggests. Perhaps a preface would have helped the reader better understand the purpose of the book? Chapter 1 does provide an introduction into the nature and extent of wrongful convictions, however, the purpose of the book is not clearly identified. This omission is, in my opinion, an oversight that would have helped introduce the book's purpose and framework in a clear and comprehensive manner.

Even with the absence of the preface, this book is desirable and written in a way that is easy to read and comprehend. At the onset of each chapter, the authors introduce a wrongful conviction case study. The authors catch the reader's attention by bringing in the human element to wrongful convictions. Drawing from real life exoneration cases, each chapter introduces the material from a human approach. This is one of the most appealing traits of the book. It is unique from other books in that it applies real life cases directly with the issue the chapter is covering. This was a clever way to get the reader drawn into each chapter and tie the material directly to the case study.

Another strength of the book is that chapter 2 exposes extralegal factors, such as race and gender, as they apply to wrongful convictions. Norris, Bonventre, and Acker address what is already known about racial disparity in the criminal justice system, specifically, that African Americans are disproportionately arrested and convicted. Additionally, African Americans are more likely to be wrongfully convicted. They also note that African Americans are more likely to be exonerated than Caucasian Americans as the National Registry of Exonerations reports that almost half of all exonerees are African American. Although it is understood that African Americans are exonerated at higher rates than Caucasian Americans, the authors provide some explanations as to why this may be the case. One explanation is that cross-racial identification is flawed leading to erroneous identifications.

Similar to other books on wrongful convictions, chapters 3 through 9 focus on canonical factors leading to a wrongful conviction. Unique to this book is that the authors deliver reform considerations in most of the chapters. For example, in the chapter addressing eyewitness identification, they offer suggestions, such as double-blind procedures and recording the identification process. Their recommendations are not new in wrongful conviction literature, nonetheless, the placement of the recommendations at the conclusion of the chapter is a logical sequence.

An interesting part of the book that needs to be highlighted is that two chapters are dedicated to false admissions. One chapter details interrogations and confessions while the other chapter examines guilty pleas and plea bargaining. Norris, Bonaventure, and Acker note that the purpose for this is that, while there is some overlap on the two issues, both are guilt-presumptive. The goal of an interrogation is to secure a confession and the same outcome is desired with a guilty plea. But, these occur at different points within the criminal justice process. For this reason, the

authors suggest that they warrant separate attention. Unlike other wrongful conviction books examining false confessions solely from the interrogation stage, these authors recognized that false admissions also occur at another stage: plea bargaining. Thus, false admissions, at different points within the criminal justice process, merit individual attention. This was a clear strength of the book in that it showcased the factors leading innocent persons to falsely confess to a crime during the interrogation process and during plea bargaining.

The book includes a chapter on no-crime cases which is very important in wrongful conviction literature. It is difficult for many people to comprehend that innocent persons are wrongly convicted for crimes that never even happened. Drawing on the National Registry of Exoneration webpage, the types of crimes for which people are convicted in no-crime cases are shared including, shaken baby syndrome, sexual assault, murder, drug offenses, to name a few. The authors, rightfully, note that the majority of female exonerees were wrongly convicted on no-crime cases. This clearly reflects that the issue of no-crime wrongful convictions is a female phenomenon. However, there was no thorough discussion as to why females are more likely be wrongly convicted of a crime that never happened compared to their male counterparts. While gender was mentioned throughout the book, this chapter would have been the appropriate place to highlight the gender variations in no-crime cases. A dedicated section on female no-crime cases would have been logical within this chapter since they are the ones most likely to be wrongly convicted of a no-crime case.

This book included a chapter on detecting and correcting miscarriages of justice which is especially important to a book which focuses on causes of wrongful convictions. Readers have been informed, up to this point in the book, on how a wrongful conviction occurs, therefore, a consequent chapter on how to identify and correct a wrongful conviction is necessary. The authors explain the major challenges in the exoneration process. Legal terms are easily understood for those not in the law profession which makes this chapter even more valuable.

The last chapter of the book, Wrongful Convictions: Continuing and Future Challenges, is thought provoking. Norris, Bonventure, and Acker do an excellent job discussing issues, such as, the death penalty, juveniles, and popular culture as they relate to wrongful convictions. The chapter includes a welcome section on Conviction Integrity Units (CIU) as these newly formed prosecutorial based units are important in identifying and redressing wrongful convictions within their jurisdictions.

In closing, despite some weaknesses, this book, authored by seasoned wrongful conviction scholars, is an excellent addition to wrongful conviction scholarship. The use of case studies was an intriguing way to get readers interested in the chapter by connecting the case to the chapter topic. This book captures the causes of wrongful convictions in a very detailed approach and provides suggestions for each contributing factor which would minimize the risk for a wrongful conviction. This easy-to-read book is a must read for those curious about wrongful convictions. It is a welcome addition to the existing research in the field.