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Book Review

Neoliberal Austerity: The Impact of Political Injustice on the Universal Right to Legal Aid Advocacy for Defendants Facing Indictment Within the Crown Court. A Precursor Towards a Miscarriage of Justice

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Denying defendants access to legal aid places a detrimental infringement on the right to due process. Post-2010 in England and Wales it is evidenced that such rights are impacted by political fiscal policy. This contribution therefore considers how political interference through the implementation of neoliberal austerity may impact the due process of legal aid for defendants facing trial within the Crown Court. Concerning such a query, advocacy aspects of criminal legal aid will be considered and how funding of advocacy may impact the very foundations of due process. Furthermore, the research agenda narrows focus specifically on the Crown Court due to the potential severity indictable offences pose, especially if defendants face the possibility of being wrongfully convicted. Similarly, legal aid issues surrounding the causation of the barrister strikes are considered and how these may have helped or hindered the defendant's access to due process. In the advent of the creation of neoliberal legislation, an investigation will be further carried out within the remit of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA) which has possessed a detrimental grounding within the causation of creating a chain reaction towards a wrongful conviction within defendant's facing an indictable based sentence.

I. Introduction

During the last decade, the adversarial justice system of England and Wales has been placed under significant financial pressure from austerity in the form of budget cuts. The ostensible purpose of such a politically enforced austerity policy is to reduce government spending while restoring balance in fiscal budgets.[1] However, this article presents the argument that these measures have gravely damaged the ability of the criminal justice system to provide due process to defendants, in particular due to restrictions to legal aid and the need to provide adequate representation. According to the United Nations (UN), defendants should be permitted the fundamental right to due process by receiving sufficient criminal legal aid to

[1] Florian Schui, *Austerity: The Great Failure* (London: Yale University Press, 2014) at 2.

obtain an adequate defence.[2] The purpose of due process is to provide all individuals fair and equal treatment while facing criminal charges.[3] Article 6(3) of the European Convention of Human Rights (ECHR) further guarantees the right to a fair trial, and is enshrined in UK law by the Human Rights Act 1998 in article 6(3)(c), which states that everyone charged with a criminal offence has the minimum right to:

> … defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.[4]

Not only is it argued that austerity measures limit due process, this paper further argues, by applying a critique of neoliberalism, that the justice system has become class-based where divisions are created between the wealthy who can achieve adequate legal representation against the less wealthy who cannot.[5] It is argued that neoliberal and managerialist agendas promoted by the state increase such likelihood of a miscarriage of justice occurring when access to criminal legal aid becomes restricted,[6] particularly given that one of the most accepted definitions of a miscarriage of justice is when defendant's rights to due process are breached.[7]

Obtaining criminal legal aid has become fundamental in providing defendants access to justice and the right to a fair trial through effective legal assistance.[8] A previous coalition government made up of conservatives and liberal democrats applied financial constraints to criminal legal aid through the implementation of austerity-based legislation. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA) cut legal aid spending by 28% post-2010.[9] These cuts to legal aid have further created an inadequacy in the availability of representation where defence teams are less likely to possess the resources required to form a competent defence.[10] On consideration of possible incompetence applied through the deprivation of resources, LASPOA enforced cuts to legal aid further created a detrimental impact pressuring solicitors to take on as many cases as possible.[11] Possessing excessive caseloads within an already under resourced law firm only seeks to exacerbate an unworkable

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[2] *European Convention on Human Rights*, Council of Europe, 3 September 1953, art 6(3)(c).

[3] Lucia Zedner & Carl-Friedrich Stuckenberg, "Due Process" in Kai Ambos et al, eds, C*ore concepts in criminal law and criminal justice: Volume 1* (Cambridge: Cambridge University Press, 2020) 304 at 304.

[4] *The Human Rights Act 1998* (UK), 1998, art 6(3)(c).

[5] Sam Fowles, *Overruled: Confronting Our Vanishing Democracy in 8 Cases* (London: Oneworld Publications, 2022) at 192.

[6] Roxanna Dehaghani & Daniel Newman, "Criminal legal aid and access to justice: an empirical account of a reduction in resilience" (2022) 29:1 Intl J of the Leg Profession 33 at 48.

[7] Clive Walker, "Miscarriages of Justice in Principle and Practice" in Clive Walker & Keir Starmer, eds, *Miscarriages of Justice: A Review of Justice in Error* (Oxford: Oxford University Press) 31 at 34.

[8] Olubunmi Onafuwa, "LASPO 2012: ten years and beyond – a socio-legal a study of the impact of legal aid cuts on service providers in England and Wales" (2024) 27:1 Leg Ethics 45 at 01.

[9] Jonathan Ames, "Barristers back strike that 'will bring wheels of justice to a halt", *The Times* (22 August 2022), online: <thetimes.com>.

[10] Carolyn Hoyle & Mai Sato, *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission* (Oxford: Oxford University Press, 2019) at 309.

[11] James Thornton, *Criminal Justice in Austerity: Legal Aid, Prosecution and the Future of Criminal Legal Practice* (Oxford: Hart Publishing, 2023) at 58.

situation embedded in the representation process. Being under resourced as well as not being paid adequately as a result of LASPOA forced The Law Society to take the Ministry of Justice (MOJ) to the High Court over legal aid payments not being increased to the recommended 15% in line with the barristers' pay rise.[12] In this context, this article aims to address the gap in literature regarding the extent to which neoliberal austerity restricts fair access to justice which may lead to a miscarriage of justice occurring by critically examining how measures such as means testing limit representation and impact on the justice system's ability to provide essential rights.

II. How Has Legislative Change Impacted Fundamental Rights?

Since the commencement of neoliberal austerity within the year 2010, legal aid spending had been cut from 2.2 billion to 1.6 billion in 2018, with only 20% of citizens now entitled to funding.[13] The Legal Aid Agency (LAA) of England and Wales was set up in 2013 with the goal of expanding access to representation for those without the means to hire legal counsel. However, under austerity-driven LASPOA legislation, this agency has progressively been brought under MOJ control and access to counsel further restricted as a result.

Due to such cuts, it is argued, e.g., by Robins and Newman (2022), that a divide has been created where access to legal aid is described as a "two nation justice system" where the wealthy elite settle cases with a "gold standard of British justice" and everyone else has to deal with an outdated, fractured justice system due to monetary issues.[14] Such a divide contradicts ECHR rights by failing to provide access to justice for the poor, the marginalised and the disadvantaged.[15]

The Independent Review of Criminal Legal Aid in 2021 stated that there has been a 28% decline in firms specialising in criminal legal aid over seven years.[16] While reasons for this may vary, an argument can be made that LASPOA-related austerity measures contributed to this pattern. Since 2007 the number of law firms specialising in criminal legal aid has declined by half.[17] Criminal defence solicitors have also not received a pay increase for criminal legal aid fees since 1998 and the fees which they are paid are worth less today than back in 1998 due to the rise in cost of living and inflation.[18] Based on the information provided,

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[12] The Law Society, Press Release, "New duty solicitor rota illustrates decline of criminal legal aid" (18 August 2022), online: <lawsociety.org.uk>.

[13] Owen Bowcott, "Covid has undermined chronically under-funded justice system", *The Guardian* (10 January 2021), online: <guardian.com>.

[14] Jon Robins & Daniel Newman, *Justice in a Time of Austerity: Stories from a System in Crisis* (Bristol, Bristol University Press, 2021) at 05.

[15] *Transforming our world: the 2030 Agenda for Sustainable Development*, UNGA, 70th Sess, UN Doc A/RES/70/1 (2015) GA Res 70/1.

[16] Christopher Bellamy, *Independent Review of Criminal Legal Aid* (England and Wales: UK Parliament, 2021).

[17] The Law Society, Feature, "Defending the future of criminal legal aid: what we're doing for members" (09 June 2022), online: <lawsociety.org.uk>.

[18] Daniel Newman, "Why the government lost in court on criminal legal aid", *Transforming Society* (07 February 2024), online: <transformingsociety.co.uk>.

it grows increasingly obvious that the criminal defence role is not a lucrative one, which may deter future solicitors from entering the criminal side of the law profession.

Additionally, barristers were also impacted when neoliberal injustice emerged relating to advocates being capped on the amount of unused material they would be paid to read, which was reduced from 10,000 to 6,000 pages.[19] The cap on payment for reading unused material meant that barristers were not paid for anything analysed over the threshold. This questions whether defence counsel will have upheld integrity while representing the defendant under due process guidelines. Since 2020, however, in regard to the assessment of unused disclosure schedules, both solicitors and barristers can now claim a basic rate for the first 3 hours of work, then additional payments can be claimed for any further work required.[20] The addition of extra payments for reading unused material introduced positive engagement by the LAA and MOJ, which further indicates that government agencies are now attempting to understand the complexities of criminal disclosure required when defending a client. Despite such improvement, neoliberal processes are still evident in the obtainment of defence counsel and seem to contradict UN procedures presenting a detrimental impact towards due process. This is based on elitist agendas which inflict neglect on those who require access to legal aid. However, further analysis of the legal aid agency is required to establish the true monetary impact which defendants face.

III. Means Testing Access to Justice

Having established the erosion of availability and standard of representation which can be attributed to LASPOA, the MOJ stated there will be a £2.2 billion investment into civil and criminal legal aid over three years.[21] However, according to former Justice Secretary Dominic Raab, Westminster planned to provide £135 million alongside £20 million per annum for the purpose of providing 3.5 million more people access to criminal legal aid.[22] Further in 2022, the MOJ introduced the CLAIR report 'Government's Response to the Criminal Legal Aid Independent Review.' The report suggested that since September 2020 an extra £35-51 million per annum has been injected into criminal legal aid with an estimation of £27m increase in 2022/23 leading to a further £36m in 2023/24.[23] These injections of cash are promising and may be deemed as an improvement; however, such monetary influxes are nowhere near previous funding levels which are required to protect due process.

Post-LASPOA 2012 the government has significantly chipped away at funding the defendants right to access due process which consequently impacts criminal legal aid access. On observation of statistics produced by the MOJ, the criminal legal aid expenditure when the coalition government came into power was £1.47 billion, however, when compared to pre-

[19] Katie McFadden & Oliver Carter McFadden, "MoJ face another challenge to 'catastrophic' legal aid cuts for defence firms", *The Justice Gap* (29 January 2018), online: <thejusticegap.com>.

[20] UK, Legal Aid Agency. *Claim for criminal legal aid work under graduated fee schemes*. (London: Ministry of Justice, 2021).

[21] (Catherine Baksi, "Social welfare claims struggle in legal 'advice deserts'", *The Times* (03 November 2022), online: <thetimes.co.uk>.

[22] UK, Parliament, *UK Hansard*, 710 (15 March 2022) online <hansard.parliament.uk>.

[23] UK, Ministry of Justice, *Government's full response to the Criminal Legal Aid Independent Review and consultation on policy proposals* (CP 645, 2022) para 19

covid in the financial year ending 2020 the government had reduced expenditure significantly to £918 million further falling to £599 million in 2021.[24]

Since the MOJ possesses monetary control over the criminal legal aid budget, the neoliberal agenda has severely restricted defendants from accessing free legal representation. Under the creation of LASPOA, legal aid has become a means-tested process restricting access to hiring a solicitor or barrister of choice. Based on the means-testing process created under LASPOA, only the wealthy can fund a defence team of choice and only the very low-income possess the means to access a fully funded legal aid lawyer.[25] Having to pay heavy contributions towards legal fees contradicts due process while further placing a price on fair access to justice.

For a defendant to receive a fully funded legal aid representation, an adjusted annual income is considered which must not exceed £12,475. However, if the defendant's adjusted income ranges between £12,475 - £37,500 partial contributions are required, which would now be assessed through implementing the full means test. However, defendants with adjusted incomes over £37,500 are automatically disqualified from accessing any criminal legal aid.[26] To illustrate the means-testing process which defendants face when applying for criminal legal aid an example has been provided within (Table 1) presenting how the adjusted annual income is worked out under the initial means test.

Table 1: Example of Initial Means Testing

Defendant gross income	Partner gross income	Dependants (Age)	Defendants adjusted income %
£32,600	£24,000	Child 1: 6 years old Child 2: 4 years old Child 3: 15 years old	Applicant – 1.0 Partner – 0.64 Child 1 – 0.34 Child 2 – 0.30 Child 3 – 0.44

(Note: * Data presents an example of initial means testing of a defendant's income and dependants. A single adult = 1.00, a couple = 1.64, and children's weighting is based on the following age 6 years = 0.34, 4 years = 0.30 and 15 years = 0.44. [Age ranges: 0-1 = 0.15, 2-4 = 0.30, 5-7 = 0.34, 8-10 = 0.38, 11-12 = 0.41, 13-15 = 0.44, 16-18 = 0.59 (GOV.UK, 2022a)].

Source: Prepared by authors.

The above table presents a defendant and partner who have three dependants aged 4, 6 and 15 equating to a total percentage factor of 2.72 which is divided by the joint gross annual income (£56,600 ÷ 2.72 = £20,588 adjusted annual income). For a defendant to receive any legal aid assistance in the Crown Court, the full means test assessment is now applied as the adjusted annual income is above the full entitlement threshold of £12,475.

[24] UK, Ministry of Justice, *Legal aid statistics England and Wales bulletin Jan to Mar 2022* (London: Secretary of State for Justice, 2022) at Table 1.0.

[25] Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2023) at 13.

[26] UK, Legal Aid Agency, *Guidance – Criminal legal aid: means testing* (London: Ministry of Justice, 2025).

Eligibility for full legal aid entitlement under the full means test assessment requires an adjusted income of £3,398 and under. However, an adjusted income ranging between £3,398 - £37,500 would require the defendant to make monetary contributions of 90% towards legal fees.[27] Payment of such fees, however, is dependent on calculations of the individual defendants' incomes and expenditures. The LAA further provides an automatic allowance of £5,676 known as the adjusted living allowance which is multiplied by the factor percentage (£5,676 x 2.72 = £15,438) creating an Adjusted Living Allowance. This is then added to the defendant's annual disposable income (living expenses) which in this example is £26,600 including outgoings such as mortgage, council tax, childcare and national insurance (£26,600 + £15,438 = £42,308). A subtraction is then carried out from the original joint gross annual income (£56,600 - £42,038 = £14,562) presenting a disposable income which the defendant must pay (90% of £14,562 = £13,105) equating to payments of £2,184 a month over a six-month period.

Furthermore, it is concerning that defendants are forced to pay significant amounts of money to fund a legal aid-assisted defence which could place a defendant in possible financial jeopardy. Neoliberal austerity constraints are evident based on LASPOA enforcing the means-testing process. However, once funding is obtained, challenges may surface regarding the premise that solicitors and barristers may not receive sufficient payment from the LAA for work carried out to represent a defendant.

IV. Consequences of Neoliberal Austerity on Representation

Having discussed the constricting implications, the means-testing process has on defendants facing indictment in the Crown Court, the article ventures further into how neoliberal austerity within the remits of LASPOA impacts legal representation. Within the adversarial criminal justice system of England and Wales the advocate's role is to act as protection for the defendant against the power of the governing state.[28] Advocates provide a voice for the defendant when faced against accusations of the ever-powerful adversarial system.[29] Furthermore, every defendant facing an indictable sentence within the Crown Court deserves a defence under the protection of due process. However, there is also the prospect that neoliberal austerity may hinder the defendant from receiving adequate advocacy or even any advocacy at all. This is evident when defendants are now representing themselves in the Crown Court.[30] Self-representation is concerning and retracts from the foundations of due process causing an unbalanced fairness against the state while also breaching the 'equality of arms' principle. The equality of arms principle is important to establish adequate and fair balance between both the defence and prosecution.[31] A defendant fighting against accusations from the state would require fairness at trial proceedings, however, when the power of the prosecution

[27] Allisdair Gillespie & Siobhan Weare, *The English Legal System* (Oxford: Oxford University Press, 2021) at 382.

[28] Ed Johnston, "The Adversarial defence lawyer: Myths, disclosure and efficiency – A contemporary analysis of the role in the era of the Criminal Procedure Rules" (2020) 24:1 Intl J of Evidence & Proof 35 at 42.

[29] Ed Johnston, "The Adversarial Lawyer and the Client's Best Interest: Failures with Pre-Charge Engagement" (2024) 88:1 The J Crim L 3 at 5 [Johnston, "Pre-Charge Engagement"].

[30] Fowles, *supra* note 5 at 84.

[31] Jonathan Law, ed, *Oxford Dictionary of Law* (Oxford: Oxford University Press, 2022) sub verbo 262.

possesses unlimited resources and the defendant is unable to obtain a sufficient defence, a notion of imbalance of fairness emerges.

A study conducted by the MOJ suggested that one of the prominent factors established with unrepresented defendants was caused by an inability to gain access to legal aid.[32] On consideration of unrepresented defendants there is a requirement to investigate further into why neoliberal austerity's impact on legal aid causes an individual to be unrepresented, while further discrediting the foundations of due process. This was evident when recently The Law Society produced predictions that the number of law firms providing criminal legal aid representation by 2025 will decrease by 16% in which 150 firms are predicted to collapse due to the previous Justice Secretary Dominic Raab rejecting the advice of the independent review into legal aid.[33] This premise is concerning for defendants if firms are collapsing and are not taking on any criminal legal aid work, the process will become restrictive impacting defendants' access to representation of choice. However, these statistics are based on predictions and cannot be taken as sufficient proof which prompts further investigation into the root cause of such erosion of criminal legal aid representation.

While it has been established that advocates are the voice, protecting the rights of the defendant, legal aid advocates have also been branded by the public and media as 'Fat Cat's' who earn too much money.[34] The All-Party Parliamentary Group report counteracted such presumption stating that labelling was established by the tabloids ignoring the fact that legal aid fees have not increased within 20 years.[35] A minimal increase in payments for legal teams is possibly a contributing factor as to why solicitors or barristers are less likely to take on such work. Furthermore, the prospect of inflation over the years may have also played a significant part. Based on the 'Fat Cat' premise, the public may question whether legal counsel in the past may have abused the system by forcing neoliberal restrictions. However, this is unlikely, due to no evidence in the literature suggesting abuse of the legal aid process. Evidence more sufficiently points towards a neoliberal money-saving agenda where the erosion of legal representation emerges through inadequate payments forcing solicitors and barristers to leave the profession.

Retention of criminal defence lawyers has become a prominent issue of late based on a lack of lucrativeness within the criminal area of law. A lack of retention stems from fixed fees creating an unethical work process where casework cannot be prepared to a high-quality standard.[36] Defence teams are overworked and underfunded which has led to a defence driven

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[32] UK, Ministry of Justice Analytical Series, *Unrepresented Defendants: Perceived effects on the Crown Court in England and Wales – practitioners' perspectives* (London: Ministry of Justice, 2019) at 01.

[33] The Law Society, News Release, "Real-terms cut to legal aid leaves no viable future for criminal defence" (30 November 2022), online: <lawsociety.org.uk>.

[34] Amy Clarke & Lucy Welsh, "F**k this game … I'm off': financial and emotional factors in declining legal representation in miscarriage of justice cases" (2022) 49:3 J of L & Society 518 at 536; Catrina Denvir et al, *We are Legal Aid: Findings from the 2021 Legal Aid Census* (UK: Legal Aid Practitioners Group, 2022) at 10; Carina Rebecca Oliva, "An appraisal of the Criminal Justice System's Fairness and Ability to Promote Effective Participation in Light of Society's Wealth Disparities" (2022) 9:1 North East L Rev 56 at 64.

[35] UK, Westminster Commission on Legal Aid, *Inquiry into The Sustainability and Recovery of The Legal Aid Sector* (London: The All-Party Parliamentary Group on Legal Aid, 2021).

[36] Oliva, *supra* note 34 at 65.

by managerial processes resulting in minimal effort and lacking attention to detail.[37] A lack of attention within the defendant's case will impact the right to a fair trial as the defendant requires advocacy of the highest standard to proceed against the accusations of the state. However, understanding why legal counsel may not represent clients adequately can be justifiable if not compensated for duties carried out. Furthermore, criminal legal aid work is not lucrative; a large caseload must be taken on to match what would be paid for private consultation which has forced solicitors to avoid complex time-consuming cases restricting defendants from accessing a sufficient defence of choice.[38]

Money seems to be a key concern for criminal defence solicitors if cases are to be investigated thoroughly. This is based on the fact that workloads have become excessive impacting the quality of work produced which further impedes on the due process rights of the defendant receiving a fair trial. The reluctance to carry out legal aid work for clients in need can be observed as fallout from an age of austerity under LASPOA, however, the government is now attempting to address such monetary issues for solicitors. An injection of £85 million for solicitors will be provided bringing reform forward in 2024 under the Litigators Graduated Fee Scheme (LGFS) so that solicitors are paid for the work they carry out in the Crown Court.[39] The government proposals are evidence that attempts are being made to improve retention rates, however, these changes may have come a little too late and at the cost of losing many skilful criminal defence solicitors. A further consideration must be acknowledged that less legal counsel means a minimal quality defence for defendants leaving room for a possible miscarriage of justice to occur.

Retention rates have also impacted barristers, where at least 300 barristers have left the job since the cuts commenced. There are now 70-hour work weeks, cases keep piling up creating a backlog and the accused are informed that their cases may not be dealt with for years.[40] Working excessive hours presents the burden of conducting criminal legal aid work, which also further suggests that legal aid advocates are not being paid for the hours they work. This questions if representation will continue to uphold due process for defendants within the Crown Court.

When defendants rely on criminal legal aid to fund their case, and the advocate who represents them becomes overworked alongside not being paid adequately, there may be questions raised as to whether advocates will work to their full potential. This becomes a significant concern, especially if the neoliberal-influenced LAA does not provide sufficient funding. Similarly, restrictions to adequate legal advice are increasing where the demand for managerialism efficiency pressures legal representation to conduct a basic job compared to striving for excellence.[41] Legal aid cuts have similarly been known to push advocates to force a guilty plea on their clients due to monetary self-interest further linking to an age of managerialism.

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[37] Johnston, "Pre-Charge Engagement", *supra* note 29 at 15.

[38] Oliva, *supra* note 34 at 62.

[39] Ministry of Justice, Press Release, "Second major investment boosts fees for legal aid lawyers" (30 November 2022), online: <gov.uk>.

[40] Joanna Hardy-Susskind, "Attrition" (21 July 2022), online: <thesecretbarrister.com>.

[41] Fionnuala Ratcliffe & Penelope Gibbs, "The criminal defender in an age of austerity: Zealous advocate or cog in a machine?" (23 July 2019), online: <transformjustice.org.uk>.

At the height of austerity and slightly pre-covid, 29 advocates were interviewed who presented mixed views regarding inadequate plea advice. Advocates were found to be only spending minimal time on legal aid cases as they are unprofitable, one advocate stated; 'The tighter you cut the funding, the more pressure there is to cut corners and put your interests first'.[42] Based on such responses by advocates, further remnants of neoliberal austerity can be observed, however, it is concerning that some advocates are willing to cut corners and in the interest of money show disregard towards the due process of the defendant.

With the premise that the advocate will not work to their best ability, this creates a miscarriage of justice going against the foundations of due process resulting in a high chance that the legal aid-funded defendant may be wrongly convicted. If this is the case a sense of pointlessness occurs when being represented within the Crown Court by advocates who are unable to make the effort to fulfil their obligation. However, consideration must be made that neoliberal austerity is at play here backing advocates into a corner with low fees and financial instability.

A further neoliberal agenda which negatively impacts due process can be observed concerning criminal defence lawyers, who have now accepted that their role has been compromised hindering the quality of defence due to the constant cuts to funds.[43] It may be plausible that not all advocates will carry out such diligence within the work role and read extra, as payment may be still deemed insufficient. Austerity impacts towards due process can be observed which has spanned from the neoliberal ideology of cutting legal aid to the bare necessities. Negativity also emerges from perceptions of advocacy staff, however, there is a further requirement for a root cause analysis of why such incidents are occurring. This can be understood by analysing how legal aid is paid to advocates.

V. Funding representation within the Crown Court, paying for due process

Within the previous section monetary issues were discussed, however, this section investigates further into how advocacy is paid under the legal aid process with a more intricate observation of schemes between differential defence counsel. Advocates, normally solicitors are funded by the Litigator Graduated Fee Scheme (LGFS) which covers the cost of instructing counsel, note-taking, conducting witness statements, and providing legal advice. In comparison, the barrister is funded by the Advocate Graduated Fee Scheme (AGFS) which pays the cost of representing during trial within the Crown Court.[44]

To further understand the funding of such defence counsel it would be purposeful to search within data how neoliberal austerity has impacted the LAA spending over the years, especially on funding barristers under the AGFS scheme at the trial stage. A lack of expenditure could indicate that defendants are not receiving legal aid for their defence, however, according

[42] James Thornton, "The Way in Which Fee Reductions Influence Legal Aid Criminal Defence Lawyer Work: Insights from a Qualitative Study" (2019) 46:4 J of L & Society 559 at 581.

[43] Daniel Newman & Lucy Welsh, "The practices of modern criminal defence lawyers: Alienation and its implications for access to justice" (2019) 48:1-2 Common L World Rev 64 at 65; Emma Cooke "The Working Culture of Legal Aid Lawyers: Developing a 'Shared Orientation Model'" (2022) 31:5 Soc & Leg Studies 704 at 579.

[44] UK, Legal Aid Agency, *Criminal Legal Aid Manual Applying for legal aid in criminal cases in the magistrates' and Crown Court* (Guidance) at 43.

to published MOJ statistics, this was not the case. LAA expenditure on AGFS post-LASPOA increased from (£107,120,000) in 2011/12 to (£149,550,000) pre-pandemic in 2019/20 then decreased to (£78,540,000) during the pandemic rising to (£142,640,000) between 2023/24.[45] Emerging out of the pandemic, expenditure increased dramatically for AGFS pointing towards the notion that the LAA is funding AGFS to fund barrister-represented cases which means that defendants facing trial in the Crown Court are being represented. This notion should not be taken for granted though, as the volume data presents a large influx of representation post-pandemic which could be increasing due to courts reopening and further attempting to reduce the backlog. On analysis of data, it is observable that the LAA are spending money to fund representation, however, these may only be a handful of defendants seeking representation or defendants who meet the LAA criteria for representation under the means testing mentioned previously. The increase in expenditure has only occurred due to courts reopening post-pandemic and the requirement for managerialism to push cases through. Reasoning behind this notion is that austerity has placed enhanced pressure on the courts to economise through court closures and change the use of legal aid applications.[46] This indicates that there is a possible pressure of managerialism mixed with neoliberal austerity which may impact the defendant's due process as the Crown Court and the defendant's representation has become compromised.

Defendants accused of serious offences were already held within the Crown Court backlog of 40,000 cases pre-pandemic before March 2020 which the government blamed later on COVID-19 as the cause for the current backlog.[47] This is contestable; however, as post-covid statistics provided by the Crown Prosecution Service (CPS) present that the backlog in the Crown Court increased 6.9% from the first quarter (69,786) 2022/23 to (74,587) in 2022/23 second quarter.[48] Most recent statistics further acknowledged that the backlog is not decreasing with the Crown Court backlog standing at (76,957) 2024/25 which is an 11% increase from the previous year.[49] On consideration of backlog issues, there are also other relatable factors to consider such as the impact of the recent barrister strikes on the defendant's access to due process in the Crown Court.

The defendant relies on the representation of the barrister to protect their rights to due process. However, if there are no barristers to provide representation, defendants are left defenceless if a decision is made by the defendant to proceed without their striking representation which could lead to a miscarriage of justice. However, it could be argued that the barrister strikes are for the benefit of upholding the due process of defendants they represent within the Crown Court.

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[45] UK, Ministry of Justice, *Legal Aid Statistics – Crime Summary – Workload and Expenditure* (Legal Aid Statistics Dashboard), Criminal Legal Aid (London: Legal Aid Agency, 2024-2025) online: <powerbi.com>.

[46] Richard Garside & Roger Grimshaw, *Criminal justice systems in the UK: Governance, inspection, complaints and accountability* (London: Centre for Crime and Justice Studies, 2022) at 35.

[47] Mark George KC, "The State We Are In: The Crisis of Criminal Justice and How We Got Here" (2022) 11 Manchester Rev of L, Crime and Ethics 164 at 174.

[48] Crown Prosecution Service, CPS data summary Quarter 2 2022-2023 (London, Crown Prosecution Service, 2023), online: <cps.gov.uk>.

[49] The Law Society, News Release, "Court waiting times undermine justice" (26 June 2025), online: <lawsociety.org.uk>.

VI. The striking barrister, fighting back at neoliberal austerity

On the premise of the literature analysed so far, an observation can be established into why the criminal defence sector has become disgruntled due to neoliberal austerity and the offspring of LASPOA which caused a chain reaction to the inevitability of the barrister strikes. The recent barrister strikes commenced in April 2022 due to the Criminal Bar Association (CBA) informing the government that barristers do not receive adequate financial restitution for criminal legal aid work.

Based on such a requirement for more pay 'The Independent Review of Criminal Legal Aid' was conducted in 2021 which suggested that legal aid barristers and solicitor advocates should receive a 15% increase.[50] There was a further recommendation that firms specialising in criminal legal aid should receive an extra £100 million per annum to match equality with the CPS while also investing such money to retain and recruit quality staff. [51] The CBA, however, did not accept the government's proposed 15% and proceeded to carry out regular strikes with a requirement of a 25% pay rise. These strikes placed defendants in a sort of limbo waiting for conviction or acquittal due to relying on a legal aid-funded barrister for representation.[52]

Barrister's striking may have held off all Crown Court trials; however, it was not just about the period the barristers were striking which will have impacted the defendant. An observation is required into the fact that if being a barrister as a career is not lucrative enough, not paying for the amount of work carried out to defend the accused facing an indictable offence then there will be minimal legal aid barristers to conduct such work, which could cause a chain reaction towards a miscarriage of justice. Such a prospect dismantles the foundations of the right to due process and a right to a fair trial which could cause an innocent person to be wrongly convicted. Therefore, this is why the barrister strikes are relevant due to the neoliberal austerity agenda which has created a shortfall in funding post-2010.

Barristers who are junior or self-employed may only earn a salary of £12,200 within the first three years and without a 25% pay rise there would be a vast number of barristers leaving criminal legal aid work, as the goodwill of criminal barristers has been exhausted.[53] Considering such neoliberal cuts to funding legal aid representation, concerningly there will be minimal barristers to challenge witnesses and complainants' credibility at trial which is essential for due process to be upheld. Challenges by defence counsel are essential as the police operate under the College of Policing model of 'believe the victim' not considering the fact that the complainant may be untruthful.[54] This prompts the essentiality of barristers to challenge and fight accusations against clients, however, concerns arise here as the defendant may not be able to afford an adequate defence to challenge if they are not entitled to legal aid. In addition, there is also the issue that there are no criminal legal aid barristers readily available to defend them, as many barristers have exited the profession.

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[50] Haroon Siddique, "Criminal barristers vote for industrial action over legal aid funding", *The Guardian* (15 March 2022), online: <theguardian.com>.

[51] Bellamy, *supra* note 16 at 64.

[52] Aoife Walsh & Oliver Slow, "Criminal barristers in England and Wales vote to go on all-out strike", *BBC News* (22 August 2022).

[53] Jane Croft, "Barristers end strike after accepting improved legal aid deal in England", *Financial Times* (10 October 2022).

[54] George KC, *supra* note 47 at 192.

The importance of barrister representation can be observed in the case of Liam Allan, this case involved failures by police investigators and prosecution not disclosing vital evidence that the complainant was lying which nearly led to a wrongful conviction. It was the due diligence of defence counsel funded by legal aid which went beyond paid remits of reading and searching through extra evidence at the time to challenge the police and prosecution about text messages which should have been disclosed.[55]

If a defendant within the Crown Court is facing a conviction for an indictable offence it is essential that neoliberal austerity be stopped within its tracks and that the adversarial justice system's legal representatives be adequately funded. The CLAIR report published on the government's request has commenced the first steps towards such requirements by suggesting that safeguard procedures should be initiated under the 'Equality of Arms' principle to match the prosecution barrister fees.[56]

Based on the recent actions of the barrister strikes, a delve was made into the government's neoliberal agenda where Rt Hon Brandon Lewis MP agreed to a 15% fee increase for the majority of cases within the Crown Court.[57] In October 2022 the CBA accepted the government's proposal of 15% plus £30 million on top of that increase, however, criminal solicitor-advocates only received a 9% increase to represent under legal aid where many are still considering leaving the profession in their masses.[58] Neoliberal austerity has suffered a blow due to advocates standing up for fair payments, however, the notion remains open if such action was in the interest of the defendant facing an indictable sentence within the Crown Court. The increase, however, is a successful start to quash the political ideology of neoliberal austerity providing a stance that such ideology possesses no grounding within the interest of due process.

VII. Conclusion

The article presented awareness into the accessibility of criminal legal aid with extensive focus on defendants facing trial on indictment in the Crown Court. Concerningly, inequalities were evidenced in relation to the political instability of the economy in which the implementation of neoliberal ideology and the pursuit of austerity was sought to reduce state debt. This came at the price of creating a reduction in access to justice, however, from the government's perception, austerity was an imperative requirement to reduce the deficit within the economy placing a price on due process. Defendant's due process became further compromised in the creation of LASPOA legislation which served the purpose of dismantling criminal legal aid to its foundations while further evidencing a breach against United Nations protocol hindering defendants who possess a low income. The enforcing political party, however, should not be discredited, as literature evidenced that the government is aware of the impact caused by LASPOA.

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[55] Holly Greenwood & Dennis Eady, "Re-evaluating post-conviction disclosure: A case for 'better late than never'" (2019) 59 Intl J of L, Crime and Justice 1 at 1, 2.

[56] Ministry of Justice, *Response to Independent Review of Criminal Legal Aid* (London: Secretary of State for Justice, 2022).

[57] Ministry of Justice, Press Release, "New Justice Secretary agrees deal to get criminal barristers back to work" (29 September 2022), online: <gov.uk>.

[58] Croft, *supra* note 53.

The same political party which enforced austerity since 2010 is now attempting to make amends 14 years later by offering more adequate funding through a cash injection of £135 million into legal aid representation. These are positive steps conducted by the government towards reform and making amends for a failed past of pursuing a neoliberal agenda. Nonetheless, regardless of attempts to improve access to criminal legal aid, reform relating to due process will take a considerable time to rectify. The money proposed may only place a limited hold over a haemorrhaging adversarial system which may have been applied a little too late. Means testing procedures provided an insight into how defendants fund their right to due process. Methods introduced by the LAA, however, seem to place many at a disadvantage, especially if they fall between the funding criteria which require contributions placing many defendants in financial instability. On that basis, this is an area which requires sufficient improvement to maintain that fundamental right to due process.

Due to the lack of funding over the years, it became evident that criminal legal aid work is not lucrative and places not only the defendant in jeopardy but the advocacy which represents them. Solicitor firms which provided criminal legal aid could no longer do so as it was not financially viable, and barristers were leaving on a large scale due to an excessive workload and not being paid adequately, with barristers moving to other areas of law. This exodus first prompted research into how much advocacy is paid which presented minimal for the work carried out. In relation to advocacy funding, the quality of defence became scrutinised which evidenced that a lack of money will result in advocates cutting corners. Based on such findings, an area for reform is required to protect a possible innocent person's liberty becoming compromised. Under the premise of due process, the defendant should receive the best defence possible, and if the advocate cannot provide this, then there is no hope for the defendant. The government-funded LAA needs to learn that the advocacy role must remain lucrative for solicitors and barristers to remain within the profession.

The means test system requires improvement, especially regarding defendants paying 90% of the final fee over six months. As a consequence, defendants may have to sell property or obtain loans for the purpose of achieving an adequate defence which yet again impacts a defendant's human rights while discrediting the international policy of the United Nations. This austerity enforced action leaves the adversarial system of England and Wales vulnerable to international reputational damage and potentially impacts the nation's credibility surrounding the Rule of Law Index where justice systems are measured on how they treat their citizens regarding fair access to justice.

Recently, it became evident that the barristers were not afraid to challenge these impacts mentioned. The CBA took their fight and won a considerable deal which the government must now honour. Obtainment of such a deal will provide the first steps towards the fight to provide a fair trial for defendants. This upholds the very foundations of due process as advocates will hopefully work to their full potential if being paid effectively. One further issue which remains is that solicitors did not receive the deal that barristers received, and due to this, a storm may be on the horizon once again ready to challenge the legal aid process. Neoliberal Austerity is alive and well circulating in the criminal legal aid process, even though the government is attempting to make minor amends by providing reasonable adjustments to advocacy funding. However, at present, it is not enough and until a full overhaul of the criminal legal aid system is conducted, the defendant's right to fair due process in the Crown Court is at stake further impacting their liberty and human rights leading to a possible wrongful conviction.

Convicting the Innocent in Belgium: Historical Exonerations and Their Contemporary Relevance

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Over the past three decades, awareness of wrongful convictions has surged, mobilizing an innocence movement that started in the United States and later expanded internationally. Research into wrongful convictions has contributed to this awareness and remains a crucial component in addressing the issue, also in democracies with ostensibly robust criminal justice systems. In Belgium, however, discussions on wrongful convictions have been limited since the issue is considered an anomaly in this country. This narrative is supported by the apparent absence of formal exonerations. Yet, our research demonstrates that people have been wrongfully convicted and exonerated by the Belgian criminal justice system, including for serious crimes. Drawing on the works of the late journalist Jos Cels, we conducted a comprehensive investigation into historical exoneration cases using open sources, such as the Belgian official gazette and digital newspaper archives. The findings include 28 exoneration cases spanning from 1830 to 1963, involving 33 exonerees. For a subset of these cases, we provide descriptive information and document the factors that allegedly contributed to the wrongful conviction, such as fraudulent forensic expert testimony, and report the grounds on which the wrongfully convicted people were eventually exonerated. This study confirms the existence of historical exonerations in Belgium and takes a first step in collating these seemingly overlooked injustices. Our findings resonate with research on contemporary wrongful convictions across the globe. Given the universal characteristics of wrongful convictions, these historical cases help raise awareness and foster understanding of modern-day injustices, among criminal justice professionals, irrespective of their jurisdiction.

I. Introduction

The fact that people can be wrongfully convicted for a crime that they did not commit is frightening. Not only do such miscarriages of justice impose profound harm on the involved individuals and their families, they can also undermine the public trust in and the legitimacy of the criminal justice system.[1] Moreover, another serious concern is that the true perpetrator remains at liberty, posing a continuing threat to public safety.[2]

The issue of wrongful convictions has gained significant scholarly and public attention over the past decades.[3] As part of the research into the topic, exoneration databases have been developed in which cases of confirmed wrongful convictions are documented. They serve as vital resources for researchers, policymakers, and reform advocates, offering data on exonerations and giving insight into factors contributing to the injustice. Major databases now

[1] Samantha K Brooks & Neil Greenberg, "Psychological impact of being wrongfully accused of criminal offences: A systematic literature review" (2021) 61:1 Med Sci Law 44, online: <https://journals.sagepub.com/doi/10.1177/0025802420949069>; Mark A Cohen, "Pain, suffering, and jury awards: A study of the cost of wrongful convictions" (2021) 20:4 Criminology & Public Policy 691, online: <https://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12559>; Seri Irazola et al, "Addressing the impact of wrongful convictions on crime victims" (2014) 274 NIJ 34, online: <https://www.ojp.gov/pdffiles1/nij/247881.pdf>; Jeff, Kukucka, Ashley M Horodyski & Christina M Dardis, "The Exoneree Health and Life Experiences (ExHaLE) study: Trauma exposure and mental health among wrongly convicted individuals." (2022) 28:3 Psychology, Public Policy, and Law 387, online: <https://doi.apa.org/doi/10.1037/law0000358>.

[2] Robert J Norris et al, "The criminal costs of wrongful convictions: Can we reduce crime by protecting the innocent?" (2020) 19:2 Criminology & Public Policy 367, online: <https://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12463>.

[3] Jon Gould & Richard Leo, "One Hundred Years Later: Wrongful Convictions After a Century of Research" (2010) 10:3 Journal of Criminal Law and Criminology 825; Richard A Leo, "The Criminology of Wrongful Conviction: A Decade Later" (2017) 33:1 Journal of Contemporary Criminal Justice 82; Brandon L Garrett "Wrongful Convictions" (2020) 3:1 Annu Rev Criminol 245, online: <https://www.annualreviews.org/doi/10.1146/annurev-criminol-011518-024739>.

exist documenting exonerations in the United States (the National Registry of Exonerations), Canada (the Canadian Registry of Wrongful Convictions), and the United Kingdom (Exeter Miscarriage of Justice Registry). Since 2024, Europa has its own exoneration database with the establishment of the European Registry of Exonerations (EUREX).[4] EUREX registers exoneration cases that occurred in member states of the Council of Europe, covering wrongful convictions dating back to 1970.[5]

In November 2025, EUREX listed 139 exonerations from 20 countries across Europe, such as France, Germany, Italy, and Ukraine. Belgian cases are absent from the listed exonerations. Indeed, Belgian journalists, lawyers, and other practitioners in the criminal justice system have argued that Belgium has no wrongful convictions.[6] There are, however, also scholars, lawyers, and journalists who have asserted that wrongful convictions occur in Belgium and have argued that it would be naive to assume that the Belgian criminal justice system is infallible.[7] In this study, we demonstrate that Belgian wrongful convictions and exonerations exist but have become largely invisible over time due to limited documentation and public access. We systematically identified cases based on existing documentation and analyzed the mechanisms underlying the wrongful convictions and subsequent exonerations. Despite their historical nature, these cases reveal persistent patterns that align with findings from contemporary international research. We begin by providing definitions of wrongful conviction and exoneration, followed by a brief overview of how such injustices may occur and how they can be remedied.

A. Defining wrongful conviction and exoneration

The terminology used to describe individuals erroneously involved in the criminal justice system lacks consistency in the literature. Terms such as "wrongful conviction," "exoneration," "innocence," and "miscarriage of justice" are frequently used interchangeably despite representing distinct concepts.[8] Approximately 40% of psychology publications using

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[4] *European Registry of Exonerations (EUREX)*, online: European Registry of Exonerations <https://www.registryofexonerations.eu/>. [*EUREX*]

[5] *Ibid*.

[6] Ricardo Nieuwkamp & Lore Mergaerts. "Psychologie en recht: een geslaagd huwelijk? Over de moeizame doorwerking van de rechtspsychologie in de Belgische strafprocedure [Psychology and law: a successful marriage? On the difficult impact of legal psychology on Belgian criminal procedure]" (2022) Boom juridisch 215.

[7] Katrien Verhesschen & Cyrille Fijnaut, "Chosen Blindness or a Revelation of the Truth?: A New Procedure for Revision in Belgium" (2020) 13:4 Erasmus Law Review 13, online: <https://www.boomportaal.nl/doi/10.5553/ELR.000183>; Peter J Van Koppen & Robert Horselenberg "Waarom er in België en Nederland geen rechterlijke dwalingen zijn [Why there are no miscarriages of justice in Belgium and the Netherlands]" (2018) 6 Expertise & Recht 276, online: <https://www.petervankoppen.nl/ewExternalFiles/2018%20Waarom%20er%20in%20Belgie%CC%88%20en%20Nederland.pdf>. [*Van Koppen*]

[8] David Hamer, "Conceptions and degrees of innocence: the principles, pragmatics, and policies of the innocence movement" (2023) 35:1 Current Issues in Criminal Justice 81, online: <https://www.tandfonline.com/doi/full/10.1080/10345329.2022.2114870>; Taya D Henry et al, "Are they synonyms? A review of the use of the terms innocence, miscarriages of justice, wrongful conviction, and exoneration." (2025) Psychology, Public Policy, and Law, online: <https://doi.apa.org/doi/10.1037/law0000468>.

these terms fail to define them, and when definitions are provided, they are often inconsistent.[9] Similarly, the aforementioned databases use different terms to refer to seemingly identical concepts or fail to define their terminology altogether. For example, the Canadian database states that "a wrongful conviction occurs when a criminal conviction is overturned based on new matters of significance related to guilt not considered when the accused was convicted or pled guilty".[10] Thus, this database only considers an erroneous conviction to be a wrongful conviction once the courts have officially recognized the error. In the US database, however, this definition would fit what they term an exoneration, defined as occurring "when a person who has been convicted of a crime is officially cleared after new evidence of innocence becomes available".[11] Definitional ambiguity may hamper research comparability, may inadvertently exclude certain categories of wrongfully convicted individuals, and can contribute to public confusion.[12]

Given these issues, we explicitly define the key terms used in this study. We define wrongful conviction as occurring when someone who did not commit the alleged crime (thus, factually innocent) receives a final conviction for that crime. This includes cases where no crime occurred or where the crime was committed by another person. A final conviction refers to a conviction at the conclusion of the regular appeal process, when a defendant no longer has a possibility to appeal the judgment.[13] With this definition we, therefore, exclude cases in which defendants were wrongfully held in pretrial detention, were first convicted followed by an acquittal on regular appeal, or were convicted and sentenced even though they could not be held criminally responsible (e.g., insanity defense). We refer to an exoneration when a final conviction and the associated criminal liability are officially removed by an authorized government body from a person who was convicted of a crime while being factually innocent.[14] In practice, there will be more wrongful convictions than exonerations since it is unlikely that all wrongful convictions are brought back into court after the final conviction. Moreover, when addressed, not all requests for revision are found admissible, let alone result in the acquittal of a wrongfully convicted person.[15]

B. Factors Contributing to Wrongful Convictions

When a case moves through the criminal justice system, various professionals such as police, prosecutors, experts, and ultimately judges and/or juries extensively review and weigh the evidence to reach a verdict. Because the system relies heavily on human judgment, it is

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[9] Henry, *Ibid*.

[10] *About: Canadian Registry of Wrongful Convictions*, online: Canadian Registry of Wrongful Convictions <https://www.wrongfulconvictions.ca/about>.

[11] *Understanding the Registry,* online: The National Registry of Exonerations <https://exonerationregistry.org/understanding-registry>.

[12] Hamer, *supra* note 8; Henry, *supra* note 8.

[13] David Hamer, "Wrongful Convictions, Appeals, and the Finality Principle: The Need for a Criminal Cases Review Commission" (2014) University of New South Wales Law Journal, online: <https://www.austlii.edu.au/au/journals/UNSWLawJl/2014/12.html>.

[14] Jon B Gould & Richard A Leo, "The Path to Exoneration" (2016) 79:2 Albany Law Review 325, online: <https://www.albanylawreview.org/article/70029-the-path-to-exoneration>.

[15]Joost Nan, Nina Holvast & Sjarai Lestrade, "A European Approach to Revision in Criminal Matters?" (2020) 13:4 Erasmus Law Review 102, online: <https://www.boomportaal.nl/doi/10.5553/ELR.000189>. [*Nan*]

vulnerable to the kinds of perceptual, cognitive, organizational, and structural issues that can lead to error. Social science research has therefore played an important role in understanding how wrongful convictions can occur. Studies of exoneration cases in the United States and elsewhere have identified a range of factors that are frequently present in such cases and may help explain the erroneous decision-making that resulted in a wrongful conviction.[16] It is important to note, however, that the presence of these factors does not in itself establish that they caused the wrongful conviction. Most factors commonly observed in exoneration cases are correlates rather than demonstrated causes, and meaningful causal inference requires comparison with other types of cases—such as accurate convictions or "near misses"—to determine whether these factors occur at different rates.[17] That said, research shows that when appropriate comparison groups are used, certain factors can predict differential outcomes among innocent defendants who have been indicted, helping explain why some are ultimately (wrongfully) convicted while others are cleared.

Factors associated with wrongful convictions include false confessions, eyewitness misidentification, errors related to forensic evidence, unreliable informant testimony, and other false accusations, as well as misconduct by officials.[18] We introduce these issues briefly and refer to relevant literature for the interested reader.

Perhaps the most counterintuitive of these factors is when people falsely confess to a crime that they have not committed.[19] Although people assume that they would never confess to a crime they did not commit, scholars have identified contextual (e.g., pressure on the police to solve the crime), situational (e.g., sleep deprivation, long and high-pressure interrogations)

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[16] Brandon Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Harvard University Press, 2011), online: <https://www.degruyter.com/document/doi/10.4159/harvard.9780674060982/html>; Fredericke Leuschner, Martin Rettenberger & Axel Dessecker, "Imprisoned But Innocent: Wrongful Convictions and Imprisonments in Germany, 1990-2016" (2020) 66:5 Crime & Delinquency 687, online: <http://journals.sagepub.com/doi/10.1177/0011128719833355>; Mark Godsey, "The Global Innocence Movement" in Daniel S Medwed, ed, Wrongful Convictions and the DNA Revolution, 1st edn (Cambridge University Press, 2017) 356, online: <https://www.cambridge.org/core/books/abs/wrongful-convictions-and-the-dna-revolution/global-innocence-movement/107FD3F5DC9F2B3B406076A74A0FE803>.

[17] For example, see Jon B Gould, Julia Carrano, Richard A. Leo, & Joseph K. Young, "Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice: (2013) 20 Univ of San, online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231777>.

[18] Gould, *supra* note 3; Robert J Norris, Catherine L Bonventre & James R Acker, When justice fails: causes and consequences of wrongful convictions, second edition edn (Durham, North Carolina: Carolina Academic Press, LLC, 2021); Ryan Schneider, Jennifer Bartlett & Tina M Zottoli, "Wrongful Conviction" in Wrongful Conviction (Routledge, 2022), online: <https://doi.org/10.4324/9780367198459-REPRW95-1>. [*Schneider*]

[19] Saul M Kassin, "False confessions" (2017) 8:6 WIRES Cognitive Science e1439, online: <https://wires.onlinelibrary.wiley.com/doi/10.1002/wcs.1439>; Saul M Kassin et al, "Police-induced confessions, 2.0: Risk factors and recommendations." (2025) 49:1 Law and Human Behavior 7, online: <https://doi.apa.org/doi/10.1037/lhb0000593>; Kyle C Scherr, Allison D Redlich & Saul M Kassin, "Cumulative Disadvantage: A Psychological Framework for Understanding How Innocence Can Lead to Confession, Wrongful Conviction, and Beyond" (2020) 15:2 Perspect Psychol Sci 353, online: <https://journals.sagepub.com/doi/10.1177/1745691619896608>.

and personal (e.g., young age, suggestibility) factors that make someone vulnerable to falsely confessing, even to murder.[20]

Another contributing factor that has gathered much scientific interest is eyewitness (mis)identification.[21] Eyewitness identification refers to the process in which a witness or a victim identifies who they recognize as the perpetrator, for example, in a lineup at the police station. This identification process can go awry because of reasons that can be classified into two categories: estimator variables and system variables.[22] Estimator variables refer to the circumstances in which the crime was witnessed and that can increase the risk of a misidentification, such as poor lighting, heightened stress, intoxication of the witness, or racial bias.[23] These variables are beyond the control of the criminal justice system. Variables under the control of the criminal justice system are referred to as system variables and relate to the procedures that law enforcement relies on during investigations, such as lineup procedures and interviewing techniques.[24] Misidentification can occur, for instance, when the lineup procedure is biased toward a particular suspect or when interviewers ask suggestive questions.[25] Such improper practices are often unintentional, resulting from a lack of knowledge or awareness. When police officers intentionally obstruct best practices, this constitutes misconduct.

The systematic study of exonerations also revealed that forensic science, often considered as objective 'hard' science, was a major contributing factor to wrongful convictions.[26] That is, forensic science practitioners have provided erroneous testimony

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[20] See for example Gisli H Gudjonsson, "The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions" (2021) 12 Front Psychol 633936, online: <https://www.frontiersin.org/articles/10.3389/fpsyg.2021.633936/full>.

[21] Stephen D Lindsay, et al, "Eyewitness suspect identification: six claims regarding the state of the science" (2025) 33:7 Memory 757, online: <https://www.tandfonline.com/doi/full/10.1080/09658211.2025.2551222>; National Research Council, ed, Strengthening forensic science in the United States: a path forward (Washington, DC: National Academies Press, 2009), online: <https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf>; Annelies Vredeveldt, Robert Horselenberg, R., & Peter van Koppen, "Fundamenten van herkennen [Fundaments of recognition] " in Tussen wet en wetenschap: De psychologie van het recht (Boom juridisch, 2024).

[22] Gary L Wells, "Applied eyewitness-testimony research: System variables and estimator variables." (1978) 36:12 Journal of Personality and Social Psychology 1546, online: <https://doi.apa.org/doi/10.1037/0022-3514.36.12.1546>.

[23] Carolyn Semmler, et al "The role of estimator variables in eyewitness identification." (2018) 24:3 Journal of Experimental Psychology: Applied 400, online: <https://doi.apa.org/doi/10.1037/xap0000157>.

[24] Miko M Wilford & Gary L Wells, "Eyewitness system variables." in Brian L Cutler, ed, Reform of eyewitness identification procedures (Washington: American Psychological Association, 2013) 23, online: <https://doi.org/10.1037/14094-002> .

[25] Gary L. Wells et al, "Policy and procedure recommendations for the collection and preservation of eyewitness identification evidence." (2020) 44:1 Law and Human Behavior 3, online: <https://doi.apa.org/doi/10.1037/lhb0000359>. [*Wells*]

[26] Chris M Fabricant, Junk science and the American criminal justice system (Brooklyn, New York: Akashic Books, 2023); Brandon L Garrett, Autopsy of a Crime Lab: Exposing the Flaws in Forensics, 1st edn (University of California Press, 2021).

resulting from analytical errors and mistaken conclusions regarding the available evidence (e.g., DNA, fingerprints, bloodstains, gun residue). This finding has spurred two national reviews of forensic sciences in the United States that concluded that the forensic field oftentimes does not meet the scientific standards for reliability and validity.[27] Since these reviews, the scientific community has invested in advancing forensic sciences, for example, through the foundation of the Center for Statistics and Applications in Forensic Evidence (CSAFE) and the Organization of Scientific Area Committees (OSAC). Areas of advancement efforts include addressing psychometric and technical limitations, how findings are communicated in reports and in courts (e.g., used terminology and error rate information), and expert proficiency.[28] Another key issue is understanding and minimizing the impact of cognitive bias on forensic analyses.[29] The implementation of bias mitigation strategies and other advancements is, however, an ongoing challenge.[30]

A less studied contributing factor is the use of informants who are incentivized to provide information and testimony to law enforcement.[31] Informants have similar vulnerabilities and are as error-prone as other witnesses, but on top of that, they often receive an incentive for the information or testimony they provide (e.g., benefits in prison, reduction in sentence). Incentives, such as getting leniency or avoiding punishment, have been shown to increase the likelihood that people would lie,[32] making informants a particularly high-risk source of inaccurate testimony. However, informants are not the only source of false accusations in criminal cases. A false accusation occurs when someone provides a false statement about someone's involvement in a crime, and the accuser knows the allegation is untrue or has no reasonable basis to believe it is true. These accusations can come from multiple sources: actual perpetrators seeking to deflect blame, co-defendants attempting to secure favorable plea deals, witnesses with personal vendettas against the accused, or even victims and bystanders who genuinely but mistakenly identify the wrong individual. When false accusations

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[27] National Research Council, *supra* note 21; President's Council of Advisors on Science and Technology, Forensic science in criminal courts: Ensuring scientific validity of feature-comparison methods. (2016), online: <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf> .

[28] Garrett, *supra* note 26; Henry Swofford, Strategic opportunities to advance forensic science in the United States : a path forward through research and standards, by Henry Swofford, NIST SP 1319 (Gaithersburg, MD: National Institute of Standards and Technology (U.S.), 4 September 2024).

[29] See for an overview on bias in forensics, Jeff Kukucka & Itiel E Dror, "Human Factors in Forensic Science: Psychological Causes of Bias and Error" in David DeMatteo & Kyle C Scherr, eds, The Oxford Handbook of Psychology and Law, 1st edn (Oxford University Press, 2023) 621.

[30] Carolina Rojas Alfaro et al, "A practical approach to mitigating cognitive bias effects in forensic casework" (2025) 10 Forensic Science International: Synergy 100569, online: <https://linkinghub.elsevier.com/retrieve/pii/S2589871X24001165>; Swofford, *supra* note 28.

[31] Alexandra Natapoff, "Beyond Unreliable: How Snitches Contribute to Wrongful Convictions" (2006) 17 Golden Gate University Law Review 107, online: <https://ssrn.com/abstract=905864> .

[32] Dale Chappell, "Government Snitches: Incentivized Witnesses Are the Leading Cause of Wrongful Convictions", online: <https://www.criminallegalnews.org/news/2019/feb/14/government-snitches-incentivized-witnesses-are-leading-cause-wrongful-convictions/>;
Simon Schindler & Stefan Pfattheicher, "The frame of the game: Loss-framing increases dishonest behavior" (2017) 69 Journal of Experimental Social Psychology 172, online: <https://linkinghub.elsevier.com/retrieve/pii/S0022103116303523>.

are intentional, motivations can be diverse and may include fear of retaliation, revenge, jealousy, or self-preservation.[33] When false accusations are willfully made under oath (e.g., in court), they constitute perjury.

a. Official Misconduct

Official misconduct involves the violation of legal, professional, and ethical standards on the part of police, forensic experts, prosecutors, judges, and defense attorneys.[34] In their report on government misconduct, the American National Registry of Exonerations defines misconduct as intentional behavior that "produces unreliable, misleading or false evidence of guilt, or that conceals, distorts or undercuts true evidence of innocence".[35] The National Registry of Exonerations considers five categories of misconduct typically conducted by police and/or prosecutors: witness tampering; misconduct in suspect interrogations; fabricating evidence; concealing exculpatory evidence, and misconduct at trial such as police perjury or lying by prosecutors.[36]

Witness tampering refers to acts in which the police manipulates or forces witnesses to falsely testify against a defendant.[37] Misconduct in interrogations can involve using coercion, (threats of) violence, and in some situations or jurisdictions presenting false evidence during a suspect interview is also considered misconduct.[38] There are indications that the use of deception by police during an interrogation can increase the risk of false confessions.[39] A third type of misconduct, fabricating evidence, typically involves police officers and forensic experts. Such misconduct occurs, for example, when a police officer plants evidence (e.g., drugs, a knife) at an alleged crime scene or writes up a fabricated confession.[40] Forensic fraud committed by experts can, for example, involve the fabrication of false matches, in which forensic experts falsely link a defendant to a crime scene.[41] A fourth type includes misconduct by prosecutors which typically involves concealing exculpatory evidence. This means that prosecutors break their legal duty to disclose any evidence that could imply a defendant's

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[33] James J McNamara, Sean McDonald & Jennifer M Lawrence, "Characteristics of False Allegation Adult Crimes" (2012) 57:3 Journal of Forensic Sciences 643–646, online: <https://onlinelibrary.wiley.com/doi/10.1111/j.1556-4029.2011.02019.x>.

[34] Schneider, *supra* note 18.

[35] Samuel R Gross et al, "Government Misconduct and Convicting the Innocent, The Role of Prosecutors, Police and Other Law Enforcement" (2020) at iii, online: <https://www.ssrn.com/abstract=3698845>.

[36] *Ibid.*

[37] *Ibid*.

[38] *Ibid*; Klara Stephens, "Misconduct and bad practices in false confessions: interrogations in the context of exonerations" (2019) 11:2 Northeastern Univ L Rev 593.

[39] Jennifer T Perillo & Saul M Kassin, "Inside interrogation: The lie, the bluff, and false confessions." (2011) 35:4 Law and Human Behavior 327, online: <https://doi.apa.org/doi/10.1007/s10979-010-9244-2> .

[40] Stephens, *supra* note 38.

[41] Gross, *supra* note 35; Brent Turvey, Forensic Fraud : Evaluating Law Enforcement and Forensic Science Cultures in the Context of Examiner Misconduct Bond University, 2013).

innocence.[42] Lastly, misconduct can happen during the trial itself when, for example, police officers or prosecutors lie in court about the investigation and/or the evidence, when prosecutors misrepresent the law, or when they ask improper or impermissible questions during cross-examination.[43]

In addition to misconduct by police and prosecutors, there can be misconduct by judges and defense attorneys. Misconduct by judges is a sensitive topic because integrity, impartiality, and fairness are core values of the judicial profession and its legitimacy.[44] It is delicate for defense lawyers to imply judicial misconduct and as a result it is seldom mentioned in wrongful conviction investigations and litigation.[45] The reluctance to address potential judicial misconduct makes it difficult to study the issue.

Poor representation by defense attorneys can also be considered as official misconduct. Although defense lawyers are not 'officials' in the sense that they represent the government - not even when they are provided and paid for by the government - we argue that defense attorneys fit into this category as they are an official party in the criminal justice system with legal, professional and ethical obligations towards the defendant. Examples of misconduct by defense lawyers typically involve the failure to investigate and gather exonerating evidence (e.g., testimony of an alibi witness) or familiarize themselves sufficiently with their client's case.[46] Because inadequate legal defense is often a failure to act, such misconduct can be challenging to detect and study.[47]

b. Prevalence of Contributing Factors

Table 1 provides an overview of the prevalence of factors contributing to wrongful convictions as reported in the various exoneration databases. These percentages provide an indication of how frequently the aforementioned factors are present in exoneration cases in the respective jurisdictions. However, databases and jurisdictions cannot be directly compared because of considerable differences. Not only do the databases represent countries with different criminal justice systems, they also differ in methodology. That is, databases may use different definitions and may vary in how and which contributing factors they code. This ties in the broader definitional challenges in wrongful conviction scholarship discussed earlier.[48]

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[42] Margaret Kovera & Melanie B Fessinger, "Prosecutorial Misconduct" in David DeMatteo & Kyle C Scherr, eds, The Oxford Handbook of Psychology and Law, 1st edn (Oxford University Press, 2023) 692, online: <https://doi.org/10.1093/oxfordhb/9780197649138.013.40>; Gould, *supra* note 3.

[43] Russell Covey, "Police Misconduct as a Cause of Wrongful Convictions" (2013) 90:4 Washington University Law Review 1133, online: <https://openscholarship.wustl.edu/law_lawreview/vol90/iss4/2>; Kovera, *Ibid*; Stephens, *supra* note 38.

[44] Nina Varsava, "Professional Irresponsibility and Judicial Opinions" (2021) 59:1 Hou L Rev, online: <https://houstonlawreview.org/article/29552-professional-irresponsibility-and-judicial-opinions> .

[45] Gross, *supra* note 35.

[46] Sheila Martin Berry, "Bad Lawyering-How Defense Attorneys Help Convict the Innocent." (2003) 30 N. Ky. L. Rev. 487; Gould, *supra* note 3.

[47] Gross, *Supra* note 35.

[48] Hamer, *supra* note 8; Henry, *supra* note 8.

We refer to the respective websites for an overview of which factors are included in each registry and which definitions they use.[49]

Table 1: Contributing Factors in Exoneration Cases as Documented in Four Databases

Contributing factor	European database (N = 136)	USA database (N = 3586)	UK database (N = 490)	Canadian database (N = 89)
False confession	37%	13%	20%	16%
False accusation	32%	64%	12%	19%
Eyewitness Misidentification	25%	27%	25%	28%
Incorrect forensic science	25%	29%	17%	35%
Use of informants	-	7%	-	20%
Official misconduct	15%	60%	29%	31%
Inadequate defense	-	28%	-	2%

Note. The percentages do not add up to 100% because multiple factors can be present in one case. The empty cells indicate that the database did not report on the factor at the time of writing.

c. Contributing Factors in Belgium

It is unlikely that these contributing factors are absent in the Belgian criminal justice system. There have been cases in which evidentiary issues and official misconduct became apparent during trial. Fortunately, these factors were identified in time and the defendants were acquitted.[50] For example, in the case of Carlo V. H., the judge concluded that the defendant made a false confession and excluded the questionable confession from the admissible evidence.[51] Carlo was acquitted of a murder charge. Moreover, the judge criticized the police investigation and referred to tunnel vision among the police officers. Subsequently, one of the police officers working on the case was convicted of forgery for not truthfully documenting an interrogation session in the official police report.[52] This is a case in which erroneous evidence was rectified in court, but the question remains whether all errors are discovered in time.

[49] European database: https://www.registryofexonerations.eu/;
USA database: https://www.law.umich.edu/special/exoneration/Pages/about.aspx;
UK database: https://evidencebasedjustice.exeter.ac.uk/miscarriages-of-justice-registry/;
Canadian database: https://www.wrongfulconvictions.ca/.

[50] Henry Otgaar et al, "Het belang van foutenmarges in de rechtspsychologie ter preventie van gerechtelijke dwalingen: Een vergelijking tussen België en Nederland op het gebied van academisch onderzoek en onderwijs [The importance of margins of error in legal psychology to prevent miscarriages of justice: A comparison between Belgium and the Netherlands in the field of academic research and education]" in Strafrechtelijk beleid in een vergelijkend perspectief (Boom, 2023)

[51] Dennis Rombaut, Dennis, "The Belgian Confession Tapes : de zaak waar men een onschuldige toch een moord liet bekennen[The Belgian Confession Tapes: The case where an innocent man was made to confess to murder]" (28 October 2020), online: Studio Pegale <https://studio-legale.com/the-belgian-confession-tapes-de-zaak-waar-men-een-onschuldige-toch-een-moord-liet-bekennen/>.

[52] Dendermonde (18 October 2020), online: <https://www.vrt.be/content/dam/vrtnieuws/bestanden/R.P.%20(geanonimiseerd)%2018.10.22.pdf>.

C. Grounds for Revision of a Conviction

When a wrongful conviction occurs, many (yet not all) countries have a revision procedure in place that provides the opportunity to rectify the injustice and exonerate the wrongfully convicted person.[53] Overall, the process of getting a final conviction revised is strenuous because it interferes with the rule of finality.[54] This important principle dictates that the criminal justice system should strive for a final resolution and there should be a limit to the possibilities for defendants to appeal a conviction.[55] Nevertheless, because errors and wrongful convictions occur, there should be the possibility to rectify a wrongful conviction.[56] Although rules and regulations differ by jurisdiction and criminal justice system, general arguments for revision can be identified. Most importantly, someone can be exonerated if there is new evidence that was not available during the initial court proceedings and that demonstrates that the convicted person is innocent.[57] This could entail new forensic evidence (e.g., DNA evidence), new witness testimony or a recanting key witness, a confession from the real perpetrator, or proof of official misconduct such as proof that exculpatory evidence was concealed.

a. Grounds for Revision in Belgium

The Belgian Code of Criminal Procedure (CCP) mentions three grounds for revision (Art. 443 CCP). The first ground involves irreconcilable convictions. This occurs when two or more people were convicted for the same crime in separate cases where it was factually impossible to have multiple perpetrators; therefore, at least one of the convicted persons must be innocent. A second ground is when a witness who played a central role in the conviction was convicted for perjury with respect to the testimony they provided against the defendant. The third and last ground is the discovery of a so-called *novum,* which is a given that was unknown to the judge or jury at the time of the initial trial(s) and, if known, would have resulted in an acquittal, dismissal of charges, or lower classification of the crime. The Belgian CCP uses the broad term ‘given’ to highlight that not only new or newly discovered facts or circumstances can serve as a novum but also new appreciations by or conclusions from experts.[58] Although the first two revision grounds could also be considered as examples of a novum, Belgian legislatures decided to describe these three grounds separately and establish different revision procedures for each ground.[59]

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[53] Brandon Garrett, “Towards an International Right to Claim Innocence” (2017) 105:4 California Law Review 1173, online: <https://scholarship.law.duke.edu/faculty_scholarship/3873>; Jon Robins, *Murder, Wrongful Conviction and the Law: An International Comparative Analysis*, 1st edn (London: Routledge, 2023).

[54] Garrett, *Ibid.*

[55] *Ibid*; Hamer, *supra* note 13.

[56] Katrien Verhesschen en Frank Verbruggen, *Niets dan de waarheid? Grenzen aan de waarheidsvinding in het strafrecht [Nothing but the truth? Limits to truth-finding in criminal law]* (2020), online: <https://lirias.kuleuven.be/retrieve/549469>.

[57] Nan, *supra* note 15.

[58] For a discussion, see Verhesschen, *supra* note 7.

[59] See Verhesschen, *supra* note 7.

D. The Current Study

The Belgian judicial system is infamous for its lack of registration.[60] There is no centralized data available on requests for revision of criminal convictions and their outcomes. The experience of the first author is that this information is scattered and difficult to obtain. It depends on the willingness and availability of instances such as the Court of Cassation or courts of appeal to answer requests for information. With the lack of publicly available official judicial information, we turned to other sources. Specifically, a late Belgian journalist with an interest in wrongful convictions published several works about Belgian exoneration cases. In two Flemish books, this journalist, Jos Cels, documented 28 Belgian wrongful convictions. According to Cels, 21 cases were successfully reviewed resulting in the official exoneration of 26 people, and the other 7 (alleged) wrongful convictions did not end in an exoneration.[61] In the current study, we set out to confirm the exoneration cases through open sources, gather descriptive information about the cases, and document the factors that allegedly contributed to the wrongful conviction as well as the grounds that eventually led to the exoneration. Despite the historical nature of these cases, analyzing the mechanisms underlying these wrongful convictions and their exonerations may give insight into similarities across decades and criminal justice systems. That is, the findings will be contextualized within the broader context of research derived from international databases and contemporary cases.

II. Methods

The cases mentioned by Jos Cels cover a time period between 1830 (the independence of Belgium) and 1963, when the first book of Cels was published which was also the year of the most recent exoneration case he describes. His second book mainly elaborates on one specific wrongful conviction case that was mentioned in the first book (i.e., the conviction of Clementine Lyssens in 1928, see below). Cels reported one case that occurred prior to the independence of Belgium (i.e., conviction of Karel Claus in 1817), however, we decided to use 1830 as a starting point to report on Belgian exoneration cases. In sum, for the period 1830–1963, we sought to identify exoneration cases using two open sources: the Belgian Official Gazette and Belgian newspaper archives.

A. Belgian Official Gazette

The ‘Official Gazette’ (Het Staatblad) is the state’s official daily bulletin in which new laws, royal decrees, and other governmental decisions are published in French and Flemish. This outlet is relevant to the study of exonerations because financial compensations for exonerees are published here. Exoneree compensations are considered official expenses of the Ministry of Justice and are therefore officially reported in the Belgian Official Gazette. Decisions about compensation for exonerees are published using the following statement (translated):

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[60] J Decoker, Beredeneerde overtuiging of twijfel: een verhaal over evidente twijfels, betwijfelbare evidenties, perfecte imperfectie en imperfecte perfectie[Reasoned belief or doubt: a story about evident doubts, questionable evidence, perfect imperfection and imperfect perfection] (2024). 25:1 Tijdschrift voor Strafrecht 3.

[61] Jos Cels, Zij waren onschuldig: Ongekende facetten van ons rechtsleven [They were innocent: Unknown aspects of our judicial system] (Opdebeek, 1983); Jos Cels, De gifmoord van Steendorp: Een gerechtelijke dwaling [The Steendorp poison murder: A miscarriage of justice] (De Roerdomp, 1985).

> In application of the article 447 of the Code of Criminal Procedure, amended by the law of June 18, 1894, by royal decree of [date], a compensation of [amount] francs has been awarded to [name], residing in [municipality], allocated from the budget of the Ministry of Justice.

These compensation announcements were used as a starting point to corroborate the cases reported by Cels. The Belgian Official Gazette was systematically searched for such announcements for the period between June 1894 and 1963. The start date of our search (June 1894) corresponds with the month and year in which the law on compensation for exonerees was introduced (i.e. the Act of June 18th 1894 in the Belgian Code of Criminal Procedure). We conducted a manual search in the indices of each quarterly Gazette for Flemish keywords 'herziening' (i.e., revision) and 'strafrecht' (criminal law). For books without an index, each day of the Official Gazette was reviewed for the presence of an exoneree compensation announcement.

B. Digital Newspaper Archives

A second source to confirm the exoneration cases mentioned by Jos Cels was the Belgian newspaper archive. Belgium's national library, the Royal Library of Belgium, collects all Belgian publications and the online platform *BelgicaPress* gives access to a digital archive of 142 Belgian newspapers.[62] The online collection covers the period from the independence of Belgium (1830) until 1950. Our university provided access to the complete database in which a word search was conducted. First, the names of the exonerees were searched, followed by a more general search using the term 'miscarriage of justice' both in Flemish (*gerechtelijke dwaling*) and French (*erreur judiciaire*).

C. Coding

For each identified case, three types of information were coded in an Excel spreadsheet (see https://osf.io/4mtvb/overview): descriptive information about the case, factors that likely contributed to the wrongful conviction, and the grounds for revision. Descriptive information included the name and gender of the wrongfully convicted, the offense type, the (alleged) victim, year in which the offense occurred, year and court in which the person was wrongfully convicted, and the sentence the person received. With respect to the revision procedure, we coded the year in which the request for revision was filed, the year in which the person was released from prison, and the year and court in which the person was eventually exonerated. Additionally, we coded the amount of financial compensation the exoneree received as well as the announcement and publication date of the compensation announcement in the Official Gazette. As mentioned earlier, in addition to these details, information about the grounds for revision and the most central contributing factor(s) was gathered.

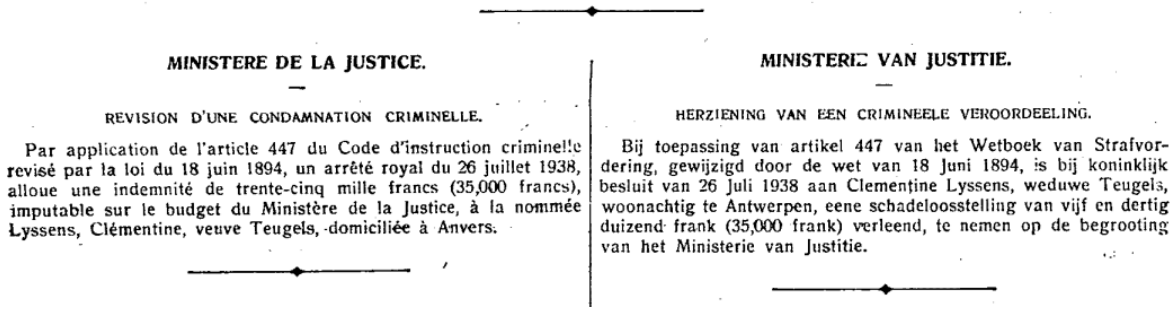
III. Results

The search in the archives of the Belgian Official Gazette started with nine exoneree announcement dates reported by Jos Cels and eight announcements were found. Additionally, Cels had mentioned the names of 10 exonerees without referring to any received compensation: eight of these names were identified in the Belgian Official Gazette. Besides confirming cases

[62] "KBR - Belgicapress", online: <https://www.belgicapress.be/?lang=EN>.

that were reported by Cels, our systematic search of the Official Gazette resulted in nine additional royal decrees mentioning exoneree compensation. Thus, using the Belgian Official Gazette, evidence for 25 exoneration cases (8 + 8 + 9) involving 28 exonerees was found for the period between June 1894 and December 1963 (see Table 2). Figure 1 provides an example of a compensation announcement in the Belgian Official Gazette.

Figure 1: Example of an Announcement of an Exoneree Compensation in the Belgian Official Gazette



MINISTERE DE LA JUSTICE.

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REVISION D'UNE CONDAMNATION CRIMINELLE.

Par application de l'article 447 du Code d'instruction criminelle revisé par la loi du 18 juin 1894, un arrêté royal du 26 juillet 1938, alloue une indemnité de trente-cinq mille francs (35,000 francs), imputable sur le budget du Ministère de la Justice, à la nommée Lyssens, Clémentine, veuve Teugels, domiciliée à Anvers.

MINISTERIE VAN JUSTITIE.

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HERZIENING VAN EEN CRIMINEELE VEROORDEELING.

Bij toepassing van artikel 447 van het Wetboek van Strafvordering, gewijzigd door de wet van 18 Juni 1894, is bij koninklijk besluit van 26 Juli 1938 aan Clementine Lyssens, weduwe Teugels, woonachtig te Antwerpen, eene schadeloosstelling van vijf en dertig duizend frank (35,000 frank) verleend, te nemen op de begrooting van het Ministerie van Justitie.

Table 2: List of Exonerees who Received Compensation from the Ministry of Justice as Published in the Official Belgian Gazette

Exoneree	Amount	Date Royal Decree	Publication date
1. Jozef Lacanne	Not mentioned	07.07.1909	05.08.1909
2. Petrus Vatlet	1500 francs	9.10.1910	22.10.1910
3. Frans Vermeylen	20,291 francs	14.10.1910	23.10.1910
4. Arthur De Gryse	3000 francs	20.10.1910	29.10.1910
5. Hendrik Hubrecht	990 francs	4.01.1911	20.01.1911
6. Herman Schuermans	650 francs	4.01.1911	20.01.1911
7. Julius Lapère	40 francs	5.10.1911	18.10.1911
8. Lodewijk Fiolet	200 francs	25.04.1912	4.05.1912
9. Alfons Van Dorpe	15,000 francs	06.09.1912	28.09.1912
10. Mathias Habets	1000 francs	11.04.1919	11.05.1919
11. Léon Toret	7500 francs	22.12.1920	29.01.1921
12. Joseph Mouchet	6000 francs	03.05.1922	26-27.05.1922
13. Maurits Charlier	Not mentioned	13.12.1922	31.12.1922
14. Maria Van den Bossche	10,000 francs	28.02.1924	16.03.1924
15. Francois Vandenvelde	1,000 francs	11.10.1934	28.10.1934
16. Clementine Lyssens	35,000 francs	26.07.1938	22-23.08.1938
17. Octaaf Wyffels	350,000 francs	21.12.1943	31.12.1943
18. Laurent Devorst	50,000 francs	11.04.1950	18.05.1950
19. André Proesmans; Jacques Stoffels	125,000 francs; 125,000 francs	25.11.1952	18.12.1952
20. Raoul Hoornaert	300,000 francs	31.08.1953	27.9.1953
21. Hubert Masy	65,000 francs	13.10.1953	23-24.11.1953
22. Jean-Léon Malchair	100,000 francs	13.10.1953	23-24.11.1953
23. Alfred De Smet; Cesar Van de Walle; Marcel Vermassen	40,000 francs; 65,000 francs; 70,000 francs	30.11.1961	11.01.1962
24. Michaël Geukens	400,000 francs	11.07.1963	03.08.1963
25. Emiel D'Haens	400,000 francs	17.12.1963	28.01.1964

Through a search in the digital newspaper archive BelgicaPress, we were able to corroborate two more cases reported by Cels and found an additional exoneration that was not reported by Cels. In total, when combining the information from the Belgian Official Gazette and BelgicaPress, we identified 28 exoneration cases including 33 people who were exonerated between 1830 and 1963 (see Table 3).

A. Descriptive Information of the Exoneration Cases

Based on the books by Cels, the newspapers, and the royal decrees, descriptive information about the cases was gathered. For 12 cases (12 exonerees), only minimal information was found based on data in the Belgian Official Gazette (i.e., name, place of residence, announcement date, amount of compensation). For the other 16 cases (21 exonerees), additional information could be obtained and is presented in Table 3.

In these 16 cases, exonerees were convicted for crimes that occurred between 1841 and 1955. Nine involved an armed robbery and in three of these instances, the robbery resulted in the death of one of the victims. Other crimes concerned: four (attempted) homicides, two war-related crimes, and one accessory to burglary and theft. Four people received the death penalty. Fortunately, death penalties were no longer executed in Belgium and they were converted into a lifelong prison sentence. In the other convictions, people were convicted and sentenced to prison terms between 6 months and life. Most exonerees were male (19:2) and eventually spent six months to five years in prison for a crime they did not commit. The wrongful convictions occurred in various types of courts across Belgium: courts of assizes (jury trials), courts-martial (court for members of the military), courts of appeal, and, in one instance, a criminal court of first instance. The exoneration always occurred in a different court than the original conviction, typically in a court of assizes or a court of appeal. That said, some exonerations occurred in a court-martial or a court of first instance. In one instance, of Guillaume Verdenne, the person was exonerated by the Minister of Justice without the involvement of a criminal court. In what follows, we will first discuss what contributed to the wrongful convictions, followed by a brief account of the grounds for revision on which the people were exonerated.

Table 3: Confirmed Exonerees with Information on Type of Crime, Conviction and Exoneration Year, Sentence, and Time Spent in Prison

Name	Sex	Crime	Year of Conviction	Sentence	Year of Exoneration	Estimated years in prison
1. Hendrik Bonné	M	Armed robbery	1842	Death penalty, converted to lifelong penal labor	1843	3
2. Jan-Baptist Bonné	M	Armed robbery	1842	Death penalty, converted to lifelong penal labor	1843	3
3. Jan Geens	M	Armed robbery	1842	Death penalty, converted to lifelong penal labor	1843	3
4. Alfons Van Dorpe	M	Armed robbery	1905	15 years of penal labor	1912	6

5.	Florimond Vermeylen	M	Armed robbery with homicide	1905	Death penalty, converted to lifelong penal labor	1910	5
6.	Emile D'Haens	M	Deserting	1921	1-year prison sentence	1961	1
7.	Joseph Mouchet	M	Homicide	1919	20 years of penal labor	1921	0.5
8.	Maria Van den Bossche	F	Reporting to the enemy	1920	6 months prison sentence	1923	2
9.	Petrus Visschers	M	Accessory to attempted homicide	1924	20 years of penal labor	1928	4
10.	Clementine Lyssens	F	Homicide	1928	20 years of penal labor	1938	4
11.	Francois Vandenvelde	M	Accessory to burglary and theft	1933	1-year prison sentence	1934	1
12.	Octaaf Wyffels	M	Homicide	1935	10-year prison sentence	1943	3
13.	Michel Geukens	M	Armed robbery	1944	4 years and 6 months prison sentence	1961	2
14.	André Proesmans	M	Armed robbery with homicide	1945	lifelong penal labor	1950	3
15.	Jacques Stoffels	M	Armed robbery with homicide	1945	lifelong penal labor	1950	3
16.	Jean Malchair	M	Armed robbery	1945	15 years of penal labor	1953[a]	1
17.	Hubert Masy	M	Armed robbery	1945	15 years of penal labor	1953[a]	1
18.	Guillaume Verdenne	M	Armed robbery with homicide	1945	20 years of penal labor	1947	2
19.	Alfred De Smet	M	Armed robbery	1956	7-year prison sentence	1961	1
20.	Cesar Van de Walle	M	Armed robbery	1956	7-year prison sentence	1961	1
21.	Marcel Vermassen	M	Armed robbery	1956	2-year prison sentence	1961	1
22.	Jozef Lacanne	-	-	-	-	1909[a]	
23.	Petrus Vatlet	-	-	-	-	1910[a]	
24.	Arthur De Gryse	-	-	-	-	1910[a]	
25.	Herman Schuermans	-	-	-	-	1910[a]	
26.	Hendrik Hubrecht	-	-	-	-	1910[a]	

27. Julius Lapère	-	-	-	-	1911 [a]
28. Lodewijk Fiolet	-	-	-	-	1912 [a]
29. Mathias Habets	-	-	-	-	1919 [a]
30. Léon Toret	-	-	-	-	1920 [a]
31. Maurits Charlier	-	-	-	-	1922 [a]
32. Laurent Devorst	-	-	-	-	1950 [a]
33. Raoul Hoornaert	-	-	-	-	1953 [a]

*Note***.** Exonerees marked in grey were convicted and exonerated in the same case: exonerees 1, 2 and 3; exonerees 14 and 15; exonerees 19, 20 and 21. The year of exoneration for exonerees 22 – 33 is an estimation based on the announcement date of compensation. This is a condensed version of the table. The complete table, with additional variables (i.e., involved courts, year of crime, year of release) can be found and downloaded at https://osf.io/4mtvb/overview.

[a] In the available documents, no exoneration year was mentioned, this is the year they received financial compensation.

B. Contributing Factors

Based on the limited information that was available, the most prominent contributing factor could be extracted for 12 cases (14 exonerees; see Table 4). Eyewitness misidentification was mentioned as the main contributing factor in 6 cases. In five cases, a false accusation was the leading contributing factor and in one case, the wrongful conviction was largely due to a fraudulent forensic report.

Table 4: Contributing Factors in 12 Confirmed Historical Wrongful Conviction Cases in Belgium

Key contributing factor	Exonerees
Eyewitness misidentification	Alfons Van Dorpe Joseph Mouchet Michel Geukens Jean Malchair Hubert Masy Guillaume Verdenne
False accusation	Florimond Vermeylen Petrus Visschers Octaaf Wyffels Alfred De Smet, Cesar Van de Walle, and Marcel Vermassen Maria Van den Bossche
Fraudulent forensics (official misconduct)	Clementine Lyssens

a. Cases with Eyewitness Misidentification

Alfons Van Dorpe (convicted in 1905, exonerated in 1912) was misidentified as being part of a group of four men that was seen in the vicinity of the robbery. This group was noticed

and linked to the crime because they were not residents of the town and the men had a reputation of being a gang of thieves from the neighboring city. The town's constable had also seen and recognized the men that afternoon and he provided a list with three names and one nickname to the investigative judge. During the investigation, the investigative judge confronted the constable with a suspect who carried the respective nickname. However, the constable stated that he did not recognize this man as being part of the group. Instead, he mistakenly identified Alfons Van Dorpe, who had also been arrested as a suspect, as one of the four perpetrators he had seen that afternoon. Based on this misidentification, Van Dorpe was convicted along with two other men, despite not actually being part of the gang.

Joseph Mouchet (convicted in 1919, exonerated in 1921) was misidentified by his niece. She told police that she had seen her uncle close to the crime scene 10 to 15 minutes before the crime. Although she had indeed seen him, she was mistaken about the timing of her sighting: more time had passed between seeing him and the occurrence of the crime. In fact, Joseph Mouchet had a strong alibi, with multiple people stating that they saw him and/or were with him elsewhere in the village at the time of the crime. This alibi, however, was ignored at trial.

Michel Geukens (convicted in 1944, exonerated in 1961) was misidentified by the victims of an armed robbery when police confronted them with Geukens in a show-up. That is, the police presented Geukens, who had become a suspect for unknown reasons, to the victims and asked them whether they recognized this man as one of the perpetrators. Two of them readily confirmed, while one was doubtful and believed that Geukens was not the perpetrator. However, later during the investigation, the police organized a second show-up with Geukens and this time all three victims identified him as the perpetrator.

Similarly, Guillaume Verdenne (convicted in 1945, exonerated in 1947) was misidentified by the surviving victim of a home invasion. Two brothers living together had been attacked and robbed by three men in their farmhouse. The surviving brother thought he had recognized Verdenne as one of the perpetrators.

Lastly, Jean Malchair and Hubert Masy (convicted separately in 1945, exonerated in 1953) were also misidentified by witnesses. According to the newspapers, they showed striking resemblances to the true perpetrators.

b. Cases with False Accusations

Florimond Vermeylen (convicted in 1905, exonerated in 1910) was accused of being the main perpetrator by the true perpetrator of a robbery-homicide. At his arrest, the true perpetrator told the police that Vermeylen committed the break-and-entry and assaulted the residents, while claiming he himself was only involved as a lookout. He used this strategy to minimize his role in the crime to reduce potential consequences. The police accepted his version of events and arrested Vermeylen even though there was no evidence that tied him to the crime scene. Both men were convicted, and the strategy worked: the true (and only, it would later turn out) perpetrator received a reduced sentence for his "confession".

Petrus Visschers (convicted in 1924, exonerated in 1928) was falsely accused by a codefendant for taking part in an attempted homicide of a taxi driver. The codefendant confessed to the police that the two had a preconceived plan to rob the driver and steal the car. The robbery, however, went wrong and the driver was shot in the head. Visschers maintained his innocence and stated that he did not know that his codefendant would try to rob the driver.

Octaaf Wyffels (convicted in 1935, exonerated in 1943) was falsely accused of murder by the victim's sister. The victim, a 32-year-old woman, was found dead and buried in the dunes at the Belgian coast. She had been with Wyffels and another friend the last evening she was seen. Rumors arose that Wyffels had something to do with her death, and the victim's sister was especially vocal in her accusations. There was, however, no evidence linking Wyffels to the crime. Journalists who reported on the trial proceedings wrote that the prosecutor stated: "There is no need for evidence! This man is guilty. I take full responsibility". Such a statement may qualify as official misconduct. Yet, Wyffels was convicted of murder and sentenced to 10 years' imprisonment. This sentence was perceived as low given the offence and journalists speculated that the court (i.e., judges and jury in a court of assizes) likely compensated for the doubt they had about the conviction.

Exonerees De Smet, Van de Walle, and Vermassen (convicted in 1956, exonerated in 1961) were falsely accused of an armed robbery by the alleged victim. A milk carrier who transported dairy noticed that the proceeds of the day had disappeared from his truck. The money had been lost or stolen. Fearing that his boss would accuse him of theft, he fabricated a story about being robbed by two men. In subsequent weeks, police arrested two men who were in the area at the time of the alleged crime and who had prior criminal records. The milk carrier identified one of them as one of the so-called perpetrators. Later, a third person, an employee of the dairy farm, was arrested as an accomplice who allegedly provided the perpetrators with information needed to plan the robbery. All three men were convicted based on the fabricated story and testimony of the alleged victim.

Lastly, Maria Van den Bossche (convicted in 1920, exonerated in 1923) was convicted of reporting a neighbor, who was smuggling letters and people across the border during the First World War, to the Germans who were considered the enemy. Her conviction was based on false testimony from multiple witnesses who had planned this accusation to claim compensation from the wrongly convicted.

c. Case with Fraudulent Forensic Testimony

Clementine Lyssens (convicted in 1928, exonerated in 1938) was convicted of poisoning and killing her husband. The conviction was based on a toxicological report by a renowned toxicologist and professor. The forensic expert concluded that arsenic was present in the husband's intestines as well as in the thermos from which the deceased had drunk. This was deemed sufficient evidence by the prosecutor and the jury that Lyssens, who had prepared the coffee, had poisoned him. Throughout the court proceedings, Lyssens, who became known as the 'poisoner of Steendorp', maintained her innocence. In 1932, five years after her conviction, she was unexpectedly released from prison. It turned out that the professor was standing trial for fraud, and during these proceedings, former assistants revealed that the professor manipulated his analyses. One assistant noted that in the poisoning case of Clementine Lyssens, the professor had sent the toxicological report to the investigative judge while the jars containing the remains that were to be tested were still sealed. No toxicological investigation had been conducted, and the report was therefore fabricated. Without this report, there was no evidence that Lyssens poisoned her husband or even that a crime had been committed. The husband had likely died of uremia due to kidney failure, as stated in the death certificate by his doctor.

C. Grounds for Revision

Using newspaper articles and the books of Jos Cels, we were able to extract information about the grounds for revision in 15 cases (20 exonerees). As mentioned in the introduction, the Belgian Code of Criminal Procedure provides three grounds for exoneration: 1) irreconcilable convictions, 2) key witness convicted of perjury, and 3) a novum that was unknown to the court at the time of the conviction and, if known, would have led to a different outcome in favor of the person convicted.

Table 5: Grounds for Revision in 15 Historical Belgian Exoneration Cases

Ground for revision	Exoneree
Ground 1: Irreconcilable convictions	Hendrik Bonné, Jan-Baptist Bonné & Jan Geens Alfons Van Dorpe Michel Geukens André Proesmans & Jacques Stoffels Jean Malchair Hubert Masy
Ground 2: Witness convicted of perjury	Maria Van den Bossche Alfred De Smet, Cesar Van de Walle, & Marcel Vermassen
Ground 3: Novum	Florimond Vermeylen Emile D'Haens Joseph Mouchet Petrus Visschers Clementine Lyssens Octaaf Wyffels Guillaume Verdenne

a. Irreconcilable Convictions

Six exonerations were based on the ground that multiple people were convicted of the same crime while these convictions were incompatible, meaning that at least one of the convictions had to be wrong. This happened for Alfons Van Dorpe. Six years after their arrest in 1904, one of the codefendants became remorseful and confessed that Van Dorpe had not been involved in the crime and disclosed the name of the actual accomplice. After this confession, Van Dorpe was quickly released and the true accomplice was arrested. This person confessed to the crime and confirmed that Van Dorpe was innocent. In 1911, the accomplice was convicted of the crime, which was irreconcilable with the conviction of Alfons Van Dorpe. The latter received a new trial in 1912, during which he was formally exonerated. A similar chain of events happened to Proesmans and Stoffels. After nearly three years' imprisonment, the codefendants became remorseful. They confessed that André Proesmans and Jacques Stoffels had nothing to do with the crime and they named the two actual accomplices. These two men were arrested and confessed to the crime in 1948. Proesmans and Stoffels were immediately released. The true perpetrators were convicted that same year, and two years later, in 1950, Proesmans and Stoffels were exonerated.

In the case of Hendrik Bonné, Jan-Baptist Bonné, and Jan Geens, one of the true perpetrators confessed to the crime and disclosed who else had been involved. These individuals were arrested and convicted for the crime. After this, in 1843, father and son Bonné and Jan Geens were officially exonerated.

Michel Geukens had to wait longer for formal rehabilitation. In 1946, after serving half of his prison sentence, Michel Geukens was suddenly and unexpectedly released from prison. Later he would learn, by chance in a newspaper article, that other men had been convicted of the crime he had been convicted of, albeit in a different court. With this proof of his innocence, he rushed to the prosecutor's office to get his name cleared. The gang who had been responsible for the respective armed robbery had confessed to the crime and their gang leader had provided testimony that explicitly exonerated Geukens. Despite this new evidence (in addition to an already existing alibi), Michel Geukens was not readily exonerated. The Attorney General believed that Michel Geukens was still involved in the crime, be it as an accomplice keeping guard. It would take 15 years and two revision requests before the criminal justice system would exonerate Geukens in 1961.

For Jean Malchair and Hubert Masy, the process went by faster. After their convictions for armed robberies, both in 1945, the investigation into the many burglaries and robberies in the region continued. Less than one year later, a gang of thieves was arrested and evidence was found that this gang was responsible for the robberies Malchair and Masy had been convicted of. The two men were released in 1946 and after the conviction of the true perpetrators, they were formally exonerated somewhere between 1947 and 1953.

b. Witness Convicted of Perjury

In two cases, it was discovered that key witnesses — the alleged victims — had purposefully provided false testimony in court. These witnesses were later convicted for perjury. It concerned the milk carrier in the case of De Smet, Van de Walle, and Vermassen (convicted in 1956, exonerated in 1961), and the witnesses who accused Maria Van den Bossche (convicted in 1920, exonerated in 1923) of reporting to the enemy in war time (see 'Cases with False Accusations'). Following the perjurers' convictions, the people who had been wrongfully convicted based on false testimony were exonerated.

c. Novum

In seven cases, people were exonerated based on a novum that came to the attention of the wrongfully convicted and the criminal justice system after the final conviction. It concerned a given that likely would have resulted in a different outcome for the defendant if the court had known about it. In four of these seven cases, the novum concerned an exonerating confession. That is, someone who had been involved in the crime confessed that the convicted person had nothing to do with the crime. In two cases (Joseph Mouchet; Guillaume Verdenne), the confession originated from the true perpetrator who was later arrested in the context of another crime. In the other two cases (Florimond Vermeylen; Petrus Vissers), the confession originated from codefendants who became remorseful. Note that cases in which the confession by a codefendant or the true perpetrator resulted in the conviction of the true perpetrator, are coded as cases with irreconcilable convictions (i.e., first ground).

In three other cases, the novum involved new exonerating witness testimony. One example is the case of Emile D'Haens, who was convicted in 1921 by a military court for

unlawfully leaving his military squad in 1914 during the First World War. After serving his sentence for desertion, D'Haens continued searching for evidence to prove his innocence. He eventually wrote to the commander of the establishment he had belonged to during WW1. This commander replied that an eviction order by the governor had caused chaos among the troops, and that during such periods of chaos, soldiers were permitted to act at their own discretion. In the subsequent revision procedure, the lieutenant-colonel testified that D'Haens' departure had therefore not been unlawful. Forty years after his wrongful conviction, Emile D'Haens was exonerated in 1961.

Similarly, Octaaf Wyffels set out to prove his innocence once he was conditionally released from prison in 1938. First, he documented and investigated the inconsistencies in the accusation made by the victim's sister. Second, he tracked down two witnesses who heard someone else confessing to the murder and stating that Wyffels was innocent. The confessor had left the country around the time the victim disappeared. He was arrested in 1943 and transported back to Belgium to testify during the revision procedure. In court, however, the man denied having made this confession. A second novum in the revision procedure involved a police officer who had been at the crime scene but never testified at the initial trial. This time, he came forward with new information about the position of the body that was not disclosed before and he informed the court that several facts had been documented incorrectly at the time of the original trial. The combination of this new evidence (i.e., witnesses of another man's confession and unknown facts about the crime scene) was sufficient to exonerate Octaaf Wyffels in 1943, eight years after his wrongful conviction.

In the case of Clementine Lyssens, who was wrongfully convicted in 1928 based on a fraudulent expert report, new evidence demonstrating the unreliability of the toxicologist's investigation and overall credibility issues with this expert resulted in her exoneration.[63] In the request for revision, her lawyers documented new evidence that could be considered a novum. For example, they referred to the civil and criminal proceedings that had been held against the toxicologist. During these proceedings, it was established that he had committed fraud on various levels: embezzling university money, giving fictitious grades to students, and delivering fraudulent expert reports. With respect to the latter, the government department of health reanalyzed the examinations that the expert had conducted in the context of food inspection, and they discovered that none of his results lined up with the results obtained by the Central Laboratory in Brussels. The toxicologist was asked to resign as an expert affiliated with the health department and he was removed from their expert registry. Since these findings were not directly related to the case of Lyssens, her lawyers additionally invited two international experts to evaluate the expert report submitted in her case. Both experts independently concluded that the investigation was scientifically unsound. These elements were sufficient to have the case revised,[64] and Clementine Lyssens was exonerated in 1938.

[63] Rechtskundig Weekblad, "Herziening In Strafzaken. - Omstandigheden Die De Veroordeeling Hebben Beinvloed. - Vertrouwbaarheld En EerLijkheld Van Den Deskundige" (1937) Hof van Beroep te Brussel. 1e Kamer - 13 maart 1937 [Brussels Court of Appeal, First Chamber - March 13, 1937] at 1235–1239, online: <https://rw.be/archief/629/pdf>.

[64] *Ibid*.

IV. Discussion

This study challenges the perception among some Belgian legal professionals and scholars that successful exonerations are virtually absent from the country's legal history.[65] To our knowledge, this is the first systematic examination of historical exoneration cases in Belgium. It builds on the work of the late journalist Jos Cels, whose documentation served as a crucial foundation for this research. Using publicly available sources, we identified 28 exoneration cases between 1830 and 1963, involving 33 individuals. The findings demonstrate that revision procedures were successful for a variety of offenses, ranging from theft and desertion to homicide.

A. Key Contributing Factors and Grounds for Revision

For approximately half of the cases, we identified contributing factors to the wrongful conviction and the legal grounds that led to exoneration. Overall, eyewitness misidentifications and false accusations were the most prevalent contributing factors, consistent with findings in contemporary wrongful conviction research (see Table 1). While investigative methods and legal safeguards have evolved, these issues remain relevant today. Eyewitness errors and false accusations continue to pose risks, underscoring the importance of rigorous investigative practices to mitigate tunnel vision and ensure reliable evidence collection, both incriminating and exonerating. Social science research has made significant strides to identify best practices for criminal investigations, offering evidence-based recommendations for procedures such as suspect identification, witness interviewing, and minimizing cognitive biases among investigators.[66] For example, the use of "show-ups," where a witness is presented with a single suspect, has been shown to increase the risk of misidentification and should be avoided where possible.[67] In practice, however, the police may still decide on applying this identification method when more reliable lineup procedures are not feasible such as in active search-and-detain operations.[68] These insights highlight the ongoing need for criminal justice systems to integrate empirical findings into policy and practice to prevent errors that may lead to wrongful convictions. With respect to grounds for revision, all three grounds available in Belgium—irreconcilable convictions, perjury by witnesses, and a novum—were applied in the historical exoneration cases. The most commonly used grounds were irreconcilable convictions and novum, invoked six and seven times respectively.

B. Importance of Documenting Exoneration Cases

A key contribution of this study is its collation of historical exoneration cases, providing a foundation for future research and public awareness. Currently, Belgium lacks a systematic registry of wrongful convictions or exonerations, even at the Court of Cassation, which is

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[65] *Van Koppen*, *supra* note 7.

[66] Example: Jan de Keijser , Robert Horselenberg & Annelies Vredeveldt, *Tussen Wet en Wetenschap: De Psychologie Van Het Recht,* 1st ed (Boom Jurisdich, 2024); Andy Griffiths & Rebecca Milne, *The Psychology of Criminal Investigation: from Theory to Practice* (Milton: Routledge, 2018); *Schneider*, *supra* note 18.

[67] Margaret B. Kovera et al, "Science-based recommendations for the collection of eyewitness identification evidence." (2022) 58 Court Review 130, online: <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1847&context=ajacourtreview>.

[68] *Ibid*; *Wells*, *supra* note 25.

responsible for processing revision requests. Documenting exoneration cases is essential for preserving history, promoting transparency, and fostering accountability within a criminal justice system.[69] Publicly accessible records allow scholars, journalists, and policymakers to study these cases, draw lessons from past errors, and educate the public about the risks of wrongful convictions. Documentation is necessary to maintain a collective memory concerning these cases.[70] As we have seen in the United States, documentation efforts by scholars, journalists, and advocacy organizations have facilitated the study of wrongful convictions and their contributing factors. This information, in turn, can be applied to improve the quality of a criminal justice system (Hicks et al., 2021).[71] Last but not least, documenting exoneration cases has the potential to promote accountability among criminal justice stakeholders and inform systemic reforms aimed at preventing future miscarriages of justice.[72]

The findings of this study contribute to ongoing discussions about wrongful convictions and revision procedures in Europe, a region where systematic data remain scarce.[73] As highlighted in Nan and colleagues' special issue on wrongful convictions in Western Europe, the absence of comprehensive data hinders cross-jurisdictional comparisons and limits the ability to identify best practices. Transparent documentation of exoneration cases by European jurisdictions would enable more impactful research which may help to increase the fairness of criminal justice systems, by learning from each other's challenges and best practices. The creation of the EUREX database has been an important step in this process.

Moving forward, Belgium could benefit from establishing systematic documentation and reporting of revision requests and their outcomes. Such a system would not only enhance transparency, but also provide a valuable resource for empirical research and comparative analysis. By learning from historical and contemporary cases, Belgian policymakers and legal professionals can work towards a more transparent and accountable system that prioritizes justice and minimizes the risk of wrongful convictions.

C. Limitations and Future Research

This study faces several limitations, primarily stemming from the sources that were used to identify and analyze historical exoneration cases in Belgium between 1830 and 1961. Without an official registry of Belgian exonerations, there is no certainty that all relevant cases have been identified. However, under the 1894 Act, it is reasonable to assume that all financial compensation awarded to exonerees were reported in the Official Gazette and, therefore, included in our search.

Because we relied on the Official Gazette as a source, the extracted case information was limited to basic details such as the exoneree's name, place of residence, announcement date

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[69] Robert J Norris & Kevin J Mullinix, "Framing innocence: an experimental test of the effects of wrongful convictions on public opinion" (2020) 16:2 J Exp Criminol 311, online: <http://link.springer.com/10.1007/s11292-019-09360-7>.

[70] Robert J Norris, *Exonerated: A History of the Innocence Movement* (NYU Press, 2017).

[71] William D Hicks, Kevin J Mullinix & Robert J Norris, "The Politics of Wrongful Conviction Legislation" (2021) 21:3 State Politics Policy 306 at 306-325, online: <https://www.cambridge.org/core/product/identifier/S1532440020000043/type/journal_article>.

[72] *Ibid.*

[73] *Nan*, *supra* note 15.

of the financial compensation, and the amount awarded. To supplement this data, the Belgian newspaper archive, BelgicaPress, was used. However, this source only provides access to newspapers published up to 1950, resulting in incomplete information for 12 of the 33 identified cases. For these cases, only the exoneree's name and compensation year were available (see Table 3). For the cases described in newspaper articles, the accounts often lacked detailed descriptions of the police investigation or court proceedings. For example, critical elements such as eyewitness identification methods or other procedural details were rarely documented. Additionally, newspaper articles may include bias, errors, and inconsistencies. For example, names were spelled differently across the various sources and, in some cases, the chain of events surrounding the crime was described slightly differently between newspapers or between the newspaper and the narrative provided by Jos Cels.

Future research should address these limitations by studying the original court files. Criminal court files for cases more than 100 years old are publicly accessible under Belgian archival law.[74] For more recent cases, access may require formal permission from an attorney general and there may be logistical challenges in finding and accessing the court files. Given Belgium's slow progress on digitizing court judgments and making them publicly available,[75] it is unlikely that such old court files will be digitized any time soon – if ever. Moreover, the physical files may have been destroyed. Criminal court files have a retention period of 20 years after which they are collected for destruction. An exception can be made for cases that had significant societal relevance, as judged by the court's principal clerk; those cases are preserved at the National Archive of Belgium.[76]

Despite these challenges, access to the original court files would enable a more detailed coding of central features such as the crime, the police investigation, the court proceedings, the person wrongfully convicted, the contributing factors, and the grounds for exoneration. Additionally, future studies could employ predefined coding frameworks and assess interrater reliability to enhance methodological rigor, practices not implemented in the current study.

Nevertheless, the current study of historical cases provides insight into Belgian wrongful convictions and past implementations of the revision procedure. A comparative analysis of historical and contemporary criminal revision cases in Belgium would also be valuable. This could reveal how legal standards and judicial approaches to exoneration have evolved. However, such analysis is currently unfeasible due to a lack of data on revision requests and formal exonerations in recent decades. As mentioned earlier, the Court of

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[74] *Archief van hoven en rechtbanken [Archives of Courts and Tribunals],* online: Rijksarchief in België [State Archives of Belgium] <https://www.arch.be/index.php?l=nl&m=over-ons&r=wat-bewaren-we&sr=specifieke-raadplegingsmodaliteiten&p=archief-van-hoven-en-rechtbanken>.

[75] Laurius, "Stand van zaken: de online databank JustJudgment en de digitale dossiers Justview, JustConsult en JustRestart [Status: the online database JustJudgment and the digital files Justview, JustConsult and JustRestart] " (17 January, 2024), online: LinkedIn <https://nl.linkedin.com/pulse/stand-van-zaken-de-online-databank-justjudgment-en-digitale-vhe0e>; Terzake,
"Digitalisering bij Justitie: kroniek van een eeuwige stilstand | VRT NWS: nieuws" (24 May 2024), online: VRT NWS <https://www.vrt.be/vrtnws/nl/kijk/2024/05/24/tza-kroniek-van-een-lijdensweg-mimir-636ce302-3092-423b-bd01-6db/>.

[76] Federale Overheidsdienst Justitie, "Selectielijst voor de archieven van de rechterlijke macht" (2021) online:<https://www.arch.be/docs/surv-toe/TT-SL/fed/2021_SL_RO_vdef.pdf>.

Cassation does not systematically report on requests for revision and statistics such as frequency and success rates. The relevance of the current study extends beyond the Belgian context in that it provides a first opportunity to compare Belgian exoneration cases with cases in the European and Anglo-Saxon databases. The brief comparison in this article revealed shared characteristics in terms of factors contributing to the wrongful convictions. A more in-depth comparison of case characteristics, contributing factors, and the applied exoneration strategy may provide further insights into universal mechanisms leading to such injustices, but also into what works in reversing miscarriages of justice.[77]

V. Conclusion

In Belgium, the issue of wrongful convictions has not received as much attention as in other countries like the United States or, closer to home, the Netherlands.[78] This study, however, reveals that the Belgian criminal justice system has a history of exonerations that has been largely absent from the Belgian collective memory. Acknowledging these cases is important not only for fostering a more comprehensive understanding of the Belgian criminal justice system, but also for ensuring that such injustices are addressed and prevented in the future. The findings confirm the importance of having a formal and legitimate remedy to correct wrongful convictions. Ultimately, this study aims to expand awareness of wrongful convictions, fostering a broader conversation about their implications for individuals and society.

[77] *Nan*, *supra* note 15.

[78] See EUREX, *supra* note 4; Linda Geven & Karien van den Doel, "Miscarriages of justice in the Netherlands" in Jon Robins, 1st ed, *Murder, Wrongful Conviction and the Law* (Routledge, 2023) 53-64, online: <https://doi.org/10.4324/9781003251484>.

When Science Meets Justice: A Case Study on Eyewitness Misidentification and Wrongful Conviction

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In 2008, a group of three armed individuals entered a grocery store in the Buenos Aires area. The episode ended tragically with the death of the store owner. A local man, M.A.M., was accused of the crime and sentenced to life in prison. After the conviction, the defense filed an appeal with a higher court. There, legal organizations submitted amicus briefs raising concerns about M.A.M.'s factual innocence. Our team was consulted by Innocence Project Argentina to review the official records, providing a psychological and neuroscientific analysis of the eyewitness identification procedures that may have led to a wrongful conviction. Specifically, we examined the recognition procedures and the statements of key witnesses. Subsequently, we presented an amicus curiae with our findings. Here, we discuss the results of

that analysis in light of current theories on memory distortion, including reconsolidation, forgetting, and common errors in recognition. In 2022, the Provincial Court of Cassation acquitted M.A.M., citing the lack of reliable evidence to uphold the conviction. The expert report presented by our team was among the materials considered in reaching that decision.

Facundo A. Urreta Benítez and Candela S. Leon contributed equally as first authors. Micaela Prandi and Cecilia Forcato contributed equally as senior authors.

I. Introduction

Errors in eyewitness identification are among the leading causes of wrongful convictions across various legal systems. Decades of empirical research have shown that memory is a reconstructive and fallible process, susceptible to distortion through suggestion, feedback, stress, and time.[1] Despite this, legal frameworks and courtroom procedures often treat eyewitness accounts as reliable, especially when delivered with high confidence.[2] This disconnect between scientific understanding and judicial practice has resulted in serious miscarriages of justice.[3]

In this article, we present an in-depth analysis of a real criminal case in Argentina involving the conviction of a young man, referred to here as M.A.M., based primarily on

[1] Elizabeth F. Loftus, "Make-believe memories" (2003) 58:11 American Psychologist 867 at 867-873; Daniel Schacter & Elizabeth F Loftus "Memory and law: what can cognitive neuroscience contribute?" (2013) 16:2 Nature Neuroscience 119 at 119-120.

[2] John Wixted & Gary Wells, "The relationship between eyewitness confidence and identification accuracy: A new synthesis" (2017) 18:1 Psychological Science in the Pub Interest 10 at 11-12.

[3] Innocence Project, "Eyewitness Misidentification", online (website): <https://innocenceproject.org/eyewitness-misidentification/>

eyewitness identification. M.A.M. was sentenced to life in prison in 2010, but the Court of Cassation in the Province of Buenos Aires reviewed the case in 2022 and ultimately acquitted him. Our intervention consisted of an amicus brief submitted to the Court of Cassation of the Province of Buenos Aires, at the request of Innocence Project Argentina. This document included a psychological and neuroscientific assessment of the memory-related aspects of the case, with particular attention to eyewitness identification procedures.

The purpose of this article is threefold. First, we aim to present how well-established findings from cognitive psychology and neuroscience can be applied to the forensic evaluation of a specific case of potential misidentification. Second, we seek to illustrate how collaboration between legal and scientific experts can help identify procedural flaws and prevent wrongful convictions. Third, we aim to highlight that Argentina's legal system lagged behind in adopting scientifically grounded procedures for eyewitness identification. With relatively modest investments in training and the promotion of interdisciplinary dialogue between science and justice, many wrongful convictions in the country could potentially be prevented.

Unlike experimental studies, this case report is grounded in the real-world complexity of criminal proceedings and aims to contribute to ongoing efforts to improve the use of eyewitness evidence in legal systems.

Our analysis identifies six key factors that compromised the reliability of the identifications in this case: repeated lineups, insufficient instructions, lack of fairness, high emotional distress, a lengthy time lapse and witness contamination. These factors are discussed in light of relevant scientific literature, and their combined impact is assessed in the context of the defendant’s eventual acquittal.

By presenting this case, we aim to strengthen the bridge between neuroscience, cognitive psychology, and legal practice, advocating for evidence-based reforms in the procedures surrounding eyewitness identification.

II. Material and Methods

A. Case Context and Legal Process

On June 14, 2008, at approximately 8:30 p.m., a group of three armed individuals entered a grocery store owned by a local shopkeeper with the intent to commit robbery. During a struggle with one of the perpetrators, the store owner was killed.

Following oral proceedings, on November 17, 2010, the Oral Criminal Court No. 1 of the Judicial Department of Mercedes issued a conviction against M.A.M. and R.J.V., finding them responsible for the events described above. The trial was conducted before professional judges, who are subsequently responsible for delivering a duly reasoned judgment.

According to the court, M.A.M, R.J.V., and a third unidentified individual entered the store for the purpose of robbery, each carrying a firearm. They first threatened the cashier (hereafter referred to as witness 1) with a gun, demanding the money from the register, which she handed over with help from her sister (witness 2). Meanwhile, R.J.V. went to the back of the store, specifically the butcher section, where the owner was located. A struggle ensued. At that moment, M.A.M. moved to the butcher section to assist his accomplice, while the third assailant remained near the cash register. Both R.J.V. and M.A.M. fired their weapons during

the struggle, inflicting wounds that led to the store owner's death hours later in the hospital. The assailants then fled the scene.

In addition to the cashier sisters (witnesses 1 and 2), who were also the victim's nieces, two other employees (witnesses 3 and 4) were present in the store and saw two of the assailants kill the owner.

According to the judgment, M.A.M.'s conviction was based on the testimonies of four witnesses. However, as explained below, neither witness 3 nor witness 4 identified M.A.M.

Co-defendant R.J.V. confessed to his participation in the crime and consistently stated that M.A.M. had not taken part. He also named those who allegedly accompanied him, although efforts to locate them were unsuccessful. R.J.V. was identified in a lineup by all witnesses in the case. All witnesses agreed in identifying him as the person who went to the back of the store and fired the gun after struggling with the victim.

Argentine law guarantees the right to a broad review of convictions by a higher court. Such review includes not only legal matters but also factual ones, as interpreted by the Supreme Court of Justice, the highest court in Argentina. As established in Casal ruling,[4] on the charge of attempted simple robbery, the right to a broad appellate review encompasses not only questions of law but also the assessment of evidence. In this context, the Court of Cassation of the Province of Buenos Aires[5] reviewed the conviction of M.A.M. on March 4, 2015, and concluded: *"(...) from the analysis of the case, it appears that the sentencing court reasonably assessed the collected evidence and concluded, without absurdity or doubt, the existence of the criminal acts and that the defendants were their perpetrators".*

In response, M.A.M.'s defense filed an Extraordinary Motion for the Inapplicability of Law. Under Argentine law, once a higher court has reviewed both the facts and the law and upheld the conviction, the filing of extraordinary appeals is authorized, with those appeals confined exclusively to issues of law. The defense argued that the Court of Cassation's ruling failed to adequately address the grievances raised, thereby violating the right to appeal as guaranteed by international instruments .[6] The Constitution of the Province of Buenos Aires supports a broad interpretation of the term "law,"[7] which includes constitutional and international norms. Therefore, limiting the scope of "substantive law" under Article 494 of the Criminal Procedure Code to merely infra-constitutional rules would constitute an unacceptable restriction of the right to appeal. Moreover, the Supreme Court of Buenos Aires (SCBA) has repeatedly held that constitutional violations must be addressed within the framework of this extraordinary motion (e.g., SCBA, Ac. 28.414).

On April 17, 2019, the Supreme Court of Justice of the Province granted the defense's motion and ordered the case be returned to the BA Cassation Court to issue a new ruling with a different panel of judges that would address the defense's arguments. Specifically, the court was ordered to assess the irregularities in the identification procedures involving two sisters

[4] *Simón, Julio Héctor y otros s/ privación ilegítima de la libertad,* CSJN, 20 September 2005, SAIJ No FA05000322.

[5] BA Cassation Court

[6] American Convention on Human Rights, 22 November 1969, 1144 UNTS 123, art 8(2)(h); International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, art 14(5).

[7] Art. 161 para. 3(a).

(witness 1 and 2), both nieces of the victim, who were the only individuals to identify M.A.M., and whose testimonies constituted the sole evidence on which his conviction was based.

On March 9, 2022, the Court of Cassation of the Province of Buenos Aires, with a newly composed panel, acquitted M.A.M. The decision was based on the following grounds: (1) irregularities in the inclusion of M.A.M. in the case; and (2) irregularities and contradictions in the identifications made by witnesses 1 and 2.

B. Irregularities in the inclusion of M.A.M. in the case

Lieutenant N.G.O.C. conducted the investigation aimed at identifying those responsible for the offense. During his inquiries, he reported, based on his findings, that M.A.M. was likely involved and that he was acquainted with the co-defendant, and he provided M.A.M.'s address. This information stemmed from data supplied by a witness who, a few days later, offered a statement under an identity-protection arrangement before the prosecuting authority.

During the trial, the witness was identified as H.J.V., a retired police officer who shared information with law enforcement based on comments he had gathered from local residents who declined to reveal their identities for fear of reprisals.

The court that acquitted M.A.M. found no link between him and R.J.V. beyond the information provided by the police. It emphasized that these references were no more than uncorroborated leads, since the police stated that their supposed sources feared reprisals and refused to testify publicly.

Additionally, police officers claimed that a vehicle allegedly owned by M.A.M. was used in the robbery and subsequent homicide. However, all witnesses agreed that the perpetrators fled the scene on motorcycles, not in a four-wheeled vehicle.

C. Irregularities and contradictions in the identifications by witness 1 and 2

a. Identification procedures in the Province of Buenos Aires

Identification procedures in the Province of Buenos Aires Chapter VIII of the Buenos Aires Criminal Procedure Code sets forth the following guidelines for lawful police identification procedures:

- Article 258: Before the identification, the witness shall be asked to describe the person in question and to state whether they have seen that person before, either in person or through images.
- Article 259: The identification procedure shall follow immediately after the questioning. The person to be identified shall be placed alongside at least three (3) individuals of similar outward appearance. The suspect may choose their position in the lineup.

In the presence of the group, or from a place where the witness cannot be seen, as deemed appropriate, the witness shall state whether the person referred to is in the lineup, and if so, must clearly and precisely indicate them, and describe any similarities or differences observed between their current appearance and their appearance at the time of the event.

The procedure shall be recorded in an official report, which must include all relevant circumstances, including the names and addresses of those who formed the lineup. If the identification concerns a defendant, the defense counsel must be notified at least twenty-four (24) hours in advance, under penalty of nullity.

b. Witness 1's Identification

On January 22, 2009, witness 1 participated in her first lineup. On that occasion, she stated that M.A.M. resembled the person who had approached the cash register and threatened her with a gun to take the money. However, the procedure was declared void because M.A.M.'s right to legal defense was not guaranteed. The public defender was dismissed on the grounds that M.A.M.'s trusted counsel was present. However, the lawyer had not yet formally accepted the appointment, and thus M.A.M. was left without technical legal representation.

A second lineup was conducted on April 1, 2009, this time in compliance with legal formalities. Witness 1 did identify M.A.M., but attributed a different role to him than in the first statement. This time, she claimed M.A.M. had gone to the butcher section and fired three shots at her uncle, specifying that the crime was committed with two other individuals: one who remained at the cash registers (the role she had initially attributed to M.A.M.), and another who accompanied him to the butcher section.

An important aspect to note regarding the conduct of the lineups in this case is that, in every instance, the witnesses observed the individuals through the peephole of a door, a factor that undoubtedly influenced the way they processed the faces of those included in the lineups.

c. Witness 2's Identification

On January 22, 2009, witness 2 participated in a properly conducted lineup concerning M.A.M. The result was negative: she identified a decoy as the perpetrator. She left the procedure aware that her selection was incorrect, having signed an official record confirming it, and had also seen M.A.M. among those she did not choose.

However, during the trial hearing (two years and five months after the event), she testified: *"I recognize both defendants, the ones sitting in the courtroom... I had already identified one in the lineup (referring to R.J.V.), and I recognize the other one here,"* referring to M.A.M., whom she had not identified in the earlier procedure.

It is noteworthy that, in her initial statement, the witness claimed she could identify only one individual, whom she described in detail, namely, R.J.V. Nonetheless, during the trial, she also identified M.A.M., whom she had not previously recognized in the lineup.

D. Role of the Authors and Amicus Curiae Intervention

In 2021, Innocence Project Argentina requested an expert psychological and neuroscientific opinion, to be submitted as an amicus brief, in order to provide scientific support for its filing before the Provincial Court of Cassation. Our research team, formed by F.A.U.B., C.S.L., M.B. and C.F. specialized in memory formation and modification, participated voluntarily and without remuneration. The amicus brief presented an evidence-based analysis of the memory-related risks present in the identification procedures used in the case. It focused specifically on how factors such as repeated exposure, suggestive instructions,

stress, delay, and contamination may have increased the likelihood of eyewitness misidentification.

The court accepted the amicus briefs submitted by various organizations, including ours. The reasons set forth in its decision indicate that the court adopted the arguments developed by our team. Indeed, as for the Innocence Project Argentina's amicus brief, the court expressly cited it among the grounds for its ruling. The Foundation's brief, which we helped prepare, was drafted in alignment with the same arguments advanced in our submission that is analyzed here.

This study follows ethical standards for the use of anonymized legal material for educational and scientific purposes. No personal data beyond public legal records were accessed, and all identifiers have been removed or coded to protect privacy.

No direct assessment or psychological testing of the witnesses was performed, as the analysis was based entirely on official court documents, police records, and available transcripts.

III. Results

The following results are based on a comprehensive review of the official court records and police documentation related to the case against M.A.M. Although four store employees, witnesses 1, 2, witness 3, and 4, were present during the robbery and cited in the original conviction, only two (witness 1 and 2) ultimately identified M.A.M. Their identifications were fraught with inconsistencies and procedural irregularities, raising serious concerns about the reliability of their testimony. Additional testimonies from the co-defendant, who exonerated M.A.M., and a police intelligence source whose account could not be independently verified, further complicate the evidentiary landscape. Each of the following subsections details a specific set of irregularities observed in the identification process, which collectively contributed to M.A.M.'s wrongful conviction.

A. Repeated Lineups

The use of repeated lineups is considered scientifically problematic, as the outcome of a second identification can be influenced by the experience of the first one.[8] A key indicator of such influence is an increase in witness confidence between lineups.[9] Importantly, M.A.M. was the only individual who appeared in both lineups. This repetition constitutes a critical procedural flaw, as it increased the likelihood that witnesses would later select him. Several theoretical mechanisms have been proposed to explain this effect. One of them is the

[8] Loftus, *supra* note 1 at 867-873; Kenneth A Deffenbacher et al, "Mugshot exposure effects: Retroactive interference, mugshot commitment, source confusion, and unconscious transference" (2006) 30 L & Human Behavior 287 at 289-292, 300; Jason Chan & Jessica LaPaglia, "The dark side of testing memory: Repeated retrieval can enhance eyewitness suggestibility" (2011) 17:4 J of Experimental Psychology: Applied 418 at 419-420; Wenbo Lin et al, "The effects of repeated lineups and delay on eyewitness identification" (2019) 4 Cognitive Research: Principles and Implications 16 at 2-3.

[9] Melissa Paiva et al, "Influence of confidence inflation and explanations for changes in confidence on evaluations of eyewitness identification accuracy" (2011) 16:2 Leg & Criminological Psychology 266 at 267; Wixted & Wells, *supra* note 2 at 13, 18-19.

commitment effect, whereby witnesses seek consistency and are thus less likely to reject a prior selection .[10] Valentine et al, for instance, found that 88% of participants selected the same suspect in a second lineup as they did in the first, regardless of accuracy.[11] This pattern has been replicated in numerous studies .[12]

Another explanation is the transference effect, where witnesses may select a suspect in a subsequent lineup based on familiarity rather than true episodic memory of the perpetrator.[13] In this scenario, the memory being accessed may pertain to the prior lineup, rather than the original crime.

A third and increasingly supported mechanism is memory reconsolidation, which proposes that consolidated memories can become labile and modifiable after reactivation, particularly in the presence of a prediction error.[14] If a suspect in a new lineup resembles, but is not identical to, the perpetrator, this mismatch may trigger memory destabilization. The original memory may then be altered to incorporate new, misleading features.[15]

In the case of M.A.M., four eyewitnesses underwent identification procedures, but only two ultimately identified him (witnesses 1 and 2). Notably, one of these two witnesses did not make her identification during the lineup but rather during the debate hearing, two and a half years after the incident, with M.A.M. seated on the defendants' bench alongside R.J.V., whom she had previously recognized in the lineup (witness 2). Witness 1 participated in an initial lineup on January 22, 2009, and described M.A.M. as having "similar characteristics" to one

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[10] Thomas Schreiber & Susan Sergent "The role of commitment in producing misinformation effects in eyewitness memory" (1998) 5 Psychonomic Bulletin & Rev 443 at 444, 448.

[11] Tim Valentine et al, "Live showups and their influence on a subsequent video line-up" (2012) 26:1 Applied Cognitive Psychology 1 at 53.

[12] Jennifer Dysart et al, "Mugshot exposure prior to lineup identification: Interference, transference, and commitment effects" (2001) 86 J of App Psych 1280 at 1283; Ryan Godfrey & Stephen Clark, "Repeated eyewitness identification procedures: Memory, decision making, and probative value" (2010) 34 L & Human Behavior 241 at 246-257; Ryann M Haw et al, "The phenomenology of carryover effects between show-up and line-up identification" (2007) 15:1 Memory 117 at 118.

[13] Elizabeth Loftus, "Unconscious transference in eyewitness identification" (1976) 2 L & Psychology Rev 93 at 93-98; David Ross et al, "Unconscious transference and mistaken identity: When a witness misidentifies a familiar but innocent person" (1994) 79 J of Applied Psychology 918 at 918-922; Dysart et al, *Ibid* at 1280-1281.

[14] Karim Nader et al, "The labile nature of consolidation theory" (2000) 1:3 Nature Reviews. Neuroscience 216 at 216-219; Cecilia Forcato et al, "Human reconsolidation does not always occur when a memory is retrieved: the relevance of the reminder structure." Neurobiology of Learning & Memory (2009) 91:1 50 at 50-51; Alyssa Sinclair & Morgan Barense, "Prediction error and memory reactivation: how incomplete reminders drive reconsolidation" (2019) 42:10 Trends in neurosciences 727 at 1-11.

[15] Cecilia Forcato et al, "Reconsolidation in humans opens up declarative memory to the entrance of new information" (2010) 93:1 Neurobiology of Learning & Memory 77 at 77-84; Rodrigo Fernández et al, "The role of GABAA in the expression of updated information through the reconsolidation process in humans" (2017) 142: Neurobiology of Learning & Memory 146 at 146-152; Schacter & Loftus, *supra* note 1 at 119-120; Facundo Urreta-Benítez et al, "Identification performance during quarantine by COVID-19 pandemic: Influence of emotional variables and sleep quality" (2021) Frontiers in Psychology 4734 at 9-12.

of the perpetrators, but noted that the suspect had a thicker build than their memory suggested. This lineup was deemed invalid due to the absence of a defense attorney.

Three months later, a second lineup was conducted. On this occasion, witness 1 again identified M.A.M. and expressed increased confidence. Such an increase is frequently reported in flawed identification procedures.[16] When witnesses receive some form of feedback or reinforcement, even subtle, their confidence in a prior selection can become inflated.[17] This is particularly true in cases of weak memory traces, where external cues disproportionately shape judgment.[18] Although it is not known whether witness 1 received any confirmation between lineups, the lack of systematic recording makes it difficult to rule out this possibility. It is widely recommended that identification procedures be videotaped to detect any unintentional or intentional cueing.[19] This is especially important because witness confidence is often given considerable weight in court decisions,[20] even when jurors are instructed not to equate confidence with accuracy.[21]

Witness 2, the sibling of witness 1, initially participated in a lineup in which she selected a filler rather than M.A.M. However, two years later, during the trial, witness 2 positively identified M.A.M., this time under conditions even less reliable than those of a formal showup procedure. Showups, in which a single suspect is presented without alternatives, have been shown to yield lower discriminability and reliability than lineups.[22] In this particular instance, reliability is even more questionable than in a single-suspect lineup, given that the defendant was seated in the dock alongside another suspect whom witness 2 had previously identified, thereby further skewing the situation. Showups conducted after witnesses are informed that the authorities have arrested a suspect increase the likelihood of false identifications, without improving accuracy.[23] In addition to these showup-related concerns, the identification made by witness 2 may also reflect a case of transference. Because she had previously been exposed to M.A.M. during the first lineup, where she selected a filler instead of him, her later recognition in court could have been driven by familiarity with the lineup

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[16] Amy Bradfield et al, "The damaging effect of confirming feedback on the relation between eyewitness certainty and identification accuracy" (2002) 87:1 J of Applied Psychology 112 at 112-119.

[17] Nancy Steblay et al, "The eyewitness post identification feedback effect 15 years later: Theoretical and policy implications" (2014) 20:1 Psychology, Pub Pol'y & L 1 at 6-7.

[18] Charles Brainerd & Valerie Reyna, "Fuzzy-trace theory and false memory" (2002) 11:5 Current Directions in Psychological Science 164 at 164-168.

[19] Gary Wells et al, "Policy and procedure recommendations for the collection and preservation of eyewitness identification evidence" (2020) 44:1 L & Human Behavior 3 at 23-24.

[20] Brian Cutler et al, "Jury decision making in eyewitness identification cases" (1988) 12 L & Human Behavior 41 at 41-43; Brian Cutler et al, "Juror sensitivity to eyewitness identification evidence" (1990) 14:2 L & Human Behavior 185 at 190-191.

[21] Steven G Fox & HA Walters, "The impact of general versus specific expert testimony and eyewitness confidence upon mock juror judgment" (1986) 10:3 L & Human Behavior 215 at 224-227.

[22] Daniel Yarmey et al, "Accuracy of eyewitness identifications in showups and lineups" (1996) 20 L & Human Behavior 459 at 459-461; Stacy Wetmore et al, "Effect of retention interval on showup and lineup performance" (2015) 4:1 J of Applied Research in Memory & Cognition 8 at 13; Laura Mickes, "Receiver operating characteristic analysis and confidence–accuracy characteristic analysis in investigations of system variables and estimator variables that affect eyewitness memory" (2015) 4 J of Experimental Psychology: Applied 93 at 100-102.

[23] Mitchell Eisen et al, "Pre-admonition suggestion in live showups: When witnesses learn that the cops caught 'the' guy" (2017) 31 Applied Cognitive Psychology 520 at 527-529.

exposure rather than by episodic memory of the crime itself. This mechanism, known as the transference effect[24], underscores how repeated exposure to a suspect across different contexts can bias memory and inflate the likelihood of a positive identification even in the absence of genuine recognition.

Taken together, these findings illustrate the dangers of repeated and non-standardized identification procedures. In the present case, they contributed to the increased confidence and eventual identification of M.A.M., in the absence of corroborating evidence.

B. Insufficient Instructions

The manner in which instructions are delivered to witnesses during identification procedures can significantly influence both the reliability and the outcome of the recognition.[25] Research has shown that when witnesses are not explicitly informed that the perpetrator may or may not be present in the lineup, the rate of false identifications increases.[26] Additionally, even when standardized instructions are used, they often fail to control for meta-communicative cues such as tone of voice, body posture, or subtle gestures that may unintentionally influence witness responses.[27]

Best practices in lineup administration recommend the use of double-blind procedures and the thorough documentation of each session, including audiovisual recording, to prevent both conscious and unconscious suggestion.[28] However, these practices are not routinely implemented in many judicial systems, particularly in countries such as Argentina, where regulation of identification protocols remains inconsistent and underdeveloped.

In the case of M.A.M., no written or audiovisual records of the instructions provided to witnesses during the lineup procedures were available in the court files. Nevertheless, inconsistencies in the delivery of instructions can be inferred from the testimony of witness 1, who participated in both the first and second lineups. During their testimony regarding the second identification procedure, witness 1 stated: *"The other time it was all faster, and it wasn't explained to me that I could take a long time to observe and carefully look at the people in the lineup. Now I was able to do it and come to the conclusion that the recognized individual was the perpetrator."* This statement suggests that the first lineup was conducted under time pressure and without appropriate guidance, while the second lineup included a more relaxed and structured approach. Later in the testimony, witness 1 added: *"The certainty is greater in this act, as it was explained to me that I could take all the time I wanted, and thus I could observe better, reaching the conclusion."*

This contrast implies a lack of standardization between the two procedures and raises concerns about the validity of the increased certainty expressed during the second identification. If the instructions and context varied significantly between procedures, it

[24] Loftus, Ross, and Dysart, *supra* note 13.

[25] Nancy Steblay, "Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects" (1997) 21:3 L & Human Behavior 283 at 294-295.

[26] Roy Malpass & Patricia Devine, "Eyewitness identification: Lineup instructions and the absence of the offender" (1981) 66:4 J of Applied Psychology 482 at 486-489.

[27] Gary L Wells et al, *supra* note 19 at 14-17.

[28] *Ibid* at 14-17.

becomes problematic to compare the outcomes or to use confidence as an indicator of accuracy.[29]

Moreover, the absence of neutral and consistent instructions could have introduced implicit pressure on the witness to choose someone, particularly if the procedures lacked safeguards against expectation bias. These inconsistencies, when combined with the repeated exposure to the same suspect, may have inflated confidence without a corresponding increase in actual memory accuracy.

C. Lack of Fairness

The fairness of a lineup is fundamentally dependent on the construction of the array, particularly the selection of fillers who accompany the suspect. According to internationally accepted standards, fairness requires that the suspect not unduly stand out in physical appearance, attire, or contextual presentation.[30] When this requirement is violated, witnesses may select the suspect not based on genuine memory, but due to the suspect's salience within the lineup. In the case of M.A.M., the method used by police to select the fillers for each lineup was not documented in the case file. However, a review of the photographic evidence from the first and second lineups shows no conspicuous visual discrepancies in clothing or physical features among the participants. On the surface, the lineups may appear visually balanced. However, a critical procedural flaw arises from the fact that M.A.M. was the only individual repeated across both lineups for witness 1. In the second procedure, all other lineup members were different from those in the first, which effectively made M.A.M. the only familiar face to witness 1. This recurrence could have unintentionally highlighted M.A.M. to witness 1, thereby undermining the fairness of the second lineup. This violation of lineup independence compromises the validity of any subsequent identification. It becomes unclear whether the witness recognized M.A.M. from the original criminal event or from prior exposure during the earlier lineup. Such a scenario heightens the risk of source monitoring errors, wherein witnesses confuse the origin of their memory.[31] It also increases susceptibility to commitment effects, as previously discussed, which reinforce initial choices across repeated procedures.

Regarding the identification made by witness 2, the conditions were so far removed from a formal lineup that conventional fairness metrics cannot be meaningfully applied. The recognition act took place in open court, akin to a showup, where the accused was seated beside another co-defendant already identified by the same witness. Such a setup lacked the structural safeguards of a properly designed lineup, including the use of non-suspect fillers[32] and unbiased instructions.[33] Consequently, the procedure did not provide a neutral context for testing recognition and rendered the identification highly susceptible to bias.

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[29] Wixted & Wells, *supra* note 2 at 12.

[30] Gary L Wells, Michael R Leippe & Thomas M Ostrom, "Guidelines for empirically assessing the fairness of a lineup" (1979) 3:4 L & Human Behavior 285 at 286-287.

[31] Marcia K Johnson, Shahin Hashtroudi & D Stephen Lindsay, "Source monitoring" (1993) 114:1 Psychological Bulletin 3 at 4-8.

[32] Melissa F Colloff & John T Wixted, "Why are lineups better than showups? A test of the filler siphoning and enhanced discriminability accounts" (2020) 26:1 J of Experimental Psychology: Applied 124 at 124-127.

[33] Steven E Clark, "A re-examination of the effects of biased lineup instructions in eyewitness identification" (2005) 29:5 L & Human Behavior 575 at 598-602.

D. High Emotional Distress

The relationship between stress and memory performance has been extensively studied, revealing a complex and sometimes contradictory picture. However, a substantial body of evidence suggests that elevated stress during the retrieval phase, such as during a lineup, can impair memory accuracy and increase susceptibility to suggestive influences.[34] These findings support the notion that every effort should be made to reduce the emotional distress experienced by witnesses during identification procedures. Indeed, practical experience frequently shows that witnesses perceive such procedures as psychologically demanding or distressing.[35]

In the case of M.A.M., there is no official record describing the emotional state of witness 1 during the first lineup. However, testimony and procedural notes from the second lineup provide clear indications of psychological distress. When asked about the first identification, witness 1 stated: *"I think it was conducted before last year's holidays, but I can't be sure because I was very nervous"*. Moreover, the police officer responsible for documenting the second identification reported *"The witness, when asked, mentions being very nervous, breaking into tears and stating that she does not want to remember the situation anymore, that this is harmful to her, and that she is nervous about having to go through this task."* This emotional state, characterized by distress and avoidance, raises serious concerns about the cognitive environment in which the identification was made. Although legal systems may not always be able to eliminate stress from criminal proceedings, psychological best practices suggest that personnel should be trained to recognize and mitigate emotional disturbances during such procedures.[36] In this case, there is no record of any attempt to reduce the witness's emotional burden during the process.

Importantly, the evaluation of witness performance should take into account not only the formal elements of the identification procedure but also the internal psychological state of the witness. Stress-related cognitive impairments may reduce the reliability of recognition judgments, and therefore must be considered when interpreting the probative value of such evidence.

E. Long Time Lapse

The detrimental effects of time on the stability of declarative memory have been recognized for more than a century, beginning with the foundational work of Ebbinghaus (1885). As time passes between the encoding of an event and its retrieval, the likelihood of memory degradation increases significantly. This principle is particularly critical in the context of eyewitness identification, where delays can profoundly impair recognition accuracy.

Although well-established in the scientific literature, the time-related decay of memory is seldom accounted for in judicial procedures across many Latin American countries, where delays in investigations and trials are pervasive.[37] Experimental studies have

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[34] Lars Schwabe et al, "Stress effects on memory: An update and integration" (2012) 36:7 Neuroscience & Biobehavioral Reviews 1740 at 1740-1747.

[35] Facundo A Urreta Benítez et al, *supra* note 15 at 9-12.

[36] Kenneth A Deffenbacher et al, "A meta-analytic review of the effects of high stress on eyewitness memory" (2004) 28:6 L & Human Behavior 687 at 702-704.

[37] Pablo Ciocchini, "Campaigning to eradicate court delay: power shifts and new governance in criminal justice in Argentina" (2014) 61:1 Crime L & Soc Change 61 at 61-77.

demonstrated that even a delay of just one week can significantly reduce the accuracy of identification in lineup procedures, with correct identifications dropping to 65%.[38]

In the case of M.A.M., the two key witnesses were not summoned for the first identification procedure until January 2009, more than seven months after the robbery in June 2008, and a second lineup was conducted nearly ten months after the incident. Both intervals represent substantial delays, long enough to severely compromise the reliability of eyewitness memory.[39]

The extended lapse between the crime and the identification procedures, combined with other procedural flaws such as repeated exposure to the same suspect and lack of standardized instructions, compounds the risk of misidentification. In such conditions, the weight given to eyewitness testimony must be carefully reevaluated, as its probative value may be significantly compromised.

F. Witness Contamination

In legal contexts, it is common for witnesses to provide multiple statements over the course of an investigation or trial. Although the emergence of new details across statements is not inherently problematic,[40] significant contradictions may signal reduced reliability and accuracy.[41] These inconsistencies may result from differences in interview technique,[42] repeated questioning, or external influences such as contact with media, investigators, or other witnesses.[43] In the case of M.A.M., notable contradictions emerged in the two statements provided by witness 1. During the first lineup, when asked to describe the role of the individual identified, she responded: *"He presented similar characteristics to the person I mentioned in my testimony as the one who entered the store, went to the cash register, and pointed a gun at me, forcing me to hand over the money."* However, in the second lineup, the same witness provided a substantially different account: *"He was the one who passed behind the counter that led to the butcher's area and fired three shots with the gun he was carrying at my uncle. He was accompanied by two other men, one stayed in the cash register area while the other, accompanied by the identified individual, went to the back where my uncle's death occurred."*

These statements are not only inconsistent but suggest radically different roles for the identified individual, one as a participant in the robbery and the other as the alleged shooter.

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[38] Tim Valentine, Alan Pickering & Stephen Darling, "Characteristics of Eyewitness Identification that Predict the Outcome of Real Lineups" (2003) 17:8 Applied Cognitive Psychology 969 at 983-984.

[39] Wenbo Lin, *supra* note 8; Michael J Strube & Henry L Roediger III, "The effects of repeated lineups and delay on eyewitness identification" (2019) 4 Cognitive Research: Principles & Implications 1 at 3-4.

[40] Alana C Krix et al, "Consistency across Repeated Eyewitness Interviews: Contrasting Police Detectives' Beliefs with Actual Eyewitness Performance" (2015) 10:2 PLoS One 1 at 13.

[41] Ronald P Fisher, Aldert Vrij & Drew A Leins, "Does Testimonial Inconsistency Indicate Memory Inaccuracy and Deception? Beliefs, Empirical Research, and Theory" in Barry S. Cooper, Dorothee Griesel & Marguerite Ternes, eds, *Applied Issues in Investigative Interviewing, Eyewitness Memory, and Credibility Assessment* (New York: Springer, 2013) 173 at 173-187.

[42] Julian AE Gilbert & Ronald P Fisher, "The Effects of Varied Retrieval Cues on Reminiscence in Eyewitness Memory" (2006) 20:6 Applied Cognitive Psychology 723 at 734-737.

[43] Mitchell L Eisen, "'I Think He Had A Tattoo On His Neck': How Co-Witness Discussions About A Perpetrator's Description Can Affect Eyewitness Identification Decisions" (2019) 6:3 J of Applied Research in Memory & Cognition 274 at 274-276.

Such a shift significantly affects the legal interpretation of the witness's testimony. Additionally, witness 2, the sibling of witness 1, provided a version of events during the trial that appeared to blend elements of both prior accounts: *"One of the individuals who had threatened me at the cash register and then headed to the back."* This convergence raises the possibility of memory contamination through cohabitation or discussion between witnesses, particularly given that the two lived together between their respective testimonies. Furthermore, another critical problem in this case was the inconsistent matching of perpetrators with their alleged roles in the crime. Research on eyewitness identification in multiple-perpetrator contexts shows that such scenarios are particularly prone to error, as witnesses must not only recall individual faces but also bind them to specific roles or actions. Hobson and Wilcock demonstrated that accuracy decreases substantially when multiple perpetrators are involved, especially when witnesses attempt to match suspects to roles.[44] Similarly, Nortje et al. highlighted the limitations of human face memory capacity, underscoring why misattributions are common in multi-perpetrator cases.[45] These findings suggest that the role-inconsistencies observed in the present case reflect well-documented cognitive constraints rather than reliable identifications.

The interview records suggest a semi-structured questioning format, with defense-initiated prompts documented in the transcripts. Statements often appear in the form: *"In response to questions about the involvement of the identified individual, she commented that..." "In response to questions posed regarding the defense's requests...".* Although this consistent format limits variability attributable to interview technique, it does not rule out external contamination. In fact, the evolution of narratives, along with the cohabitation of the witnesses, strengthens the hypothesis that exposure to post-event information may have altered their recollections.

These observations highlight the importance of implementing protocols that minimize exposure to contaminating information, especially in cases where witness testimony plays a pivotal role in legal outcomes.

IV. Discussion

This case illustrates how a cluster of system variables, repeated lineups, insufficient instructions, lack of fairness, high emotional distress, long retention intervals, and opportunities for cross-contamination, could undermine the reliability of eyewitness evidence and contribute to wrongful convictions. The subsequent acquittal of M.A.M. underscores the need to evaluate identification evidence through the lens of contemporary memory science.

Our analysis relied exclusively on official records and applied well-established principles from cognitive psychology and neuroscience to assess procedural risks rather than private mental states. This approach aligns with the aims of appellate review, which focus on the integrity of procedures and the probative value of the resulting evidence. Although originally framed as an amicus curiae brief, our focus was strictly on identifying scientifically

[44] Alicia Nortje, Colin G Tredoux & Annelies Vredeveldt, "Eyewitness identification of multiple perpetrators" (2020) 33:2 South African J of Crim Justice 348 at 348-353.

[45] Alicia Nortje, Colin G Tredoux & Annelies Vredeveldt, "How many faces can we remember? Why these matters when assessing eyewitnesses" in Markus Bindemann & Ahmed M Megreya, eds, *Face Processing: Systems, Disorders and Cultural Differences* (Hauppauge, NY: Nova Science Publishers, 2017).

established risks, which may have emphasized vulnerabilities more than strengths. Nevertheless, the multiple deviations from evidence-based standards render our conclusions regarding identification reliability robust. Future expert reports could benefit from contrasting alternative hypotheses to further minimize bias.[46]

A further limitation is that, because the analysis was conducted within the legal record, we were inevitably exposed to contextual information beyond the identification procedures, such as additional testimonies. Research on forensic confirmation bias shows that such exposure can inadvertently influence expert interpretation by shaping expectations.[47] While our assessment remained focused on procedural aspects, complete insulation from case-related information was not possible. Future expert practice would benefit from protocols that restrict access to irrelevant contextual details, thereby minimizing potential bias. Importantly, Argentina operates under a federal system, meaning each of its 25 jurisdictions (the 23 provinces, the Autonomous City of Buenos Aires, and the federal jurisdiction) maintains its own criminal procedure regulations. This legal diversity directly affects the conduct of eyewitness identification procedures, causing substantial variations depending on where the crime is investigated. Despite these differing regulations, no jurisdiction has fully adopted the scientific standards recommended for conducting identification procedures. One clear example is the absence of a double-blind requirement, no legislation mandates that the individual conducting the lineup be unaware of the suspect's identity, a factor that can inadvertently introduce bias.

As we noted, lineup size regulations in Argentina vary by jurisdiction, with each code setting different requirements. Specifically, seven jurisdictions do not establish a minimum number of participants, thirteen require at least two fillers in addition to the suspect, five mandate three, and only one requires four. These standards fall short of international recommendations. Both experimental research and best-practice guidelines emphasize that lineups should include at least five fillers in addition to the suspect to maximize fairness and reduce the risk of false identifications.[48] The absence of such minimum standards in Argentina highlights how regulatory fragmentation can directly compromise the reliability of eyewitness evidence.

As for the video recording of the procedure, only two provinces (San Luis and Chubut) require that the process be filmed under penalty of nullity, meaning the procedure is valid only if recorded. The remaining jurisdictions impose no explicit obligation in this regard.

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[46] Annelie Vredeveldt, "Legal psychologists as experts: Guidelines for minimizing bias" (2024) 30:7 Psychology, Crim & L 705 at 705-722.

[47] Saul M Kassin, Itiel E Dror & Jeff Kukucka, "The forensic confirmation bias: Problems, perspectives, and proposed solutions" (2013) 2:1 J of Applied Research in Memory and Cognition 42 at 45-48; Steve D Charman, Melissa Kavetski & Dana Hirn Mueller, "Cognitive Bias in the Legal System: Police Officers Evaluate Ambiguous Evidence in a Belief-Consistent Manner" (2017) 6:2 J of Applied Research in Memory and Cognition 193 at 198-201.

[48] Gary L Wells et al, " Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads" (1998) 22:6 L & Human Behavior 603 at 634-635; Nicola Marie Menne et al, "Measuring lineup fairness from eyewitness identification data using a multinomial processing tree model" (2023) 13:1 Scientific Reports 6290 at 2-4; Steven E Clark, Molly B Moreland & Scott D Gronlund, "Evolution of the empirical and theoretical foundations of eyewitness identification reform" (2014) 21:2 Psychonomic Bulletin & Rev 251 at 253-254.

Furthermore, photographic identification is regulated across all jurisdictions only as an exceptional measure, permissible when the suspect cannot be located or when the suspect's appearance has significantly changed between the time of the incident and the identification procedure.

The lack of uniform criteria among the jurisdictions directly impacts the administration of justice, as procedural safeguards vary from one region to another. Consequently, an identification procedure might be carried out in a manner more closely aligned with scientific guidelines in one province than in another, affecting both the fairness and the reliability of identifications.

In countries such as Argentina the systematic scrutiny of eyewitness identification within criminal procedure has only recently gained traction. Many procedural codes were drafted decades ago and have not kept pace with empirical advances on memory and identification; justice-system actors often lack specialized training in this domain. Closing this gap is essential if courts are to appraise eyewitness evidence with appropriate caution.

Empirical research has consistently demonstrated that judges, lawyers, and even expert witnesses often hold misconceptions about how memory operates, including the belief that recollections function like video recordings or that confidence directly predicts accuracy.[49] These misunderstandings can lead courts to overestimate the reliability of eyewitness testimony and underestimate the risks of contamination or distortion. Addressing this problem requires not only procedural reform but also systematic training of justice-system actors in cognitive psychology and neuroscience, ensuring that legal decisions align with contemporary scientific knowledge.

This case also exemplifies a concrete route by which scientific knowledge can reach judges and assist in correcting erroneous outcomes: the submission of rigorous, transparent, evidence-based analyses through amicus curiae and expert consultation within the record. While no single brief is determinative, the engagement between science and the courts here shows how research can inform appellate scrutiny and promote error correction.

Looking ahead, the findings in this case and the regulatory heterogeneity we identified support a coherent program of reform and training for Argentina and the wider Latin American region, aimed at preventing avoidable errors. Core safeguards should be codified in procedural law, such as double-blind administration; pre-lineup documentation of a witness's description and confidence; neutral instructions that the perpetrator may or may not be present; adequate numbers of fillers; prohibitions on repeating the same suspect across lineups absent necessity; and contemporaneous audiovisual recording with a preserved chain of custody. Showups should be treated as truly exceptional procedures, tightly circumscribed and documented under supervisory oversight. Continuing education on memory and identification should be embedded for prosecutors, public defenders, and judges, and integrated into professional curricula. Finally, research and justice partnerships can help design, implement, and audit evidence-based protocols. Embedding these changes in procedural codes and professional

[49] Joyce W Lacy & Craig EL Stark, "The neuroscience of memory: implications for the courtroom" (2013) 14:9 Nature Reviews. Neuroscience 649 at 655-656; Mark L Howe & Lauren Knott, "The fallibility of memory in judicial processes: Lessons from the past and their modern consequences" (2015) 23:5 Memory 633 at 651-653; Pamela J Radcliffe & Lawrence Patihis, "Judges and lawyers' beliefs in repression and dissociative amnesia may imperil justice: further guidance required" (2024) 32:8 Memory 1083 at 1091-1096.

training would better align everyday practice with the state of the science and reduce the risk of wrongful convictions across the region.

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The Victimology of a Wrongful Conviction
Innocent Inmates and Indirect Victims

By Nicky Ali Jackson, Kathryn M. Campbell, Margaret Pate
New York, Routledge, 2023

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Jackson, Campbell, and Pate do a magnificent job of identifying the all-encompassing harm caused by wrongful conviction – to the exoneree, their families, the victims, and society in their recent book, *The Victimology of a Wrongful Conviction: Innocent Inmates and Indirect Victims*. Based on their analysis of in-depth qualitative interviews of exonerees (n=24) and their family members (n=13), the authors thoughtfully document that exonerees are victims of the criminal legal system.

The authors divide their book in two parts – the wrongfully convicted as victims (Part 1), and the many victims of wrongful conviction (Part 2). Though, I suspect readers may also wonder why Chapters 5 and 6 (the exoneree as a victim, and female exonerees, respectively) are in Part 2 of the book as opposed to Part 1.

Part 1 of the book walks the reader through topics that zig and zag more than they do unite. Part 1 includes chapters on the authors' methods and demographics of their sample, victimology theories, quantifying wrongful convictions and their causes, and racism's inherent role in further oppressing Black exonerees. The chapters are disjointed, but well-written.

Central to the book's premise, Chapter 2 presents the reader with a detailed review of theoretical perspectives on victimology, including the history of victimology, the Victim's Rights Movement, and victim theories applied to wrongful convictions. Jackson provides a foundation for the reader to begin to think of exonerees as victims. Jackson's efforts to display the myriad applications of victimology research to exonerees are novel but also reveal a genuine concern about applying theories of victimology to exonerees. By victimologists focusing on the victim's role in their own victimization they may perpetuate the very harm exonerees experience by effectively blaming them for their wrongful conviction. Coupled with the popular public misconception that a truly innocent person would never be wrongfully arrested or convicted, it appears that some victimology research may exacerbate the stigma that exonerees and their family members already face.

Chapter 3, though brief, is imperative for any book on wrongful convictions: the extent and causes of wrongful conviction. Campbell attempts to quantify how many people are wrongfully convicted, providing conservative and liberal estimates from past authors, but the chapter is a bit outdated when contextualizing the social science research on causes of wrongful convictions. Of appeal to the curious reader, Campbell thoughtfully includes actual cases of wrongful conviction that involve eyewitness misidentification, false confession, jailhouse informants, police and prosecutorial misconduct, and forensic science.

Not to be missed by any scholar of wrongful convictions is the compelling chapter by Hattery and Smith (Chapter 4), which provided one of the sharpest critiques of the criminal legal system I have read documenting the effects of racism and White supremacy on every aspect of the legal system, including the overrepresentation of Black male exonerees (~50% of all exonerees). Notable is that Black men are disproportionately wrongfully convicted of interracial crimes – crimes in which a Black man is accused of raping and/or murdering a White woman – even though crime data demonstrate intraracial (White-White, or Black-Black) crime is much more common.

The flow of Part 2 (Chapters 5-11) improves greatly, as the authors turn to their analysis of the interview data, revealing the substantial victimization experiences of exonerees and how wrongful convictions creates additional victimization to the exonerees' family members, crime victims, and society. I commend the authors on recognizing that some of these victimization experiences are also shared among those who have been rightfully incarcerated, but the authors made impressive effort to document the additional victimization the wrongfully convicted face. In Chapter 5, Jackson delivers a methodical analysis of how an innocent person goes from falsely accused to wrongfully convicted and breakdowns the harms exonerees face. This chapter is essential reading for any undergraduate student interested in wrongful conviction. Jackson's writing skillfully captures the painful victimization experience of an exoneree, and her inclusion of the quotes from the exonerees' provides a richness that will resonate with the reader.

Chapter 6 highlights the unique experience of female exonerees and is a must-read for any scholar of wrongful convictions. I have no doubt, my friend, the late Karen Daniel, co-founder of the former Center on Wrongful Convictions Women's Project at Northwestern University, School of Law, would be smiling from ear to ear reading Campbell's depiction of how female exonerees' cases are unique from male exonerees. Critical to an attorney fighting a wrongful conviction is that women's cases are different – often women are wrongfully convicted of cases in which no actual crime occurred – a natural death mistaken for a homicide, an accidental fire mistaken for an arson, sexual abuse allegations based on false memories, etc. Though the authors' interview female exoneree data are more limited, particularly for women of color exonerees (n=1), the data are meaningful.

A growing area of wrongful conviction research recognizes the enormous toll that wrongful convictions take on exonerees' families – their parents, children, siblings, etc. Relatedly, at the annual Innocence Network conference, my friend and exoneree extraordinaire, Kristine Bunch has aided in creating workshops for family members' of exonerees to discuss the intergenerational impacts of wrongful conviction and how to re-build relationships. Pate does justice to these family members in Chapter 7, when thoughtfully detailing the many examples of psychological harm, financial hardship, familial strain, and more that these loved ones experience as a result of their family members' wrongful conviction.

Pate continues her elegant story-telling of victims' lived experiences in Chapter 8 when she details the agonizing experience an original crime victim may go through when learning that the convicted defendant of the crime is actually innocent. Pate captures the re-victimization that victims may experience during the exoneration process, especially as a result of public scrutiny. The chapter is appropriately thorough and thoughtful at each step.

Chapters 9 and 10, respectively, demonstrate how society is a victim to wrongful conviction (e.g., taxpayers' cost of compensation, illegitimacy of the legal system exposed) and

how exonerees are re-victimized upon release from prison by unjust policies and laws that do not benefit the innocent (e.g., a lack of employment and housing opportunities). In Chapter 10, Jackson shared one of the most illustrative examples of the unbelievable struggles exonerees face: A male exoneree did not tell his mom or children he was released from prison because he did not want to burden them to house him after his incarceration. Jackson makes clear that exonerees face a plethora of struggles far beyond those that are released upon a rightful incarceration.

The final chapter of the book ends with a hopeful reminder of how we can improve the criminal legal system. The authors claim that some promising policy changes have occurred, but at best, leave the reader with an unrealistic outlook. Put simply, many police lineups do not follow pristine conditions, not all police interviews and interrogations are recorded, and science is still lacking from several forensic science disciplines. Nonetheless, I still appreciate the authors' message of hope.

Ultimately, the authors provide a detailed account of the victimology of a wrongful conviction. Their qualitative data provide a richness and fullness to the lived experiences of exonerees and their family members, and I commend the authors on raising awareness of the experiences of Black male exonerees, women exonerees, and crime victims, all of which highlight the magnitude of victimization these individuals experience. For these reasons, while I recognize that the authors created the title of the book in the context of victimology research and terminology, I would have appreciated if the title focused more on humanizing exonerees by referring to them as innocent people rather than innocent inmates.

I also pose one more question for the authors, as well as others who read this book – do we think that exonerees' victimization experiences are more shared than different? Is the experience of a mother who was wrongfully convicted of killing their child unique from a Black man who was wrongfully convicted of raping a White woman? What if the exoneree was sentenced to death? What if the exoneree is a member of the LGBQT+ community or was a teenager when they were convicted? While I do not doubt the authors would recognize that the experiences of each exoneree may be unique, research suggests there is no single response to trauma or grief. Therefore, I caution those working with exonerees or proposing a victimology perspective to avoid assuming exonerees will experience a shared set of "psychological consequences." We must be mindful to prevent exonerees from experiencing further guilt, stigma, or shame as a result of not having had those "common" experiences or feelings that other exonerees did. After all, research reveals that myths about trauma can further harm victims (see Clancy, 2009).

Clancy, S. A. (2009). *The trauma myth: The truth about the sexual abuse of children – and its aftermath.* New York, NY: Basic Books.