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Plagues in Our Criminal Justice System: An Analysis of Wrongful Conviction in Canada and other Countries

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This study compared the causes of wrongful convictions in Canada, the United States, the United Kingdom, Australia, and New Zealand to a) determine the main causes of wrongful convictions in different countries, b) determine if the cause(s) of wrongful convictions significantly differ between each country, c) determine what, if any, recommendations were made in these countries, and d) if any of these recommendations could be implemented in a Canadian setting. The main causes were witness perjury, forensic error, and procedural error (Canada), witness perjury (US), witness perjury and police misconduct (UK), police misconduct (Australia), and procedural error (New Zealand). Kruskal-Wallis tests indicated significant differences in distribution between these countries for medicolegal death investigations, bitemark analysis, procedural error, police misconduct, inadequate legal defence, eyewitness misidentification, and witness perjury. Objectives c and d were addressed through a content analysis resulting in the following five themes emerging: lack of accountability, education, accessibility, discrimination, and post exoneration.

I Introduction

Criminal justice systems around the world depend on their ability to accurately convict the guilty, yet wrongful convictions still occur regularly. Wrongful convictions have occurred throughout the entirety of history and have been coming to light more in recent decades largely due to advances in DNA testing and analysis (Huff & Killias, 2013; Gould, 2007). Furthermore, the contributing causes of wrongful convictions are also being increasingly studied. Comparative scholarship and policy transfer has potential to allow countries to borrow and learn from one another. This can allow for changes in criminal policy, procedure, and evidence when necessary (Benson & Jordan, 2011; Delcour & Tulmets, 2019; Gould, 2007; Jones et al., 2021).

The current study analyzes the causes of wrongful convictions in Canada and other countries including the United States (US), the United Kingdom (UK), Australia, and New Zealand. These countries were chosen because they have established Innocence organizations as well as public legal databases that allow for a retroactive legal analysis of criminal cases in each of these countries. This study utilizes both quantitative and qualitative methods with a greater focus on quantitative methods. Data were collected through a content analysis coding sheet, allowing for themes to emerge throughout the data collection process. The data were then analyzed quantitatively to determine the most common causes of wrongful convictions in the various countries. Secondly, recommendations related to wrongful convictions in the countries were analyzed. The goal of this second portion was to see if any successful recommendations could be implemented in the Canadian criminal justice system. The ultimate objectives of this research were to a) determine the main causes of wrongful convictions in the countries being analyzed, b) determine if the cause(s) of wrongful convictions significantly differ between each country, c) determine what, if any, recommendations were made in these countries, and d) lastly, if any of these recommendations could be implemented in a Canadian setting to reduce the number of wrongful convictions and miscarriages of justice in the future.

II Background Information

A. Wrongful Convictions and Miscarriages of Justice

The definitions of wrongful conviction and miscarriage of justice vary across jurisdictions. According to the US National Institute of Justice (2021), a wrongful conviction occurs under one of two circumstances. Firstly, when a person convicted of a given crime is “factually innocent,” or

secondly, when there were "errors that violated the convicted person's rights" (National Institute of Justice, 2021, para. 2). The Canadian Parliament has described a miscarriage of justice as a situation in which "new, credible evidence emerges that could have affected the verdict" (Mason, 2020, p. 1). A miscarriage of justice can include police harassment, poor legal representation, or any other unlawful action on behalf of the justice system (Bohm, 2005). For this study, wrongful convictions (according to the US definition) will be focused on to limit the data collection and provide a clear inclusion criterion for cases during the data collection and analysis portion. However, the recommendations provided at the end may also be applicable to other miscarriages of justice.

B. Exonerations and Exonerees

According to the US National Registry of Exonerations (2021), "an exoneration occurs when a person who has been convicted of a crime is officially cleared based on new evidence of innocence" (para. 1). A person can be exonerated for one of two reasons. Firstly, if they have been "declared to be factually innocent by a government official or agency" with the power to make such a decision (National Registry of Exonerations, 2021, para 1). Secondly, an individual may be exonerated if they were "relieved of all the consequences of a criminal conviction" by an authority with the power to act (National Registry of Exonerations, 2021, para. 2). The subsequent action may include "a complete pardon, … an acquittal of all charges, … or a dismissal of all charges" (National Registry of Exonerations, 2021, para 1). Further, these actions must have resulted in part from evidence that either "was not presented at the trial" when the individual was convicted, or "if the person pled guilty, was not known to the defendant or the defense attorney, and to the court, at the time the plea was entered" (National Registry of Exonerations, 2021, para. 1). Thus, while the terminology may vary amongst jurisdictions, the word 'exoneree' in this study describes an individual who was wrongfully convicted of a crime and later exonerated. Exoneration is not a legal term in many jurisdictions and may instead be called an acquittal, withdrawal, stay of proceedings, pardon, or dismissal of charges.

C. Contributing Causes of Wrongful Convictions

The growth of the innocence movement has allowed scholars to begin asking why wrongful convictions occur (Bell et al., 2008; Roach, 2012; Roberts, 2003). The causes of these wrongful convictions have been considered by many scholars and legal professionals (Roach, 2012). Wrongful convictions may be caused intentionally (with, for example, malice) or accidentally (Grunewald, 2023; Naughton, 2018). In 2018, the Public Prosecution Service of Canada (PPSC) published a report on wrongful convictions, outlining some of the main causes of wrongful convictions. In this publication, they list eyewitness misidentification, false confessions, jailhouse informers, forensic evidence, expert testimony, and false guilty pleas as being recognized hallmarks of wrongful convictions by many scholars in the field (Campbell, 2018; Bell et al., 2008; Poyser et al., 2018; PPSC, 2018; Roach, 2023; Roberts, 2003).

D. International Comparison

The literature on wrongful convictions is growing rapidly, and more authors are considering international comparisons (Huff & Killias, 2013; Roach, 2015; Sangha et al., 2010; Shapiro, 2020). Organizations such as the Innocence Network (2021) provide examples of why global collaboration of innocence organizations is highly important. International participation

allows countries to learn from one another, improve resource accessibility for exonerees, and advocate for policy change when necessary. Roach (2015) states that comparative scholarship is one of the best ways to "understand the causes of and remedies for wrongful convictions" (p. 381). Shapiro (2020) also notes that more research is needed on these topics and that cross-national analysis is highly important for "overcoming the wrongful conviction problem" (p. 934). For these reasons, this study chose to take an international approach to see what can be learned from other systems.

E. Significance

We chose to analyze Canada, and compare it with the US, the UK, Australia, and New Zealand for several reasons. The first reason is accessibility. All these countries have Innocence organizations and legal databases available to the public which allow for increased transparency and accessibility. This is significant as wrongful convictions research is a unique topic and thus accessible, transparent data are important. Secondly, these systems have different approaches to legal procedure and policy. Thus, each country has considered the causes of wrongful convictions differently. As these countries' policies, procedures, and processes vary, it allows for greater consideration of different methods when addressing potential remedies. Lastly, there is no current literature that compares rates of wrongful convictions between these countries using a similar mixed methods approach.

II Methods

A. Research Design

To address the research questions, two separate content analyses were employed. The first used legal cases and was analyzed quantitatively. The second used documents containing recommendations for remedying wrongful convictions. This second content analysis was approached qualitatively allowing for themes to emerge during analysis.

A total of 440 court cases (100 from the US, 100 from the UK, 95 from Canada, 91 from Australia, and 54 from New Zealand) were collected and coded. The UK cases included all jurisdictions in the broader UK. These cases were analyzed in Microsoft Excel® and SPSS® Statistics. The quantitative portion of this study used these cases to answer the first two research questions (a) what the main causes of wrongful convictions in each country are and (b) do these causes significantly differ between each country?

The qualitative component of the study utilized a non-numeric policy content analysis to identify themes in documents containing recommendations provided to reduce or address concerns surrounding wrongful convictions. A total of 22 documents were collected (five from the US, six from Canada, five from Australia, four from the UK, and two from New Zealand). These documents included public inquiries, royal commissions, judicial reports, and academic studies. This portion of the study was used to answer the second two research questions which were to (c) determine what, if any, recommendations were made in these countries, and d) if any of these recommendations could be implemented in a Canadian setting to reduce the number of wrongful convictions and miscarriages of justice in the future. While these samples are by no means exhaustive of all cases and recommendations in these jurisdictions, they were chosen through a

random sampling method to limit the quantity and analysis of data. Additionally, while there is much to learn from policy transfer research methods, scholars have also outlined certain associated risks (James & Lodge, 2003), It may be best to consider the transferability of these recommendations as comparative "lesson drawing" than absolute policy transfer (Dolowitz & Marsh, 2012; James & Lodge, 2003; Jones et al., 2021; McFarlane & Canton, 2014; Rose, 1991).

B. Sampling

a) Legal Content Analysis - Quantitative

Court cases were selected using non-probability purposive sampling. Purposive sampling allows for fast and relevant data collection. Additionally, purposive sampling allows the researcher to collect data based on a set criterion specific to the area of interest which permits a narrow, systematic search. Thus, this sampling method allowed cases to be chosen that directly related to the research question. Specifically, cases were chosen that were known wrongful conviction cases (i.e., the individual had been formally exonerated/acquitted/pardoned, although the term varies amongst jurisdictions) in which the individual spent some time wrongly incarcerated.

Cases were taken from various online platforms. The primary sources were legal databases including WorldLii (for the US), CanLii (for Canada), BaiLii (for the UK), AustLii (for Australia), and NzLii (for New Zealand). These sources were chosen because they contain extensive libraries of cases from nearly all jurisdictions. Secondary sources included news articles, academic papers, and Innocence organization websites. These sources were used for supplementary information when the legal case did not contain enough context, or when legal cases were referenced but did not appear in any of the legal databases when searched.

b) Policy Content Analysis - Qualitative

Documents that contained recommendations for reducing miscarriages of justice were collected through online sources. These were collected using non-probability purposive sampling for the same reason that the cases were collected using this method. These documents included public inquiries, commissions, reports, and academic studies. All documents were collected using a Google search using the search phrases "wrongful conviction" + "recommendation" + "name of country." The 22 sources collected are by no means exhaustive of the documents available. The recommendation(s) from these documents were then analyzed and coded for themes relating to the causes and consequences of wrongful convictions.

C. Quantitative Component

The data collection process differed slightly depending on the country as the resources in each country are slightly different. Generally, the country's Innocence Project, exoneree database, or Criminal Conviction Review Group (CCRG) website was used first to identify the names of known wrongful conviction cases. After, their cases were searched in that country's legal database. Because each country, jurisdiction, and level of court use different key words to identify wrongful convictions, this process allowed for mainstreamed collection and ensured that only wrongful conviction cases were being collected. For the US specifically, the National Registry of Exonerees was used. Thus, beginning with Innocence organizations or CCRG websites allowed relevant cases to be identified early on, and their official court cases were subsequently collected. Occasionally,

the legal cases were not accessible in the public legal databases, possibly because many exonerees change their names following exoneration, which may make their cases harder to locate and, depending on the jurisdiction or level of court, the case may never have been made publicly available. As well, cases involving minors would have pseudonyms, so their cases were difficult to locate. Regardless of the reason, in situations where the actual court case was not available, supplementary information was searched for. This included both academic and news articles. A basic Google search with the exoneree's name, the country, and year of crime (if known) was done. In cases where nothing relevant came up, the terms "wrongful conviction" and "miscarriage of justice" were also included in the search.

For the coding phases, initially a total of fifteen primary coding groups were created. However, once coding was completed, an additional four groups emerged resulting in nineteen overarching coding groups. These primary codes related to causes of wrongful convictions as they are relevant to the research question. Nine of these coding groups related to the forensic sciences and the rest related to professional misconduct, human error, human bias, procedural error, or a combination of these. In addition to these primary codes, other relevant contextual and demographic information was collected (Table 1).

Table 1. Final Coding Groups

Primary coding groups (causes of WC)	Other relevant contextual and demographic information collected
Forensics: Medicolegal Death Investigation, DNA Analysis, Hair Analysis, Fiber Analysis, Firearm/Toolmark Analysis, Fingerprint Analysis, Blood Pattern Analysis, Fire Investigation, Bitemark Analysis Other: Expert Witness Testimony, Witness Perjury, Eyewitness Misidentification, Jailhouse Informants, False Confession, False Guilty Plea, Inadequate Legal Defence, Police Misconduct, Prosecutorial Misconduct, Procedural Error	Contextual Information: Year of Crime, Year of Conviction, Year of Exoneration, Sentence Received, Status of Case, Judge or Jury Demographic Information: Sex/Gender, Race, Age, Educational Level, Religion, Immigration Status, Mental Disability, Physical Disability, Financial Status, Children, Single Parent, Physical Appearance, Traumatic Brain Injury

Each of the primary coding groups had specific inclusion and exclusion criteria (Table 2). The additional contextual and demographic information was noted down whenever made apparent in the data being coded.

Table 2. Inclusion and Exclusion Criteria for Primary Coding Variables

Primary Coding Variable	**Inclusion Criteria**	**Exclusion Criteria**
Medicolegal Death Investigation	If mentioned in relation to faulty autopsy results, inaccurate estimated time of death, or inaccurate estimated cause or manner of death.	If not mentioned

Primary Coding Variable	Inclusion Criteria	Exclusion Criteria
DNA Analysis	If mentioned in relation to inaccurate conclusions about a DNA sample such as a false positive, or misidentification	If not mentioned
Hair Analysis	If mentioned in relation to an inaccurate hair "match"	If not mentioned
Fiber Analysis	If mentioned in relation to an inaccurate fiber "match"	If not mentioned
Firearm/Toolmark Analysis	If mentioned in relation to an inaccurate firearm or tool mark "match"	If not mentioned
Fingerprint Analysis	If mentioned in relation to an inaccurate fingerprint "match"	If not mentioned
Blood Pattern Analysis	If mentioned in relation to some blood pattern analysis in which the analyst drew inaccurate conclusions about the nature or recreation of the crime	If not mentioned or if mentioned in relation to DNA (if so, would have been coded as DNA Analysis)
Fire Investigation	If mentioned in relation to some type of faulty arson/fire/explosion investigation	If not mentioned
Bitemark Analysis	If mentioned	If not mentioned
Expert Witness Testimony	If related to an "expert" testimony, either in relation to their own bias/improper training (i.e., if the "expert" is discussing an established field such as DNA Analysis but was found to overstate their findings or ignored other important facts etc.) or if they are discussing a scientifically invalid field, claiming that it is accurate (i.e., bitemark analysis)	If not mentioned
Witness Perjury	If the witness is lying about some aspect of the case other than identifying an individual, unless it was explicitly stated that the witness purposely misidentified a suspect	If not mentioned or if related to lying about identifying a suspect (would then be coded as Eyewitness Misidentification)
Eyewitness Misidentification	In cases where the witness accidentally misidentifies the suspect due to factors such as the weapon focus effect, racial cross identification, or human bias/error	If not mentioned or if proven that the individual purposely misidentified the individual (would then be coded as Witness Perjury)
Jailhouse Informant	If mentioned	If not mentioned
False Confession	If mentioned	If not mentioned

Primary Coding Variable	Inclusion Criteria	Exclusion Criteria
False Guilty Plea	If the wrongfully convicted individual formally pled guilty	If not mentioned
Inadequate Legal Defence	If mentioned that the wrongfully convicted individual's lawyer provided poor legal representation (i.e., poor cross examination of witnesses, not raising exculpatory evidence, providing poor advice such as encouraging them to take a guilty plea)	If not mentioned
Police Misconduct	If the police participated in some form of misconduct (i.e., police brutality, poor investigation/interrogation techniques, destroyed evidence, withheld evidence etc.)	If not mentioned
Prosecutorial Misconduct	If the prosecution/Crown participated in some form of misconduct (i.e., failure to disclose, overzealous behaviour etc.)	If not mentioned
Procedural Error	If related to some type of procedural error, usually in relation to the judges conduct (i.e., misapplication of legal tests, inaccurate instructions to jurors etc.)	If not mentioned

In addition to the primary coding groups, secondary coding groups (contextual and demographic data) were also created. These variables were collected to situate the rest of the data and ensure that any patterns were identified. Similar to the primary coding groups, these additional codes followed specific inclusion and exclusion criteria throughout the coding process (Table 3).

Table 3. Inclusion and Exclusion Criteria for Secondary Coding Variables

Secondary Coding Variables	Inclusion Criteria	Exclusion Criteria
Year of Crime	The year in which the crime that the person was wrongfully convicted of occurred	Always included when available
Year of Conviction	The year in which the person was wrongfully convicted (usually the end of their first trial)	Always included when available
Year of Exoneration	The year in which the individual was formally recognized as being innocent (through an exoneration/pardon/acquittal etc.)	Always included when available
Sentence Received	The length of prison sentence received	Always included when available

Secondary Coding Variables	Inclusion Criteria	Exclusion Criteria
Status of Case	The status of the case, including how many years the exoneree spent incarcerated	Always included when available
Judge or Jury	Whether the initial trial was led by a jury or judge alone	Always included when available
Gender	The gender by which the exoneree identifies	Always included when available
Race	The race of the exoneree (data available usually limited to the categories of White, Black, Hispanic, Middle Eastern, Indigenous, or Asian)	Always included when available
Age	The age of the exoneree when they were wrongfully convicted	Always included when available
Educational Level	The exoneree's level of education (i.e., elementary level, less than high school, high school graduate, university etc.)	Always included when available
Religion	The exoneree's self-identified religion	Always included when available
Immigration Status	The exoneree's immigration status in the country they were wrongly convicted	Always included when available
Mental Disability	If the exoneree has any diagnosed mental disabilities	Always included when available
Physical Disability	If the exoneree has any diagnosed physical disabilities	Always included when available
Financial Status	If mentioned	Always included when available
Children	If the exoneree has any children, including stepchildren	Always included when available
Single Parent	If the exoneree is a single parent	Always included when available
Physical Appearance	If the exoneree has any physical characteristics that were brought up in some negative way during the investigation/trial etc. (tattoos etc.)	Always included when available
Traumatic Brain Injury (TBI)	If the exoneree suffered some TBI	Always included when available

The cases were both collected and coded in Microsoft Excel®, the name of the exoneree was written down in the first column, followed by one column for each primary code and lastly one column for each secondary code. Generally, wrongful convictions stem from multiple systemic issues, they rarely happen in isolation. Many wrongful convictions are "the perfect storm" in which a combination of situational, environmental, and systemic issues come together to create this type of injustice. Thus, many cases were assigned more than one of these primary codes. For

primary codes, 1 was assigned when the code was absent and 2 was assigned when the code was present. For secondary codes, they were written out in plain language for each exoneree.

The data were then analyzed in Excel® to determine the main cause(s) of wrongful conviction in each country as well as the main cause overall using the entire sample (n=440). Subsequently, the data were analyzed in SPSS® Statistics using independent-samples nonparametric Kruskal-Wallis tests to determine if the causes of wrongful convictions significantly differ between the countries of interest. For this second analysis, rather than using the entire sample, 54 cases were randomly selected from each country. This was done to ensure equal sample sizes for analysis as New Zealand only had 54 cases. For each Kruskal-Wallis test that indicated some significant differences, pairwise comparison tests were employed to determine where the significant differences are. These pairwise tests were performed in SPSS® Statistics using Bonferroni corrections as multiple independent tests were being performed at once.

D. Qualitative Component

Documents containing recommendations for reducing miscarriages of justice were collected and coded. These documents included policy, inquiries, commissions, reports, and some academic studies. A total of 22 documents were collected (five from the US, six from Canada, five from Australia, four from the UK, and two from New Zealand). The recommendation sections of these documents were coded according to the primary codes used in the quantitative component of this study (Table 1). The only difference was that this portion of the study searched for recommendations for the causes of wrongful convictions that were coded. The primary codes were considered during this analysis to determine if each country has addressed the main causes of wrongful convictions identified in this study. In addition, any themes that emerged were also noted. A total of five themes with multiple subthemes emerged.

E. Ethical Considerations

All data were taken from online sources through public databases. Additionally, all the research was conducted online and did not involve human participants. As such, no immediate or physical risk was present to the researchers. Thus, there are limited ethical concerns related to this study. Thus, an ethics proposal was not required.

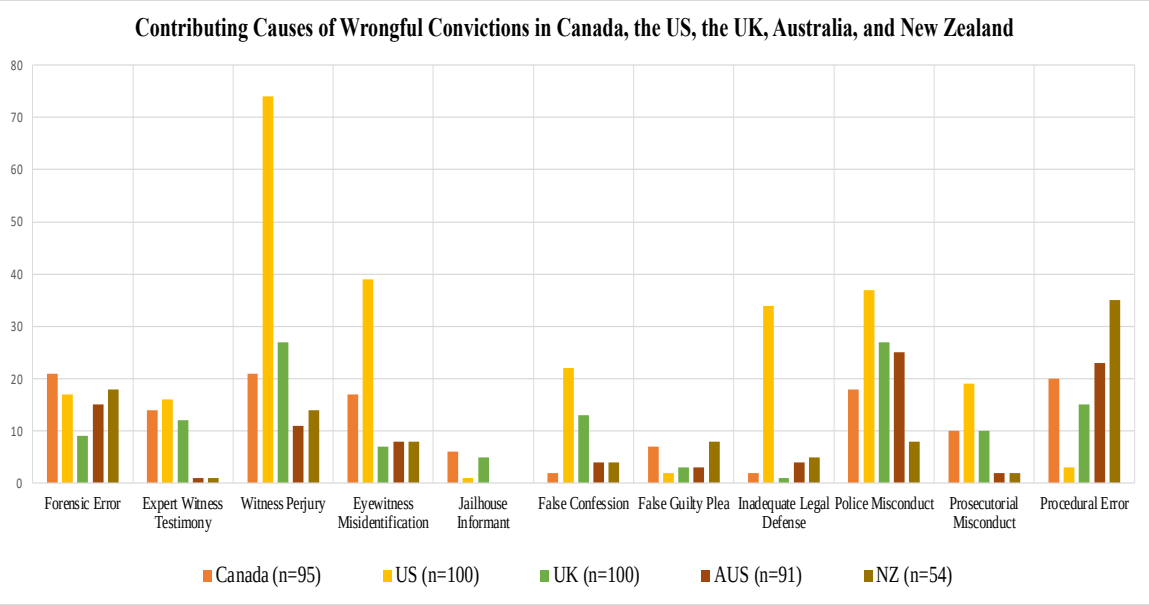
The study does address sensitive topics such as institutional and systemic issues which historically disproportionately affect marginalized communities and peoples. Thus, the researchers committed to continuously address and consider other perspectives and potential biases. Many of the topics discussed and coded for in this study, such as police misconduct, are faced by Black, Indigenous and People of Colour (BIPOC) much more regularly than able bodied, cis, heteronormative White people. Thus, it is important that any patterns that reflect systemic issues are identified and discussed in a respectful matter. One way this has been addressed in this study is by coding for additional demographics such as race and religion. Ensuring that these populations have space in research is important not only for addressing historical injustices, but also for considering how policy, procedure, and justice systems in general affects different communities.

Lastly, addressing personal biases are important to ensure proper representation and interpretation of the data. As non-probability purposive sampling was utilized, it is important to follow a strict coding inclusion and exclusion criteria to reduce bias.

F. Quantitative Results

The final sample for the quantitative component included 440 cases (n=440). Originally, the sample was intended to include 100 cases from each country. However, many of the cases did not meet the inclusion criteria. Overall, 100 cases were collected from the US (23%), 100 from the UK (23%), 95 from Canada (21%), 91 from Australia (21%), and 54 from New Zealand (12%) (Figure 1).

Figure 1. Contributing causes of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand.



To address the first research question, the data were first analyzed in Excel®. As there were many codes for the various forensic sciences, they were grouped into "forensic error" for simplified data visualization. Firstly, the main cause of wrongful conviction was assessed in each country. In Canada, the main cause of wrongful convictions was found to be witness perjury, forensic error, and procedural error (all 15%). In the US, the main cause of wrongful convictions was found to be witness perjury (28%). In The UK the main causes of wrongful convictions were found to be witness perjury (21%) and police misconduct (21%). In Australia the main cause of wrongful convictions was found to be police misconduct (26%). Lastly, in New Zealand the main cause of wrongful convictions was found to be procedural error (41%).

To answer the second research question whether the causes of wrongful convictions significantly differ between countries, Kruskal-Wallis tests were performed in SPSS® Statistics. Since the number of cases collected for each country differed, only 54 cases from each country were used to ensure equal sample sizes for this analysis. These 54 cases were randomly selected from each country. Each country was assigned a number (Canada as 1, US as 2, UK as 3, Australia as 4, and New Zealand as 5) for analysis. Kruskal-Wallis tests were chosen because the means of more than two samples were being compared, and the data did not meet the assumptions of a One-Way ANOVA test. Using a significance level or alpha of 0.05, the Kruskal-Wallis tests performed indicated a significant difference amongst countries for seven of the causes of wrongful convictions (Table 4).

Table 4. Hypothesis Testing Summary (Significant results shown in bold and italics).

	Null Hypothesis	Test	Sig.[a,b]	Decision
1	The distribution of Hair Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.087	Retain the null hypothesis.
2	The distribution of Fire Investigation is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	1.000	Retain the null hypothesis.
3	The distribution of Expert Testimony is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.097	Retain the null hypothesis.
4	The distribution of Witness Perjury is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.000	Reject the null hypothesis.
5	The distribution of False Confessions is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.072	Retain the null hypothesis.
6	The distribution of Eyewitness Misidentification is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.000	Reject the null hypothesis.
7	The distribution of Inadequate Legal Defence is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.000	Reject the null hypothesis.
8	The distribution of Jailhouse Informants is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.206	Retain the null hypothesis.
9	The distribution of Blood Pattern Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.251	Retain the null hypothesis.
10	The distribution of False Guilty Plea is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.080	Retain the null hypothesis.
11	The distribution of Police Misconduct is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.000	Reject the null hypothesis.
12	The distribution of Prosecutorial Misconduct is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.177	Retain the null hypothesis.
13	The distribution of Firearm and Toolmark Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.398	Retain the null hypothesis.
14	The distribution of Fiber Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.556	Retain the null hypothesis.
15	The distribution of Procedural Error is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.000	Reject the null hypothesis.
16	The distribution of Bitemark Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.017	Reject the null hypothesis.
17	The distribution of Fingerprint Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.251	Retain the null hypothesis.
18	The distribution of Medicolegal Death Investigation is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.001	Reject the null hypothesis.

	Null Hypothesis	Test	Sig.[a,b]	Decision
19	The distribution of DNA Analysis is the same across categories of country.	Independent-Samples Kruskal-Wallis Test	.090	Retain the null hypothesis.

a. The significance level is .050.
b. Asymptotic significance is displayed.

Kruskal-Wallis tests indicated that there is a statistically significant difference ($p < 0.05$) between the US, UK, Canada, Australia, and New Zealand for medicolegal death investigations ($p = 0.001$), bitemark analysis ($p = 0.017$), procedural error ($p = 0.000$), police misconduct ($p = 0.000$), inadequate legal defence ($p = 0.000$), eyewitness misidentification ($p = 0.000$), and witness perjury ($p = 0.000$). As this type of statistical test does not indicate exactly where these significant differences are, follow up pairwise comparison tests with Bonferroni corrections were used. Pairwise comparisons were only done on the seven causes of wrongful convictions that were found to be significantly different.

a) Statistical Conclusions

i) Witness Perjury

The distribution of witness perjury as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differ (Kruskal-Wallis, H (4) = 57.177, $p < 0.001$). A follow-up pairwise comparison test with Bonferroni corrections for the distribution of witness perjury indicated that this significant difference is between Australia and the US ($p = 0.000$), the UK and the US ($p = 0.000$), New Zealand and the US ($p = 0.000$), and Canada and the US ($p = 0.000$).

ii) Eyewitness Misidentification

The distribution of eyewitness misidentification as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differ (Kruskal-Wallis, H (4) = 28.275, $p < 0.001$). A follow-up pairwise comparison test with Bonferroni corrections for the distribution of eyewitness misidentification indicated that this significant difference is between Australia and the US ($p = 0.000$), the UK and the US ($p = 0.000$), New Zealand and the US ($p = 0.002$), and Canada and the US ($p = 0.032$).

iii) Inadequate Legal Defence

The distribution of inadequate legal defence as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differ (Kruskal-Wallis, H (4) = 41.722, $p < 0.001$). A follow-up pairwise comparison test with Bonferroni corrections for the distribution of inadequate legal defence indicated that this significant difference is between Australia and the US ($p = 0.000$), the UK and the US ($p = 0.000$), New Zealand and the US ($p = 0.000$), and Canada and the US ($p = 0.000$).

iv) Police Misconduct

The distribution of police misconduct as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differ (Kruskal-Wallis, H (4) = 20.600, $p <$

0.001). A follow-up pairwise comparison test with Bonferroni corrections for the distribution of police misconduct indicated that this significant difference is between New Zealand and Australia ($p = 0.013$), New Zealand and the US ($p = 0.001$), and Canada and the US ($p = 0.027$).

v) Procedural Error

The distribution of procedural error as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differ (Kruskal-Wallis, H (4) = 28.147, $p < 0.001$). A follow-up pairwise comparison test with Bonferroni corrections for the distribution of procedural error indicated that this significant difference is between Australia and the US ($p = 0.006$), the US and New Zealand ($p = 0.000$), Canada and New Zealand ($p = 0.002$), and the UK and New Zealand ($p = 0.028$).

vi) Medicolegal Death Investigation

The distribution of medicolegal death investigations as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differ (Kruskal-Wallis, H (4) = 18.840, $p < 0.001$). A follow-up pairwise comparison test with Bonferroni corrections for the distribution of medicolegal death investigations indicated that this significant difference is between Australia and New Zealand ($p = 0.007$), and the US and Australia ($p = 0.007$).

v) Bitemark Analysis

The distribution of bitemark analysis as a cause of wrongful convictions in Canada, the US, the UK, Australia, and New Zealand significantly differs (Kruskal-Wallis, H (4) = 12.090, $p < 0.017$). A follow-up pairwise comparison test for the distribution of bitemark analysis indicated that this significant difference is between Canada and the US ($p = 0.006$), the US and the UK ($p = 0.006$), the US and Australia ($p = 0.006$), and New Zealand and the US ($p = 0.006$). However, when these significance values were adjusted by Bonferroni corrections, none of them remained significant ($p > 0.060$).

G. Qualitative Results

A total of 22 documents including academic studies, Royal Commissions, public inquiries, reports, and academic papers were considered. Any of the relevant causes of wrongful convictions that were coded for in the quantitative portion of this study (Table 2) were noted down during analysis. In addition, the documents were analyzed for any other relevant themes. A total of five themes emerged during analysis. These themes include a lack of accountability (with two subthemes of individual and systemic), education, accessibility, post exoneration (with two subthemes of reintegration and compensation), and discrimination (Table 5).

Table 5. Documents containing recommendations and their emerging themes.

Name of Document	Country	Year	Relevant Causes Discussed	Emerging Themes
American Prison Congress Review	United States	1912		Lack of Accountability

Name of Document	Country	Year	Relevant Causes Discussed	Emerging Themes
Borchard Study	United States	1932	Eyewitness Misidentification, Procedural Error, Witness Perjury	
Franks' Study	United States	1957	Eyewitness Misidentification, Procedural Error	Lack of Accountability
Commission on Capital Punishment (Illinois)	United States	2002	Procedural Error, Forensic Error, Police Misconduct	
Predicting Erroneous Convictions – US Department of Justice	United States	2013	Eyewitness Misidentification, Prosecutorial Misconduct, Forensic Error	Lack of Accountability, Education
Kaufman Commission	Canada	1998	Forensic Error, Police Misconduct, Education	Education
Sophonow Inquiry	Canada	2001	Police Misconduct, Jailhouse Informants	Education
Lamer Commission	Canada	2006	Police Misconduct	Accessibility
MacFarlane Paper	Canada	2008	Forensic Error, Police Misconduct, Procedural Error	Education
The Path to Justice: Preventing Wrongful Convictions	Canada	2011	Forensic Error, Jailhouse Informants, False Confessions, Eyewitness Misidentification	Education
LaForme and Westmoreland-Traroé Commission	Canada	2021		Lack of Accountability, Reintegration and Compensation
Du Cann Study	United Kingdom	1960	Procedural Error	
Brandon and Davis Study	United Kingdom	1973		Accessibility, Discrimination
Report of the Royal Commission on Criminal Justice	United Kingdom	1991	Police Misconduct, False Confessions, Forensic Error	Accessibility, Education
Forensic Science Regulator	United Kingdom	2007	Forensic Error	Lack of Accountability
The Shannon Report	Australia	1984	Forensic Error	Lack of Accountability
Royal Commission on the Chamberlain Convictions	Australia	1987	Forensic Error	Lack of Accountability
The Hunt Report	Australia	1994	Forensic Error	Compensation
Mallard Inquiry	Australia	2008	Police Misconduct, Prosecutorial Misconduct	Lack of Accountability, Accessibility
Queensland Commission	Australia	2018		Compensation, Discrimination

Name of Document	Country	Year	Relevant Causes Discussed	Emerging Themes
Arthur Allan Thomas Inquiry	New Zealand	1980	Forensic Error, Police Misconduct	Compensation
Compensation Guide	New Zealand	2020		Compensation

A. Theme 1: Lack of Accountability

The first theme that emerged is a lack of accountability. Two subthemes emerged under this theme which are an individual lack of accountability and a systemic lack of accountability.

a) Subtheme: Individual Lack of Accountability

Individual lack of accountability refers to professionals in the justice system who engage in misconduct and do not face enough, if any, consequences. This is illustrated in the 1987 Australian Royal Commission on the Chamberlain Convictions. In this report, it is acknowledged that there was a great deal of forensic error that contributed to the Chamberlain's wrongful convictions, for example the authors acknowledge (Royal Commission on the Chamberlain Convictions, 1987, pp. 317-318):

> Forensic science facilities for support of police in Australia were fragmented and lacked co-ordination and potential for significant research and development. It also found that facilities were generally limited by lack of liaison, that information exchange was not coordinated, and that there was no long term plan for national development and improvement.

While this report acknowledges issues with forensics in Australia, it does not provide any information regarding the individuals in this case who contributed to the forensic error, nor does it recommend any punitive measures for individuals who contribute to such errors. This subtheme also arose in the 2008 Australian Mallard Inquiry in which it was determined that two police officers and one prosecutor engaged in extreme misconduct leading to the wrongful conviction of Mr. Mallard. However, the only recommendations related to holding these individuals accountable were as follows (Mallard Inquiry, 2008, p. 165):

1. That the Commissioner of Police give consideration to the taking of disciplinary action against Assistant Commissioner Malcolm William Shervill and Assistant Commissioner David John Caporn.
2. That the Director of Public Prosecutions gives consideration to the taking of disciplinary action against Mr. Kenneth Paul Bates.

Clearly, these recommendations provide no actual consequences for the individuals who engaged in misconduct. This demonstrates again a lack of individual accountability in which misconduct is acknowledged but no punitive measures are taken.

b) Subtheme: Systemic Lack of Accountability

Systemic lack of accountability refers to systems and institutions refusing to acknowledge their role in wrongful convictions. For example, in the 1912 American Prison Congress Review, all reported unjust convictions were reviewed and they concluded that no cases of wrongful convictions existed at all.

The 1957 Franks' study from the US illustrated how the system perpetuates individual mistakes and lack of accountability. Specifically, the authors discuss how the adversarial justice system implements a "fight mentality" encouraging opposing sides to "win" their case. The following quote illustrates this issue (Frank, 1957, p. 237):

> [Fight mentality is an] occupational disease [leading them to adopt a] bias in pre-trial investigations [which leads to] a habit of drifting into a chronic spirit of hostility toward each new suspect.

This quote from the Franks' study demonstrates the inherent flaws in the adversarial system. Additionally, it may shed light on why those running the adversarial justice systems have for so long ignored their role in wrongful convictions. As this mentality is so deeply entrenched, individuals who work in the system and who benefit from the system are unlikely to acknowledge any wrongdoings.

The recent 2021 LaForme and Westmoreland-Traroé Commission may be one of the only examples of a public document from this study that begins to take some responsibility on a systemic level. They note that "there are people who have been failed by our system of criminal justice" (para. 3) and that "miscarriages of justice do not occur in a social or legal vacuum" (para. 4). That said, this document is relatively progressive in comparison to the others, but the recommendations have not been formally implemented by the Canadian government yet. However, Canada recently introduced Bill C-40 to address some of the recommendations, primarily by amending the *Criminal Code* to implement an Independent Review Commission for Miscarriages of Justice (Department of Justice, 2023).

In many ways both types of accountabilities are deeply connected and can be condensed to the argument of bad apple or systemic issue. On one hand, there are individuals in the system who make either conscious or unconscious decisions that have negative consequences. This can be easily written off as a "bad apple" or individual mistake but in reality, it is much broader than that. A Canadian example of this is that of Charles Smith who was not qualified to be in the position he was and through his testimony contributed to many wrongful convictions (Goudge, 2008). While some may argue he is a "bad apple," we believe that this study has made it clear that there are no single bad apples when it comes to wrongful convictions. Individuals should be held accountable for their mistakes, but we also need to consider *who* hired these individuals, *who* allowed them to continue working, *who* admitted their testimony. The system allows for "bad apples" to operate and contribute to wrongful convictions. Thus, it is important to implement more safeguards for avoiding firstly individual mistakes but also for holding the system accountable. Although not included in the sample, the CCRC in the UK is a response to systemic issues, and has influenced other countries, including Canada. Additionally, the creation of the UK Forensic Science Regulator is a form of systemic reform as well, and was formalized in 2021 (Crown Prosecution Service,

2023). There may be other examples as well not included in this sample. Regardless, it seems clear that most systems should be doing more to address systemic issues and miscarriages of justice.

B. Theme 2: Education

Many of the recommendations in these documents related to increased education for legal professionals, especially for police and in relation to forensic evidence. One example of this comes from the 2008 Canadian MacFarlane paper which considers the importance of education for the forensic pathology community. The following quote summarizes some of the main recommendations related to education in this paper (MacFarlane, 2008, pp. 67-68):

> Indeed, education should be extended beyond tunnel vision and include issues such as:
> a) distortion in the decision-making process due to irrelevant and prejudicial extraneous information;
> b) the proper role of the forensic pathologist in Canada (see below); and
> c) presentation of evidence in court, with particular emphasis on the limitations of that evidence and the need to clearly convey those limitations to the court when testifying (recognizing that work in this area was announced by the Chief Coroner in his public announcement on April 19, 2007)
> d) Additionally, the forensic pathology community should consider the following:
> e) Education on these issues should start in medical school.
> f) Education of this nature should be ongoing, and not be seen simply as a "one-shot" event.
> g) Education should be multidisciplinary in nature, drawing on psychological and legal expertise.

Education was also acknowledged in the 2013 report titled "Predicting Erroneous Convictions" from the US Department of Justice. In this report the authors discuss how judges and defence attorneys regularly misunderstand forensic and scientific evidence in courts. The following quote illustrates this issue (Predicting Erroneous Convictions – US Department of Justice, 2013, p. 83):

> Judges, like defense attorneys, appeared to lack training and education in new advances in psychology, forensic science, and other related disciplines. More importantly, in a number of our cases, the judge failed to use his or her discretionary powers to closely examine the evidence, level the field between prosecution and defense, or otherwise take an active role in protecting the innocent defendant.

Evidently, there is a need to increase educational resources regarding forensic evidence so judges, lawyers, and other legal professionals can properly understand and cross-examine such evidence.

Recommendations for police are also common in these documents. The Canadian Kaufman (1998) and Sophonow (2001) Inquiries recommend ongoing training for police officers and encourage their attendance at annual lectures on tunnel vision and bias. The 1991 UK Royal Commission on Criminal Justice also addresses police training. One of the recommendations in

this commission relates to interviewing suspects and witnesses (Report of the Royal Commission on Criminal Justice, 1991, p. 189):

> Police training should stress the special needs of distressed victims and witnesses and equip police officers with the necessary skills to handle such people with tact and sympathy.
> The new national training in basic interviewing skills announced in Home Office Circular 22/1992, as supplemented by Home Office Circular 7/1993 should, so far as practicable, be given to all ranks of police officers.
> Code C of PACE should be examined with a view to it in future specifying the minimum length of breaks between interviews. This aspect should subsequently be kept under review.

This quote relates to the issues of false confessions and false guilty pleas. Many factors can contribute to someone falsely confessing, including poor and abusive interview strategies as well as mental health issues. Police are usually the first justice system professionals that an accused individual will encounter (Garrett, 2020). The police conduct most of the investigation, interview suspects, provide their findings to the prosecution, and oftentimes testify at trial (Haberfeld, 2002; Smith & Hattery, 2011). Depending on the jurisdiction, police training varies, but seldom includes proactive or informative training about wrongful convictions and other systemic issues (Haberfeld, 2002; Marenin, 2004). This needs to be changed to reduce miscarriages of justice. Police must be properly equipped to interview individuals from a variety of backgrounds. They should also be educated on why and how wrongful convictions occur and on the different types of cognitive biases (National Academy of Sciences, 2009; President's Council of Advisors on Science and Technology, 2016). Further, this training should be ongoing. Education for all justice system professionals should be seen as a lifelong endeavour and should not end once they enter the work force.

C. Theme 3: Accessibility

The third theme emerging relates to accessibility in the criminal justice system. One example of this comes from the 2006 Canadian Lamer Commission. This document contains recommendations for improving access to legal aid (p. 326):

a) The Legal Aid Commission should establish an outreach program to assist prisoners in completing legal aid applications, particularly when they are incarcerated outside of Newfoundland and Labrador.
b) A simple pamphlet should be made available to explain the legal aid program to laypersons.

In some cases, accessibility was addressed in terms of considering the needs of suspects, witnesses, and victims. For example, in the 2008 Australian Mallard Inquiry the following recommendation was made (p. 165):

That consideration is given by the Commissioner of Police to making special provision for the interviewing by investigating police of mentally ill suspects. While this recommendation is not very clear in terms of actionable routes, it does address the fact that some individuals face greater accessibility issues and systemic barriers in the justice system. Similar issues were also considered

in the recommendations of the UK report of the Royal Commission on Criminal Justice (1991, pp. 206-207):

> 208. The court should be responsible for providing the interpreter at the request of the defence out of central funds.
> 209. There should be central coordination to ensure that national and local registers exist from which interpreters of the required standard may be drawn for the courts as needed. The arrangements should be overseen by the Lord Chancellor's Department.
> 210. A glossary of legal terms should be prepared in all the main languages to help interpreters understand the system.
> 211. Whenever possible the interpreter at the court should not be the interpreter used at the police station.

These recommendations address issues of accessibility in the system. Marginalized communities including individuals with English as a second language are disproportionately affected by the criminal justice system. Ensuring that such groups have access to equal procedures is thus highly important. Increasing the accessibility and scope of legal aid could greatly assist with exonerating innocent individuals and increasing access to justice. Legal aid is important for marginalized communities especially individuals who face systemic or institutional barriers (Cunneen, 2006; Roach, 2023). This also connects to a second reoccurring accessibility recommendation, the need to provide free interpreters. Canada is a multilingual country with very diverse demographics. Many Canadian citizens and permanent residents have English as a second language (Statistics Canada, 2022). Thus, providing free, qualified interpreters at every stage of the criminal process is highly important.

D. Theme 4: Discrimination

The fourth theme that emerged is that of discrimination. This theme greatly relates to the previous theme of accessibility. Accessibility concerns address the fact that individual experiences in the justice system are all different. Different individuals require different levels and types of accessibility. Recognizing this is also recognizing that some people face greater systemic, environmental, and societal barriers than others.

Unfortunately, while many institutions and policies recognize the existence of systemic issues and oppression in our systems, very few have done anything to aid in this issue. The 2018 Australian Queensland Commission considers the overrepresentation of Indigenous peoples in wrongful convictions and recommends amendments to the Human Rights Bill. This Commission points out some flaws with the way the current bill stands (p. 1):

> The wrongfully convicted in Queensland are disproportionately Indigenous, and will be denied fundamental human rights under this bill. Rather than closing the gap, this bill just opens the prison gates wider for Indigenous Queenslanders. This human rights bill does little to reduce high suicide rates for Indigenous persons in custody, a critical element of the Closing the Gap strategy.

However, the recommendations in this 2018 Commission do very little to address the root of this systemic issue (p. 2):

> The Queensland Human Rights Bill should be amended to include a provision to provide restitution for judicial exonerees, as required under international Human Rights law, and to address inequality and injustice of human rights for innocent Queenslanders, particularly indigenous exonerees, who have suffered serious miscarriages of justice and served long periods wrongly in prison.
> This Bill should be seen by the community as supporting in its human rights laws the reduction of indigenous incarceration rates, in particular for indigenous exonerees, who face particular challenges in having their wrongful convictions recognised and remedied.

Evidently, this document is working to address Indigenous overrepresentation in the justice system *after* the damage has already been done. The 2021 Canadian Miscarriages of Justice Commission report has in some ways begun to address actual root causes of systemic issues such as BIPOC representation. For example, they recommend that the Canadian review commission contain the following (para. 5):

> We recommend that a third of the commissioners have expertise in the causes and consequences of miscarriages of justice; a third of the commissioners be qualified as lawyers; and a third represent groups that are overrepresented in prison and disadvantaged in seeking relief. There should be at least one Indigenous and one Black commissioner.

By ensuring that there is space for "one Indigenous and one Black commissioner" they are allowing for the inclusion of perspectives that have been historically left out. Regrettably, it does not appear that this is something the Canadian government has committed to in Bill C-40.

Unfortunately, few of the other documents analyzed in this portion of the study included any recommendations related to discrimination. Discrimination is an incredibly complex topic to consider when discussing wrongful convictions because some form of discrimination is usually present in all wrongful conviction cases. Each country in this study has their own, unique history. However, settler-colonialism, white supremacy, capitalism, and the patriarchy are just some of the factors that have created and maintained oppressive institutions (Johnson, 2004; Logan, 2015; Mills, 2017). Thus, we need reform that addresses not what we can do to help these people once they have entered the system but why they need help in the first place. For years, various marginalized groups have been telling colonial systems what they need to improve their standard of life and reduce their drastic overrepresentation and mistreatment in justice systems (see for example, Truth and Reconciliation Commission of Canada, 2015). Listening to the voices of those from marginalized communities is also highly important. However, we need to do more than listen, we need to ensure their voices, concerns, and perspectives are being entrenched in our legislation, criminal procedure, and policy. Any steps towards true equity and reconciliation in Canada are good steps, but we need to address the deeper roots of these issues as well.

E. Theme 5: Post Exoneration

A final theme that emerged from this analysis is related to post exoneration. In this group there are two sub themes: reintegration and compensation. In some ways, these two subthemes overlap as compensation is integral for reintegration in many cases. However, as many of the

documents being analyzed here considered them separately, they are going to be considered separately here as well.

a) Subtheme: Reintegration

Reintegration refers to an exoneree's ability to reintegrate into society following their wrongful conviction. This can be incredibly challenging and there are very few if any resources available to exonerees currently. The 2021 LaForme and Westmoreland-Traroé Commission from Canada considers reintegration (para. 50):

> We recommend that the commission be enabled by statute and funding to provide support for the reintegration of applicants during the application process and after they have been released or had their conviction overturned.

Many innocence organizations are only able to assist the wrongly convicted up until exoneration. Very few resources are accessible for exonerees following their release from prison. Thus, acknowledging reintegration as a crucial part of a wrongful convictions commission is an important step. However, it is again regrettable that this does not seem to be implemented in Bill C-40. Australia has also addressed reintegration in some ways which is palpable, for example, in the 2018 Queensland Commission (p. 4):

> There are no laws or guidelines in Queensland to provide restitution when a person is judicially exonerated after years in prison. There is no assistance provided for housing relief, for employment assistance, nor for counselling for the exoneree and his family. Nor is there any apology or financial restitution for the loss of the victim's income and superannuation, and for other costs, human and financial, incurred by the victim's family over those lost years.

Evidently, there is a recognition of the struggles exonerees face after being released from prison. In this same document it is also acknowledged that "existing legal remedies for exonerees in Queensland, such as they are, are hopelessly outdated and unfair" (p. 5). Unfortunately, it seems no additional recommendations have been provided or implemented to remedy this extensive issue.

b) Subtheme: Compensation

In addition to issues with reintegrating in society, exonerees are rarely guaranteed any form of compensation following their wrongful conviction. Interestingly, New Zealand seems to have the most publications, inquiries, and guidelines surrounding compensation than any of the other countries in this study. In the New Zealand Government's 2020 Compensation Guide they acknowledge the following legal limitations of compensation (p. 2):

> There is no legal right to receive compensation from the Government for wrongful conviction and imprisonment. However, the Government in its discretion may decide to compensate a person who has been wrongly convicted and imprisoned by making an ex-gratia payment.

A similar limitation was brought up in the 1980 Inquiry into the case of Arthur Allan Thomas in New Zealand (p. 113):

> What sum, if any, should be paid by way of Compensation to Arthur Allan Thomas Following upon the Grant of the Free Pardon?" 474. Compensation is not claimable as of right. It is in the nature of an ex-gratia payment, sometimes made by the Government following the granting of a free pardon, or the quashing of a conviction. Being in the nature of an ex-gratia payment, there are no principles of law applicable which can be said to be binding.

New Zealand specifically has addressed compensation in many of its public documents. However, while it acknowledges that there are no laws making compensation automatically available and agrees that this is problematic, they have not advanced any policy to try to make it automatic. Similarly in Australia for example, the 2018 Queensland Commission points out the following (p. 1):

> The International Covenant on Civil and Political Rights (at Article 14(6)) provides for compensation in certain limited circumstances to people wrongfully convicted, where there has been a miscarriage of justice. This Queensland bill does not.

Evidently, in both New Zealand and Australia compensation is very limited. In Canada, however, in the 2021 Miscarriages of Justice Commission report they state the following (para. 51):

> We recommend that Canada enact a no-fault compensation scheme for victims of miscarriages of justice to satisfy its international law obligations under Article 14(6) of the International Covenant on Civil and Political Rights. This scheme should provide quick no fault relief but not preclude civil or Charter litigation by victims of miscarriages of justice. We also recommend that the commission be established as a matter of urgency regardless of whether this reform continues, regrettably, to be problematic.

While this Canadian example poses a great deal of potential for advancements in compensation laws, they have not yet been formally implemented, or included in Bill C-40. Overall, the documents examined in this section provided little if any recommendations for compensation. At most, they acknowledge the issues surrounding a lack of compensation laws but do not take any real steps to improving them.

Reintegration and compensation are both incredibly important factors to consider after a person is exonerated. Some necessary supports may include increasing accessibility to jobs, housing, support groups, financial literacy, counselling, and education. It should also be noted that needs will be drastically different from exoneree to exoneree depending on various factors. Some of these factors include the age at which they were incarcerated, how long they spent incarcerated, and the age at which they were released (Alberti et al., 2019; Kirshenbaum et al., 2020). Another necessary component of reintegration is access to compensation (Armbrust, 2004; Jasiński & Kremens, 2023). As discussed, compensation is rarely guaranteed and generally inaccessible, it has also proven to be quite controversial (Campbell, 2019; Ekins & Laws, 2023). Implementing required, fair, and automatic compensation would improve the exonerees chances of reintegrating and is quite honestly the bare minimum the government can offer.

IV Discussion

This study identified the main causes of wrongful convictions in Canada and compared them with the US, the UK, Australia, and New Zealand. While most literature has found eyewitness misidentification to be the number one cause of wrongful convictions (Findley, 2016; Gould & Leo, 2010; Wells, 2006; Wise & Safer, 2004), this study did not find this. While eyewitness misidentification was found to be the fourth most common cause overall (Figure 1), it was not found to be a top cause for any of the countries. This may be due to the coding differences between witness perjury and eyewitness misidentification. In this study, if a witness misidentified a suspect on purpose it was coded as witness perjury. It is possible other studies have approached coding these two causes differently. Witness perjury was found to be the main cause of wrongful convictions in the US (28%), tied for the main cause in the UK (21%) and tied for the main cause in Canada (15%). This in some ways aligns with previous research indicating that witnesses contribute the most to wrongful convictions.

Interestingly, police misconduct was found to be a major cause of wrongful convictions in the UK (21%) and Australia (26%). In 1984 the Police and Criminal Evidence Act came to force in the UK. Of the police misconduct cases in the UK revealed in this study, 42.8 percent occurred prior to 1984. Additionally, 92.8 percent occurred prior to 2000. This suggests that the Police and Criminal Evidence Act may have reduced police misconduct in the UK, even though some of its content were controversial (Jones, 1985; Ozin & Norton, 2019). In Australia, previous studies done by legal analysts have found that eyewitness misidentification is not a major cause of wrongful convictions, but police misconduct is (Department of Justice Canada, 2004, p. 15; MacFarlane & Stratton, 2016). Additionally, Indigenous peoples are disproportionally wrongfully convicted in Australia (MacFarlane & Stratton, 2016). A 2016 study by MacFarlane and Stratton claims that this "vulnerability is largely due to issues of cross-cultural communication, often negative interactions with police" (p. 303). This suggests a correlation between police misconduct and Indigenous overrepresentation in justice systems. This of course is not unique to Australia, forms of systemic discrimination and racism exist in many different countries and legal systems (Chaney & Robertson, 2015; Jackson et al., 2022; Kiedrowski et al., 2021; Laniyonu, 2021; Palmater, 2016).

The main causes of wrongful convictions in the UK were found to be witness perjury (21%) and police misconduct (21%), however, the UK CCRC and other official bodies point to disclosure problems as a major cause (HM Crown Prosecution Service Inspectorate, 2017; HM Crown Prosecution Service Inspectorate, 2020; House of Commons Justice Committee, 2018; McCartney & Shorter, 2019). This difference may be due to different procedural and methodological practices. The current study randomly selected 54 cases for equal analysis, meaning it may have eliminated some of the cases involving discretion issues. As well, this study did not include all of the possible available cases in the UK, and the CCRC has power to look into the Court Martial and Service Civilian Court, whereas this study did not consider those courts (Criminal Case Review Commission, 2021). Additionally, one report by the HM Crown Prosecution Service Inspectorate used cases that were only charged on or after August 2019, which may also account for some of the differences (HM Crown Prosecution Service Inspectorate, 2020).

New Zealand's main cause of wrongful convictions was determined to be procedural error (41%), primarily related to trial judges either misapplying legal tests or providing improper instruction to jurors. One example of this comes from the case of James Watchorn who was

wrongfully convicted of theft in 2012 and subsequently exonerated in 2014. In this case, the trial judge improperly defined what 'property' was under the law (*R v Watchorn*, 2014). Interestingly, much of the literature available on procedural error in New Zealand relates to prosecutorial misconduct (Corns, 2019; Stone, 2012). However, in this study prosecutorial and procedural misconduct were clearly separated during the coding process. Thus, the current literature does not seem to have addressed issues with trial judge errors in New Zealand in a similar way (Corns, 2019; Sheehy, 1996; Stone, 2012). During the qualitative content analysis in this study as well, no recommendations from New Zealand were identified as addressing procedural error of any kind, including prosecutorial error. Thus, while scholars have identified prosecutorial misconduct as an issue in New Zealand it has not been adequately addressed in policy (Huff, 2002; Sheehy, 1996). Additionally, the main cause of wrongful convictions in New Zealand identified in this study was not addressed at length in the current literature or policy analyzed.

One final observation that is worth discussing is the difference in findings for science versus scientists contributing to wrongful convictions. In some cases, it is the science that is flawed whereas in other cases it is the scientist's testimony that is flawed. Some scientific methods were developed under law enforcement, have not been subject to peer review, do not have enough data on error rates and so on (Girard, 2021; Goudge, 2008; National Academy of Sciences, 2009; President's Council of Advisors on Science and Technology, 2016). In these cases, it is the science itself that is problematic. In other cases, the science may be solid, peer reviewed, and relatively uncontroversial in its field, such as DNA analysis. However, the scientist who presents the evidence may overstate the significance of their findings, lie about their results, fail to report error rates, or employ proper quality control standards (Gill, 2014; National Academy of Sciences, 2009; President's Council of Advisors on Science and Technology, 2016). In those cases, it is the "expert's" testimony that is flawed, not the science itself. We see both issues arise in the available literature and current study. For example, bitemark analysis is seen as a relatively unreliable, inherently flawed scientific method in which the science itself is flawed (National Academy of Sciences, 2009; President's Council of Advisors on Science and Technology, 2016). On the other hand, an autopsy is performed using scientifically tested, peer reviewed surgical methods, but we consistently see 'experts' like Charles Smith provide false testimony related to the established science (Goudge, 2008). In this study, in New Zealand, and the UK, flawed expert testimony contributed to more wrongful convictions than inherently flawed scientific methods or procedures. In Canada, expert testimony was only 5% behind forensic error, and, in the US, expert testimony was only 1% behind forensic error. Australia was the only country with a significantly higher rate of forensic error than expert testimony. While addressing the issue of science versus scientist was not a part of this study's research scope, there are implications based on the results that it is the testimony of scientists contributing more to wrongful convictions than the science itself. Often in the media, we hear of flawed science causing wrongful convictions, rarely are the specific individuals at fault discussed, except in highly publicized cases (for example, Charles Smith) (Goudge, 2008). Thus, the results from this study point towards the potential significance of researching this area further. It would be interesting to see how we redistribute blame in the media in wrongful convictions cases and how this results in a lack of accountability (Chancellor, 2019; Laporte, 2018; Zalman et al., 2012). It would also be worthwhile looking into why this isn't addressed further in policy especially in the context of, for example, qualified immunity in the US (Baude, 2018; Schwartz, 2017). The fact that human error and biases contribute a greater amount to wrongful convictions than flawed scientific methods should be made known. Lastly, based on the results in this study it may be interesting to further investigate why Australia has less flawed expert testimony than forensic error out of all the countries analyzed in the current study. This may

suggest further policy reform that could help in reducing both flawed testimony and forensic error cross-nationally.

A. Policy Recommendations for Canada

Many policy recommendations and implications arose during this study. Firstly, from the UK, the Forensic Science Regulator Bill and the Brandon and Davis study (1973) provide interesting recommendations that may be relevant to Canada. The 2021 Forensic Science Regulator Act established a Regulator who would oversee a code of practice and standards for forensic science activities. Canada currently has no such equivalent. Having some type of regulation board for forensic sciences would hopefully increase the reliability of forensic evidence in courts. While it may be difficult to find one individual qualified enough to oversee *all* forensic science standards in a country, it may be worth considering the establishment of a forensics commission or board. There are forensic science societies that exist in Canada such as the Canadian Society of Forensic Science (CSFS) which "is a non-profit professional organization incorporated to maintain professional standards" (CSFS, 2022, para. 1). However, standards set by the CSFS are not legally required for the admissibility of scientific evidence in court. Additionally, the CSFS acts merely as an advisory group for justice systems. The UK Forensic Science Regulator Act made the forensic regulator more involved with the justice system to ensure that there is an "understanding of quality and standards by all stakeholders including… the police, the prosecuting authorities, defence and courts" (UK Government, 2022, para. 6). Implementing similar policy in Canada should be considered to improve scientific evidence in courts.

Also from the UK, the 1973 Brandon and Davis study has additional recommendations relating to full disclosure of evidence that could be useful in a Canadian setting. Brandon and Davis recommend that the prosecution be required to disclose any evidence whether it is favourable to the defence and regardless of whether the prosecution intends to use it during trial. In Canada, the case precedent for prosecutorial disclosure comes from *R v Stinchcombe* (1991). In this case, it was determined that the Crown or prosecution has a duty to disclose all evidence that could be relevant to the case regardless of whether they intend to use it or if it is favourable for the defence. *Stinchcombe* also requires disclosure after conviction, which is significant for wrongful convictions (Montana, 2022). Evidently, the *Stinchcombe* precedent is similar to the reform proposed in the 1973 Brandon and Davis study. However, issues with full disclosure have continued in Canada even after the 1991 ruling. Specifically, the Crown determines what is and is not "relevant" when disclosing evidence. A recent example from the UK comes from the HM Crown Prosecution Service Inspectorate (2020) which recommended procedures to identify and address issues in file quality and develop strategies to improve. This could be relevant for Canadians as well.

From Australia, the 2008 Mallard Inquiry and 2018 Queensland Commission provide recommendations that could be germane in Canada. First, the Mallard Inquiry (2008) suggests taking on "special provisions" when interviewing mentally ill individuals (p. 165). While this inquiry does not provide specifics on what provisions may assist this issue, it is well known that mentally ill individuals are more likely to falsely confess and falsely plead guilty (Leo, 2009; Mogavero, 2020; Redlich et al., 2010). One Canadian example is that of Phillip Tallio – a disabled Indigenous man – who falsely confessed to the murder of a 22-month-old girl (Robinson & Fumano, 2017). There was no physical evidence tying him to the murder, no eyewitnesses, the only evidence was his false guilty plea (Robinson & Fumano, 2017). The interview was not

recorded, and Mr. Tallio provided contradictory and unclear statements (Robinson & Fumano, 2017). If the police had proper tools for interviewing disabled individuals it may be possible to reduce the rate of false confessions and false guilty pleas. Obviously, factors such as ensuring the individual's *Charter* rights under section 11 including their right to silence and council will assist in reducing false confessions. However, the Australian Mallard Inquiry points out that mentally ill suspects may require some extra support during interviews. Some recommendations may include having a psychiatrist or psychologist present during interviews and providing mental health screens.

The Australian Queensland Commission (2018) also contains relevant considerations for Canada. Specifically, it addresses the overrepresentation of Indigenous peoples being wrongfully convicted. In Canada as well, Indigenous peoples are often overrepresented in the justice system (LaPrairie, 1990; Wiley et al., 2020). The Australian Queensland Commission (2018) discusses the overrepresentation of Indigenous individuals in wrongful convictions and recommends constant consideration of their overrepresentation and unjust treatment especially when considering compensation and restitution for exonerees. In Canada, *R v Gladue* (1999) and *R v Ipeelee* (2012) provide precedent for considering the unique circumstances of Indigenous offenders during sentencing. However, there is no policy or case precedent in Canada for considering the unique circumstances of Indigenous peoples in the context of wrongful convictions. Thus, Canada should consider taking on a similar approach that was recommended in the Australia Queensland Commission. This may include considering the circumstances of Indigenous peoples when they apply for appeals, put in s.696.1 applications, and following their exoneration when providing compensation. These recommendations are aligned with the National Centre for Truth and Reconciliation (NCTR) and the Truth and Reconciliation Commission of Canada's 94 Calls to Action that were published in 2015. Part of the 55th recommendation was to provide progress reports on what the government is doing to reduce "the overrepresentation of Aboriginal people in the justice and correctional systems" (2015, p. 6). Additional calls to action in this commission include reducing Indigenous overrepresentation in custody. Thus, ensuring unique consideration of Indigenous exonerees would assist in reconciliation efforts. Additionally, providing support for Indigenous peoples who encounter the system in any way could assist in reducing overrepresentation as well.

Lastly, all recommendations in the 2021 Canadian LaForme and Westmoreland-Traoré report on a miscarriages of justice commission in Canada should be implemented. Canada does not yet have an independent commission to investigate claims of miscarriages of justice whereas other countries such as the UK do. Having a properly funded commission to investigate miscarriages of justice would drastically improve accessibility to resources for exoneration. The LaForme and Westmoreland-Traoré report goes beyond this to include support for exonerees regarding reintegration and compensation. This is significant for two reasons. Firstly, in Canada, compensation is not automatic and usually requires the exoneree to go through another legal process. Secondly, most wrongful conviction organizations only assist exonerees up until exoneration. They have few if any resources to support exonerees after release. The commission proposed by LaForme and Westmoreland-Traoré would fill this gap by providing exonerees with support after they have been exonerated.

While all the countries in this study have adversarial justice systems, they are still different in many ways. Although there are some similarities amongst these countries, they differ in their policy, procedure, legislation, and case law. Due to the way in which different laws and policies

are applied, there may be different outcomes. Beyond this, each country has a unique history that may impact both routine administration in the system and biases that professionals in these systems hold. For example, colonialism and slavery has affected these countries in different ways. While there is obviously the overarching trend of racism in all colonial systems, the specific history connected to each of these systems will be different in some ways. This may affect the way that justice system professionals approach investigations and cases depending on the type, severity, and history of biases they may carry with them. This also may affect what groups are overrepresented in varying systems. The current environment and nature of colonialism, racism, sexism, and other isms are also important to consider. Current and historic events will affect the ways in which systemic injustices manifest and how the system operates daily. Regardless, these differences can affect comparative analysis and complicate policy transfer between countries. Nevertheless, these can still be incredibly valuable for several reasons. Analyzing differences between systems may be beneficial to identify which systems handle different situations or procedures better. This may point towards certain areas of necessary reform, which was the goal of the qualitative content analysis in this study. Essentially, identifying which systems have better procedures can help inform other countries that are lacking in certain areas. Overall, this can improve the way policy is reformed by making informed decisions from other countries that have had success with addressing injustices and systemic issues. As mentioned previously, we should consider this from the perspective of "lesson drawing" rather than absolute policy transfer (Rose, 1991).

B. Future Research Recommendations

Research on the causes of wrongful convictions is constantly changing and growing. Comparative scholarship has proven useful when trying to understand the major causes of wrongful convictions and for implementing change (Huff & Killias, 2013; Roach, 2015; Sangha et al., 2010; Shapiro, 2020). Thus, a general recommendation for future research is to continue adding to the literature on wrongful convictions from a cross-national and domestic perspective. This will continue to push legal professionals to ask questions, contemplate biases, and advocate for policy change when necessary.

A second recommendation relates to the UK Forensic Regulator Act. Research should be employed regarding the success of this act through the lens of wrongful convictions. Studies should be done to assess both the validity of implementing a similar regulator in Canada, and to look into the current role of forensic societies in Canada. Specifically, it should be determined if it is possible to give institutions such as the CSFS more legal powers. This may include deeper involvement and consultation with legal professionals, providing required seminars/training on forensics for legal professionals, or developing a required set of standards under the CSFS that need to be present for scientific evidence to be admitted at all. This analysis would also require some research into how this could fit in with the existing *Mohan* framework for admitting expert evidence.

Thirdly, studies on compensation laws in differing countries should be performed. This may include a cross-national comparison of rates of wrongful convictions in countries/jurisdictions with automatic/required compensation compared to countries with no compensation guarantees. It would be interesting to see if the rates of wrongful convictions differ based on compensation laws and how this relates to accountability. Further, this may lead to inquiries regarding tunnel vision specifically police and prosecutorial misconduct. As state actors, they may be more hesitant to engage in misconduct if they know compensation is automatic for exonerees and thus they may be

costing the government large amounts of money. This also may suggest the importance of considering how investigative thoroughness and compensation laws correlate in different jurisdictions.

Additionally, the validity of implementing more Innocence organizations and independent criminal review commissions globally should be assessed. These types of organizations are one of the only resources available for individuals who have exhausted all appeals. Unfortunately, these organizations are also incredibly over worked, short staffed, and do not have unlimited funds or resources. Each country should consider how they could redistribute funds to implement more of these initiatives.

Lastly, research regarding education accessibility for justice system professionals should be studied in the context of miscarriages of justice. Generally, it would be interesting to see how jurisdictions differ in *required* education for police, prosecution, defense, judges, and juries. It may be possible that jurisdictions with more rigorous, required, and ongoing training would correlate with lower rates of wrongful convictions. Additionally, the type and quality of education provided should be considered. During the qualitative component of this study education emerged as a theme. Two major points concerning education in this analysis related to police training and forensics. Thus, research should be done on what training police receive in different jurisdictions especially regarding proper interview techniques, performing lineups, dealing with unique suspects, and on the nature of false confessions and false guilty pleas.

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Statutes

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Jurisprudence

R v Gladue, [1999] 1 SCR 688

R v Ipeelee, [2012] 1 SCR 433

R v Mohan, [1994] 2 SCR 9

R v Stinchcombe, [1991] 3 SCR 326

R v Watchorn, [2014] NZCA 493

How Joint Enterprise Liability Neutered the Criminal Cases Review Commission in England

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In 2016 the English Supreme Court corrected the law concerning joint enterprise liablity in R v Jogee ([2016] UKSC 8). The decision did not invalidate every conviction made under the erroneous, albeit faithful application of the old law, on the basis it could lead to an unmanageable number of appeals. Individuals convicted as secondary parties prior to Jogee who appeal outside of the statutory 28 days have to demonstrate they have suffered a substantial injustice, the test imposed by the Court of Appeal in all change of (common) law cases. The Court of Appeal will also apply this test to a referral made by the English Crimial Cases Review Commission (CCRC). This has meant that the CCRC has no choice for this category of applicant, but to apply its own statutory test and also the substantial injustice test. The CCRC's statutory real possibility test has been criticised for compromising its independence, on the basis the language makes it subordinate to the Court of Appeal. The fact that the CCRC has to apply the Court of Appeal's substantial injustice test further questions just how subservient it is to the Court.This article is based on a research study produced by the author, which was the first to examine applications made to the CCRC from individuals who have been convicted under joint enterprise liability. The findings explore the extent to which the corrected law from Jogee is used in applications, and shows the limiting effect that the substantial injustice test has had on the CCRC. The study also reveals the low number of applicants identifying as Black British, despite existing research suggesting this demographic has the highest conviction rate for joint enterprise.

I Introduction

Between 2009 and 2020 there were 247 applications made to the English Criminal Cases Review Commission (CCRC) from individuals that have been convicted under an aspect of joint enterprise liability.

160 of these applications were made from individuals convicted as secondary parties and of these, 91 applications were made after 2016. This is significant because that was when the English Supreme Court in *R* v *Jogee* ([2016] UKSC 8) corrected the law concerning joint enterprise liablity, abolishing an aspect of joint enterprise known as parasitic accessorial liability (PAL). The decision in *Jogee* should have provided individuals convicted under PAL the potential to appeal their conviction. Yet, because of this change taking effect at common law, the decision has in fact had the opposite effect, especially on applications made to the CCRC.

The CCRC is an independent body that has the power to return criminal cases back to the English Court of Appeal Criminal Division (CACD). Established in March 1997 by the Criminal Appeal Act 1995, applicants must show either fresh evidence or a new legal argument not used at trial or on appeal, to which the CCRC applies the statutory real possibility test identified in s.13 of the Criminal Appeal Act 1995:

> 13. (1) A reference of a conviction … shall not be made under any of sections 9 to 12B unless— (a) the Commission consider that there is a real possibility that the conviction verdict, finding or sentence would not be upheld were the reference to be made. [1]

Applicants to the CCRC must have exhausted the criminal appeals process, which means they either must have had leave to appeal denied or a full appeal dismissed.

The statutory real possibility test has been criticised on the basis it makes the CCRC deferential to the CACD, calling into question its status as an independent body (Law Commission report 2015, Westminster Commission on Miscarriages of Justice report 2021). Following *Jogee*, the CCRC is mandated to apply the CACD's own substantial injustice test for applicants who identify as secondary parties convicted under joint enterprise liability (*Jogee* [100]). As will be explained, the substantial injustice test provides a threshold that has to be met by any individual wishing to appeal on the basis of a change at common law. The test is supposed to limit the number of appeals based on a change in the law (*Jogee* [100]). For the CCRC however, it further calls into question its independence from the CACD.

The study this article is based on was the first to examine applications to the CCRC from secondary parties convicted on the basis of joint enterprise. The main finding is that the imposition of the substantial injustice test on the CCRC has created a two-tier approach for individuals convicted as secondary parties under joint enterprise liability. The first tier under the statutory real possibility test applies the threshold of safety (of the conviction) but the second tier under substantial injustice applies a higher threshold. This approach is so restrictive that its stops the CCRC fulfilling its purpose, which is to provide a service for *anyone* who believes they have been wrongfully convicted or sentenced in criminal courts in England, Wales and Northern Ireland (ccrc.gov.uk). It cannot provide the same service for all applicants because secondary party applicants are treated differently. Despite existing research suggesting that Black British individuals have the highest conviction rate under joint enterprise liability (Crewe, Hulley and Wright 2014, Young 2020), the study revealed the low number of this demographic making applications to the CCRC. Furthermore, whilst the findings highlighted that applicants are able to access legal representation, it also showed that the corrected law from *Jogee* is being applied

incorrectly by lawyers, which essentially wastes an application but also gives false hope to the convicted individual.

II Joint Enterprise Liability: Before and After the Supreme Court Decision in England

The term joint enterprise in England and Wales refers to three different types of criminal liability: principal, joint principals and secondary parties (Crown Prosecutio Service, 'Secondary Liability: charging decisions on principals and accessories, February 2019). A principal is someone who carries out the conduct element of the substantive offence, and if two or more people do this together they are identified as joint principals. As joint principals the Crown Prosecution Service (CPS) needs to prove that the offence was committed as a joint agreement, which need not be formal or expressed verbally and can amount to a nod or behaviour from which an agreement can be inferred. A secondary party is described by the CPS as someone who aids, abets, counsels or procures (often referred to as assists or encourages) someone to commit the substantive offence, without being the principal offender. A secondary party can also be prosecuted and punished as if he were a principal offender under s8 Accessories and Abettors Act 1861. The Supreme Court was highly critical of the use of the term 'joint enterprise' which in its view is not a legal term of art and has been subject to public misunderstanding (*Jogee* [77]), but the phrase continues to be used by the CACD (*R* v *Garwood* [2017] EWCA Crim 59 [2] and [17]; *R* v *Brown* [2017] EWCA Crim 167 [41] and [54]; *R* v *Aradour* [2017] EWCA Crim 605 [16]).

PAL referred to a situation where two defendants agreed to be involved in an intial first crime, during the course of which the principal defendant went on to commit another crime. If the second defendant foresaw the possibility of the second crime being committed then they were also guilty of the second crime. It can be best illustrated through a scenario concerning two defendants, D1 and D2 both of which have a common intention to commit a robbery. During the robbery, D1 attacks and kills a security guard. PAL made it easier to convict D2 of the murder of the security guard because since D2 was already committing a crime they would be liable for any crimes committed by their accomplice as long as D2 had forseen the risk that another crime might occur. The second crime was parasitic on the first crime. The problem with the application of PAL was that for the secondary party, liability could be found to exist even though the second offence was not part of the joint enterprise to which they had originally agreed (Way, 2015). In effect, the standard of proof for the secondary party was easier to meet than for the principal for whom it was necessary to show intent.

Mr Jogee was convicted of murder having gone to the home of the victim with the principal. Here the principal stabbed the victim with a knife. Jogee was outside when this happened smashing a bottle against a car and shouting words of encouragement. Both men were convicted in March 2012 (*Jogee* [101]), and Jogee made an unsuccessful appeal in 2013 (*Jogee* [101]). It was a further appeal to the Supreme Court which found that the law had taken a wrong turn in the case of *Chan Wing-Sui* ([1985] AC 168). The court stated that:

> 'The error was to equate foresight with intent to assist, as a matter of law; the correct approach is to treat it as evidence of intent. The long-standing pre Chan

> Wing-Siu practice of inferring intent to assist from a common criminal purpose which includes the further crime, if the occasion for it were to arise, was always a legitimate one; what was illegitimate was to treat foresight as an inevitable yardstick of common purpose.' (([2016] UKSC 8 at [87])

The Supreme Court returned foresight to where it should always have been: evidence of intention, rather than a sufficient standard on its own.

The decision was initially celebrated, until the realisation set in that it was to have limited practical impact, especially for those individuals whose convictions applied PAL prior to it being set aside. The Supreme Court made it clear that a 'faithful application of the law as it stood at the time' (*Jogee* [100]) can only be set aside by seeking exceptional leave to appeal to the CACD out of time (beyond the statutory 28 day appeal period). The Court would only grant such leave where an individual could demonstrate a substantial injustice, a principle the court highlighted, that had been applied for many years to general cases where there was a change in the law (*Jogee* [100]). The CACD in the subsequent case of *Johnson and Others* ([2016] EWCA Crim 1613 [15]) defined what would constitute a substantial injustice for 'out of time' appeals (made beyond the statutory 28 day time period) resulting from the corrected law in *Jogee*. The CACD determined substantial injustice to be considered on 'the strength of the case advanced that the change in the law would, in fact, have made a difference' (*Johnson* [22]). The key question the court has to answer is, would the defendant have not been convicted of murder if the law as set out in *Jogee* had been explained to the jury. In determining this question, the CACD refer to where a case falls on the spectrum of offending; where crime A is a crime of violence 'which the jury concluded must have involved the use of a weapon so that the inference of participation with an intention to cause really serious harm is strong' and at the other end of the spectrum where crime A is a different crime, not involving intended violence or use of force. The court acknowledged that the substantial injustice test is one with a 'considerably higher threshold', (*R* v *Towers* [2019] EWCA Crim 198 [72]) than that of the safety test used for appeals made within the statutory 28-days (Gerry 2021). The CACD, rejected submissions that argued to the contrary, and held that the correction of the law in *Jogee* did not demonstrate a substantial injustice (*Johnson* [17] and [18]). As Felicity Gerry described in 2018: 'Put another way, appellants have to satisfy the CACD that they would have been found not guilty on the basis of the law in *Jogee* to demonstrate that they have suffered a 'substantial injustice'. (Gerry 2018). The substantial injustice test is likely to be satisfied where appellants were not in possession of a weapon, or were unaware that the principal or others were carrying a weapon, and did not set out to commit offences of violence (*Jogee* [98]).

The CACD made it clear that the requirement to show a substantial injustice extended to cases referred by the CCRC, stating that the 'Criminal Cases Review Commission must make its assessment of alleged miscarriages of justice in the light of the approach of this court' (*Johnson* [14]). This has proven to be significant because it placed the CCRC's statutory real possibility test in a framework of developing CACD jurisprudence concerning substantial injustice. There has only been one successful appeal direct to the CACD applying the corrected law from *Jogee* and arguing a substantial injustice (*R* v *Crilly* [2018] EWCA 168). The CCRC has made four referrals to the CACD for applicants convicted as secondary parties (one in 2017/18, and another three in 2018/19).

This low number indicates the struggle applicants have in meeting the high threshold of the substantial injustice test, which the CCRC has said, will only be crossed in 'the rarest of circumstances' (CCRC 2017/18).

III The Problem with Joint Enterprise in England

The Supreme Court's actions have been described as substantive law reform that was not made explicit because it would have raised concerns as to judicial activism (Stark 2016). Studies have pointed out that whilst *Jogee* corrected the law there has been 'no discernible impact on the numbers of people prosecuted or convicted of serious violence as secondary suspects.' (Mills, Ford and Grimshaw 2022). Mills *et al* highlighted how legal professionals consider that *Jogee* only really changed how joint enterprise is expressed, with little change in the number of individuals prosecuted as secondary suspects, as some had hoped for. The decision of the Supreme Court was not followed by common law jurisdictions Australia and Hong Kong (Jackson 2017, Dyer 2018). Where these states have decided not to apply the correction, it is thought that PAL continues to contribute to 'large numbers of black people in prison' (Gerry 2021).

Joint enterprise has been characterised as a dragnet legal principle, on the basis that it disproportionately draws large numbers of Black And Minority Ethnic (BAME) young men into the criminal justice system (Young 2020, Mills *et al* 2022). Research supports this perspective. In 2014, the Institute of Criminology at the University of Cambridge collated figures concerning the race of individuals convicted of murder under joint enterprise. The study explored the experiences of male prisoners who were convicted at 25 years old or younger and given sentences of 15 years or more (Crewe, Hulley and Wright 2014). The research identified that of those convicted under joint enterprise, 57.4% were BAME (37.7% Black/Black British, 4.7% Asian and 15.5% Mixed Race) compared to 38.5% who were White (Crewe, Hulley and Wright 2014). A different study by Williams and Clarke in 2016 examined the extent to which gang discourse influence the prosecution of young Black men in joint enterprise cases. The report identified that convictions of BAME individuals under joint enterprise have been premised on gang rhetoric. The survey used in the study showed that 69% of BAME prisoners said the gang narrative was introduced in the court room, compared to 30% of White prisoners (Williams and Clarke 2016). David Lammy MP carried out a review in 2017 into the treatment of, and outcomes for, Black, Asian and Minority Ethnic (BAME) individuals in the Criminal Justice System. A survey of prisoners suggested that half of those convicted under joint enterprise identify as BAME (Lammy 2017).

There are situations when joint enterprise liability is necessary, such as where an offence is commited by two people acting with a common purpose as joint principals, or where someone is an accessory and helped or encouraged the the principal offender to commit the offence, for example as a getaway driver. The reach of secondary liablity however, has been extended through association with gangs and violence, so much so it has become central to the crime control response and has been seen as a catch-all approach (Williams and Clarke 2016). Lord Falconer, former Lord Chancellor speaking in a radio interview in 2010 highlighted his support for joint enterprise convictions for gang-related offences:

> The message that the law is sending out is that we are very willing to see people convicted if they are a part of gang violence - and that violence ends in somebody's death. Is it unfair? Well, what you've got to decide is not, 'Does the system lead to people being wrongly convicted?' I think the real question is: 'Do you want a law as draconian as our law is, which says juries can convict even if you are quite a peripheral member of the gang which killed?' And I think broadly the view of reasonable people is that you probably do need a quite draconian law in that respect (Cited in Jacobson *et al*, 2015).

This supports the notion that protecting society is favoured over protecting the individual, with which the accompanying perception is that the conviction of a secondary party is acceptable collateral damage (Young 2020).

This position underpins the primary criticism of the use of joint enterprise as being unfair, especially from individuals convicted of murder as secondary parties, where often they do not perceive themselves to be murderers on the basis they did not kill anyone directly (Hulley, Crewe and Wright 2019). The study from Hulley *et al* in which a number of convicted secondary parties were interviewed, describe the label of 'murderer' as being too far removed from the actions for which these individuals identify with, such as not calling the police or not intervening to stop a violent situation (Hulley *et al* 2019). The common point amongst this group was that joint enterprise did not make sense (Hulley *et al* 2019).

IV The First Study to Examine Applications to the CCRC Concerning Joint Enterprise

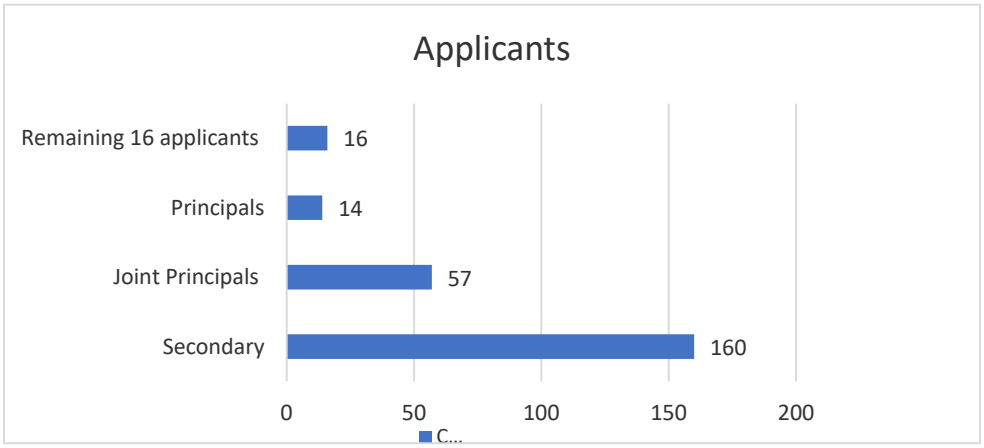
Informing this article is the first study to which the CCRC gave access to 247 applications. These had been made between 2009 and 2020 from individuals convicted where joint enterprise liability had been applied. The intial aim of the study was to examine the 207 applications referred to in the CCRC's annual report of 2017/18, (CCRC Annual Report and Accounts 2017/2018) post the decision in *Jogee*. However, where the global pandemic delayed the start of the research, when the data did become available the CCRC provided an additional 40 applications. The 247 applications account for only 1.8% of the total number of 13,730 applications made between 2010 and 2020 (taken from the CCRC annual reports which started in 2010 available at www.ccrc.gov.uk). The study received ethical approval from the University of Greenwich.

The initial design of the study had two primary aims which were to 1) identify points of commonality in the applications, and 2) construct a statistical portrait of applicants, focusing on key demographic characteristics. When the research began and upon reading the applications, it became clear that to achieve the first aim, a separate research study would be required based on the variation in documents submitted by applicant, as well as the split in applications that had legal advice and those that did not. The focus of the current study was consequently reframed with the primary aims to explore a) how the corrected law in *Jogee* was being used in applications, b) whether applicants had legal representation, and c) the demographic characteristics of applicants.

The research was initially approved by the CCRC in 2020, but the global pandemic caused problems with access to the relevant data so the proposed start date of February 2020, became 1 March 2021.

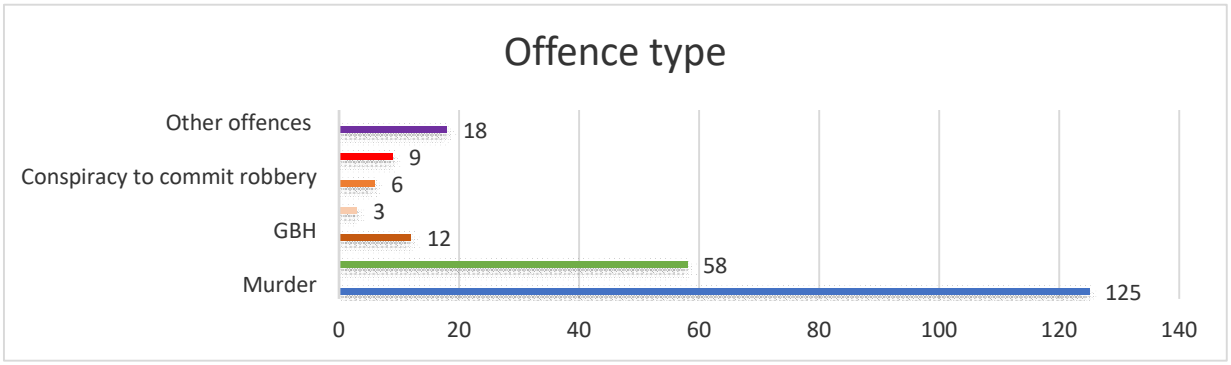
From the 247 applications, 160 were convicted as secondary parties, 57 were convicted as joint principals and 14 were convicted as the principal. There were 14 applications where the no joint enterprise liablity was applied because the applicants were convicted in either multi-defendant trials or under the Accessories and Abettors Act, these were excluded from the analysis. In two applications the paperwork had been destroyed so it was not possible to determine what type of joint enterprise the applicant had been convicted under. These were also excluded from the analysis (Hewitt 2023). This left 231 applications (see figure 1 below).

Figure 1: Numbers of applicants listed as principals, joint principals or secondary parties.



From the 231 applications examined, 125 applicants had been convicted of murder, whilst 58 had been convicted of murder as well as another offence such as robbery or Actual Bodily Harm. Twelve applicants had been convicted of Grievous Bodily Harm (GBH) and, three had been convicted of GBH together with other offences. Six applicants had been convicted of conspiracy to commit robbery and nine applicants had been convicted of conspiracy to commit robbery as well as another offence. The remaining applicants had been convicted of rape, theft, hijacking and other offences (Author 2023). Figure 2 shows this below.

Figure 2: Type of offence applicants were convicted of.



V The Effect of *Jogee* and Substantial Injustice on Applications to the CCRC

From the 160 applicants convicted as secondary parties, 65 (40%) of these that referred to the corrected law in *Jogee* also claimed to have suffered a substantial injustice citing *Johnson*. Nineteen applications (12%) referred solely to *Jogee* and did not argue a substantial injustice. There were 75 secondary party applicants (47%) that did not refer to either *Jogee* or *Johnson*, because the applications focused on new evidence, new legal arguments or the case law was not applicable to the conviction. One application solely referred to *Johnson*.

The corrected law is not a routine feature of applications to the CCRC, evident in the 40% of secondary party applicants that used both *Jogee* and *Johnson*. Indeed, a higher number of applicants chose to apply on the basis of new evidence or a new legal argument more likely because of the high threshold required for demonstrating substantial injustice. The CCRC has made only four referrals to the CACD for applicants convicted as secondary parties (one in 2017/18, and another three in 2018/19). This 6% referral rate (4 out of the 65 applicants that cited *Jogee* and argued a substantial injustice under *Johnson*) appears higher than the CCRC's historical average of 2% out of all applications made to it (CCRC, 2023). It is easy to suggest the referral figures for secondary parties are high when dealing with such a small numbers of applications. The 160 applications from secondary parties make up only 1.1% of the total number of 13,730 applications made to the CCRC between 2010-2020 (taken from the CCRC annual reports, although there was no report for 2009, accessible via www.ccrc.gov.uk). If the four referrals are taken in the context of the 13,730 applications, the referral rate diminishes to less than 1%.

The application of the substantial injustice test by the CCRC was challeged in *R (on the application of Davies)* v *CCRC* ([2018] EWHC 3080) where Felicity Gerry QC (as it was referred to then, now it is KC) argued that the necessary approach was for the CCRC to apply the statutory real possibility test, and that the substantial injustice test was a diversion. The court disagreed and held that the substantial injustice test was intrinsic to and required by the statutory real possibility test (*R* v *Davies*). As such, it bound the CCRC to adopt the starting point that follows the legal approach taken by the CACD, when considering whether a substantial injustice has been demonstrated in applications from individuals convicted as secondary parties (*R* v *Davies*).

There were no active records by either the CPS or the Home Office of prosecutions that applied joint enterprise liability (McClenaghan *et al* 2014), until the CPS started a pilot in February 2023 to monitor homicide / attempted homicide cases that use joint enterprise liability (CPS Joint Enterprise Pilot: data Analysis, 2023). The pilot applied a flag to the aforementioned cases in six of the 14 CPS areas. Research carried out previously therefore, had to use data from appeal judgements, the CPS and also data from the Ministry of Justice and the Home Office. The Bureau of Investigative Journalism in 2014 obtained information from both the CPS and Home Office. Following a consultation with legal professionals, the Bureau asked for information on cases that involved two or more defendants convicted in murder cases (McClenaghan *et al* 2014). The study found that for the prosecution of 1,853 individuals charged with murder in cases involving four or more defendants between 2005 and 2013 joint enterprise was almost certainly relied upon (McClenaghan *et al* 2014).

This accounted for approximately 17.7% of all homicide prosecutions for this period. In the same eight years there were 4,590 prosecutions for murder in cases involving two or more defendants which was equivalent to 44% of all murder prosecutions in those years (McClenaghan M. McFadyean M. and Stevenson R. 2014). A smaller study of 61 CPS case files involving multiple parties charged with the same violent offence, identified that a third of cases resulted in two or more people being convicted of the principal offence (Jacobson 2016). A more recent study in April 2022, by the Centre for Crime and Justice Studies (Mills, *et al*) was the first research study that used national data to assess the use of joint enterprise in prosecutions and serious violence in England and Wales over the last 15 years. The report, acknowledging the lack of data in the public domain about the use of joint enterprise adopted a similar to the method used by the Bureau of Investigative Journalism in 2014, and submitted Freedom of Information requests to the Ministry of Justice, the CPS and the Home Office. Their study looked at: the number of people that had been prosecuted and convicted for serious violent offences [2] under joint enterprise law, who had been prosecuted and convicted for serious violence where joint enterprise had been applied, and the impact the Supreme Court decision had on trends in the use of joint enterprise in convictions. Not surprisingly, the results showed that over 1,000 people had been convicted of murder or manslaughter as a secondary suspect [3] in the 10 -year period to 2020. Over 2,000 had been convicted of murder in cases involving four or more defendants in the 15- year period to 2020. Young adults aged between 18-24 were the recipients of 2,218 convictions between 2005 and 2020. Young black people were over-represented in the figures, with 46% from BME backgrounds convicted of murder as secondary parties compared to 34% of all BME individuals convicted of murder (Mills, Ford and Grimshaw 2022). The study also made it clear that *Jogee* appeared to have 'no discernible impact' on the number of people prosecuted or convicted of serious violence as secondary parties.

Krebs (2019) described the requirement of the substantial injustice test for secondary party applicants as rigorous, a point illustrated by *R* v *Crilly* ([2018] EWCA Crim 168), the only successful case to overcome the threshold required. John Crilly's defence was able to demonstrate that 'the accusation was built on foresight all along' (Krebs 2019) which was sufficient to satisfy the CACD that had the jury been directed on the basis of the law in *Jogee*, he would not have been convicted of murder. The justification for imposing the substantial injustice test arose from the decision in *Cottrell & Fletcher* (2007 EWCA 2016 [46]) where the CACD, citing *Ramzan and others* made it clear that the:

> 'very well established practice of this court, in a case where the conviction was entirely proper under the law as it stood at the time of trial, to grant leave to appeal against conviction out of time only where substantial injustice would otherwise be done to the defendant'.

Extending the substantial injustice test to the CCRC started in *Cottrell*. The CACD referred to the divisional court's decision in *R (DRCP) v Criminal Cases Review Commission* (2006 EWHC 3065), when the court considered whether the CCRC, in exercising its statutory function should have regard to the practice adopted by the CACD in change of law cases. The divisional court decided that, 'the independent Commission was under no obligation to have regard to, still less to implement, a practice of the CACD which operates at a stage with which the Commission is not concerned' (*Cottrell* [49]).

As a result of the decision the CCRC drafted a seventh version of its Formal Memorandum: Discretion in Referrals (issued in March 2007) where it asserted that 'regard *will not* be had to....the Court of Appeal's practice in relation to applications for an extension of time in which to appeal change-of-law cases' (*Cottrell* at 49). The decision in *R (DRCP)* meant that individuals could circumvent the requirement for an application to the CACD for an extension to an out of time appeal. If an individual applied directly to the CCRC on the basis of a change made at common law, and if the CCRC referred it back to the CACD, the referral would effectively bridge the time gap and circumvent the request for an extension for an an appeal out of time. This meant the CACD could end up hearing a case that it *would not* have granted an out of time extension to (*Cottrell* at [51]). The CACD highlighted that whilst the CCRC was vested with considerable authority, it did not have the jurisdiction to quash convictions, this was the exclusive responsibility of the CACD (*Cottrell* at [52]).

The concern from the CACD was that thousands of cases could potentially be returned to the court on the basis of changes made at common law, so the matter was referred to Parliament. This resulted in s.16C (1) of the Criminal Appeals Act 1968 (inserted by s.42 of the Criminal Justice and Immigration Act 2008), giving the CACD the power to dismiss CCRC referrals summarily if based solely on a change in the law. The provision sought to prevent the situation arising where the CCRC refers a case to the CACD in the circumstances that the court would not have granted an extension of time for leave to appeal had the applicant gone directly to it. In *Johnson* the CACD made reference to s.16C (at [15]):

> 'Thus, for convictions not brought in time (including second appeals brought through the Criminal Cases Review Commission) it is necessary to identify the considerations the court will take into account in determining whether there has been a substantial injustice'.

The ramifications of this legislation mean that individuals convicted under the now abolished PAL are unable to access justice through the CCRC due to the substantial injustice threshold imposed by the CACD (Westminster Commission on Miscarriages of Justice report 2021), which is higher than that for the safety of the conviction (*Johnson* [20]). The CCRC's statutory test has been reframed by the jurisprudence of the CACD but only for applications from secondary parties convicted under joint enterprise. For this category of applicant, there is a two-tier approach where the CCRC applies both its statutory test and the substantial injustice test. The threshold of safety from the real possibility test is overridden by the higher threshold of substantial injustice. Yet for other applications where joint enterprise is not used and the law has not been changed it applies only the statutory test. When the CCRC was established in 1997 it was given the statutory real possibility test to apply to all applications it received, reviewing them to the same threshold (safety of the conviction). It is the CACD that has imposed the substantial injustice test on the CCRC, and pushed for a change in the law to retain its control over it as evidenced in *Cottrell*. The low number of applicants that attempted to argue a substantial injustice using *Johnson* in addition to applying *Jogee*, alongside only four referrals from the CCRC, shows how difficult it is to overcome the threshold for substantial injustice.

The CCRC's independence has been examined in reports from the House of Commons Justice Select Committee in 2015 (at [12]) and the Westminster Commission on Miscarriages of Justice in 2021. The real possibility test has been identified as encouraging the CCRC to be deferential to the CACD (Westminster Commission on Miscarriages of Justice, 2021 at [36]). Where the CACD has mandated the CCRC to use a test developed through its own jurisprudence, this further calls into questions the extent to which the CCRC is truly independent of the court. The purpose of the CCRC as an organisation is to provide a service for *anyone* who believes they have been wrongfully convicted or sentenced in criminal courts in England, Wales and Northern Ireland (ccrc.gov.uk). It cannot provide that service for all applicants, because secondary party applicants are treated differently. Echoing Felicity Gerry KC in her evidence to the Westminster Commission, the substantial injustice requirement 'effectively neuters the CCRC' (2021).

VI The Demographics of Applicants

The data revealed information about the demographics of the 247 applicants to the CCRC. There were 38 Black British applicants, 79 White British applicants, 7 (3%) identified as British Mixed, 15 applicants (6%) identified as Asian and 24 applicants (10%) identified their ethnicity ranging as Irish, Chinese, Jamaican, Lithuanian, Romanian, etc. 84 (34%) people did not identify any ethnicity. The two most represented groups were Black British and White British. Out of the Black British applicants, 26 (65%) identified as secondary parties (six identified as joint principals and the remainder identified as the principal) . Out of the secondary parties, 19 (73%) had been convicted of murder or murder plus another offence and 7 (27%) were convicted of offences ranging from GHB, robbery, manslaughter, conspiracy and s.18 offences against the person. Of the joint principals, five (83%) were convicted of murder or murder plus another offence.

From the White British applicants 57 (75%) were convicted as secondary parties, 49 (86%) of these were convicted of murder or murder and another offence. Twelve (16%) White British applicants were convicted as joint principals, and 11 (92%) of those were convicted of murder or murder and another offence. The remaining seven (9%) White British applicants identified as the principal offender, five (71%) of these had been convicted of murder or murder and another offence. Examining the age of the White British applicants when the offence was committed showed that 59 (24%) were aged 19 or under, 97 (39%) were aged between 20-29 years old and 44 (18%) were aged between 30-39 years old. Twenty (8%) were aged between 40-49 years old when the offence took place, 5 (2%) were aged between 50-59 years old and for 22 applicants (9%) it was not possible to ascertain this information.

Out of the 38 Black British applicants, 17 (45%) were aged 19 or under when the offence took place, 13 (34%) were aged between 20-29 years old and 5 (13%) were aged between 30-39 years old. The remainder did not provide an age. Out of the 79 applicants that identified as White British, 15 (20%) of these were aged 19 and under when the offence took place, 28 (37%) were aged 20-29 years old, 17 (22%) were aged between 30-39 and 13 (17%) were aged between 40-49 years old. The remaining applicants did not provide an age.

Although 85 applicants did not identify any ethnicity there is a lower number of Black British applicants (convicted under joint enterprise liability) to the CCRC, when considered in the context of existing research that shows the disproportionate representation of Black secondary parties (McClenaghan *et al* 2014 and Mills *et al* 2022). The CCRC compares its diversity statistics with those of the general prison population where 24% of the prison population is from minority ethnic groups, so anything near to this percentage is represented as being successful in terms of the CCRC meeting its diversity targets (Hewitt 2023). Twenty-five per cent of applicants identifying as black British is low in comparison to the 46% identifying as White British, but it would appear that applicants identifying from an ethnic minority group are under- represented more generally in CCRC applications. In the CCRC annual report for 2021/22, 24.4% of applicants describe themselves as being from an ethnic minority group, which was an increase of 19.8% from 2020/21 where the number of applicants identifying as from ethnic minority groups had dropped below the normal average of 24%. The report in 2020/21 also stated that 43.8% of applicants were white. Annual reports from previous years do not include information as to the ethnicity of applicants. As this is the first study to examine applications made to the CCRC from individuals convicted under joint enterprise liablity, although it advances an understanding of the demographic of these applicants, there is no data on which to base a prediction as to the expected number of black British applicants. The Bureau for Investigative Journalism stated that it found at 'least 1800 and up to 4590' people were prosecuted for joint enterprise homicide between 2005/2006 and 2012/2013 (McClenaghan *et al* 2014). The same study found that 57.4% were BAME. The most recent study by Mills *et al* in 2022, indicates that between 2005 and 2020 5,783 cases involving two or more defendants resulted in a conviction and 2,222 cases with four or more defendants resulted in a conviction. This study found that for individuals convicted as secondary parties of murder between 2010 and 2020, 46% were BAME compared to 34% of all those convicted during the same time period. These studies are unable to accurately reflect the number of individuals convicted using joint enterprise liablity because as already highlighted the CPS only started recording this data in February 2023. What both studies indicate however, is the over representation of Black individuals convicted under joint enterprise liability. When set in this context, 38 applications from BAME individuals over 11 years (between 2009 and 2020) averages 3 applications a year, which is a low number.

One reason for this low number could be the lack of trust in the criminal justice system from BAME defendants, a point highlighted by David Lammy in 2017 in his review of the disproportionate representation of BAME groups as youth prisoners between 2006-2016 (p69). If BAME individuals do not trust the system when they enter it at the time of being charged with an offence then there is very little to suggest they will start trusting it after exhausting the appeals process with only an application to the CCRC as their last resort. Further research would be needed to explore this point and is something the CCRC should consider carrying out to ensure that potential cases that could be referred back to the CACD are not being missed on the basis that young Black men, convicted under joint enterprise are not making applications. The CCRC should commission research into Black British applicants convicted of joint enterprise as secondary parties to understand whether there is an issue of trust in the criminal justice system that extends to the CCRC.

VII Legal Representation and Applications to the CCRC

This examination of applicants encouragingly showed that that individuals convicted under joint enterprise liability are being represented by lawyers in applications to the CCRC. The findings of this study break down the number of applicants that had legal representation in the context of White British and Black British applicants, on the basis these were the majority in terms of the demographic of ethnicity. Sixteen (61%) Black British secondary parties and four (66%) Black British joint principals had legal representation. For White British secondary party applicants 30 (53%) and six (50%) joint principal applicants had legal representation.

From the perspective of the 160 secondary party applicants, of the 91 applications made post *Jogee*, 44 of these were represented by a lawyer. Thirty-eight of the 91 applications were made after *Johnson* and 20 of these were represented by lawyers. Of the six applications that that were made after *Johnson*, but referred solely to *Jogee* and did not argue a substantial injustice, three of them were represented by a lawyer.

This data can be considered in the context of, firstly an increase in overall applications, from around 1,000 per year between 2006 and 2011 to around 1,500 per year between 2012 and 2019 (CCRC 2018/19); secondly the suggestion of an increase in unrepresented clients (CCRC 2019/20), and thirdly the limited funding that a solicitor can claim for each application based on ten hours of work (Clarke and Welsh 2022). An early study in 2008 by Professor Jacqueline Hodgson and Juliet Horne identified that from 2248 cases rejected as ineligible or having no reviewable grounds of appeal between 2001-2007, 29% of them were legally represented. The authors suggested this was a lack of understanding as to the CCRC's legal remit. A more recent three-year study published in 2021, carried out by Professor Richard Vogler *et al* (2021) from the University of Sussex identified that 42% of lawyers who participated in the research were no longer willing to accept publicly funded CCRC cases (see also Clarke and Welsh 2022), a position caused by the low remuneration rates for what is a demanding area of work. As a result of the lack of funding, law firms select cases where the issues are straight forward and rejected those that were time consuming or where there is considerable evidence to consider (Vogler *et al* 2021). The participants interviewed were almost unanimous in suggesting that CCRC work should be carried out by experienced lawyers, but the restricted funding meant that paralegals, trainees and sometimes consultants were paid to put together applications (Vogler *et al* 2021). There is an indication that lawyer-led applications to the CCRC are better structured and organised than those that are not represented (Hodgson and Horne 2009). Existing studies have considered the quality of representation in the context of applications being sent for review by the CCRC (Hodgson and Horne 2009, Vogler *et al* 2021), yet for this research a judgment can be based on quality in terms of how the relevant case law has been used. The study shows that some applicants, a few of which were supported by lawyers, used the law from *Jogee* incorrectly, whilst others did not argue a substantial injustice. Using the corrected law alone does not demonstrate a substantial injustice meaning that there is no scope to base an application solely on that decision (Gerry 2018). Nineteen applications referred solely to *Jogee*, six of these were made after *Johnson* was decided but the applications did not claim a substantial injustice. Three of the six applications made after *Johnson* were represented by a lawyer. Seventeen applicants convicted as joint principals referred to the corrected law from *Jogee*, eight of these were represented by a lawyer. This aspect of joint enterprise does not engage the corrected law.

In the majority of responses the CCRC made this clear in the statement of reasons, using a comment similar to the one below:

> The *Jogee* judgment relates only to secondary parties in simple terms where people are convicted of helping the principal (or main) offender commit an offence. For example if A gives B a knife or shouts encouragement and B stabs someone, B is the principal offender and A is a secondary party. *Jogee* only relates to the mental state that must be proved against A.

This implies that there is a lack of understanding amongst some lawyers as to what the corrected law in *Jogee* applies to. Whilst research indicates a positive association between applications with legal representation, the use of *Jogee* in this way is misguided and normally associated with applications that do not have the benefit of legal advice (Vogler *et al* 2021). This finding echoes the conclusion from the study in 2009 that there was a need to improve the quality of representation in CCRC cases (Hodgson and Horne) and a more recent study in 2021 highlighted the consensus amongst interviewees as to a deterioration in the overall quality of lawyer -led applications (Vogler *et al* 2021). Funding for a CCRC application is nearly non-existent and does play a large role in the time available for experienced lawyers to take on the work. Whilst the CCRC does provide the aforementioned comment above in the statement of reasons that is sent to the applicant and their legal representative, the use of incorrect case law should be made explicit by the CCRC in a separate advisory note to the lawyer.

VIII Conclusion

This article has shone a light on the issues caused by joint enterprise liability in applications made to the CCRC, which is an area that is under -researched. Existing research used data drawn from convictions for serious violent offences including murder where joint enterprise liability was applied in the period both before and after the Supreme Court decision in *Jogee*. This study introduces data from applications made to the CCRC by individuals convicted under joint enterrpise liability (Hewitt 2023).

Research that examined legal representation for CCRC applications indicates that whilst this is a benefit, it can vary in quality and the lack of funding for applications is directly affecting the use of more experienced lawyers to carry out the work. This article has exemplified the position for applications concerning joint enterprise, where although applicants are able to find legal representation, some of it is misguided, especially where *Jogee* is referred to for individuals convicted as joint principals or used alone without reference to substantial injustice. The CCRC must continue to explain in detail to applicants when the decision in *Jogee* does not apply to them because they have been convicted as joint principals or a principal in the offence. They should go further to provide a seperate advisory note to the representing lawyer so that future applications are not wasted by using the law incorrectly.

The overwhelming outcome of research before this, is that a disproportionate number of BAME men have been convicted of offences where joint enterprise was used (Young *et al* 2020).

The low number of applicants identifying as Black British as outlined in this article is not consistent with the existing data. Further research is urgently needed to explore this point, and it is something the CCRC should carry out to ensure that potential cases that could be referred back to the CACD are not being missed on the basis that this demographic are not making applications.

This article alongside the findings from the corresponding study (Author 2023) show that the decision in *Jogee* has had little, if any effect on historical convictions that incorrectly applied PAL. Despite the over representation of secondary parties, there is a high number of applications that chose to use new evidence or a fresh legal argument and did not apply *Jogee* and *Johnson.* The reason being, the hurdle of substantial injustice is almost impossible to overcome, and the effect of the substantial injustice test on the CCRC is significant. The discussion has shown that the imposition of the test by the CACD has placed the statutory real possibility test in a body of CACD jurisprudence, the effect of which has created a two-tier approach for individuals convicted as secondary parties under joint enterprise. The CCRC has to apply two different thresholds from the two different tests: real possibility uses the threshold of safety of the conviction and the substantial injustice test has a higher threshold.

This situation is so restrictive that the CCRC is unable to fulfill its purpose, which is to provide a service for *anyone* who believes they have been wrongfully convicted or sentenced in criminal courts in England, Wales and Northern Ireland (ccrc.gov.uk). It cannot provide the same service for all applicants because secondary party applicants are treated differently.

Notes:
[1] Continued….(b)the Commission so consider—
(i)in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or
(ii)in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
(c)an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
(2)Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.
[2] The report states that the term serious violence is used to refer to murder, manslaughter and homicide.
[3] The report uses this term to refer to those convicted as joint principals as well as those convicted as secondary parties, derived from the Homicide index applied by the Home Office, which is one source of the data used in the research.

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‘Angry and heartbroken for the failure of the system’: A content and thematic analysis of viewer reactions to *When They See Us*

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As the number of wrongful conviction media productions released to the public increases, an understanding of their potential impact on viewers is prudent. One such production, When They See Us, depicts the wrongful conviction of five racialized youth, and we investigated the effect of watching this specific wrongful conviction media production on a subset of Reddit users’ online conversations about wrongful convictions and the criminal justice system in general. Following an inductive content analysis of Reddit comments shared to r/WhenTheySeeUs (N = 461), seven coding categories were observed. The ‘Wrongful Conviction Relevant’ coding category was the third most frequently occurring, representing 28% of total comments. Additionally, after conducting a deeper thematic analysis of the ‘Wrongful Conviction Relevant’ comments, the following themes and subthemes were identified: Risk Factors (Individual Characteristics and System Factors), Exoneration and Beyond (Impacts on Exonerees and Changes to System), and the Innocence Movement (Unmet System Expectations and Public Awareness). Users’ ‘Wrongful Conviction Relevant’ comments were situated within the academic literature investigating wrongful conviction correlates, outcomes, and preventative measures, and discussed in relation to viewer reactions to other wrongful conviction media productions.

I Introduction

There are many media productions[1] about suspected and confirmed cases of wrongful conviction (Blom et al., 2023; Golob, 2017; Stratton, 2013). In fact, both Innocence Canada and the Innocence Project have compiled dozens of such productions on their websites, including movies, documentaries, television series and podcasts, that are meant to shed light on these injustices and expand the public's knowledge (Innocence Canada, n.d.; Innocence Staff, 2019). However, in comparison to the numerous media productions depicting wrongful convictions, there is considerably less research investigating whether, and how, such media impacts consumers' knowledge of, and attitudes toward, wrongful convictions (Golob, 2017). Understanding the public's attitudes toward wrongful conviction is important, given that members of the public have the ability to facilitate the reintegration of exonerees (e.g., renting to and/or hiring exonerees) and to support legislation aimed at reducing wrongful convictions and assisting exonerees (Blandisi et al., 2015; Kukucka et al. 2020; Westervelt & Cook, 2010; Zannella et al., 2020).

Empirical research suggests that wrongful conviction narratives (as opposed to aggregated statistics or fact-based reports from experts) reduce prejudices towards exonerees and increase support for innocence related reforms (Norris & Mullinix, 2020; Savage, 2013; Tudor-Owen et al., 2019; Zannella et al., 2022). For instance, Norris and Mullinix (2020) found that in comparison to statistics about wrongful convictions, written narrative cases resulted in the emergence of support for innocence-related reforms and individual concern about a wrongful conviction happening to oneself or someone they know. Across a series of three studies, Zannella and colleagues (2022) found that participants had more positive attitudes towards exonerees after watching a video of a real exoneree describing their experience compared to watching an expert in wrongful convictions share facts about its occurrence or an unrelated control video. Finally, Tudor-Owen et al (2019) theorized that the marked improvement in the public's perceptions of exonerees compared to previous empirical findings may have been attributable to an increased

[1] According to the University of Cincinnati's media production Bachelor of Fine Arts program information, media production "encompasses the integrated media arts of film and digital cinema, television and broadcast media news, audio production, and new media design" (University of Cincinnati, 2023).

awareness of wrongful convictions via news media coverage of popular cases. Wrongful conviction media productions may similarly increase the public's awareness of, and concern about, wrongful convictions – however, research in this area is nascent.

Research investigating the public's reactions to specific wrongful conviction media productions seems to have varying results. Using a narrative analysis, Stratton (2013) compared documentary productions depicting three Australian cases of wrongful conviction[2], all broadcasted for the documentary series *Australian Story*. Stratton (2013) found that differences in the resolution of the cases (and the narratives that these resolutions conveyed) may have impacted how each case was perceived. Specifically, two productions focused on individual cases of wrongful conviction that had been resolved for several years prior to the production (i.e., survivor narratives), whereas the other focused on a multiple wrongful conviction that was still unresolved at the time of production (i.e., a mystery narrative). According to Stratton (2013), the Australian news media critiqued the series, saying it was inappropriate to depict an unresolved (i.e., potential) case of wrongful conviction as an injustice prior to its legal determination as such – which seemed to have resulted in public apathy, disrepute, and negative perceptions of the show. Stratton's (2013) findings may suggest that wrongful conviction media productions about confirmed and resolved cases of wrongful conviction are better received by the public.

More recently, studies investigating public reactions to released media productions featuring unresolved, potential wrongful conviction cases, however, have found positive affective and behavioral responses (e.g., Golob, 2017; Kennedy, 2018; Rodriguez et al., 2019; Stratton, 2019). For instance, season one of the *Serial* podcast (Koenig, 2014) described the (then) unresolved wrongful conviction of Adnan Syed, who at 17 years old, was found guilty of murdering his ex-girlfriend, despite maintaining his innocence. Following the release of *Serial*, members of the public investigated the case on Syed's behalf and submitted theories of alternate scenarios and suspects to the Innocence Project Clinic at the University of Virginia School of Law, who were handling Syed's case (Stratton, 2019). Further, more than 66,000 people discussed the case across several social media platforms, more than 31,000 people signed a petition to have Syed's case reopened, and more than $200,000 was donated to fund Syed's legal defense (Golob, 2017). Eight years after *Serial*'s release – and 23 years of wrongful incarceration – Syed's conviction was vacated and he was finally released (Innocence Staff, 2022)[3]. *Serial* has been credited with beginning the renaissance of the true crime genre (Blom et al., 2023); spawning an additional podcast and a Home Box Office documentary about Syed's case; and arguably, contributing to Syed's eventual release (Golob, 2017; Walfisz, 2022).

Another example is Netflix's *Making a Murderer*, which depicted Steven Avery's wrongful conviction for sexual assault and attempted murder, his exoneration 18 years later, and his subsequent (and presumed erroneous; Allocca, 2016) conviction for a separate murder shortly thereafter (Ricciardi & Demos, 2015).

[2] The three cases depicted were those of John Button (two episodes in 2002); Sam Fazzari, Carlos Pereiras and Jose Martinez (three episodes in 2006); and Andrew Mallard (two episodes in 2010).

[3] Syed's conviction was later reinstated because the victim's brother was denied the right to attend Syed's release hearing in person. His case is currently under appeal with the Maryland Supreme Court, though Syed remains released (Segelbaum, 2023).

Following the release of *Making a Murderer*, more than 130,000 individuals signed a petition requesting the White House pardon Steven Avery (Allocca, 2016; Golob, 2017), and more than 71,000 people took to social media to further investigate the possibility of Avery's innocence (Stratton, 2019). Further, a content analysis of social media posts found that *Making a Murderer* fostered empathy for Avery in its viewers (Kennedy, 2018).

It is unclear from the literature at this point, whether the public responds more positively to confirmed (vs. potential) and single (vs. multiple) wrongful conviction cases, if reactions to wrongful conviction media productions have improved over time, or if the differential findings reflect national differences (Australian vs. American). To help resolve these questions, and to further our knowledge about public reactions to wrongful conviction media productions, the current research provides an analysis of public reactions to a more recently produced and resolved multiple wrongful conviction media production in the U.S. (i.e., *When They See Us*). This analysis will examine if recent reactions to a survivor narrative are similar to recent mystery narrative reactions – which may suggest that public opinion in the U.S. is more supportive of innocence narratives than in the past – or if viewers respond differentially to survivor and mystery narratives in the U.S. as was witnessed in Australia.

A. When They See Us

When They See Us, a four-part dramatized miniseries, depicted the resolved multiple wrongful convictions of five teenagers, all of whom were Black or Latino, known now as the Exonerated Five (DuVernay, 2019). The miniseries was released on May 31, 2019 and garnered a viewership of over 23 million Netflix accounts in less than one month (Bennett, 2019). Antron McCray, Kevin Richardson, Korey Wise, Raymond Santana, and Yusef Salaam—all between the ages of 14 and 16 years old—were convicted of sexually assaulting Trisha Meili while she jogged in New York City's Central Park in April 1989. After being interrogated for hours on end and experiencing manipulation, deception, and physical abuse at the hands of the police, four of the five youths eventually officially falsely confessed to some involvement in the assault (depicted in Part One). These confessions were used as evidence against the five youths despite the inconsistencies among the confessions, and despite the physical evidence from the crime scene not matching any of the suspects. Antron, Kevin, Korey, Raymond, and Yusef were each convicted in 1990, receiving sentences ranging from 5-15 years imprisonment (depicted in Part Two); moreover, Korey was tried as an adult and served his sentence in various adult prisons. Their convictions were vacated in 2002 after the actual offender finally confessed to committing the crime. By then, all of the defendants, save Korey Wise, had served their sentences (depicted in Part Three). The five exonerees were awarded a $41-million settlement from the City of New York in 2014 and a $3.9-million settlement from the State of New York in 2016, and proceeded to rebuild their lives with marriage, fatherhood, entrepreneurship, criminal justice system advocacy, the establishment of an Innocence Project, and more (depicted in Part Four).

A critical discourse analysis[4] of *When They See Us* suggested that its stylistic choices (e.g., title, camera angles, language) enhanced the polarisation between the depiction of the Black and White characters, and between the powerless civilians treated as suspects and the powerful

[4] For more detailed critical discourse analyses of *When They See Us*, see Melina and Irawan (2023) and Trevisan (2022).

criminal justice system actors (Trevisan, 2022). Further, using a qualitative analysis of the miniseries' discourse and depictions of discrimination and stereotypes, Melina and Irawan (2023) found that the Exonerated Five were depicted as troublemakers, animals, rapists, liars, and perhaps most importantly, as guilty. Finally, given that the Exonerated Five were released, exonerated, and financially compensated years before the release of *When They See Us* (in addition to their characters 'aging' onscreen), the audience may have perceived the miniseries and the survivor narrative it depicted with increased legitimacy compared to productions depicting mystery narratives (Stratton, 2013). Thus, although the true crime renaissance may be marked by the public's generally positive perception of wrongful conviction media productions, it is possible that the public's exact reactions to specific wrongful conviction media productions may still be impacted by the production's stylistic, qualitative, and narrative choices in conveying a case and its resolution.

Further, it is currently unknown whether these productions also impact consumers' understanding of wrongful convictions in general. For instance, watching the depiction of wrongful convictions due, in part, to false confessions may impact viewers' perceptions of false confessors, which research has generally found to be negative (Bernhard & Miller, 2018; Clow & Leach, 2015; Kukucka & Evelo, 2019). Research has established that interrogation tactics are inherently psychologically coercive, persuasive and can contribute to the occurrence of false confessions and wrongful convictions (Kassin, 2017; Leo & Ofshe, 1998; Scherr et al., 2020a). Further, some people are at a higher risk of making false confessions than others. For instance – as was depicted within *When They See Us*, youth are more vulnerable to deceptive and manipulative interrogation tactics, more likely to waive their rights during interrogations, and more likely to falsely confess, than adults because they are less likely to fully comprehend the implications of any admissions of guilt (Gould et al., 2014; Spierer, 2017). Despite this, members of the public often perceive false confessors as being more guilty, more responsible for their conviction, less competent, and less warm than individuals wrongfully convicted due to other contributing factors (Bernhard & Miller, 2018; Clow & Leach, 2015; Kukucka & Evelo, 2019). These attitudes may be due to a poor understanding of the impact of various situational factors that contribute to false confessions and/or the counterintuitive nature of one confessing to something they did not do (Henkel et al., 2008; Kassin, 2017). As such, perhaps watching several false confessions occur throughout *When They See Us* may better inform viewers and normalize the occurrence of false confessions.

B. Current Study

Given that hundreds of thousands of people take to social media to discuss recent wrongful conviction media productions (Golob, 2017; Stratton, 2019), the online discussions that members of the public engage in may provide insight into the public's attitude towards, and understanding of, wrongful convictions; both in relation to the specific productions they consume, as well as their more general attitudes. Further, the continued analysis of these online conversations may help to demonstrate whether the public's reactions to wrongful conviction media productions change over time and/or by geographic location (e.g., demonstrating whether recently released resolved and unresolved wrongful conviction media productions receive differential reactions in the United States as found previously in Australia by Stratton (2013)). In order to analyze viewer reactions to the resolved case depicted in *When They See Us* and to compare them to past literature of other American unresolved wrongful conviction media productions, the aim of this study was to

investigate (1) which elements of the miniseries were most discussed; (2) whether these discussions aligned with academic literature about, and exonerees' lived experiences of, wrongful conviction; and (3) to what extent these conversations were occurring before and after the miniseries' release.

II Method

A. Data

Reddit is a social media platform on which users can post to a variety of interest-based community pages, which are known as subreddits and are preceded by the symbol r/ (Reddit, n.d.). Many studies, across a wide variety of fields, including medicine, parenting, and sustainability, have investigated data collected from Reddit (e.g., de Carvalho et al., 2022; Derksen et al., 2017; Engelhardt & Royse, 2022; Ölcer et al., 2020; Pilkington & Rominov, 2017; Ruan & Lv, 2022; Shao et al., 2022; Wang et al., 2015; Wu et al., 2022). As of January 2021, Reddit reports over 57 million daily active users – which are preceded by the symbol u/ – who have shared more than 13 billion posts and comments to more than 100 thousand active communities (Reddit Inc, n.d.). Data was extracted from Reddit because social media, in general, can be useful in the study of public opinion by generating new insights and capturing emergent opinions on sensitive, and difficult to study, research topics (e.g., racism; Reveilhac et al., 2022), and research has found Reddit users to be more involved in discussion than users on other social media platforms (i.e., X (formerly Twitter); Arazzi et al., 2023).

The r/WhenTheySeeUs (2019) subreddit, which has 1,900 members, was analyzed to examine the conversations that Reddit users had about the miniseries. The r/WhenTheySeeUs administrators created five discussion thread posts, one for each of the four episodes and another for the miniseries as a whole, to which more than 258[5] users voluntarily posted comments discussing the miniseries following its release. A total of 539 comments were made to the five discussion threads in this sample. Seventy-eight comments were excluded from analyses (14.47%) because users either stated that they had not watched the miniseries, appeared to have violated the subreddit's rules (yet evaded deletion), had their comments removed by the administrators, or responded to a comment that was subsequently removed. The final dataset consisted of 461 comments created between May 31, 2019, and November 14, 2019.

B. Procedure

An inductive content analysis was conducted to categorize the comments to the five selected r/WhenTheySeeUs (2019) discussion threads, and to analyze the frequency of said categories (Hsieh & Shannon, 2005; Vaismoradi et al. 2013). Initially, the content of each comment was read, and a mutually exclusive and exhaustive list of codes was created such that every concept within every comment was coded for. Subsequently, codes with related content were

[5] The exact number of users that created the comments in the final dataset is unclear due to 3.25% (N = 15) of all coded comments being created by users who had subsequently deleted their accounts, thereby replacing the specific user's username with 'u/deleted', while keeping the content of the comments.

grouped into larger categories to further condense the dataset. Subsequently, an inductive thematic analysis was conducted specifically on the comments that pertained to wrongful convictions, in order to identify repeated patterns within this category (Vaismoradi et al., 2013). These patterns were organized into themes, allowing the researchers to analyze the qualitative data more thoroughly than possible with a content analysis alone. In the following section, we will discuss the results of the content and thematic analyses as well as their relation to the extant literature investigating factors related to wrongful convictions and consumer reactions to unresolved wrongful conviction media productions.

III Results & Discussion

A. Content Analysis

The content analysis resulted in seven coding categories: 'Review of the Show' (N = 281 comments), 'Other Parties' (N = 153 comments), 'Wrongful Conviction Relevant' (N = 133 comments), 'Exonerated Five' (N = 99 comments), 'Case Details' (N = 98 comments), 'Connections' (N = 70 comments), and 'Other' (N = 50 comments). Thus, the majority of posts (60.95%) focused on the 'Review of Show,' where users talked about their emotional response to, and assessment of, the miniseries. About half as many posts (33.19%) involved 'Other Parties,' where users mentioned other individuals relevant to the case, mostly to criticize the police officers and the specific prosecutors involved in the wrongful conviction. The parties discussed in this category were all case-specific. Slightly fewer posts (28.85%) were 'Wrongful Conviction Relevant,' and the focus of our research, where users mentioned variables – both related to the specific case and more broadly – that are practically and theoretically related to wrongful convictions (described in more detail in the following sub-section).

Two other categories focused specifically on the case at hand, rather than wrongful conviction more broadly: the 'Exonerated Five' category (21.48%), where users mentioned any of the five exonerees in the case or their backstories, and the 'Case Details' category (21.26%), where users mentioned various elements of the criminal case, such as culpability and evidence. While encouraging that viewers picked up on relevant case information from the miniseries, these posts were not analyzed further as viewers did not apply this information to wrongful convictions in general. In the 'Connections' category (15.18%), users made a connection between *When They See Us* and other criminal cases or media productions – connections between *When They See Us* and other Exonerated Five media productions were the most frequent. While interesting, connections were rarely made between *When They See Us* and other wrongful conviction cases or case studies. However, any posts within this category that spoke to factors relevant to wrongful convictions or the criminal justice system were accounted for in the 'Wrongful Conviction Relevant' category. Finally, posts were coded in the 'Other' category (10.85%) when users made miscellaneous comments, such as the miniseries being based on a real story or exposing them to the case of the Exonerated Five for the first time, that did not fit within the criteria of the other coding categories.

B. Thematic Analysis

In the content analysis, the 'Wrongful Conviction Relevant' category was composed of 16

subcategories, and included comments in which users mentioned concepts related to wrongful convictions (including the case of the Exonerated Five's), and/or the criminal justice system. Following a thematic analysis of the comments in this category, its 16 subcategories were organized into three overarching themes – each with two subthemes (see Table 1). In the Risk Factors theme, users discussed demographic and systemic factors that can increase one's risk of being wrongfully convicted. In the Exoneration and Beyond theme, many users commented on, and sympathized with, a wide range of the difficulties that the Exonerated Five experienced because of their wrongful convictions, while fewer mentioned how changes within the criminal justice system could impact wrongful convictions. Finally, the Innocence Movement theme included comments that referenced issues addressed by the Innocence Movement, which is a term used to encompass the public's growing awareness about the occurrence of wrongful convictions and a widespread effort to take proactive and reactive measures to rectify these errors (Acker, 2017). In the following subsections, each of the six subthemes are explained in detail and with excerpts from included posts.

C. Risk Factors

The 'Risk Factors' theme emerged given commonalities among posts that discussed various factors that increase the likelihood of wrongful convictions, both as they relate to those at risk of wrongful conviction and the elements of the criminal justice system that contribute to said risk. This theme was summarized well by a user who noted that the criminal justice system seems to function differentially for individuals of different demographics: *"*there is a different judicial system for the poor and minorities in the USA.*"* This theme could be further divided into two subthemes: Individual Characteristics and System Factors, as described below.

1. Individual Characteristics

This subtheme encompassed demographic variables that make an individual more vulnerable to being wrongfully convicted, namely race, youth, and socioeconomic status (Gould et al., 2014; Scherr et al., 2020b; Smith & Hattery, 2011). Many of the comments in this subtheme addressed systemic prejudices present within the criminal justice system. For instance, a number of these comments focused on the impact of race in particular. For example, one user noted: "I'm quite sure they [the jurors] saw five black men (not children, which is what they were) accused of a violent crime against a white woman. Full stop. That's all they wanted and needed to see.*"* It was also noted that the racial prejudice seen in this case still occurs today, as one user compared the Exonerated Five case to the "Black Lives Matter campaign and how incredibly difficult the journey will be until we defeat this systemic discrimination and slavery."

Table 1. 'Wrongful Conviction Relevant' themes, subthemes, and codes

Themes	Subthemes		
		Codes	*N* (%)
Risk Factors	Individual	Race	40 (30.08%[6])

[6] These percentages represent the proportion of comments within the 'Wrongful Conviction Relevant' category that were included in each code.

	Characteristics	Youth	36 (27.07%)
		Socioeconomic Status	2 (1.50%)
	System Factors	Interrogation Tactics	18 (13.53%)
		False Confessions	7 (5.26%)
Exoneration and Beyond	Impacts on Exonerees	Lost Time	13 (9.77%)
		Reintegration Difficulties	9 (6.77%)
		Compensation Is Not Enough	8 (6.02 %)
		Learning Disability/Mental Health Issues	7 (5.26 %)
	Changes to System	Holding Officials Accountable	13 (9.77%)
		DNA Exoneration	3 (2.26%)
Innocence Movement	Unmet System Expectations	Broken Criminal Justice System	11 (8.27%)
		Injustice	9 (6.77%)
		Desire for Transformative Action	6 (4.51%)
	Public Awareness	Wrongful Conviction Happen/are Issues	10 (7.52%)
		Could Happen to Anyone	6 (4.51%)

Another user noted that they were unsurprised at the events depicted in the miniseries because they are "so use [sic] to black people being treated like they don't matter by cops." For another user, the miniseries left them asking "how many other young boys lives have we ruined/are we ruining because of the color of their skin […]?" Thus, it appears that *When They See Us* led many Reddit users in the sample to think about racial discrimination in the United States and how it relates to wrongful conviction – far beyond the impact race might have had in this one specific case.

Many comments also reflected on the exonerees' ages. For example, some users condemned the criminal justice officials involved in the case for directing their actions towards minors: "It's so hard to watch the detectives/officers abuse and manipulate these KIDS, it's infuriating." These users appreciated the inherent difference between children and adults in the context of the justice system, in line with research indicating youth as a risk factor for false confessions and wrongful convictions (Gould et al., 2014; Scherr et al., 2020b).

Finally, some users commented on how socioeconomic status was relevant to the case. For instance, given that *When They See Us* portrayed Kevin's father as missing a significant portion of his son's interrogation while he was at work and Antron's father as convincing his son into making a false confession so the police would not expose his criminal record to his employers, one user suggested that low socioeconomic status may have impacted the ability of the parents of the Exonerated Five to fully support their children:

> i was really struck by the way Ava + team depicted class in Ep 1. […] we've already seen a good number of parents & their interactions with their children & the cops. many of these parents' responses are directly tied to class. from raymond's dad having to leave for work to kevin's mom having to leave due to health complications (which may not have happened if she had better access to healthcare or more support) to anton's [sic] dad getting flipped by the cops after they specifically

> threaten him & his job, class has a direct impact on the support that each of the Five receive.

The mention of these issues demonstrates that some Reddit users are cognizant of obstacles surrounding education, employment, financial stability, support, and physical and mental health resources that arise for individuals based on socioeconomic status when interacting with the criminal justice system (Strang, 2017). These results are in line with the results of Kennedy's (2018) review of Reddit posts about *Making a Murderer*, which found that dozens of posts addressed that the criminal justice system disproportionately harms some people based on demographic variables such as low income and a lack of formal education.

2. System Factors

This subtheme focused primarily on manipulative interrogation practices – practices that research has shown to increase the likelihood of false confessions (Kassin et al., 2010; Scherr et al., 2018). The Exonerated Five were "harassed by the police and had their constitutional rights violated - for a crime that evidence clearly shows they did not commit." Many of these comments included users' emotional responses to seeing the interrogation tactics employed by the police officers (e.g., "the f*****g[7] fear tactics have me seething"). Some users appeared to have existing negative views about police practices that were further fueled by the miniseries. For instance, one user noted that "it's not bad enough that the cops and the system are both crooked; the people we see get sucked into its bulls**t barely seem to have a leg to stand on in terms of protecting themselves, their families, and their rights. and when they do, as in the case of anton's [sic] dad, the cops have no qualms with sweeping that leg out from under them," Other comments focused on the more heinous aspects of the police officers' abuses in this case, such as the Exonerated Five being "beaten and intimidated" by the police officers.

These comments are consistent with previous literature examining the impact of manipulative police tactics on the likelihood of a suspect falsely confessing (Kassin, 2017; Kassin et al., 2010). Similar to the present results, Kennedy (2018) found that hundreds of Reddit comments suggested that official misconduct contributed to the presumed wrongful convictions depicted within *Making a Murderer*. These findings might suggest that consumers of wrongful conviction media productions may look for people to blame after learning about the specifics of a case. In the case of *When They See Us*, some users that expressed this theme appeared to understand that these issues were not unique to this case, but a larger problem within the criminal justice system.

D. Exoneration and Beyond

The 'Exoneration and Beyond' theme included topics relevant to various phases of exoneration and reintegration. In general, users had an interest in the impact of wrongful conviction and exoneration on the lives of the Exonerated Five post-exoneration. For example, one user shared several of their questions:

[7] Obscenities have been partially censored for this manuscript.

> I kind of wish we had 2 more episodes that went through the transition from prison to home, the relationships these guys had and how they grew. […] I think a few of them had children, right? Did they meet the girlfriends in jail? I just want to know more about that. Then it's curious to see how does your life change after you've been told "we were wrong! Here's millions of dollars!", what happens then? I wish we could see them find new homes and lives.

Within this theme, two subthemes were identified: Impacts on Exonerees and Changes to System.

1. Impacts on Exonerees

This subtheme focused on how exonerees are affected by their wrongful conviction post-release, and has not previously been noted within the literature. This may be because the previous studies that analyzed online viewer reactions to American wrongful conviction media productions used unresolved cases (e.g., Kennedy, 2018; Rodriguez et al., 2019; Stratton, 2019) within which the protagonists had not yet been released, or because other American wrongful conviction media productions of resolved cases may not have emphasized the reintegration difficulties that exonerees often experience by focussing on the survivor narrative.

In the present sample, Reddit users acknowledged the lost years, stating that "the best years of their lives were spent in jail its just the saddest thing," and that *"*one can only imagine what those boys could have become had they not had their youths stolen from them by such an unfair justice system." This loss appeared to make users feel sad, angry, and empathetic for the Exonerated Five. These affective reactions aren't surprising as the miniseries was a dramatized, and emotional, retelling of the case (Ryffel et al., 2014). However, Kennedy (2018) also observed strong emotional responses among Reddit comments about the *Making a Murderer* documentary series, which was not dramatized. This might suggest that wrongful conviction media narratives in general, regardless of their specific visual style, can elicit a wide range of affective responses from consumers.

Users also acknowledged the difficult experience of reintegrating into society post-release. In general, several users seemed to notice "how hard reintegration is." For instance, in mentioning the transitional point in *When They See Us* when the young actors portraying Antron, Kevin, Raymond, and Yusef were switched to their adult counterparts, one user proposed that this change in actors was done "to show the long term impact of these guys and how it affected them upon release into society." Further, one user proposed that the portrayal of the relationship between Raymond and his stepmother in the miniseries might have been dramatized "to emphasize how hard it is for an ex con to reintegrate into society. In Ray's case not even his family accepted him." Exonerees frequently report experiencing stigma from the public upon their release (e.g., Chinn & Ratliff, 2009; Grounds, 2004) which can lead to difficulties reintegrating into society, such as difficulties obtaining employment (Clow, 2017; Westervelt & Cook, 2010) and housing (Kukucka et al., 2021; Zannella et al, 2020). The finding that Reddit users discussed these obstacles for exonerees was encouraging, as recognizing that a problem exists is the first step towards correcting it.

Another difficulty that exonerees often face is in obtaining financial compensation from the government, which tends to be a very long, and sometimes unsuccessful, process (Cole, 2017;

Goldberg et al., 2020; Norris, 2012). Some users felt that the financial compensation received by the Exonerated Five – a combined $44.9 million –was insufficient to rectify their misfortune. These users acknowledged that the money the Exonerated Five received could not return the lost years that they spent incarcerated: "that settlement they all received will never give them back time, youth and innocence," "No settlment [sic] will give them back what they lost or undo the awful memories they must have from that time," and "No amount of money can ever make up for that ever." These views match current discussions about the inadequacy of the reparations made available to exonerees. For example, in Canada, and in almost half of the states in the United States, there is no legal obligation to financially compensate exonerees (Norris, 2012; Schuller et al., 2021). Further, many jurisdictions with this obligation impose strict eligibility criteria that often exclude many exonerees – particularly false confessors – from receiving compensation (Norris, 2012). The finding that users were in support of compensation in response to viewing *When They See Us*, however, is unexpected considering previous research has found such support to decrease for exonerees who falsely confessed (Kukucka & Evelo, 2019, Scherr et al., 2018, 2020a).

Finally, users also addressed institutionalization and the negative mental health consequences of being in prison. These comments focused almost exclusively on the miniseries' portrayal of Korey Wise, whose mental health deteriorates during several long stints in solitary confinement in the miniseries. For example, one user said: "Also, mental illness def [sic] took its toll on that poor man. […] It's not just a story. It was HIS life." Another user seemed to critique society by saying "We stuck a 5'5 130 innocent child with a learning disability and hearing impediment into some of the worst prisons in America." Academic research and exoneree accounts demonstrate that imprisonment can have a plethora of negative impacts on the mental health of inmates during – and following – their incarceration, including grief and loss, post-traumatic stress and other anxiety disorders, and severe psychiatric disorders (Chinn & Ratliff, 2009; Kukucka at al., 2022; Westervelt & Cook, 2004). In fact, the negative impact of imprisonment on mental health may be heightened in cases of wrongful conviction where the knowledge of, and constant campaigning for, one's own innocence results in additional stressors and affective responses that rightfully convicted individuals may not experience (Grounds, 2004; Jackson et al., 2020; Scott, 2010). By vividly depicting the decline of Korey's mental health in *When They See Us*, the miniseries appears to have enlightened users to the psychological trauma that wrongly convicted individuals often experience.

2. Changes to System

This subtheme represented changes within the criminal justice system that have already, or could, impact wrongful conviction cases. Within this subtheme, a handful of users referenced how DNA evidence could be used to exonerate an innocent defendant and referenced its relative novelty in 1990 when the Exonerated Five were convicted. One user noted that "In 1989 DNA was cutting edge technology, it was rarely used and most people did not know what it was or how accurate its results really were. The first use of DNA in trial had been in 1984." Since its introduction in criminal cases, DNA testing has been instrumental in excluding and identifying suspects in cases in which forensic evidence has been collected (Findley & Scott, 2006; Olney & Bonn, 2015). For example, research has found that DNA evidence significantly increases the likelihood of an exoneration in cases of violent crimes, such as murder and sexual assault (Olney & Bonn, 2015). Comments about the impact of DNA evidence did not appear in the studies that analyzed viewer

responses to other wrongful conviction media, such as *Making a Murderer* (Kennedy, 2018; Rodriguez et al., 2019; Stratton, 2019). Whether this specific thematic element emerges in response to a wrongful conviction media production will likely depend on the extent to which DNA evidence is relevant to the cases portrayed.

Users also wanted consequences for the criminal justice system officials who were involved in the wrongful conviction of the Exonerated Five and went so far as to suggest moderate to extreme punishments for these officials. For example, some merely stated that they should be held accountable: "every police official, prosecutor and judge involved in this case should have to answer to these obscene injustice," while others felt that the officials involved deserved public backlash: "she [Linda Fairstein] deserves the tidal wave of hate that's coming her way," or jail time: "dare I say throw her [Linda Fairstein] in jail for as long as she incarcerated these innocent boys." Finally, some users proposed other more extreme punishments for these officials, depicting their anger and moral outrage: "I hope those law enforcement officials are Catholics so they burn in their hell for what they have done." This sentiment was also found in viewer reactions to *Making a Murderer*, with comments calling for those involved in Avery's potential wrongful conviction to experience physical violence, undergo investigation, and to be disbarred, prosecuted, and/or jailed (Kennedy, 2018).

Unfortunately, discipline for police officers and prosecutors who engage in misconduct is uncommon, and generally pales in comparison to the results of their actions (Gross et al., 2020; Yaroshefsky, 2004). For instance, following the release of *When They See Us*, the district attorney for the case, Linda Fairstein, was dropped by her book publisher and stepped away from her role as a board member of Vassar College, while the prosecutor, Elizabeth Lederer, resigned as a professor at Columbia Law School (Bruney, 2019). The repercussions that befell these lawyers came 17 years after the wrongful convictions of the Exonerated Five were overturned – due primarily to the release of the miniseries – and were mild in comparison to the consequences of their actions on the lives of the Exonerated Five. More generally, where the National Registry of Exonerations claims that 30% of its wrongful conviction cases were due, at least in part, to prosecutorial misconduct (Gross et al., 2020), only four prosecutors have ever been disbarred for professional misconduct contributing to a wrongful conviction, and only one has ever been jailed (Selby, 2021).

E. Innocence Movement

Finally, posts within the 'Innocence Movement' theme referenced issues addressed by the Innocence Movement, which is a term used to encompass the public's growing awareness about the occurrence of wrongful convictions and a widespread effort to take proactive and reactive measures to rectify these errors (Acker, 2017; Zalman, 2011). This theme, and the goals of the Innocence Movement, are summarized well by a user who stated that "it [wrongful conviction] happens everyday and it's happening right now. Stay angry. The more people who realize what's going on, the better chance there is for change." Within this theme, two subthemes were identified: Unmet System Expectations and Public Awareness.

1. Unmet System Expectations

This subtheme addressed users' perceptions of the failures of the criminal justice system.

Users noted that "the [criminal justice] system is supposed to be fair and just but it is so beyond flawed." Several users shared how the miniseries made them feel about the criminal justice system; for example, one user reported feeling "angry and heartbroken for the failure of the system." Several users also commented on more deep-rooted issues within the criminal justice system, and how they apply to both the case of the Exonerated Five, and to the public, more generally. For instance, one user commented on the systemic discrimination in the criminal justice system: "There's something truly evil and disgusting beyond words, watching children—who have no chance of defense and have no advocates—get manipulated by a system that has been historically designed for their failure." Although the occurrence of wrongful convictions demonstrates that the criminal justice system is fallible (Stratton, 2019), and popular media depictions of wrongful conviction cases highlight shortcomings within the system (Strang, 2017), the extent to which these users critiqued the criminal justice system was surprising, and perhaps a step toward demanding improvements. After watching *Making a Murderer*, over 100 comments noted several flaws within the criminal justice system, including the prosecutorial pursuit of convictions as opposed to the truth (Kennedy, 2018). Previous literature has suggested that wrongful conviction media may subvert the previously held notions of its consumers by highlighting the incongruence between what is expected of the criminal justice system and what it delivers, leading to the realization that the criminal justice system requires reform (Leo, 2017; Strang, 2017); the present results further support this idea.

Users also highlighted that the wrongful conviction of the Exonerated Five was unfair, using the term of 'injustice' specifically. For example, one user stated that wrongful conviction is an important and serious topic deserving of discussion: "I'm really enjoying this show and the depiction of this horrific shameful injustice that happened relatively recently and continues to occur to this day. It's disgusting and I'm glad the show is handling the subject with the gravity and honesty it deserves." Again, users spoke beyond the case of the Exonerated Five to the issue of wrongful convictions more broadly. Moreover, users highlighting the 'injustice' of the Exonerated Five's wrongful conviction is consistent with the reactions to the depiction of the presumed wrongful convictions of Steven Avery and Brandon Dassey in *Making a Murderer* (Kennedy, 2018). The similarities between these studies suggest that wrongful conviction media narratives – with quite different approaches and focused on very different cases – may effectively convey the severity of the atrocities that exonerees endure, and the very nature of wrongful conviction cases appears to highlight the extreme unjustness of the issue among the present sample.

Finally, users also voiced a desire to support the Innocence Movement and exonerees. For instance, one user stated they had joined r/WhenTheySeeUs (2019) specifically "to see if any ways to support present themselves in the future." Further, comments indicating users' desire to bring about changes within the criminal justice system were often conveyed alongside an emotional response. For example, one user posted the following: "Anyone else feel infuriated but hopeless at the same time? Knowing not much has changed, I feel so strongly that this is not a system I agree with or stand by but have no idea what I can do to change it or protect the most vulnerable in our communities." Given that the Exonerated Five were already exonerated and compensated when *When They See Us* was released, and because the miniseries did not address any of the ongoing struggles that the men may have experienced post-exoneration, the specific contributions that users could have made to these exonerees and to the Innocence Movement after viewing the miniseries may not have been obvious to users. However, the present results support that wrongful conviction media may be able to increase the public's awareness about wrongful convictions

(Tudor-Owen et al., 2019). In fact, based on the responses observed to wrongful conviction media productions, Kennedy (2018) and Stratton (2019) suggested that viewers transcended passive consumption, and instead actively demonstrated behavioural and affective responses in favour of the exonerees (e.g., displaying empathy, signing petitions, *websleuthing*). Thus, wrongful conviction media may present a valuable resource in attracting members of the public towards innocence advocacy. Perhaps similar behavioural and affective responses will emerge in response to wrongful conviction media productions that depict resolved cases should these productions suggest avenues to assist exonerees reintegrating into society.

2. Public Awareness

Several comments within this subtheme spoke to the fact that wrongful convictions are an ongoing issue – to which many users expressed a range of negative emotions. For example, one user claimed: "to think that something as disgusting and ridiculous could happen in this day and age is horrific and it makes me hurt inside that I can't do more as one person," while another felt: "sad that this happens so often to so many people." Some users, however, were more appreciative of *When They See Us* bringing attention to the occurrence of wrongful convictions, such as one user saying that "history has to be told and this story is one of many; they've [wrongful convictions] come hand over fist." Clearly, these users were thinking beyond the specific case they had viewed, and contrary to some critiques of the wrongful conviction true crime genre (Leo, 2017), were able to generalize their reactions to wrongful conviction more broadly. *When They See Us* appears to have imparted on many viewers within this sample that the occurrence of wrongful conviction is important to highlight given its many damaging effects. As such, wrongful conviction media productions may be a tool to increase the public's awareness of wrongful convictions.

Some users realized that a wrongful conviction could happen to anyone, including themselves. An exchange between two users highlighted the importance of this message within *When They See Us*. The exchange began with one user noting that they "actually live/grew up in the neighborhood" in which the Exonerated Five lived and that the miniseries "was hard to watch without thinking this could have been me," to which another user responded "thats [sic] just the point of the miniseries, yeah? It COULD have been you because the NYPD was just rounding up any and everyone it was easy to catch." While it is unclear whether this feeling of risk resonated with users who do not share demographic similarities with the Exonerated Five (e.g., race, socioeconomic status), Rodriguez and colleagues (2019) also found that *Making a Murderer* viewers who shared demographic similarities with Avery were more likely to rate Avery as being innocent than those who did not. Further, Kennedy (2018) found that Reddit users in their sample noted that a wrongful conviction could happen to anyone, and especially individuals lacking wealth and formal education, as was displayed in *Making a Murderer*. These results may demonstrate the utility of wrongful conviction narratives in humanizing the plight of exonerees and increasing the public's concern – and that focusing on a diversity of cases across media productions is important, as different viewers will likely identify with different exonerees.

F. Before and After *When They See Us*

Finally, quantitative analyses were conducted to investigate whether the abovementioned content and thematic analysis results emerged after – and could be attributed to – the release of

When They See Us, or if these users were discussing these themes all along. The profiles of each of the 258 known users in the present sample were searched to assess the content of their posts and comments across Reddit in the three months prior to and following miniseries' release. The available[8] posts and comments from the included Reddit users (N = 184) between March 1, 2019 and August 31, 2019 were coded based on whether their content fell within the 'Wrongful Conviction Relevant' coding category. The profiles of 74 users (28.68%) were not included in the present quantitative analyses because they were either deleted or suspended at the time of data collection, or because they did not have a comment or post within the specified timeframe.

A chi-square analysis on the remaining 184 participants revealed that users posted significantly more wrongful conviction relevant posts after the release of *When They See Us* than before, $X^2(1, N = 184) = 5.95$, $p = .015$. Specifically, prior to the release of *When They See Us*, only 1.6% (N = 3) of users in the present sample shared posts or comments relevant to wrongful conviction or the criminal justice system anywhere on Reddit, while 15.8% (N = 29) did so afterwards. These quantitative results indicate that a small, but significant, number of Reddit users in this sample who watched *When They See Us* began to discuss wrongful convictions online after the production when they previously had not.

IV Implications

The present results suggest that a portion of wrongful conviction media consumers may discern the broader criminal justice system issues and implications that these productions exemplify (Strang, 2017). Specifically, results of the content analysis indicate that the Reddit conversations about *When They See Us* included in this sample addressed many important themes within wrongful conviction literature and experience. Further, these conversations also complimented previous research analyzing online viewer reactions to other American wrongful conviction media productions, suggesting some similarities in viewers' reactions to survivor and mystery wrongful conviction narratives. Similar to responses to *Making a Murderer* (Kennedy, 2018), comments related to the 'Risk Factors' and the 'Innocence Movement' themes may arise in response to a variety of wrongful conviction media productions. However, diverging from previous research, comments related to the 'Exoneration and Beyond' theme may be more common in response to survivor narratives, especially those that highlight the reintegration difficulties that exonerees often face. In addition, viewer responses to *When They See Us* diverged from those of other productions in that users addressed the post-exoneration and reintegration experiences of the Exonerated Five – a line of discussion not possible in research examining mystery narrative productions that depict unresolved wrongful conviction cases. Finally, quantitative results suggest that wrongful conviction media productions may help to facilitate the Innocence Movement's goals of raising awareness, assisting exonerees, and promoting policy reform. As demonstrated in the present sample, there was a significant increase in the number of Reddit users discussing wrongful convictions on the social media platform after they watched *When They See Us* compared to before. Given that most American adults connect to the internet

[8] Individual posts or comments were not included in analyses if Reddit indicated that they were missing, if they were not written in English, or if they were in response to a post or comment that was removed or deleted.

daily (Perrin & Atske, 2021), and that social media platforms and their usage continue to evolve over time, researchers may wish to consider novel means by which to use social media as a tool to understand user perceptions of wrongful convictions and the ability of wrongful conviction media to mobilize users towards innocence advocacy (Childs et al., 2020).

V Limitations & Future Directions

The current study analyzed responses to one wrongful conviction media production on one social media platform. Although we found that only three of the Reddit users in the present sample were posting about wrongful conviction and the criminal justice system prior to the release of *When They See Us* – and 29 were posting about it afterwards – it is possible that these results demonstrate something unique about this group of individuals over and above the impact of the miniseries itself. Perhaps Reddit users are more likely to speak about social issues or to protest inequities online compared to others of the general population. With the current methodology, any unique factors about the individuals who did choose to post about wrongful convictions after viewing the miniseries are unknown. Moreover, we were unable to ensure that the users did in fact watch *When They See Us* – though we know they were self-presenting as if they had. Finally, this study did not include experimental manipulation, random assignment, or the collection of demographic variables. Therefore, conclusions about causality, selection biases, and demographic trends cannot be drawn. Given the lack of research on viewer responses to wrongful conviction media productions, a qualitative analysis may have been the most appropriate means by which to gain understanding within this line of research (Reveilhac et al., 2022). Our findings suggest that viewing *When They See Us* lead to the effects we describe – especially as users were not posting similar views prior to the release of the miniseries – but to confidently assert that *When They See Us* caused these findings would necessitate replication with an experimental design.

Further studies analyzing various styles and mediums of wrongful conviction media would help to determine the stability of media effects across productions. For instance, the present study examined an American wrongful conviction drama with a survivor narrative and found similar, though not identical, results to a study examining the impact of an American wrongful conviction documentary with a mystery narrative (Kennedy, 2018). However, the effects of a production that is more heavily based on research and statistics (e.g., *The Innocence Files*; Garbus et al., 2020), for instance, may vary from those of a dramatized or documentary production (Norris & Mullinix, 2020; Savage, 2013), and the reactions to American wrongful conviction media productions may differ from those produced in other countries (e.g., Australia; Stratton, 2013). Future studies could continue to expand this line of research to further investigate the impact of varying mediums of wrongful conviction media as well (Kassin, 2017; Stratton, 2019). This information would be invaluable to innocence organizations when deciding how to best invest in educational strategies regarding wrongful conviction.

VI Conclusions

Nearly a third of the Reddit comments analyzed in the present sample referenced subject matter relevant to wrongful conviction, and the themes that emerged within these comments included the factors that increase one's risk of being wrongly convicted, the experiences that

wrongly convicted individuals encounter throughout incarceration and exoneration, and awareness about the fallibility of the criminal justice system. In sum, the qualitative and quantitative results suggest that, when watching *When They See Us*, and wrongful conviction media productions in general, a subset of viewers may focus on, and begin to engage in discussions about, wrongful convictions and their implications on the criminal justice system. Ultimately, the present research demonstrates that wrongful conviction media productions can be disseminated for reasons other than entertainment; they can serve as a cultural reference to help the public understand the concept of wrongful convictions and its complexities. By humanizing the plight of wrongfully convicted individuals via its depiction of the Exonerated Five, *When They See Us* appears to have exemplified the egregious nature of wrongful convictions and fostered a personal concern about the occurrence of wrongful conviction among viewers. As summarized by one user in the present study, *When They See Us*' portrayal of the Exonerated Five case reminded them that "You get one life, one chance and theirs were all robbed from them." Given that media can likely reach a larger audience than academic research (Leo, 2017), media may be an effective tool to raise awareness about wrongful convictions and improve attitudes toward exonerees.

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Wrongfully Convicted: Guilty Pleas, Imagined Crimes, and What Canada Must Do to Safeguard Justice

By Kent Roach
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(Toronto: Simon & Schuster Canada, 2023)

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Professor Kent Roach, C.M. is uniquely situated to teach Canadians about the problem of wrongful convictions. As a senior member of the Faculty of Law at the University of Toronto, Roach is Canada's leading scholar on wrongful convictions. During his career, he has worked as counsel or as research director on the Guy Paul Morin Inquiry, the Driskell Inquiry, and the Goudge Inquiry, all concerned with wrongful convictions. He also worked closely with former justices Harry LaForme and Juanita Westmoreland-Traore on the 2022 Miscarriages of Justice Consultation Report. He has written myriad journal articles on topics important to wrongful convictions in Canada and abroad. Roach has also, along with his former colleague, Amanda Carling (now CEO of the BC First Nations Justice Council), created the Canadian Registry of Wrongful Convictions.

Wrongfully Convicted: Guilty Pleas, Imagined Crimes, and What Canada Must Do to Safeguard Justice ("*Wrongfully Convicted*") is Roach's latest achievement in the field and will have an immense impact. This book is designed to increase public awareness of the causes of wrongful convictions in Canada. With a foreword by James Lockyer, Canada's best-known wrongful conviction counsel, *Wrongfully Convicted* should be required reading for every law student and lawyer in the nation and will be of great interest to anyone concerned about the many harms caused by miscarriages of justice. In it, Roach addresses not only cases involving crimes for which the wrong person was convicted but also the less well-known class of cases in which a person was convicted where no crime was committed at all. He explains that many people have served years in prison for crimes that never in fact occurred. While Canadian-focused, Roach's work has lessons for justice systems around the world.

In *Wrongfully Convicted*, Roach both illuminates what led to the wrongful conviction of those exonerees whose names are familiar to many Canadians and shines a light on many of the lesser-known cases of Canadian wrongful conviction. He also highlights some of the less frequently discussed issues underlying wrongful convictions – for example, the problem of people pleading guilty to crimes they did not commit. Roach observes that wrongful convictions are almost always about reinvestigating the facts of the case and not issues of law, limiting the ability of the appellate courts to identify wrongful convictions in appeals from conviction. David Milgaard, Steven Truscott, and Tomas Yebes, names familiar to most Canadian lawyers, along

with many other exonerees, exhausted the appellate process, yet their wrongful convictions were not identified during those appeals. Roach writes:

> "…wrongful convictions are almost never about the law. They are about human beings making mistakes about the facts. They are sometimes about people cutting their risks in order to receive a lesser sentence, even if they are not guilty or have a valid defence."[1]

In *Wrongfully Convicted,* Roach discusses how errors flowing from areas such as forensic science, eyewitness identification, incentivized witnesses, police "tunnel vision" and interrogation techniques can falsely implicate an innocent person and turn into a wrongful conviction, false guilty plea, or a conviction for a crime which never took place.

Critically, Roach tackles issues rarely addressed in wrongful conviction literature. He comments on: the relationship of juries to wrongful convictions (i.e. that the majority of wrongful convictions occur when the accused is tried by a jury rather than a judge alone); the unfairness suffered by a wrongfully convicted person when exoneration proceedings are not published or do not receive public attention equivalent to the massive coverage of the conviction; the injustice which results from the crown or court entering administrative "stays of proceedings" when a more formal pronouncement of an exoneration is deserved; and the challenges of assessing wrongful convictions for sexual assault.

Perhaps the most significant lesson we learn from Roach, in conjunction with his Registry, involves *who* is being wrongly convicted in this country. The cataloging of wrongful convictions is essential to demonstrating critical trends in the causes of wrongful conviction, the areas of evidence that were used to wrongfully convict, and the background and characteristics of the persons subject to miscarriages of justice. Roach confirms what has been long suspected by those who work in this field, that a person is far more likely to be wrongly convicted if they are poor, racialized, suffer from addictions or mental health issues, have cognitive deficiencies, or are affected by a combination of these factors. Each of these issues on their own can lead to individuals being initially suspected of a crime by the police or witnesses, having increased susceptibility to suggestion in stressful police interviews, more readily admitting guilt in the hopes of getting out of custody, or being wrongfully convicted by prejudiced triers of fact.

In addition to tackling false guilty plea cases and no-crime wrongful convictions, Roach examines the more familiar "who done it?" wrongful convictions**.** When a crime is committed and the police or a witness identify the wrong person as the perpetrator, "safeguards" we think are built into the justice system can fail and the wrong person is convicted. These failings can include the police focusing only on evidence that confirms their conclusion that the accused is the perpetrator, relying on witnesses who are receiving significant benefits in exchange for their testimony, exerting pressure on suspects to confess to a crime, conducting an incomplete investigation, and not providing critical investigative findings to the defence. These problems not only lead to

[1] Kent Roach, *Wrongfully Convicted: Guilty Pleas, Imagined Crimes, and What Canada Must Do to Safeguard Justice* (Toronto: Simon & Schuster Canada, 2023) at xxviii.

wrongful convictions but also may leave the actual perpetrator free and emboldened to commit further crimes.

As Roach observes, not all wrongful convictions will be caught through DNA analysis. Fewer than 20% of convictions in our courts involve DNA. Moreover, DNA interpretation can be subjective and susceptible to human error. Sometimes the presence of DNA on a suspect has an innocent explanation. In terms of prevention or wrongful conviction, however, DNA plays an important role. Roach notes an oft-reported (in wrongful conviction spheres) FBI study in which DNA analysis revealed that the police had the wrong suspect in a remarkable 25% of investigations. Because many of the factors leading to wrongful conviction are the result of human behaviour, studies between jurisdictions are often comparable.

As with cases involving false guilty pleas, in the "who done it" cases Indigenous accused face particular challenges. Roach's Registry revealed that 19% of the identified wrongful convictions in Canada are of Indigenous people. With Indigenous people making up only 5% of the Canadian population, they are over three times more likely to be wrongly convicted than the non-Indigenous population. While that figure by itself is startling, Roach asks, "How many more Indigenous people have been wrongly convicted that don't have the money, support, or faith in the system to go through the long process of correcting their wrongful convictions."[2]

Roach documents the little-known cases of Indigenous accused persons Willie Nepoose and Connie Oakes. Nepoose was subjected to an inhumanely long police interrogation despite suffering from cognitive deficiencies. Tunnel vision led to a poor investigation in which exculpatory information was not disclosed to the defence, witnesses were pressured to provide inculpatory information, and alternative suspects were not investigated. Despite an alibi and no forensic evidence tying him to the crime, Nepoose was convicted by an all-white jury. The Justice Minister at the time, Kim Campbell, sent the matter back to the courts for a new appeal finding that there was a possibility of a miscarriage of justice. The Alberta Court of Appeal sent the case to a special commissioner who ultimately ordered a new trial. Eventually, the prosecution stayed proceedings ending the matter for Nepoose but, like many of the wrongly convicted, he did not get the acquittal he deserved.

Roach uses the Nepoose case to highlight many ways in which the justice system can fail Indigenous accused persons, but he also focuses on how the poor investigation in Nepoose's case failed the Indigenous victim and on the justice system's tendency not to believe Indigenous accused and witnesses:

> "The common denominator in these and other cases, including those of William Mullins-Johnson, Tammy Marquardt, and James Turpin (chapter 4), is that judges or juries simply did not believe the Indigenous people who testified before them. Wrongful convictions generally revolve around factual, not legal errors. The facts often depend on who the trial judge or jury believes."[3]

[2] *Ibid*, 154.

[3] *Ibid,* 162.

Factual errors to do with credibility pose a very significant problem in our justice system. Trial judges will instruct jurors to be particularly cautious with Crown witnesses with serious credibility or reliability issues, but Roach notes that psychological studies indicate that jury instructions may be ineffective. Further, appellate courts usually defer to the credibility findings in the trial courts. Many wrongful convictions have occurred where judges have *properly* instructed juries.

"Thinking dirty" is a catchy turn of phrase used by Roach throughout *Wrongfully Convicted*. Roach refers to the tendency of the police to focus on a particular suspect or an accused to the exclusion of all other possible suspects. In criminal law, this highly problematic phenomenon is often referred to as "tunnel vision". Psychologists call it "confirmation bias." It is a critical concept to understand when reviewing cases of wrongful conviction because one is often able to identify important aspects of the investigation that were missed due to a hyper-focus on the suspect. Roach notes that almost all of Canada's public inquiries examining wrongful convictions have identified tunnel vision as a problem leading to the conviction. However, he emphasizes that many justice system participants continue to misunderstand tunnel vision because they characterize it as a type of police misconduct, whereas it is a natural, unconscious brain process that helps people organize information. If incoming information does not fit with one's beliefs and expectations, it is frequently and unconsciously discarded. The insidious workings of tunnel vision are readily apparent in Glen Assoun's case where four alternative suspects were not considered. To combat the problem, Roach recommends various mechanisms to cast the net wider during police investigations and prosecutions. Police should thoroughly investigate alternative suspects and their alleged alibis, find ways to avoid "groupthink" during investigations, take more thorough notes and have better systems to retain them, give prosecutors access to the entire investigative file to help identify relevant information, and introduce an independent "contrarian" to challenge the prevailing police theory about the identity of the suspect. If new exculpatory information comes to light after the person is convicted, the police should recognize that wrongful conviction is a possibility and investigate the new information. Roach notes a conversation he once had with one of the early leaders of the Innocence Movement who wisely noted that much of the work in uncovering wrongful convictions is the work that should have been done in the original investigation.

A justice system can never eliminate wrong convictions. While acknowledging this inevitability, Roach doesn't leave readers disillusioned and instead provides a roadmap for progress (as part of *Wrongfully Convicted*'s subtitle suggests - "*What Canada Must Do to Safeguard Justice*"). First, we need to implement the recommendations from Canada's many wrongful conviction inquiries to prevent wrongful convictions; and second, we need robust systems for review and remedy where we suspect and uncover wrongful convictions. The current post-conviction review regime under s. 696.1 of the *Criminal Code* lacks independence, is plagued by delay, and is too narrow in its scope. Roach repeatedly observes that even Texas is doing better than Canada in terms of addressing the problem of wrongful convictions.

Roach also offers a host of specific ways to reduce the risk of wrongful convictions, including how to address issues of cross-racial identification (now a well-known phenomenon identified by psychologists), improving how the police administer photo lineups, allowing experts to help us understand how the human brain processes facial recognition, finding better ways to

protect our justice system from incentivized witnesses who are seeking critical benefits for their false testimony, and using interrogation techniques which are less likely to create a false confession. Roach hits every issue requiring consideration in discussing the common causes of wrongful conviction.

Finally, Roach notes that Canada is behind the United States in terms of reforming our forensic science regimes. Texas has a nine-member Forensic Science Commission, and Canada has no equivalent. A 2013 University of Toronto report recommending more research, education, and increased regulation in this area has not resulted in action. Roach discusses four public inquiries in Ontario identifying wrongful convictions in which Canadian forensic scientists had either overstated conclusions, relied on unreliable testing, or lacked the appropriate forensic training to give evidence in a particular area. Because so many in the criminal justice system face myriad social and economic barriers, one lawyer cited by Roach referred to forensic science as "poor people's science" – "good enough to convict the usual suspects", even though it may not have been subject to thorough research, repeated testing, and best practices in quality control".[4] Science evolves, sometimes quickly, yet the law is often insufficiently nimble to keep pace. The debunking of what was once known as "Shaken Baby Syndrome", a diagnosis that has led to many wrongful convictions of parents or caregivers following the death of a child, highlights the weakness of forensic science and the law's insufficient caution in placing reliance upon it. The justice system, Roach argues, must do more to correct errors when our understanding of a particular area of science has changed and now supports a valid claim of innocence.

Roach's identification of the problems in the Canadian justice system leading to wrongful conviction and his recommendations for systemic change are comprehensive and thoroughly studied. Those who work in post-conviction review see daily the wisdom of Roach's recommendations. The barriers to proving innocence currently facing the wrongly convicted are often insurmountable and Roach's examination of the cases in the Registry illustrates the many problems that can arise as a post-conviction review case unfolds. When innocence organizations initially determine to examine a case, they first must find the case materials – from the applicant, from court registries, from the crown, from forensic labs, and from the police. This is often a multi-year process, in which lawyers and advocates face the problem of evidence retention that Roach addresses in the final chapters of the book. In numerous cases, evidence that could have determined guilt or innocence has been lost or destroyed. This is a frustrating and all too common reality for the wrongly convicted. Roach cites the Milgaard case as a compelling justification for the need for retention. Had a clerk who believed in Milgaard's innocence not taken special care to preserve the DNA evidence that ultimately led to the identification of the real perpetrator, Milgaard may never have been exonerated. Roach uses the case of Leighton Hay, a lesser-known Canadian wrongful conviction, to illustrate that even retention will not, on its own, be a sufficient reform if the state is not willing to release and re-test evidence when questions are raised about a potential wrongful conviction. In Hay's case, the applicable science had evolved and retention and retesting of hair exhibits set Mr. Hay free.

Further, even if one obtains the key evidence, getting that evidence before the court can be very difficult. Roach invites readers to think about wrongful conviction reform initiatives in other

[4] *Ibid,* 225.

jurisdictions which have implemented changes to the appeals process such as employing a different standard of review on appeal, or perhaps allowing second appeals as is now done in Australia. Roach makes a strong case for change, identifying the many problems with the current post-conviction review regime under the *Criminal Code*, and comparing our low case review rate to those in other jurisdictions. Additionally, Roach suggests that our current conviction review process works best if one is white and male; only one black man, one Indigenous man, and no women are among those for whom the Minister has granted a remedy. The barriers in the application process might explain why so few people apply for conviction review and therefore, why so few wrongful convictions are exposed.

Having worked in this area for so many years, Roach could not have chosen a better example than his recounting of one federal official's comments at the Milgaard Inquiry. He aptly stated, "Currently, one could not say to the Minister 'I'm innocent. I'd like you to investigate. I don't know what went wrong.'"[5]Yet that is the position in which so many of the wrongly convicted find themselves. In Canada, we have had a number of cases where the wrongful conviction applicants have applied to the Project after already having unsuccessfully applied to the Minister. All that these applicants know is that they are innocent, and they have no idea how they came to be wrongful convicted. In DNA cases, they don't know how their DNA could have ended up where it was found (perhaps not knowing about issues such as secondary DNA transfer or the possibility of a false positive match) or, in other cases, how an expert could have concluded they shook their baby to death (not knowing that the science now shows that short falls can cause the same symptoms). Sometimes this lack of knowledge can lead to applicants having what can be viewed as far-fetched theories about the police planting evidence. Most of the time, people don't appreciate the frailties of forensic science in criminal cases.

At the time this book review is being drafted, Bill C-40 (also known as the Joyce and David Milgaard Act), is being debated, clause-by-clause, by Canada's House of Commons Standing Committee on Justice and Human Rights. The proposed legislation was drafted in response to the vital work that Roach and former justices LaForme and Westmoreland-Traore put into the Miscarriages of Justice Commission consultation process and report. The Bill aims to improve the process of wrongful conviction review in Canada. As Roach writes: "New legislation to establish a new Commission has the potential to be the most important law reform with respect to wrongful convictions in a generation." As he had much to do with the creation of this Bill, in the final chapters of *Wrongfully Convicted* Roach discusses the extensive recommendations that they made following the consultation process. These recommendations were the result of over 215 submissions from many of the stakeholders in the wrongful convictions review process. Roach describes these recommendations and explains the reasons behind them.

Some of the report's key recommendations include: 1) that any new Commission should have strong powers of investigation, 2) that the budget of the Commission be sufficient to allow the necessary work to be conducted, and 3) that those who have not exhausted their appeal process should have access to the Commission to help them identify what might have gone wrong. Roach and the team also made recommendations involving the structure of the Commission, its referral and appeal powers, and the need for the Commission's work to include outreach and support.

[5] *Ibid*, 257.

Wrongfully Convicted is the culmination of much of Roach's career studying the problem of Canadian wrongful convictions. He delivers the "lessons learned" in a highly accessible format that will be of interest to any reader interested in justice. It is a book that has its finger on the pulse of the criminal justice system in Canada and exposes the truth about its frailties, too many of which have been left uncorrected for far too long. Many lives have been ruined by our acceptance of the status quo despite numerous governmental inquiries and academic studies revealing a better path to exposing and preventing miscarriages of justice. *Wrongfully Convicted* charts a better path for our justice system and all justice system participants should give it their careful review.

The Coffin Affair: A Miscarriage of Justice Revisited

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Delivering all the suspense of a classic whodunnit, Kathryn M. Campbell's podcast, *The Coffin Affair*, is a taunt who-didn't-do-it about the case of Wilbert Coffin, a hapless mining prospector who, Campbell asserts, was wrongfully convicted of first-degree murder, and then sentenced to death and hanged in a Montreal prison on a cold winter night in 1956. Set in rural Quebec, the story begins a few years earlier when the bodies of three American tourists, in the region to hunt bears, were found dead in the woods, their month-old remains mauled and scattered likely by their intended prey. The authorities charged Coffin only with the murder of the youngest and most vulnerable of the ill-fated trio, 17-year-old Richard Lindsey. This may have been done to secure a conviction more easily as a jury would be able to see Coffin as capable of overpowering this slightly built lad.

Coffin was instructed not to tell his story at the trial, but in a statement taken shortly before his death, which is read aloud in a bonus episode, he claims that he was out prospecting when he came upon three Pennsylvanian hunters whose truck was disabled, so he stopped and offered to help. He drove the youngest member of the group to the nearby town to purchase a gas pump, and when they returned, two other men, Americans driving a yellow jeep, had joined the original two hunters. Coffin socialized for a while and then left the group, promising to return in a few days to make sure their truck was working. When he returned, he found the truck but not the hunters and thought they may have gotten a ride with the other Americans. After waiting several hours, Coffin decided to leave.

Before departing, however, he took a few items from the hunters' truck that were of little value but which he may have seen as compensation for his good deeds. Helping oneself to random articles in strangers' unlocked trucks was not uncommon in the region; in fact, it was dubbed "bush pilfering." Still, this petty act would help send Coffin to the gallows – "If you find the thief, you find the murderer!"[1] the prosecutor would later proclaim in court, an inflammatory statement that should never have been allowed. Campbell cites a long list of other errors committed by the trial judge including failing to instruct the jury on issues having to do with the weight that should be attached to certain types of evidence and admitting hearsay.

Moreover, potentially exculpatory evidence, such as a set of tire marks that were different from the tire marks of the Pennsylvanian hunters' truck as well as the vehicle the accused was

[1] Katherine M. Campbell, "The Coffin Affair" (2023) 4 at 9m:49s, online (podcast): <thecoffinaffair.com>.

driving, was not thoroughly investigated. Most absurdly, after the circumstantial case was presented by the Crown, Coffin's lawyer presented no defense. He did not even bother to ask the jury why, if the motive was robbery as the prosecution alleged, a guilty man would leave behind the valuable rifle found in the truck.

Perhaps most damning was the simple fact that Coffin was the last known person to see the hunters alive. As such, Campbell suggests that he was a ready-made target for a local justice system bent on "solving" the crime so as to protect its lucrative tourism industry. In support of this theory, she portrays a case riddled with the hallmarks of wrongful convictions — police tunnel vision, prosecutorial misconduct, and inept defence counsel among them.

Who was Wilbert Coffin? A black-and-white photo on the podcast's website depicts a man in his late thirties casually dressed in a loose-fitting plaid shirt with the sleeves rolled up to the elbows, and baggy pants tucked into unlaced boots. A lit cigarette dangles nonchalantly between two fingers seemingly seconds away from a practiced flick of his thumb. Although he is described as unconventional – he was a WWII vet, a cook, a prospector, and a jack of all trades who liked to drink and had a common law wife and son – in the picture, he looks like an ordinary guy but unaware of his extraordinary journey ahead.

> Campbell fills 287 minutes spread over six episodes recounting that journey, a relatively modest amount of time given the detail provided, and yet, the listener feels no rush. Guided by her steady, almost matter-of-fact narration, the podcast unfolds in its own good time. Whereas a rush to judgment plagued Coffin, his story is given its due.

Maximizing the advantages of her medium, Campbell intersperses her narration with excerpts of interviews from local historians, as well as folks who knew Coffin or knew his story and are still alive today. As such, there is no need to rely on the website's gallery of photos to get a sense of time and place – the cast of real-life characters does it for you. For example, Fabien Synnett, who was around 20 when the murders occurred, is now in his late eighties and was a witness to possible exculpatory evidence but was never questioned about it by police. In a thick French-Canadian accent, he brings us back to the time of the murders when he recalls seeing a yellow jeep in the town of Gaspé with two strangers in it. His description of the events of that day help bring small-town rural Quebec, midway through the twentieth century, to life.

> "… and there was two guys in the jeep. And there was a pool room, you know, on Main Street, and I was at the pool room, and I came out of the gallery, and just across the street there was a … a kind of a booth serving meals and so one of them got up and went to get some, some lunch, and they stayed there a little while…"[2]

André Chretien, a former police officer and resident of Gaspé, outlines his theory of how the Quebec premier was more concerned with identifying a suspect than he was identifying the *right* suspect.

"It was unbelievable, eh? You know what happened, I think? Maurice Duplessis,

[2] Ibid, 2 at 15m:13s.

> he had everybody with him … he had the priest and the nuns and all that bunch of rascals with him … and he wanted to keep on his relationship with the Americans, so he had to find somebody."[3]

Judy Reeder, Coffin's niece, whose eighth birthday fell on the day of her uncle's execution, provides a poignant portrayal of family and community huddled together as the clock ran out.

> "I was upstairs with the rest of my siblings and the house was full of people. I can hear them talking, very hushed, very quiet, very somber … and then, I hear people crying. That's all I remember."[4]

Each of the six episodes shares a similar structure beginning with a recap of events thus far, followed by an overview of the episode's content. They conclude with a summary of key takeaways and a glimpse of the next episode. This approach is ideal for listeners who are not able or prone to binge as it is easy to settle into the story even after a few days have passed since the last listen. Campbell's wise choice to have each episode focus on a particular element of the case also helps keep listeners on track. For example, episode one sets the scene; episode two captures the investigation and arrest; episode three dives into the power and politics of the times; and so on.

A wistful, haunting piano melody bookends each episode and also keeps the moving pieces together. Sound effects are minimal; Campbell rightfully has faith in the facts. As a criminology professor and lawyer with more than twenty years of experience researching and writing about wrongful convictions, including six years researching this case, she likely sees bells and whistles as a distraction. Listen up, her subdued approach suggests, a grave miscarriage of justice is about to occur to which near-silence is often the soundtrack.

The Coffin Affair is a nuanced, captivating, and cautionary tale about the Canadian justice system failing a man shepherded by misfortunes and missteps. Almost seven decades after Coffin's execution, Campbell's podcast reminds us that tragically, while we cannot go back to a case wherein an innocent person was put to death and undo the error, hopefully, going back over the events which led to the miscarriage of justice will help reduce wrongful convictions in the future.

[3] *Supra*, 3 at 11m:05s.

[4] *Supra*, 5 at 27m:42s.