

The Wrongful Convictions Reader

The Wrongful Convictions Reader

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To Noah and Reuben — may justice always guide you — and to all wrongfully convicted men and women, who have paid the price on our behalf.

— R.D.C.

To my wife Jenn for her light and love; to my students for their fire and tenacity; and to my clients for their brave and kind hearts. You have taught me how we each create our own freedom.

— V.E.B.

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Preface

This volume is intended primarily as a teaching tool for law students, undergraduate and graduate students, lawyers, judges, and those interested in educating themselves (or teaching others) about the current state of knowledge regarding wrongful convictions. This includes what we do and do not know about their prevalence, what causes them to occur, what might be done to limit their number, and how we should think about balancing the costs of preventing them with the costs of maintaining an effective criminal justice system.

The book represents some of the most important work in the field of wrongful convictions studies of the past three decades. Contributions were selected not only to inform readers about the current state-of-the-art, but also to give readers a sense of the historical progress of innocence scholarship and the innocence movement, and to expose readers to the sometimes heated debates that were its byproduct. Participants in those debates include countless scholars and researchers, reporters, prosecutors, forensic scientists, advocates for the innocent, judges, and Supreme Court justices. We are deeply grateful for the willingness of the numerous contributing authors, journals, and news media to allow us to collect and publish their path-breaking work in this volume. Needless to say, this is but the tip of a large and ever-growing iceberg of research, scholarship, adjudication, and reporting dealing with the phenomena of wrongful convictions. A great amount of important work was necessarily omitted from this volume due to the inevitable space constraints.

Acknowledgments

We acknowledge with great appreciation the following authors, journals, magazines, newspapers, and publishers who have so graciously permitted us to reproduce excerpts of their work in this reader. Because this book is intended primarily as a teaching tool, citations and footnotes have in most cases been omitted for purposes of readability, and in some instances material has been reordered from the original. Textual alterations, omissions and deletions have been indicated. Those wishing to use these works for purposes of scholarship should consult the original sources.

Artist Dan Bolick painted and sketched exonerated men and women for his series, “Resurrected: The Innocence Portraits.” He graciously permitted us to use his portrait of John Thompson, or JT, for the cover of the *Reader*. John Thompson passed away on October 4, 2017; he had spent 18 years in prison for a crime he did not commit, 14 of those years on death row, before he was exonerated. He established Resurrection After Exoneration (RAE) as a home for new exonerees, called out widely for prosecutor reform, and his civil case resulted in one of the most infamous U.S. Supreme Court decisions on prosecutorial misconduct: *Connick v. Thompson*, 563 U.S. 51 (2011). Thank you to JT, and to all wrongfully convicted men and women, for their will to fight and their pursuit of justice.

Finally, special thanks go to Kelly Parker and Christopher Maidona, West Virginia University College of Law, Class of 2018, whose research and technical assistance were critical to completing this reader. We wish you the best in your careers.

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Introduction

This is a very smart book. It serves as the best introduction yet to the impact of the innocence movement and the systematic study of wrongful convictions.

When the Innocence Project began twenty-six years ago as a clinical program at the Benjamin N. Cardozo School of Law it featured a seminar on “Wrongful Convictions: Causes and Remedies,” as well as a docket of post-conviction cases involving clients from across the country trying to prove their innocence and vacate their convictions. From the beginning, the innocence movement was deliberately organized through law school programs, combining interdisciplinary scholarship with litigation strategies, an agenda of legislative reforms, and advocacy through the media. As I write this introduction, there is an Innocence Network that consists of 56 organizations within the United States, most of them affiliated with law schools, and 11 international organizations. There have been 358 post-conviction DNA exonerations (in 47% of those cases the person who committed the crime has been identified) and, according to the National Registry of Exonerations, 2,252 United States exonerations since 1989, involving DNA and non-DNA evidence.

The success of the innocence movement is always best understood through the experiences of the exonerees and their families, not just the good case law established in courts, the laws passed by legislatures, or the reforms implemented by criminal justice stakeholders. But the intellectual foundation of the enterprise, the unstinting struggle to understand in all its dimensions why the innocent are convicted and what can be done to prevent miscarriages of justice, is what generates energy, shapes the narrative, and assures long-term sustainability of what we believe is an international human rights movement. This book is a wonderful contribution to that effort.

Professors Covey and Beety make wise selections from a rich, interdisciplinary literature that demonstrate how dramatically the examination of wrongful convictions has influenced experimental psychology (excellent chapters on false confessions and eyewitness identification research) and forensic science (a chapter on reform efforts to bring sound scientific and statistical standards to the field as a whole and a chapter on exposés of “junk science” in the fields of arson investigation and the complex area of Shaken Baby Syndrome/Abusive Head Trauma). In Chapter 7 they astutely introduce the problem of prosecutorial misconduct from the perspective of cognitive bias and “tunnel vision,” an emphasis that avoids ad hominem attack and ineluctably points to ways criminal investigations can be improved. This sets the stage for subsequent chapters on “Police and Prosecutorial Misconduct,” “Informants and Snitches,” and “Incompetent Lawyering and the Tilted Playing Field” that pull no punches. The

overarching focus on a scientific approach to criminal justice reform, a core value of the innocence movement, continually invites the faculty and students to engage with controversial and potentially polarizing issues in a rigorous and objective fashion.

Accordingly, Covey and Beety include chapters on “The Innocence ‘Myth’ and the Costs of Preventing Wrongful Convictions,” and “Reconsidering Innocence: Rethinking Causes and Addressing Consequences,” that fairly and appropriately feature criticisms of the innocence movement and the dangers of focusing too much on wrongful convictions from prosecutors (Josh Marquis), capital lawyers (Carol and Jordan Steiker), public defenders (Abbe Smith and David Feige), and a long time leader of the movement (Daniel Medwed). They are equally careful at the beginning of the book to include readings that explore how “exoneration,” “innocence,” and “miscarriage of justice” have been defined over time in the literature (Chapter 2 “Defining Innocence and Miscarriages of Justice”) and to establish the limitations of what we know about the extent of wrongful convictions and what “causes” them (Chapter 3 “Overview of the Causes of Wrongful Convictions”).

The authors do not neglect the heartland issues for a traditional legal curriculum with thoughtful readings in Chapter 13 “Guilty Pleas, Pretrial Procedure, and Innocence,” excerpts from the key Supreme Court “innocence” cases in Chapter 14, and realistic assessments about the severe limitations created by the “harmless error” doctrine, the demands of “finality,” and the strictures of federal habeas law in Chapter 15, “Appellate and Post-Conviction Review of Innocence: An Assessment.” In Chapter 16, “Intersections: Race, Gender, Sexual Orientation and Innocence,” powerful readings are assembled addressing the most pressing issues of the day that ought to be part of every law school curriculum.

In short, this casebook lays out a stimulating course of study that ought to be exciting for students in many graduate schools to take, not just law students, and a pleasure to teach.

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