

Montclair State University  
**Montclair State University Digital Commons**

---

Department of Justice Studies Faculty Scholarship  
and Creative Works

Department of Justice Studies

---

Winter 2-26-2014

# Promoting the Study of Wrongful Convictions in Criminal Justice Curricula

Jessica S. Henry

Montclair State University, [henryj@montclair.edu](mailto:henryj@montclair.edu)

Follow this and additional works at: <https://digitalcommons.montclair.edu/justice-studies-facpubs>



Part of the [Constitutional Law Commons](#), [Courts Commons](#), [Criminal Law Commons](#), [Criminology and Criminal Justice Commons](#), [Jurisdiction Commons](#), [Law and Psychology Commons](#), [Psychology Commons](#), and the [Social Control, Law, Crime, and Deviance Commons](#)

---

## MSU Digital Commons Citation

Henry, Jessica S., "Promoting the Study of Wrongful Convictions in Criminal Justice Curricula" (2014). *Department of Justice Studies Faculty Scholarship and Creative Works*. 19.

<https://digitalcommons.montclair.edu/justice-studies-facpubs/19>

## Published Citation

Henry, Jessica S. "Promoting the Study of Wrongful Convictions in Criminal Justice Curricula." *Journal of Criminal Justice Education* 25, no. 2 (2014): 236-251.

*Promoting the Study of Wrongful Convictions in Criminal Justice Curricula*

Jessica S. Henry  
Montclair State University

ABSTRACT

Criminal justice education promotes interdisciplinary learning, critical thinking skills, and ethical decision making. A course on wrongful convictions falls squarely within that paradigm, as it draws upon criminology, criminal justice, law, psychology and forensic science to examine basic assumptions about the criminal justice system and the actors within it. In a wrongful convictions course, students learn to think critically about the criminal justice system, and what happens when it fails to function as it should. Students identify practice and policy reforms that improve the accuracy and reliability of the system.

This article first considers the broad objectives of criminal justice education. It next situates the subject of wrongful convictions squarely within criminal justice education curricula. Finally, this article provides a comprehensive overview of an effective undergraduate course in wrongful convictions. It sets out clear goals, learning units, and potential resources for members of the academy who might be interested in developing such a course.

*Key words: Wrongful convictions, innocence, criminal justice education, interdisciplinary education*

I. *Introduction*

In the first five months of 2013, 21 people were exonerated after serving prison sentences for crimes they did not commit. Some of these people, such as George Allen, Jr. and David Ranta, were incarcerated for *decades* before their innocence was established and their release secured. These exonerations represent the mere tip of the innocence iceberg. Since 1989, when DNA testing was first employed to establish innocence, there have been 1,133 *known* exonerations of men and women who were wrongly convicted (National Registry of Exonerations (“NRE”), June 4, 2013). This data represent only an unknown fraction of the innocent people wrongly caught in the net of our criminal justice system. Scholars, policy makers and practitioners alike are increasingly aware that wrongful convictions occur regularly, and far more frequently, than first imagined (Leo and Gould, 2009: 9).

. With the rise of reported exonerations comes the correlative rise in concern about wrongful convictions. Increased awareness about innocence has led to a virtual explosion of scholarly attention to the causes of, and responses to, wrongful convictions. Social scientists have begun to study the factors that contribute to miscarriages of justice, such as misidentification, police “tunnel vision,” coercive interrogation techniques, prosecutorial misconduct, bad forensic science, and poor defense lawyering. As the data demonstrate, wrongful convictions are rarely produced by one of these factors alone, but rather result from a constellation of these factors (Leo and Gould, 2009).

Wrongful convictions have had a dramatic impact. Exoneration cases fundamentally “have altered the ways judges, lawyers, legislators, the public and scholars perceive the criminal system’s accuracy” (Garret: 57). This, in turn, has decreased public confidence in the criminal

justice system as a whole (Gould, 2008). It has also lead to increased scrutiny about way in which the system can be improved.

For the criminal justice student, a course that examines wrongful convictions is a course that examines the inner-workings of the criminal justice system and the actors within it. It is, by definition, a course that looks carefully at what can occur when the criminal justice system does not work as it should – and what reforms to practices and policies can be implemented to improve its accuracy and reliability. This subject should be of utmost concern for the would-be practitioner and policy maker, as “there is no worse routine error in the American criminal justice system – that the criminal justice system itself causes – than the wrongful conviction of a factually innocent person” (Leo and Gould, 2009: 29).

This article first examines the purpose and function of criminal justice education, and situates the subject of wrongful convictions within criminal justice curricula. This article also provides a comprehensive overview of an effective undergraduate course in wrongful convictions. It sets out clear objectives, learning units, and potential resources for members of the academy who are interested in developing such a course.

## *II. Criminal Justice Education and the Study of Wrongful Convictions*

Criminal justice education has “come of age” (Clear, 2001; Frost and Clear, 2007). Criminal justice education promotes “an appreciation” for “the big picture” of “the social, political, legal, and moral contexts in which criminal justice occurs....[and where justice practitioners] fit in the social cosmos.” (Owen, Fradella, Burke and Joplin, 2006:6). It is “intended to inspire curiosity, and to cultivate and enhance a mental attitude or probing exploration.” (Finckenauer, 2005:415).

Dr. Timothy Flanagan identified several essential concerns of criminal justice education, including social control in society, the moral and ethical underpinnings of the law, the legal

foundations of the criminal justice system, the function of organizations and institutions, and the process of change at the individual, organization, institutional and community levels (Flanagan: 2000). As Flanagan envisioned, criminal justice education should foster students' critical thinking skills, and provide moral and ethical guidance to the would-be criminal justice practitioner. It should challenge students to engage in the study of empirical data, and consider opportunities for improvement, reform and best practices. And it should provide the skills required to solve problems in the realm of policy and practice.

A criminal justice education also should provide students with opportunities to “wrestle with important philosophical dimensions of human behavior” (Flanagan, 2000). Ideally, this engagement in ethical questions extends beyond the theoretical to the practical. This learning should be deeply interdisciplinary, and provide students with:

the foundations for developing a worldview – through their own critical analysis and dialogues – supported by a broad base of theory and knowledge. A true understanding of criminal justice draws upon a considerable body of through from a variety of fields. This includes, for instance, biology and chemistry, to analyze criminal evidence; literature to appreciate how crimes has been understood as part of the human condition; and sociology, to understand how social conditions contribute to crime.

(Owen and Burke, 2003).

A course on wrongful convictions falls squarely within these broad objectives. Students, already familiar with criminal justice institutions and functions, learn to wrestle with systemic and individualized failures of the system. They grapple with questions of ethics and morality in the context of real cases and real people. And they evaluate potential policy responses to complex system challenges.

The study of wrongful convictions is a powerful one. Students contemplate the darkest side of justice: what happens when actors and systems simply do not function the way that they should. This is not a theoretical problem. For every wrongful conviction that occurs, many lives are shattered: an individual person is ripped from his loved ones and placed in prison for years, while the actual perpetrator remains free, sometimes to commit more offenses. Yet, it is equally true that there are more “right” outcomes – correct and accurate acquittals and convictions—than erroneous ones. What are the factors that differentiate a correct outcome from a wrongful one? What are the causes that lead to that wrongful outcome, and what can be done to prevent them from occurring? Students are forced throughout the semester to challenge their assumptions about the ways in which the system functions, and to consider the ethical problems faced by practitioners on a daily basis. Students begin to envision their own potential approaches to the system, and how they might, both as individual actors and as system reformers, create or improve policies with an eye to reducing error.

*III. Developing a Wrongful Convictions Course: Objectives, Learning Units and Challenges*

An effective course about wrongful conviction draws upon legal, psychological, sociological, criminological and scientific literature. It integrates both social science and legal analysis, calling upon one to enrich and expand the other. It considers the scope and causes of wrongful convictions, the process of exonerations, and the legal, political and social responses to wrongful convictions. It provides students with significant opportunities for critical analysis and reflection, and encourages them to develop ideas for criminal justice reform. As such, it is envisioned as an upper-level elective for students who ideally have taken a cadre of core courses

including Introduction to Criminal Justice, Criminology, Research Methods, Statistics and Justice Theory.

*A. Learning Unit 1: The Scope of Wrongful Convictions*

At the very outset of the class, students are presented with data about the scope of wrongful convictions. There is no exact accounting of wrongful convictions, and various organizations provide widely divergent data. The Innocence Project counts DNA-exonerations only, and therefore its data, while instructive, are limited.<sup>1</sup> In contrast, the National Registry of Exonerations, founded in 2012 as a joint project between the University of Michigan School of Law and the Center on Wrongful Convictions at Northwestern School of Law, provides data about all *known* exonerations in the United States since 1989, including DNA exonerations. But while perhaps the NRE data is the most comprehensive data set to date, it does not include pre-1989 exonerations, and relies upon reports by innocence projects, practitioners, exonerees, and media outlets. An exoneration that occurs “under the radar” may not make its way into the NRE data. Further, and perhaps most significantly, there are no data about the number of wrongly convicted people whose factual innocence has yet to be uncovered. The result is that there is no accurate accounting of wrongful convictions, and no effective empirical metric by which to actually measure the scope of the problem (Gross and Shaffer, 2012:10-14; 91-101).

As a final point in the introductory unit, students are asked to consider the triggering event that sets into motion a wrongful conviction. Most students believe that the starting point of a wrongful conviction is the commission of a crime. But this is not always the case. Sometimes the erroneous labeling decision by the police or prosecution of an event as a crime is what

---

<sup>1</sup> Innocence data from the Innocence Project is skewed toward murder and rape cases because these cases often involve DNA evidence. This, in turn, may pose limitations about the information that can be extrapolated more broadly to wrongful convictions.



triggers a wrongful conviction. Innocent people have been convicted of murder, for instance, in so-called “shaken baby cases” where evidence later revealed that the infant died of natural causes or that the science surrounding the diagnosis was flawed. Innocent people have been convicted on murder in mislabeled suicides, or convicted of arson, and sometimes felony-murder involving arson, where the fire in fact was not deliberately set but rather was the result of natural causes.<sup>2</sup> Innocent people have even been wrongful convicted of crimes that never occurred but rather were pure fabrications (Gross and Shaffer, 2012:68-80).

*B. Learning Unit Two: Causes of Wrongful Convictions and Potential Reforms*

The second unit, causes of wrongful convictions and potential reforms, represents the majority of the course. This unit may be divided into six smaller sub-units: 1) eyewitness misidentification, 2) false confessions, 3) unreliable science, 4) official misconduct by the police, prosecution and other governmental agents, 5) informants, and 6) bad lawyering. These categories are somewhat fluid, and can be adapted as needed. Each sub-unit carries with it the opportunity to consider both causes of error and opportunities for policy reform. As detailed below, many of these units are deeply interdisciplinary. Eyewitness identification and false confessions, for instance, draw heavily from psychology, policing and law.

*i. Eyewitness identification*

Eyewitness identification can be a critical piece of evidence for the prosecution. Jurors find highly persuasive the dramatic testimony of a sworn witness, who points her finger at the defendant and declares: “*that* is the person who committed the crime.” Yet, eyewitness misidentification is the single most frequently occurring factor in wrongful convictions. This

---

<sup>2</sup> Todd Cameron Willingham, for instance, was convicted, sentenced to die and ultimately executed, for the arson-murder of his three children in Texas. It was later revealed that the forensic evidence used to label the fire as arson was severely flawed. Cameron never wavered from his plea of innocence (Gross and Shaffer, 2012: 72).

unit, therefore, enables students to deconstruct the factors that produce eyewitness misidentification.

Students are asked to consider the psychological literature about memory and its malleability. Eyewitness identification research demonstrates that an array of variables effect and dilute memory.<sup>3</sup> Students learn that suggestivity in the creation and implementation of identification procedures can irreparably influence and alter a witness's memory. In considering memory, students can better weigh the different types of police-sponsored identification procedures, such as show-ups, simultaneous line-ups and sequential line-ups. Students learn about system variables, which are factors within the criminal justice system that are known and can be controlled, and estimator variables which are situational, such as the time of day of the offense, the lighting, length of observation, weapon presence, races of victim and perpetrator. Students then are given the opportunity to consider ways to improve systems variables. They consider the most recent research relating to identification procedure, and learn about recommended best practices, many of which can lead to the reduction of misidentifications.

*ii. False Confessions*

Students insist that they would never falsely confess to a crime they did not commit. This is consistent with research which demonstrates that most members of the public do not believe that an innocent person would confess to a crime. And yet, false confessions occur frequently in wrongful convictions. In this unit of the class, students not only learn to question their own

---

<sup>3</sup> For an excellent overview of the psychological literature about identification, the variables that impact eyewitness memory, and recommended reforms to police identification procedures, see *New Jersey v. Henderson*, 208 N.J. 208, 27 A.3d 872 (N.J. 2011). The memoir, *Picking Cotton: Our Memoir of Injustice and Redemption*, by Jennifer Thompson-Cannino and Ronald Cotton, offers a compelling personal narrative about the process and impact of misidentification.

assumptions about false confessions, but learn about police practices and aspects of police culture that can lead to false confessions.

There are typically three stages of interrogation that lead to a false confession: misclassification, coercion and contamination. First, the police misclassify an innocent person as one who is guilty. This causes interviews and interrogations to be guided by the presumption of guilt. “Investigator response bias” causes investigators to disregard new or existing leads, evidence and theories of the case that point to other suspects. As such, they interrogate suspects to obtain information that confirms their theory of guilt, and disregard evidence that does not. Second, the police engage in the “coercion error.” Once detectives misclassify a suspect, they often subject him to an accusatorial interrogation, replete with various forms of psychological coercion. This is particularly effective when the police are dealing with a vulnerable suspect, such as people who are highly suggestible and compliant, or people who have cognitive impairments, juveniles and the mentally ill. Third, police “contaminate” a suspect’s narrative by suggesting facts or pressuring a suspect to accept a particular account. An innocent person does not have the capacity to provide genuine information about the offense because they were not present. The contamination error fills in the knowledge gaps and irreparably alters the final confession (Leo, 2009).

Even with this background, students often continue to be skeptical about false confessions. Several excellent documentaries help demonstrate that innocent people do, in fact, falsely confess to crimes that they did not commit.<sup>4</sup> One such film is *The Confessions (2010)*, a PBS-Frontline documentary, which depicts the true story of four U.S. Navy veterans who falsely confessed to participation in a murder/rape after being interrogated by a detective with a history

---

<sup>4</sup> Another film that captures the phenomenon of false confessions is *The Interrogation of Michael Crowe (2002)*, which depicts the persuaded false confession of a young teenager in the killing of his sister.

of eliciting false confessions. Based in large part on their confessions, the men were convicted and spent over a decade in prison for a crime they did not commit. Films such as *The Confessions* are pedagogically valuable because they provide students with a “real-life” illustration of a concept that is inherently difficult to grasp.

This unit is compelling for students. It gives them the opportunity to consider police interrogation practices from the vantage point of a suspect. It also gives them an opportunity to consider accepted interrogation techniques, and potential reforms to those techniques such as the recording of all interrogations, minimizing the length of interrogations, limiting or ending the use of trickery and deceit, and adding protections for vulnerable suspects.

*iii. Unreliable Science*

A third cause of wrongful convictions, faulty forensic science, provides another interdisciplinary opportunity to explore science and the role of the National Academy of Sciences in criminal justice, crime laboratories and forensic scientists. For students inspired by the television series “CSI: Crime Scene Investigation,” this unit provides a glimpse into the “real world” of forensic science, where labs in many jurisdiction are under-funded, under-staffed, or under-supervised.

Instructors may elect to utilize the National Academy of Science’s landmark report critiquing the validity of various forensic disciplines (National Academy of Science, 2009). This report methodically reviews the limitations of a wide range of forensic techniques from comparative lead bullet analysis, fingerprint comparisons, hair sampling and bite marks. It concludes that “[w]ith the exception of nuclear DNA analysis . . . no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” (National Academy of

Science, 2009:7). Students learn through case studies that defendants are nonetheless often convicted based on less than reliable forensic methods. Indeed, students learn that even the presence of DNA and DNA testing does not always ensure a correct outcome, as DNA evidence itself can be subject to potential contamination and scientific error.

Students also learn about forensic errors that occur through deliberate misconduct by rogue scientists who falsify, or literally invent, scientific data. Fred Zain, for instance, was a West Virginia State police forensic expert who falsified test results in as many as 134 cases, including murder and rape cases, and testified frequently about analyses that had never been performed and about data that did not exist. Joyce Gilchrist, in Oklahoma City, and Annie Dookhan, in Massachusetts, also prove disturbing narratives of forensic scientists who falsified data and testimony, leading to hundreds of wrongful convictions. These cases of fraud offer a platform from which students can examine the system's reliance on forensic evidence. They can also consider potential reforms for improving the accuracy, reliability and admissibility of scientific evidence at trial.

*iv. Governmental Misconduct*

Governmental misconduct in wrongful convictions focuses on the roles of the police and the prosecutor in wrongful convictions. For the criminal justice student, particularly those interested in law enforcement and prosecution, this unit is particularly troubling. It raises important questions about values and cultures that may emphasize solving crimes and securing convictions, over the pursuit of fairness and justice.

*a. Police Misconduct*

Police misconduct that results in a wrongful conviction may reflect a type of “noble cause corruption,” in which the police will do whatever it takes to get the bad guy off the streets—even

when they do not have reliable evidence to do so. Indeed, in the name of “justice,” police have ignored or altered evidence that does not fit their suspect, or even manufactured evidence that does. Students can consider the impact of “tunnel vision” in which the police zero in a suspect, and filter evidence in ways that support their version of the case while disregarding evidence which contradicts it. Students also can consider examples of sweeping police misconduct such as that found in Tulia Texas, in which an undercover officer manufactured evidence and then arrested 46 African Americans on various narcotics offenses, or the physical violence and torture employed by Detective John Burge and his officers against primarily African American suspects to secure false confessions in Chicago, Illinois. These make for provocative class study and discussion.

Further, for the student who seeks to enter law enforcement, this unit emphasizes the challenges and pressures faced by police to solve crime, particularly high profile crime. Students consider the harm that can occur when police officers follow their gut instincts in crime investigations, rather than the objective evidence. They are forced to reflect on the damage that can occur when improper identification techniques are employed. Or the fine line that police must walk in interrogating suspects without browbeating them into confessions that may not be accurate. Or the routine reliance on informants that are less than credible. In facing these questions, students are also required to reflect on the type of law enforcement official they themselves hope one day to be.

*b. Prosecutorial Misconduct*

Prosecutors wield tremendous discretion. They decide whether and which charges to bring against an individual defendant. They decide trial strategy. And they wield tremendous influence, if not control, over the plea-bargaining and sentencing processes. Yet, although the

prosecutor's job is to 'do justice,' they can also be intimately involved in miscarriages of justice. Indeed, prosecutorial misconduct has been cited as one of the most common factors that causes or contributes to wrongful convictions (Joy, 2006:403).

Prosecutorial misconduct can take many forms, such as tampering with, destroying, hiding or failing to disclose evidence; threatening, tampering with or badgering witnesses; using false or misleading evidence suborning perjury; displaying bias against the defendant or defense counsel, and improper conduct in the grand jury and the courtroom. In one case, for instance, a defendant was tried and convicted of a rape-murder. The prosecution relied in large part on circumstantial evidence relating to a pair of men's underwear, allegedly belonging to the defendant, which was stained with blood that matched the victim's blood type. It was later revealed that the blood stains were not blood at all but were paint, and that the prosecution knew this to be the case at the time of trial (*Miller v. Pate*, 1967). In another case, then-prosecutor (now Judge) Ken Anderson deliberately withheld significant exculpatory evidence-- and then lied to a judge about it -- in a murder-rape case that resulted in the wrongful conviction of Michael Morton, who served 25 years in prison for a crime he did not commit. Students are disturbed to learn that most prosecutors cannot be held liable for their wrongdoings – even when their deliberate misdeeds result in a wrongful conviction (*Connick v. Thompson*, 2011; *Imbler v. Pachtman*, 1976).

*c. Informants*

Informants are individuals who provide information to the police and prosecution in return for some form of benefit, typically in the form of favorable treatment for a pending criminal case or sentence, or in some instances in the form of a tangible reward such as money or property. Many informants are so desperate to obtain a benefit that they will say and do almost anything,

rendering their testimony often unreliable. Yet, police and prosecution often rely heavily on informant testimony at trial. This is so even where the informant's story strains credulity, and even in the absence of independent corroboration of the informant's story. A wrongful conviction may occur when the police and prosecutor look the other way at patent inconsistencies and incredible stories by informants in order to support their case against the person who they have decided is guilty of a crime.

v. *Bad Lawyering*

An additional unit considers the role of defense counsel in wrongful convictions. As then-Attorney General Janet Reno recognized: "In the end, a good lawyer is the best defense against wrongful convictions." Drawing on constitutional and decisional law, students learn that the right to counsel is explicitly guaranteed by the Sixth Amendment to the Constitution.

Undergraduate students learn about the landmark Supreme Court cases of *Powell v. Alabama* (1932) and *Gideon v. Wainwright* (1973), both of which establish the fundamental right to counsel and the guarantee that indigent defendants be provided with counsel if they cannot afford to pay for legal representation.

In this unit, students may first examine the way in which states meet their obligation to provide counsel to the poor, either through public defender offices, contract attorneys or appointed counsel. Students should consider the advantages and disadvantages of each model, and learn about the ways in which inadequately funded defense programs foster a system which is stacked against the poor defendant. Students, for instance, can compare budget allocations of prosecution offices to defense offices. Or they can engage in a comparative analysis, comparing, for instance, the per capita spending on defense services in England to that which is spent in the United States.



Students also evaluate systemic hurdles to the provision of quality indigent defense. Defense lawyers are often overworked and overburdened, with staggering caseloads. As a result, defense lawyers may fail to properly investigate a case, call key witnesses, or adequately prepare for trial. Furthermore, public defenders and court-appointed attorneys have limited or no access to forensic testing and expert witnesses. Finally, defense attorneys are not subject to mandatory standards, leaving defendants at the mercy of sometimes drunk, sleeping or otherwise incompetent lawyers. Through case studies, students can contrast the advisory guidelines promulgated by the American Bar Association and the National Criminal Defense Association with actual known cases of inadequate counsel that results in wrongful convictions.

### *C. Learning Unit III: Capital Punishment, Race and Wrongful Convictions*

The subject of wrongful convictions and capital punishment is extremely compelling. It can be argued that the greatest harm of a wrongful conviction is the execution of an innocent person. According to the Death Penalty Information Center (DPIC) there have been 142 people since 1973 who have been exonerated from death row (DPIC, 2013). DPIC also identifies *ten* cases since 1976 where defendant was executed despite compelling evidence of factual innocence (DPIC, 2013). Discussions of these cases, and the factors that lead to their execution despite evidence of innocence, provide a window with which to consider the impact of wrongful convictions at its most extreme. While an innocent person can be released from prison, an innocent person who is executed can never be revived. An error ending in a state-sponsored death is a tragedy that can never be remedied, reversed or rectified.

The impact of race in wrongful convictions can also be considered. In general, African Americans are over-represented among all defendants arrested and imprisoned for violent crime and drug crimes. It is perhaps not surprising then that, according to data from the NRE, African

Americans are also over-represented among people who have been exonerated. In 2008, for example, 38% of state and federal prisoners were black; but 50% of exonerees were black. The disparity is greater depending on the type of crime. According to the NRE data, in 2008, 43% of homicide prisoners were black, while only slightly fewer than 49% of homicide exonerees were black; for robbery, 52% of prisoners and 64% of exonerees were black. The greatest disparity exists in sexual assault cases. African Americans constitute 25% of prisoners incarcerated for rape, but 62% of those exonerated for such crimes (NRE, 2012:31-32). The latter data is startling, and is a stark reminder that racial considerations, some of which hearken back to the days of Jim Crow, continue to adversely influence all aspects of the criminal justice system.

*D. Learning Unit 4: Exoneration Processes, Compensation and Life After Exoneration*

In the final unit of the course, students have an opportunity to consider the role of the government and the courts in the exoneration process, and the after-effects of exoneration on individuals. This unit examines the challenges that exonerees face in the exoneration process, exoneration compensation schemes, and the obstacles to reentry.

*i. Access to DNA Evidence/Evidence Preservation/Habeas Limitations*

The path to exoneration is full of road blocks. One of those road blocks is the inability of convicted defendants to obtain access to DNA testing. DNA, where available, can confirm the identity of the crime's true perpetrator and exclude other potential suspects. Students incorrectly assume that if DNA evidence exists, it will be tested. The reality is far different. Although every state (with the exception of Oklahoma), now has some form of post-conviction DNA-access statute, laws significantly vary in scope and application (Innocence Project(a), 2013). Many defendants are unable to access the very evidence that could free them from their conviction. Alabama's post-conviction DNA access statute provides an example of the kinds of

legal limits faced by defendants (Ala.Code 1975 § 15-18-200). A defendant in Alabama is authorized by statute to have access to post-conviction DNA testing only in capital cases, only where no DNA testing was previously performed, and only if the request was made within one year after a defendant's conviction. In Alabama, then, *all* non-capital defendants do not have right of access to DNA or DNA testing. And even in capital cases, a defendant who may have had DNA evidence tested at the time of his conviction using less sophisticated methods than those available today, or who failed to request testing in a timely manner, does not have statutory access to evidence for retesting. Other states also impose limits based on the type of crime or the time, such as Kentucky which limits its statute to capital cases (Ky. Rev. Stat. § 422.285), or Kansas which limits its statutes to rape and murder convictions (Ks. Stat. § 21-2512.)

Beyond the various statutory limitations, the United States Supreme Court has ruled that a defendant does not have a constitutional right to post-conviction DNA-testing. In *District Attorney's Office v. Osborne* (2009), an Alaskan defendant was convicted of rape and requested post-conviction DNA testing of semen – testing for which the defendant was willing to pay. Alaskan prosecutors refused to provide access to the evidence. The defendant challenged this decision, arguing there is a constitutional right to access evidence which could establish his innocence. A divided Court rejected that claim.<sup>5</sup>

Even when defendants have the right to access DNA for testing, the DNA itself may be destroyed before testing can occur. While approximately half of all states statutorily require the automatic preservation of evidence upon a conviction, many of those statutes are limited in scope. Some state statutes restrict the length of time that states are required to retain evidence,

---

<sup>5</sup> Two years later, in *Skinner v. Switzer* (2011), the Supreme Court recognized that federal courts have jurisdiction to consider, under civil rights law, claims by a defendant incarcerated in state prison facility that his state's procedures for testing of biological evidence are flawed, which may permit defendants in extremely narrow circumstances to challenge the denial of access to DNA.

while others limit the crime categories for which evidence must be preserved. Some statutes are not retroactive, which may result in the destruction of old evidence that could be critical in resolving unsolved crimes or challenged convictions. Because of these restrictions, some defendants never have the opportunity to be exonerated by DNA evidence because that evidence was destroyed before testing could occur (Innocence Project(a), 2013).

Defendants claiming innocence also face significant procedural bars in gaining access to the judicial review of their claims. Defendants often must seek post-conviction relief through the filing of a petition for a writ of habeas corpus. A writ of habeas corpus, in its most simple terms, is a legal challenge in which a defendant argues that the state does not have lawful custody over his or her person. In 1996, Congress adopted the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which greatly restricts a defendant’s access to habeas relief by limiting the number of petitions that can be filed and providing a strict timeline in which to do so. Under AEDPA, convicted defendants have one year from “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence” to file a habeas claim. Defendants who sought to raise a claim of innocence outside the one-year statute of limitations were precluded from doing so. In 2013, however, the Supreme Court ruled that proof of actual innocence may provide a gateway around that one-year limitation (*McQuiggin v. Perkins*, 2013). Although the proof requirement of *Perkins* is quite high, this new decision may prove significant for innocent defendants who would otherwise have been procedurally barred from raising their claim in court.

ii. *Life After Exoneration and Compensation Statutes*

## WRONGFUL CONVICTIONS IN CRIMINAL JUSTICE CURRICULA

The trauma of a wrongful conviction does not end when the prison gates open and an exonerated person walks free. Once an innocent person gains his or her freedom from prison, he or she faces a new set of challenges. On average, exonerated individuals spend 13.5 years in prison before they are released. The exoneree face a whole host of practical, financial, emotional and psychological barriers to successful reentry to society. Upon release from prison, exonerees may literally have no money and no access to money, no housing and no means of transportation. Depending on the circumstances of their conviction and the length of their incarceration, exonerees may lack family ties, have limited or no employment prospects, and possess outdated work and social skills. Further, even though they have been officially cleared of wrongdoing, their convictions are often not erased from the system and may appear in background checks. In addition, after years in prison, exonerees may have significant health and psychological needs. After years in prison, exonerees may suffer from a wide-range of health issues, such as high blood pressure, heart disease and diabetes. Exonerees also have been reported to display symptoms of post-traumatic stress disorder, and to suffer from anger and depression. They may have become institutionalized after so many years of imprisonment, and have trouble making independent decisions. Ironically, inmates in prison receive medical care without charge, while exonerees upon release have no health insurance and often no access to medical treatment. Thus, chronic conditions and mental health issues may prove difficult to manage in the outside world (Innocence Project, 2010).

Yet, only some exonerees will ever receive compensation for their wrongful conviction. Exoneration compensations statutes only exist in the federal government, 28 states, and the District of Columbia. Exonerees convicted in states without compensation statutes are often left penniless or to fight for special legislation that would authorize a private monetary award.

Within the jurisdictions that provide for compensation, there are wide variations in eligibility and amounts awarded. Some statutes are quite narrow in scope and have a cap for compensation that is surprisingly low, while 22 states have no compensation statute at all. Moreover, in many jurisdictions, exonerees have to apply for compensation through what can be a complex and lengthy process. Conversely, there are states, such as Texas, which provides for significant monetary compensation, state health insurance, education and job training (Innocence Project(b), 2013).

#### *E. Instructor Challenges and Conclusions*

In teaching about wrongful conviction, instructors face a number of practical and pedagogical considerations. First, an updated textbook that is appropriate for undergraduate students does not currently exist. Among the books that can be utilized for are either Sandra D. Westerfeld & John A. Humphrey, *Wrongfully Convicted: Perspectives on Failed Justice* (2001) or Barry Scheck, Peter Newfeld & Jim Dwyer, *Actual Innocence: When Justice Goes Wrong and How to Make it Right* (2001). While both provide excellent overviews of the issues that arise in wrongful convictions, the books are well-over a decade old and need to be heavily supplemented to provide updated information and data.

Second, instructors must be willing to explore topics outside their traditional subject disciplines. Instructors must become conversant in a wide range of interdisciplinary subject areas, including policing and police techniques, prosecutorial practices, legal doctrine and case law, psychology, and forensic science. It is also a course that “comes to life” with the addition of current events and actual case studies. Because wrongful convictions are a burgeoning area of

study, the instructor will have to remain current on new research and data as they become available. Thus, a course on wrongful convictions requires considerable preparation.

Beyond the course content itself, faculty must be prepared to deal with shifting student perceptions about their course of study and their chosen professions. A class about wrongful convictions, by definition, focuses on the worst scenarios, the perfect storms where police or prosecutors abuse their power, scientists lie or make significant errors, informants commit perjury, and defense lawyers fail to do their jobs. It also focuses on the imbalance of power in the criminal justice system that so often impacts the poor and the disadvantaged. This can be disheartening to the student. It is therefore important to provide ample opportunity for students to process whether and how their views of the criminal justice have shifted, and what role they can play in addressing structural problems within and about the system.

### *Conclusion*

Students learn, often from an early age, that the American criminal justice system is a model for the rest of the world. Criminal justice education typically fosters that belief by fostering the principle that our system protects the innocent and convicts the guilty. Students are taught that the concepts of fairness, integrity and equity are built into the very fabric of our constitution: police searches must be reasonable, arrests must be based on probable cause, suspects must be afforded the rights to counsel, to remain silent and to the presumption of innocence, juries must be fair and impartial, and the prosecution must prove its case beyond a reasonable doubt. In theory, these protections should ensure that the innocent go free. In practice, as a course on wrongful convictions demonstrates, that system sometimes fails.

The idea of system failure is often new, and somewhat shocking, to the criminal justice student. It turns on its head the idea of justice by establishing that injustices can and do occur –

with greater frequency than ever before documented. Although the course may fundamentally alter students' perceptions about criminal justice, it can also inspire students to become more fair and impartial toward individuals accused of crime, less zealous about securing convictions no matter the cost, and more sensitive about issues of race and poverty. Scholars, in making a case for curricula revision in criminal justice education, suggested that “[e]ducating people to become practitioners in the field of criminal justice or to assist those who seek higher degrees is partially dependent on the curriculum they encounter” (Wang and Lumb, 2005). This is particularly true in the context of wrongful convictions, where students encounter the causes of error and, in so doing, gain insight into pathways for change.

Data support this conclusion. Scholars who studied undergraduate criminology students after they completed a wrongful convictions practicum reported that “a majority” of students believed wrongful conviction were “the most important issue in the criminal justice system” (Ricardelli, et. al. 2011-2012: 1458). Although these students indicated that “the existence of wrongful convictions was indicative of problems throughout the entire system,” they did not despair. Instead, students planned to integrate the knowledge they gained from the class into their future professional careers (Ricardelli, et. al. 2011-2012:1459).

A course on wrongful convictions can be inspirational to criminal justice students. It can help them develop professional identities as field practitioners, policy makers or academicians. Students learn to think critically, and from an interdisciplinary perspective, about justice and fairness, and to envision their role in the development of practices and policies that promote reliability and accuracy in the justice system. As such, a wrongful convictions course squarely falls within the paradigm of a model criminal justice education program and is a compelling addition to the criminal justice curriculum.



*References*

Clear, T. (2001). Has academic criminal justice come of age? *Justice Quarterly*, 18:709-26.

Death Penalty Information Center (2013). Innocence and the Death Penalty. Retrieved from <http://www.deathpenaltyinfo.org/innocence-and-death-penalty>

Finckenauer, J. (2005). The quest for quality in criminal justice education. *Justice Quarterly*. 22:413-26.

Flanagan, J. (2000). Liberal education and the criminal justice major. *Journal of Criminal Justice Education*, 11:1-13.

Frost, N. and Clear, T. (2007) Doctoral education in criminology and criminal justice. *Journal of Criminal Justice Education*, 18, 1.

Garret, B. (2008). Judging innocence. *Columbia Law Review*, 108:55.

Gould, J. (2008). *The Innocence Commission: Preventing Wrongful Convictions and Restoring the Criminal Justice System*. New York: New York University Press.

Gross, S. and Shaffer, M. (2012). *Exonerations in the United States: 1989-2012, a report by the National Registry of Exonerations*. Retrieved from [http://www.law.umich.edu/special/exoneration/Documents/exonerations\\_us\\_1989\\_2012\\_full\\_report.pdf](http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf)

Innocence Project (a) (2013). Access to DNA Testing. Retrieved from <http://www.innocenceproject.org/fix/DNA-Testing-Access.php>

## WRONGFUL CONVICTIONS IN CRIMINAL JUSTICE CURRICULA

Innocence Project (b) (2013). Compensations for the Wrongly Convicted. Retrieved from <http://www.innocenceproject.org/fix/Compensation.php>

Innocence Project (2010). Making Up For Lost Time: What the Wrongfully Convicted Ensure and How to Provide Fair Compensation. Retrieved from [http://www.innocenceproject.org/docs/Innocence\\_Project\\_Compensation\\_Report.pdf](http://www.innocenceproject.org/docs/Innocence_Project_Compensation_Report.pdf)

Joy, P. (2006). The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System. *Wisconsin Law Review*: 2006, 399.

Leo, R. and Gould, J. (2009). What criminal law and procedure can learn from criminology. Studying wrongful convictions: learning from social science. *Ohio State Journal of criminal Law*, 7:7.

Leo, R. (2009) False Confessions: Causes, Consequences and Implications. *Journal of the American Academy of Psychiatry and the Law*, 37:3:332-343.

National Registry of Exonerations (2013) Retrieved from <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>

National Academy of Sciences. (2009). Strengthening Forensic Science in the United States: A Path Forward. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>

Owen, S. and Burke, T. (2003). Criminal justice as a liberal arts discipline. *Liberal Arts Online*, February 21. Retrieved at [http://liberalarts.wabash.edu/cila/home.cfm?news\\_id=1416](http://liberalarts.wabash.edu/cila/home.cfm?news_id=1416)

Owen, S., Fradella, H., Burke T. & Joplin, J. (2006). Conceptualizing justice: revising the introductory criminal justice course. *Journal of Criminal Justice Education*, 17, 1.

## WRONGFUL CONVICTIONS IN CRIMINAL JUSTICE CURRICULA

Ricciardelli, R., Bell, J. & Clow, K. (2012). “Now I see it for what it really is”: the impact of participation in an innocence project practicum on criminology students.” *Albany Law Review*, 25: 1439.

Thompson-Cannino, J., Cotton, R. and Torneo, E. (2009). *Picking Cotton: our memoir about injustice and redemption*. St. Martin’s Press: New York.

Wang, Y. and Lumb, R. (2005). Future research in criminal justice higher education – a case study of curriculum renovation. *Future Research Quarterly*, 2, 5-12.

### Legal Citations

*Connick v. Thompson*, 131 S.Ct. 1350 (2011)

*District Attorney’s Office v. Osborne*, 129 S.Ct. 2308 (2009)

*Gideon v. Wainwright*, 372 U.S. 335 (1963).

*Imbler v. Pachtman*, 424 U.S. 409 (1976)

*Miller v. Pate*, 386 U.S. 1 (1967)

*McQuiggin v. Perkins*, No. 12-126, \_\_\_ U.S. \_\_\_ (2013)

*New Jersey v. Henderson*, 208 N.J. 208, 27 A.3d 872 (N.J. 2011)

*Skinner v. Switzer*, No. 09-900, 562 U.S. \_\_\_ (2011)

*Powell v. Alabama* 287 U.S. 45 (1932)