

# **The Wrongful Convictions Reader**



# The Wrongful Convictions Reader

SECOND EDITION

Edited by

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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

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Discussions about criminal justice and the criminal legal system now acknowledge that innocent people are sometimes convicted of serious crimes. Indeed, the celebratory media coverage surrounding Adnan Syed's release from a Maryland prison on September 19, 2022, after he spent 23 years behind bars for a crime prosecutors now acknowledge he did not commit, is a fitting symbol of the complex phenomena behind the ever-growing innocence movement. *Serial*, one of the most successful podcasts of all time, debuted with a deep dive into Adnan's case in its first season. That podcast raised serious questions about the reliability of Adnan's conviction and the quality of justice he received. Yet it took an additional eight years of litigation, and numerous twists and turns in filings and appeals, before prosecutors and courts finally acknowledged Adnan's innocence. Indeed, at the time of this writing, and even after prosecutors have dropped charges against Adnan, litigation remains ongoing.

Adnan Syed's case encapsulates many of the dynamics at play in wrongful convictions, including the enhanced risks that racial and ethnic minorities face in obtaining fair trials, the devastating effects of an ineffective defense lawyer, the problematic use of cooperating witnesses in building cases against defendants, and the powerful role that modern forensics play both in contributing to false convictions and in securing exonerations for a lucky few. With indications that police and prosecutors withheld critical evidence from defense lawyers in his case, Adnan's story provides yet another example of the all-too-common link between official misconduct and miscarriages of justice. In addition, the way in which the *Serial* podcast triggered a national obsession with the case and almost certainly was the but-for cause of Adnan's eventual exoneration illustrates the critical impact of public exposure to the stories of the wrongfully convicted. What happened in Adnan's case because of *Serial* has been replicated countless times through an explosion of other podcasts, Netflix series, documentary films, and news media stories telling similar stories.

The goal of this volume is to provide the legal, scientific, and policy context needed to understand these stories. Like the previous volume, this second edition of *The Wrongful Convictions Reader* is intended to serve 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, and ever-expanding, 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.

Wonderful research, scholarship and reporting continues to be done on wrongful convictions. The Reader represents only a selection of this vital work. We chose contributions that inform readers about the current state-of-the-art research, give readers a sense of the historical progress of innocence scholarship and the innocence movement, and expose readers to the sometimes-heated debates that have been 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

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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 Clyde Charles for the cover of the Second Edition of the *Reader*. Clyde Charles spent 18 years in Louisiana’s State Penitentiary at Angola for a crime he did not commit. As a Black man, he was sentenced to life in prison for the rape of a white woman. He only obtained his freedom in 1999 when DNA evidence proved he was not the culprit. Clyde passed away January 8, 2009; he was 55 years old. Thank you to Clyde, 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 the First Edition of the *Reader*. We are proud that you are now safeguarding justice with your law degrees.

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# Introduction

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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 12 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 additional 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 Chapters 16 and 18, powerful readings on the intersections of race, gender, sexual orientation, and disability 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.

Barry Scheck  
Co-Founder of the Innocence Project  
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