

# Public Policy Responses to Wrongful Convictions

**Frank R. Baumgartner**

Richard J. Richardson Distinguished Professor of Political Science  
University of North Carolina at Chapel Hill  
[Frankb@unc.edu](mailto:Frankb@unc.edu)

**Sandra D. Westervelt**

Associate Professor of Sociology  
University of North Carolina at Greensboro  
[sdwester@uncg.edu](mailto:sdwester@uncg.edu)

**Kimberly J. Cook**

Professor of Sociology and Criminology  
University of North Carolina at Wilmington  
[cookk@uncw.edu](mailto:cookk@uncw.edu)

## Abstract

The American public and officials throughout the political system recognize the problem of wrongful conviction. This collective “discovery of innocence” developed slowly in the 1980s through the efforts of university-based innocence projects which had two goals: Exonerate their clients and draw attention to errors in the judicial system and the need for reform. By the late-1990s, attention to innocence had exploded, and today that attention has transformed the public debate about the death penalty. While the death penalty debate has been greatly affected by the increased recognition of wrongful convictions, leading to a dramatic decline in the use of capital punishment, fewer reforms have taken place affecting the criminal justice system more broadly, and very few that might have the impact of improving the lives of those who have been wrongfully incarcerated. Attention to wrongful convictions has had a large public policy impact but, paradoxically, very little has been done by public authorities to compensate those whose lives have been most directly affected. This may be due to the priorities and limited resources of the non-profit organizations that seek to help the wrongfully convicted, but the main responsibility must lie with government officials, who remain largely skittish about helping those whom the system has failed.

For inclusion in *Examining Wrongful Convictions: Stepping Back, Moving Forward*, edited by Allison Redlich et al., Carolina Academic Publishing

Accepted version for copy editing, September 16, 2013

## **Introduction**

From the Salem Witch trials onwards, Americans have long experienced wrongful conviction. The Death Penalty Information Center (DPIC) lists 142 death row exonerations from 1973 through 2013, and the newly created National Registry of Exonerations enumerates 1,187 cases from 1989 through mid-2013 (not limited to inmates sentenced to death). Until recently, public concern with exonerations, like with the criminal justice system in general, could perhaps best be described as “out of sight, out of mind”—there was little concern about wrongful convictions and little recognition of related issues, and little desire to know more about this topic which, for most Americans, is personally irrelevant. This has changed dramatically. Beginning in the 1980s but rapidly expanding around the turn of the 21<sup>st</sup> century, recognition of the issues of innocence and wrongful conviction have become perhaps the dominant way of discussing the death penalty in America. The public understanding of capital punishment has been transformed, largely due to the public’s “discovery of innocence” (Baumgartner, DeBoef, & Boydston, 2008). Death sentences have declined, state legislatures across the country have restricted the use of capital punishment, and five states have abolished capital punishment through legislative action (New Jersey, 2007; New Mexico, 2009; Illinois, 2011; Connecticut, 2012; Maryland, 2013) while a sixth (New York, 2007) did so through judicial decision, a decision which was not later reversed by the elected leadership.

The discovery of innocence also has propelled criminal justice reforms aimed at reducing the likelihood of future wrongful convictions. Policy reforms regarding eyewitness identification, false and coerced confessions, evidence preservation, and forensic oversight are aimed at curbing wrongful convictions. While reforms in these areas are ongoing and uneven, concerns about convicting innocent people have inspired reforms within the criminal justice system.

While legislative and public policy reforms restricting the use of the death penalty have been dramatic and criminal justice reforms significant, reforms to aid exonerated former prisoners have been rare. Some states have adopted legislation allowing for compensation, but these often have provisions making actual awards surprisingly rare (see Norris, 2012 for a detailed review of the limited reach of state compensation policies). So we see a paradox. Exonerations have inspired a new public attitude towards the death penalty, because they demonstrate vividly that a human-designed institution cannot be free from error. Imposition of new death sentences has plummeted. Legislative reforms have consistently restricted the conditions for which the death penalty is applied, and have created more safeguards against wrongful conviction. On the other hand, support for the individuals exonerated has been woefully inadequate. Exonerees continue to benefit from even less support than those on parole or probation. Public officials, driven by fear of supporting individuals who may have prior criminal records or by pressure from prosecutors, oppose compensation and refuse to apologize to most exonerees. Members of the public wrongly assume that these individuals so grievously harmed by the justice system are automatically and substantially compensated.

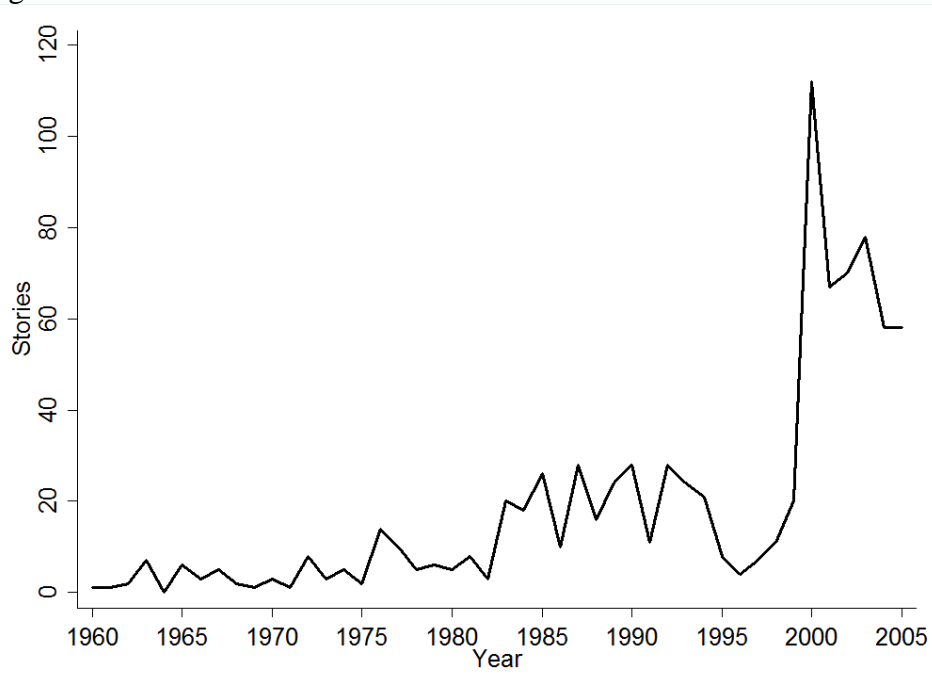
## **Stepping Back**

### ***Public Recognition of the Problem of Wrongful Conviction***

In *The Decline of the Death Penalty and the Discovery of Innocence*, Baumgartner and his coauthors (2008) review news coverage of capital punishment from 1960 through 2006. They use the phrase “discovery of innocence” in the title for two reasons. First, it is a strange “discovery” since it was simply to recognize something that so concerned the framers of the U.S. Constitution that they required careful due process to prevent convicting the innocent. But more importantly, Baumgartner et al. observe that this new “discovery” was the most important driver

in a historic shift in attitudes and public policies toward the death penalty. Figure 1 shows the rise in the number of *New York Times* stories on innocence, exonerations, DNA, and similar topics between 1960 and 2005.

Figure 1. *New York Times* stories on Innocence.



Source: adopted from Baumgartner et al. 2008, Figure 4.6.

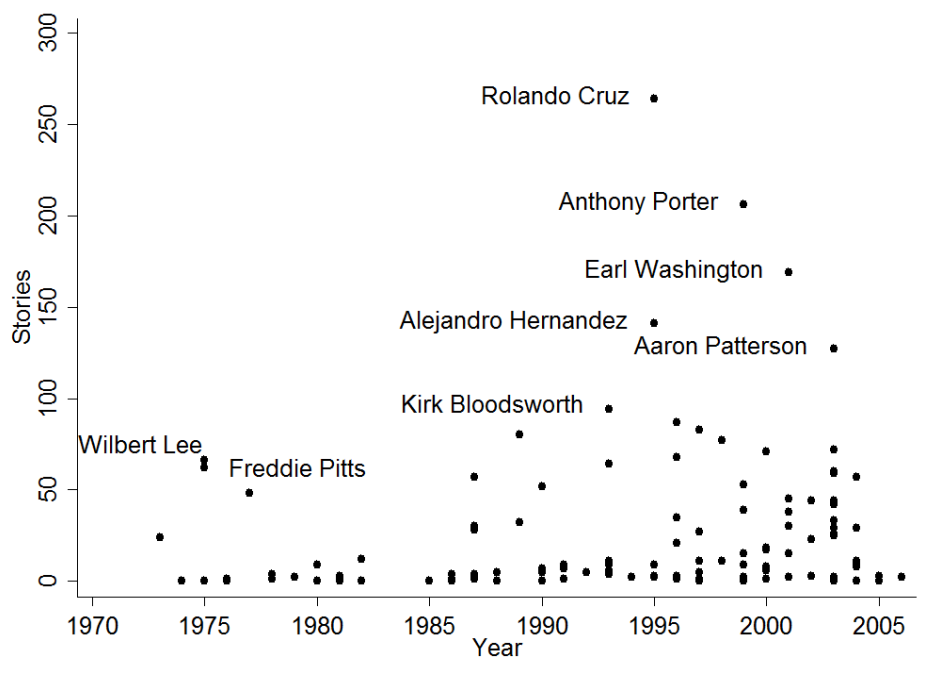
Of course, the number of individuals found factually innocent did not surge into the criminal justice system suddenly in the year 2000. Small but steady numbers of people had been exonerated consistently since the 1970s (Death Penalty Information Center, 2013). According to DPIC, the increase in attention to innocence at the turn of the 21<sup>st</sup> century is related to several factors. First is the creation of various centers and projects focusing on exonerating wrongfully convicted persons. Starting with Centurion Ministries in 1983 and then the Innocence Project in 1992, scores of university-based innocence projects across the country emerged, creating opportunities for law and journalism students to investigate local cases for wrongful convictions. High profile police brutality and forced confession cases drew attention. Northwestern University students uncovered a massive corruption scandal in the Chicago Police Department,

leading Illinois Governor George Ryan to empty the state's 167-person death row just before leaving office in 2003. As attention to such issues increased, more university-based clinics were created, more students got interested in them, more cases were investigated, and more exonerations occurred. Others, of course, have studied these trends, and the publication of some of these studies had a significant effect on the debate (see Bedau, 1987; Bedau & Radelet, 1987; Garland, 2010; Gross et al., 2005; Radelet, Bedau, & Putnam, 1994; Radelet & Borg, 2000; Scheck, Neufeld, & Dwyer, 2000; Warden & Radelet, 2008; Westervelt & Humphrey, 2001). Documenting innocence brought attention and these studies had scholarly, legal, and policy impacts. High profile cases, such as that of Kirk Bloodsworth, the first death row DNA exoneree, brought awareness of "exonerations" into the public and cultural consciousness. Following the OJ Simpson trial, popular TV shows focusing on forensic evidence, especially DNA and other factors, contributed to these trends.<sup>1</sup> This self-reinforcing process generated a national social cascade in which something that had always been there "suddenly" leaped to our collective consciousness. Figure 2 shows each of the 124 death row exonerations from 1973 through 2005 along with the amount of newspaper coverage generated by a Lexis-Nexis search on the name of the exonerated inmate.

---

<sup>1</sup> It is not our purpose here to provide a complex discussion explaining the reasons for the discovery of innocence. For our purposes, documenting its discovery is the primary concern.

Figure 2. Newspaper coverage of 124 death row exonerees, 1973 to 2005.



Source: adopted from Baumgartner et al., 2008, Figure 3.2.

Figure 2 makes clear that the same event—a death row exoneration—may or may not be newsworthy. Most of the exonérations listed generated no news coverage at all. However, several received substantial national attention, and the trend is strongly positive. Those exonerated after 1995 generated substantially more news coverage, on average, than before. Consequently, an event which was once considered “some inmate’s lucky day” with no broader social importance became an indicator of a broken system. Journalists found a story-line pre-formatted for publication: *The X<sup>th</sup> exoneration, the growing awareness of an imperfect system, the revelation of available yet overlooked, ignored, or suppressed exculpatory evidence.* Journalists referenced experts such as Richard Dieter from the Death Penalty Information Center or innocence project leaders to provide useful material for media coverage of their cases. The positive feedback process associated with the search and discovery of innocent inmates on death row transformed the debate and has put a new face, or number of faces, to the issue—that of Anthony Porter or Rolando Cruz (two Illinois exonerees), for example.

Personalizing the discussion of innocence has been fundamental to the shift in debate about the death penalty. In fact, Baumgartner and his colleagues (2008) found that newspaper coverage about the death penalty had shifted from a preoccupation with crime victims to a focus on the exonerated. From 1960 through 1993, 69 percent of the mentions of exonerees or victims focused on victims. From 1994 through 2005, it declined to 38 percent (see Baumgartner et al., 2008, figures 4.11 and 4.12). As the attention moved from the gruesome and heinous nature of the crimes to the possibility that errors had been made in the investigation and trial, exonerees were humanized, and doubts were raised. As more exonerations occurred, so too were more doubts raised in the next cases. These shifts have affected juries, public opinion, and policymakers. So far, however, they have not substantially and directly benefitted many of those who have suffered the most.

### ***The Public Policy Response to Innocence***

Baumgartner et al. (2008) use the “net tone” of media coverage of the death penalty to explain both the rise and the fall of death sentencing over the 1960 to 2006 period. As attention focused on morality or constitutionality arguments, or on simple explanations that the death penalty in fact was being expanded during the 1970s and 1980s, this pro-death penalty media coverage made the death penalty seem increasingly “normal,” resulting in greater public support for its use. When the tone shifted in the late 1990s, largely because of the rise of the innocence frame, public opinion and public policy both shifted in return. Here, we document these trends in a new way. The point is to show that attention to wrongful convictions has had a significant impact nationally, especially on public opinion about the death penalty. Unfortunately for those who were the victims of wrongful incarceration, the benefits of this attention have been in the form of diffuse policy reforms restricting or eliminating the death penalty or increasing

safeguards against future wrongful convictions. We have yet to see substantial policy efforts to address the consequences that wrongful convictions have for those most directly affected—exonerees, their families and wider networks—what Westervelt and Cook (2012b) call the “aftermath” of a wrongful conviction.

Figure 3 shows the number of exonerations listed in the National Registry of Exonerations (2013), a project of the University of Michigan Law School and Center on Wrongful Convictions of Northwestern University School of Law which lists every exoneration known in the US since 1989.

Figure 3. Exonerations over time.

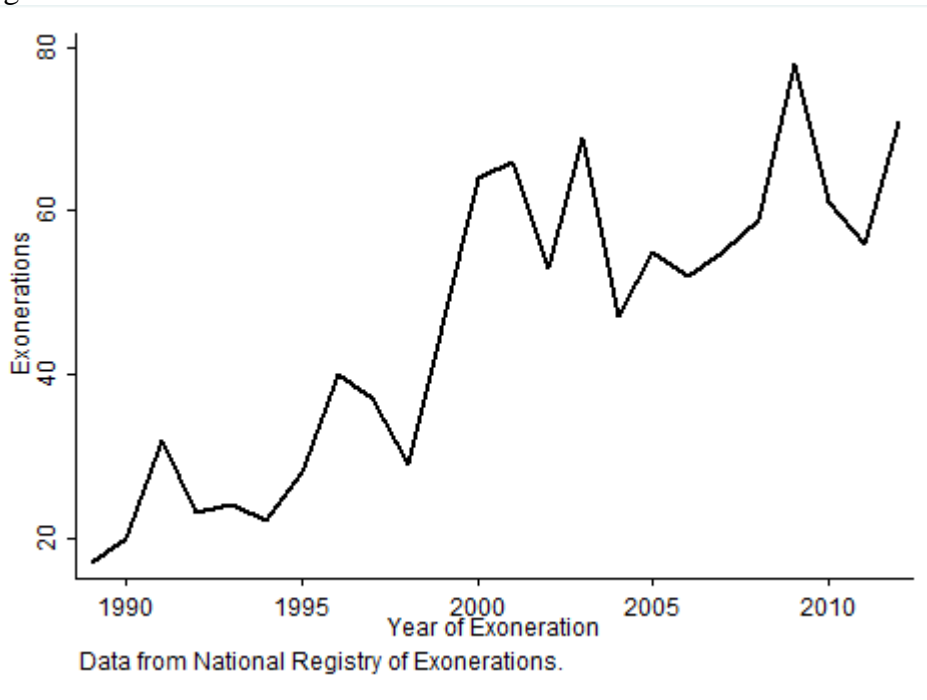
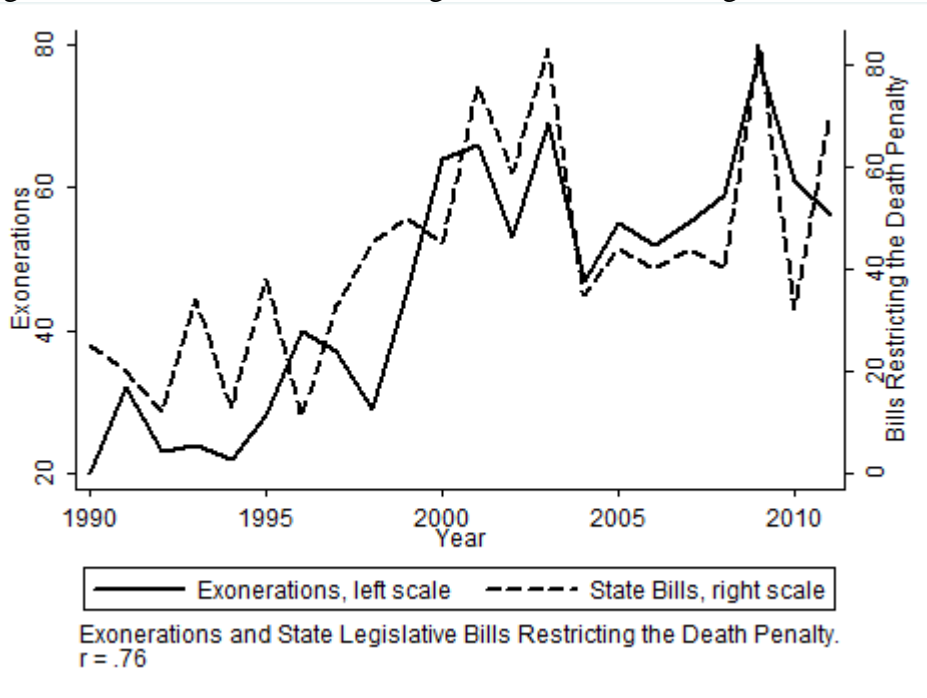


Figure 3 makes clear a substantial surge in exonerations in the late-1990s, moving from an average of about 30 per year before 1998 to one of about 60 per year after 2000. At about this same time, state legislatures “discovered” innocence as well. Figure 4 shows the correspondence between the exoneration data and the number of state legislative bills introduced to restrict or eliminate the use of the death penalty over the same time period. The number of bills passed,



and their effectiveness, is of course a different matter. But the figure shows a strong correspondence between the legislative agendas in the states and the number of death-row exonerations.

Figure 4. Exonerations and state legislative bills restricting the use of the death penalty.



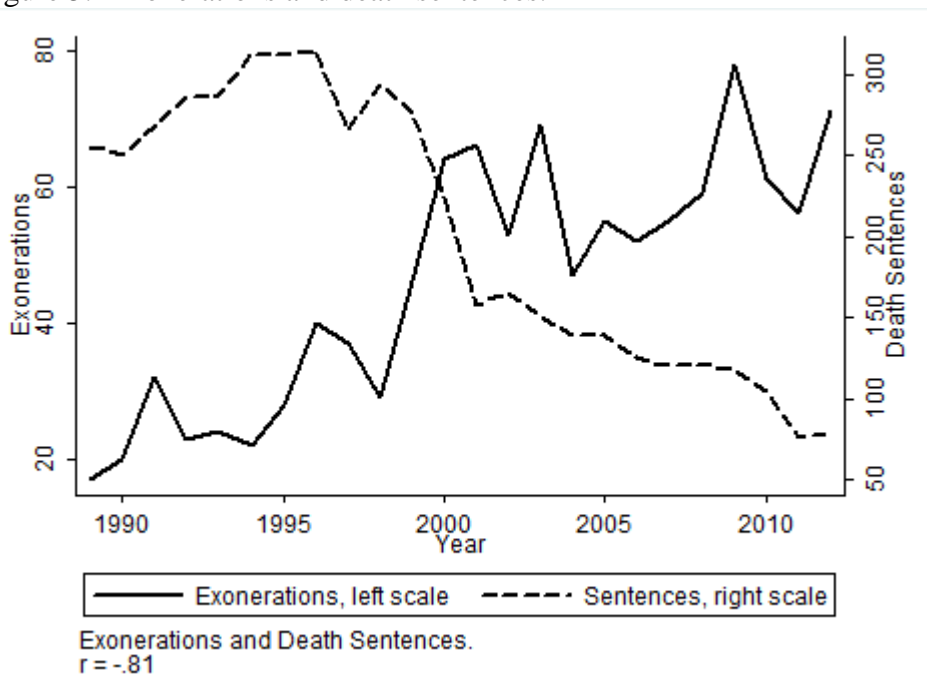
Note: Bills data come from Lexis-Nexis State Legislative Universe and were coded by Alex Loyal of UNC for restricting or expanding the use of the death penalty. The graph shows the total number of bills about the death penalty that restricted its use in any way.

The coding process began with a Lexis-Nexis search on all state legislative bills containing the words “death penalty” or “capital punishment” from 1990 through 2011, resulting in 1,223 pieces of legislation (Loyal, 2013). Each bill was coded for whether the proposed bill would expand or restrict the use of capital punishment. The analysis documents a dramatic shift in trends in the late-1990s away from a tendency to expand the use of capital punishment and toward new restrictions. Such restrictions include reducing the number of crimes eligible for death; reducing the number of aggravating factors; increasing the number of mitigating factors; enhancing the resources available to defense attorneys; eliminating the death penalty altogether;

or any other reform that would have the impact of reducing, rather than expanding, the use of capital punishment. Loyal (2013) found few differences by geographic region; these trends affected the entire country at about the same time.<sup>2</sup>

Figure 4 makes clear the high correspondence between exonerations and proposed legislative reforms. Figure 5 shows a similar pattern, looking at the number of death sentences imposed across the country over the same period.

Figure 5. Exonerations and death sentences.



Sources: Exonerations: National Registry of Exonerations. Death Sentences: DPIC.

Nationally, death sentences were being imposed at the rate of about 287 per year from 1990 through 1999 but declined to fewer than 100 by 2010. The number of executions, of course, is far lower: After a peak of 98 executions in 1999, the number fell to less than half (43) of that in 2012. In any case, Figure 5 clearly shows that as exonerations increase, death sentences

<sup>2</sup> As innocence drove much of the growth in restrictive legislation, significant numbers of bills focused specifically on eliminating wrongful convictions mandating greater resources for defense attorneys, restricting certain prosecutorial practices, and so on. Very few of these bills, however, focused on providing resources to individual exonerees. See Norris (2012) for a detailed study of compensation policies across the states.

decline dramatically. Both time series analyses document a dramatic shift in public policy around the turn of the century, exactly the time when we see a surge in exonerations. Baumgartner et al. (2008) also identify the period around 1998–2000 as a key moment in the discovery of innocence, such that increased attention to the wrongfully convicted has changed the national debate surrounding capital punishment.

This connection between the discovery of innocence and decreased support for capital punishment is supported as well by public opinion polls. These polls show that concerns about wrongful convictions have contributed to reducing popular support for the death penalty. Public support for the death penalty peaked at 80% approval in 1994 (Cook, 1998), prior to the “discovery” of innocence. More recently, a CNN/ORC (2011) poll showed that 72% of respondents believed that “a person has been executed under the death penalty who was, in fact, innocent of the crime” in the preceding five years. A Pew Research Center (2012) poll found that 54% of respondents opposed the death penalty either for moral reasons (27%) or for “concerns about flaws in the system and the possibility that innocent people could be put to death” (27%).

North Carolina serves as a good microcosm of the national debate surrounding issues of innocence, the death penalty, and criminal justice reform. In the past, North Carolina has been one of the most enthusiastic users of the death penalty. In response to the U.S. Supreme Court’s mandate in *Furman v. Georgia* (1972) that states move away from potentially biased forms of prosecutorial discretion, the state simply adopted a mandatory death sentence for all those charged with eligible homicide. More recently though, the state has enacted a series of reforms that have steadily restricted the use of capital punishment. As in other states, this has been due in large part to high-profile media coverage of local cases of wrongful convictions. Table 1 lists North Carolina exonerations in recent years.

Table 1. North Carolina Exonerations

Exoneree	Date	Exoneree	Date
Lesly Jean	1991	Jonathon Hoffman*	2007
Ronald Cotton	1995	Glen Edward Chapman*	2008
Robert Kelly	1997	Erick Daniels	2008
Kathryn Dawn Wilson	1997	Levon Junior Jones*	2008
Keith Brown	1999	Joseph Lamont Abbitt	2009
Alfred Rivera*	1999	Shawn Giovanni Massey	2010
Terence Garner	2002	Jonathan Scott Pierpoint	2010
Steve E. Snipes	2003	Gregory Taylor	2010
Leo Waters	2003	Kenneth Kagonyera	2011
Alan Gell*	2004	Robert Wilcoxson	2011
Darryl Hunt	2004	Willie Grimes	2012
Sylvester Smith	2004	Noe Moreno	2012
Dwayne Allen Dail	2007	LaMonte Armstrong	2013

Note: The cases come from the National Registry of Exonerations and do not include the death row cases of Charles Munsey (1996, posthumous), Samuel Poole (1974), or Christopher Spicer (1975). \* indicates a death row case.

Significant legislative attention followed from the cases of Ronald Cotton and Darryl Hunt, both African-American men wrongfully found guilty of rape (and murder in Hunt’s case) of white women. The death row exonerations of Alan Gell, Jonathon Hoffman, Glen “Ed” Chapman, and Levon “Bo” Jones, over four years, and all but Gell being African-American men, drew particular attention to the issue of racial bias contributing to wrongful convictions and death sentencing. In 2009, North Carolina passed the Racial Justice Act (RJA), which allowed the use of statistical evidence relating to the application of the death penalty. A photo of Darryl Hunt, Jonathon Hoffman, Ed Chapman, and Bo Jones lobbying for the law, and the personal appearances of many local exonerees, likely played a key role in developing support for the RJA (for background on trends in North Carolina, see Kotch & Mosteller, 2010; O’Brien & Gross, 2011).

A review of death penalty reforms in North Carolina makes clear the rapid developments leading to the reduction in its use:

- 1994: Life Without Parole adopted as an alternative punishment to death
- 2000: Creation of Indigent Defense Services, centralizing and professionalizing legal services for capital defendants state-wide
- 2001: Discretion given to prosecutors concerning whether to proceed capitally
- 2002: Elimination of capital punishment for the mentally retarded (pre-*Atkins*)
- 2002: Creation of the NC Commission on Actual Innocence
- 2003: Best practices adopted for eyewitness testimony, police line-up procedures
- 2006: De-facto moratorium on executions based on legal and medical concerns over lethal injection
- 2006: Creation of the NC Innocence Inquiry Commission
- 2009: Publication of a widely publicized study showing that the death penalty in North Carolina costs approximately \$11 million per year (Cook, 2009)
- 2009: Passage of Racial Justice Act
- 2010: Investigative series from the *Raleigh News and Observer* documents scandals affecting hundreds of cases in the State Bureau of Investigation

As a result of these reforms, capital trials in North Carolina decreased from about 60 per year before 2000 to fewer than 20; death sentences declined from over 20 per year to none in 2012; and executions have been on hold since 2006. These trends, while remarkable, are only somewhat stronger than similar trends in other states. (As readers may be aware, the newly-elected(?) Republican legislature in North Carolina repealed the Racial Justice Act in 2013; as these are pending legislative and judicial actions, it is unclear whether they will have the desired impact of reversing the recent anti-death penalty trends.)

There can be no doubt, whether we look nationally or focus our attention more specifically on a particular state, that exonerations, and more specifically public and media attention to them, have transformed the debate around capital punishment. So, it is fair to conclude that the public policy response to wrongful convictions, at least as regards the death penalty, has been substantial, relatively swift, and very progressive. Attention to the innocence issue also has affected policies governing criminal justice procedure, though the overall impact is not as pronounced as we see with capital punishment. But the criminal justice reforms created to

prevent future wrongful convictions are not to be overlooked and draw their breath directly from the discovery of innocence.

Increased attention to cases of innocence has led many to ask what can be done to ensure that wrongful convictions do not occur in the future. Several areas of criminal justice procedure have been subject to reform since attention to issues of innocence dramatically increased in the late 1990s (see Figure 1 earlier)—policies governing eyewitness identification and interrogation procedures, evidence preservation, and forensic oversight, to name of few.<sup>3</sup> According to data gathered by Norris, Bonventre, Redlich, and Acker (2010/2011) and the Innocence Project (2013), most reforms in these areas occurred after the rise in the innocence frame, and a review of the substance of these reforms reveals a concern for preventing future wrongful convictions.

For example, all of the thirteen states that have implemented eyewitness identification reforms have done so since 2001. Most incorporate new procedures advocated by the Innocence Project and recommended by researchers who have concerns over the role of misidentifications in producing wrongful convictions (e.g., Lindsay & Wells, 1985; Wells & Bradfield, 1998; Wells et al., 1998). Similarly, of the 21 states enacting reforms around police interrogations to reduce coerced confessions, 20 states passed the reforms after 2001, and many incorporate procedures advocated by the Innocence Project. Similarly, in states implementing reforms around evidence preservation and forensic oversight, most reforms were enacted after 2000 and follow Innocence Project recommendations. Thus, while not universal across the United States, many states have responded to the increased concern over innocence with attempts to improve criminal justice procedures and decrease wrongful convictions. While possibly not as substantive as the changes in death penalty policies noted earlier, these reforms are substantial, and the trajectory is for

---

<sup>3</sup> Other areas of reform aimed at preventing wrongful convictions include: DNA access laws, procedures governing informant use, and the establishment of innocence commissions (see Innocence Project website and Norris et al., 2010/2011).

these areas to continue to receive attention in those states that have not yet implemented new policies.

In spite of the significant impact on death penalty and criminal justice policies, the growth of the innocence frame has not had a similar impact on policies that directly affect exonerees after their release. They struggle to rebuild their lives, often without as much as an apology from the system that so grievously wronged them.

### **Moving Forward: Compensation, Reparation, and the Mythology of Exoneration**

Official policy reform to address the needs of exonerees is limited, restrictive, and inadequate. Exonerees receive little assistance with their reintegration needs. Some innocence projects, attorneys, and advocates assist exonerees in immediate post-release transition. A few non-profit organizations around the country do their best to assist exonerees and their families after release.<sup>4</sup> And some states have passed new compensation statutes to provide financial assistance to those wrongly convicted. However, in comparison to the magnitude of the policy shift in regards to the death penalty and criminal justice reform, policy reform aimed at assisting exonerees is more of a tiny tremor than a seismic shift.

Regarding aftermath assistance, a common misperception is that compensation is provided automatically by the state. States can provide three primary mechanisms for exonerees to pursue compensation: private bills, litigation, and compensation statutes (for more detailed consideration of the costs and benefits of each of these, see Bernhard 2004; Innocence Project 2009; Westervelt and Cook 2012a). Once initiated by the exoneree, the processes of pursuing litigation and private bills through state legislatures are typically costly, time-consuming, and rife

---

<sup>4</sup> In doing research for *Life after Death Row*, Westervelt and Cook (2012a) were able to locate 10 non-profit organizations dedicated, at least in part, to assisting exonerees post-release. See pp. 250-251 for more information.

with political difficulties, all hurdles that frustrate the average exoneree. For example, the Innocence Project (2009) reports that of their DNA exonerees, only 9% successfully secured compensation through a private bill and 28% through litigation, after several years of effort. As a result, these exonerees had no official assistance available to them in the immediate months and years after release. They had to depend on the ability of family/friends to assist with whatever serendipitous resources they could muster, and for extended periods of time, they went without health coverage, employment, housing, and dependable transportation. (It is worth noting that clients of the Innocence Project are better positioned to succeed with these measures than most exonerees due to additional support and credibility provided to Innocence Project clients.)

Given the problems associated with these two mechanisms, many advocates agree that compensation statutes hold the most promise for providing the wrongly convicted with meaningful, timely financial assistance. Before 2000, 12 states plus the District of Columbia had established some form of compensation for wrongful conviction or wrongful incarceration (Innocence Project; Norris, 2012). Since then, most have amended their earlier policies, and 17 more states have enacted compensation statutes (Innocence Project; Norris, 2012). By August 1, 2013, 29 states plus the District of Columbia had enacted compensation statutes for individuals wrongly convicted and exonerated. Certainly, this shift over only a 13-year period is significant, and is related to the increased awareness of wrongful convictions. Still, 21 other states have not enacted compensation statutes and thus provide no mechanism to exonerees to seek compensation post-release. Individuals who are exonerated in these states are simply arbitrarily



barred from statutory compensation based solely on location. A federal compensation mechanism may be helpful to address this gap in eligibility.<sup>5</sup>

Of course, the existence of compensation statutes does not mean that all exonerees in that state receive appropriate compensation automatically. In fact, in many states, it is likely that few who have been exonerated of crimes based on substantial evidence of factual innocence actually receive the compensation that appears to be promised to them by statute. For example, a recent overview of compensation provisions in North Carolina revealed that of those individuals exonerated prior to 2008, fewer than 40% had been compensated. In 2008, the compensation statute in North Carolina was amended to include more services and provide more compensation, making the North Carolina statute, on paper, quite progressive. However, since 2008, only 15% of North Carolina exonerees have received compensation under the newly amended statute (Westervelt & Cook, 2013). Among the eight death row exonerees in North Carolina, none have been compensated as a result of the compensation statute. Thus, it is important to remember that even though 29 states and Washington, DC have compensation statutes of some kind, this does not mean that exonerees are receiving the compensation, resulting in even fewer exonerees receiving assistance of any kind.

This gap between principle and practice typically results from an array of limitations and eligibility restrictions added onto compensation statutes. First, the request for compensation is triggered by the exoneree, who must work with an attorney to prove eligibility, thus placing the onus of responsibility on the exoneree him/herself to pursue this type of reparation. Second, the restrictions often attached to statutes, in some circumstances, could preclude almost any

---

<sup>5</sup> Another gap in eligibility concerns compensation for American citizens wrongly convicted of crimes outside of the United States. For instance, Jason Puracal is an American citizen who was wrongly convicted and incarcerated in Nicaragua (while working in the Peace Corps). After two years, he was exonerated, released and returned to the United States. He has no known options for pursuing compensation in Nicaragua, and no American authorities or resources seem available to assist him.

exoneree from receiving compensation. For example, North Carolina is one of only four states to require the exonerated individual to petition the Governor for a “pardon for innocence” (Norris, 2012). The exoneree must find the resources to hire an attorney to submit this complex paperwork on his/her behalf, unless lucky enough to have an advocate willing to work pro bono. Once submitted, the Governor re-reviews the case, although it has been thoroughly litigated in the courts, typically with more than one court noting evidence of factual innocence. The Governor can deny a petition without explanation, leaving the exoneree with no information with which to move forward with a reply or resubmission. Such a restriction on the provision of compensation makes a legal process an overtly political one and has resulted in few exonerees receiving compensation. Restrictions attached to compensation statutes in other states include denying compensation to any exoneree with a prior felony or subsequent felony conviction, to exonerees serving concurrent sentences, and to those said to have “contributed” to their own wrongful conviction (by way, say, of giving a false confession because of police brutality or coercion) (Norris, 2012). Other states have statutes of limitation in place that begin as soon as the exoneree is released and still others only provide compensation to DNA exonerees or to those wrongly convicted of certain crimes (Norris, 2012). So, again, while the number of states passing compensation statutes has certainly increased since 2000, this is not reason to believe that the number of exonerees actually receiving state-provided financial assistance has substantially increased.

As Westervelt and Cook (2012a) reveal in their examination of the reintegration experiences of eighteen death row exonerees, the difficulties facing exonerees when they are released are multi-dimensional and cannot be reduced to a monetary fix. This is not to say that the meaningful provision of compensation by the state to someone wrongly convicted is not

important. It is very important, but the assistance that exonerees need in rebuilding their lives cannot be boiled down only to compensation. They face difficult short-term problems, such as finding immediate housing and transportation, adjusting to life outside of prison, improving deteriorated job skills, getting reacquainted with family. And they face frustrating long-term problems, such as securing record expungement and employment, and locating physical and psychological healthcare. In many states, parolees, who often confront some of these same problems, are offered services to help them find housing, employment, and substance abuse treatment. But, the services offered to parolees are typically not available to exonerees. Only eleven states include any kind of social service provision for exonerees within their compensation statute, and again, there is no reason to assume that these are actually provided just because they are included in the policy. Only ten non-profit organizations exist to address the specifics of life after exoneration, and these are scattered rather randomly around the country. Again, whether an exoneree can receive assistance from such a group is arbitrary and depends on their location.

Therefore, we know that most individuals who are wrongly convicted in the United States receive very little, if any, assistance from the state, or any other type of organization, in rebuilding their lives once they are exonerated and released. The significant policy reforms that have occurred with the death penalty and with regard to criminal justice procedure as a result of the “discovery of innocence” have yet to translate into meaningful assistance programs for exonerees. Public policy in this area remains fairly undeveloped, or maybe more precisely underdeveloped, relative to the other two areas. We conclude this section with a few thoughts as to why this might be.

We argue that the limited public policy reform addressing “aftermath” results from widespread belief in three myths: the “myth of full compensation,” the “myth of actual guilt,” and the “myth of the complicit victim.” We wish we had a nickel for every time someone has said to us something like the following during a conversation about a wrongful conviction case, “It is terrible what happened to that person. I can’t imagine being convicted and put in prison for a crime I did not commit. But, at least we give them a lot of money when they get out to help them get back on their feet.” As should be clear from the preceding discussion, the reality is that most exonerees receive neither compensation nor assistance, and those few who do are not receiving lots of it (Innocence Project, 2009). However, the general public is only made aware of compensation issues when someone in their state or local area actually receives it, and more particularly receives a large amount by virtue of a generous compensation statute or winning a large lawsuit. Cases such as this typically make the news (see, for example, Elliott, 2003 on the \$5 million won by Alberto Ramos or Babwin, 2007 on the \$20 million won by four Illinois death row exonerees). Exonerees who receive no compensation or assistance do not receive any media attention. Consequently, the public image of exoneration is tilted towards those few cases that happen the most infrequently. But, because of this myth, policymakers and the public do not press for changes to compensation policies or provisions because they believe, mistakenly, that they are adequate and working well.

Furthermore, the general public also is led to believe in the “myth of actual guilt.” This myth often is generated and maintained publicly by the legal officials—police and prosecutors—responsible for the wrongful conviction. During the exoneration process, public statements by legal officials most typically maintain the exoneree’s guilt. Police and prosecutors state that, in spite of recently unearthed evidence to the contrary, they are confident in the factual guilt of the

exoneree and strenuously fight against the exoneration (Westervelt & Cook, 2010; 2012a; for a recent example in the case of Larry Lamb in North Carolina, see Mims, 2013). Because they refuse to take responsibility for mistakes that may have been made that led to the wrongful conviction, state officials rarely apologize to the exoneree (something that they often desperately want), leaving the public and community suspicious of their legal status. This resistance on the part of state officials only exacerbates the trauma exonerees experience (Westervelt & Cook, 2010).

Without a study of legal officials, it is difficult to know why they so often resist recognition of the factual innocence of exonerees. It could be that tunnel vision has led them to truly believe in the exoneree's guilt, and it is just too difficult to readjust the lens at this point in the case. It could be that public recognition exposes the state to liability which they want to avoid. It could be that knowing they participated in nearly taking someone's life, and stealing away years of someone's life, is just too psychologically troubling to accept. It could be all of these or none of these. But, their insistence on actual guilt, often in the face of overwhelming evidence to the contrary, leaves enough lingering doubt in the minds of the public and policymakers that they, in turn, are not anxious to enact policies that may, even on the outside chance, help someone who is actually guilty.

And, it is true that in some cases exonerees may be easy targets for belief in this myth because of prior experience in the criminal justice system. Many exonerees have had prior contact with police; some have actually committed crimes and served time in prison before their wrongful conviction. After all, among the people most likely to be seized upon by police after a serious crime has been committed are those already known to the police and the criminal justice system. Once details of the personal histories of some exonerees are exposed, the public and

policymakers may not be anxious to award compensation or assistance to them. In some cases, compensation and services may benefit what Schneider and Ingram (1993) call a “deviant population,” and we are not accustomed as a society to giving monetary awards and significant assistance to people with criminal records. The cases of those exonerees with prior records may be those made most visible to the public and those most protested by legal officials. In any case, the “myth of actual guilt” works against public policy reform in favor of exonerees.

Related to this idea is the third myth, the “myth of the complicit victim” where the victim is the wrongly convicted individual. Just as there may be resistance to giving assistance to someone with a criminal record, there may be resistance to giving assistance to someone who in some way contributed to their own victimization, someone who was complicit in their victimization. Some may believe that exonerees contributed to their wrongful conviction, perhaps by participating in other criminal activity, and they just got caught for the wrong thing: “if they didn’t do this, they probably did something else to deserve the punishment they got.” Or maybe they were in with the wrong crowd or had shady associates; or maybe they drank too much or did drugs and so were just “bad people” anyway. Whatever the specific justification, some people may believe that the exoneree deserved the punishment they got, just maybe not for the behavior they got it for. In this way, they are not true victims, and thus are not deserving of assistance or compensation. Some believe that they got themselves into the mess so they should be responsible for getting themselves out it.

On the one hand, the public has discovered the issue of innocence over the past twenty years, leading to support for reforms in criminal justice practice and a decline in support for the death penalty. On the other hand, it seems that the public has yet to understand and embrace the belief in the actual innocence of each exoneree in every case, especially when powerful voices

within the system appear to be saying the opposite. This lack of awareness and ambivalence over an actual person's innocence may explain the dearth of policy reform in the area of aftermath. With greater awareness and understanding, perhaps remedies (compensation, expungement, additional supports) will become more available (see Westervelt & Cook, 2012 for a discussion of these remedies; see also Cook, Westervelt, & Maruna, this volume).

## **Conclusion**

Increased public awareness of wrongful [capital] convictions has transformed the U.S. criminal justice system. The greatest impact has been in the realm of capital punishment where universal revulsion at the idea of executing an innocent person has transformed the terms of debate on an issue that was previously seen in terms of abstract morality. This has contributed to a reduction in use of the death penalty by over two-thirds; a reversal in the trend of increased use; abolition in several states; and a new political environment where being anti-death penalty is no longer seen as a death-knell for ambitious politicians of either party. This is a major accomplishment.

Public officials also have responded to the new politics of criminal justice based on the discovery of innocence by enacting reforms designed to prevent errors in the future. Many states have adopted new procedures to increase the accuracy of eyewitness identifications, reduce the possibility of coerced confessions, and ensure that evidence is adequately and accurately preserved. Paradoxically, the exonerees themselves have been left largely out of the picture. Reform advocates have, understandably, focused on those currently in prison, attempting to get them out. But those who work with exonerees know, as Westervelt and Cook (2012a) have recently documented, that these individuals have been traumatized by a system they may no longer be able to trust. They often re-enter society with few job skills, little education, and few resources to allow them to find a place to live, get a job, or acquire the skills they need to

succeed. Public officials are notably skittish about providing resources to anyone who may have other convictions. Judicial system actors may not like to draw attention to their own mistakes, or may believe the individuals are not “truly innocent” in spite of the state’s decision to drop all charges. So while members of the public are outraged at the possibility of error, so too do they assume that exonerees walk from prison into a jackpot of lucrative state support. Nothing could be further from the truth. In the end, wrongful convictions have led to massive reforms in some important areas of policy, but to precious few reforms that directly affect thousands of individuals so grievously wronged by errors in our system of justice.



## References

- Babwin, D. (2007). Chicago pays \$20M to settle lawsuits alleging police tortured death-row inmates. *Associated Press*, December 7.
- Baumgartner, F. R., De Boef, S. L., & Boydston A. E. (2008). *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge University Press.
- Bedau, H. A. (Ed.). (1987). *The Death Penalty in America: Current Controversies*. New York, N.Y.: Oxford University Press.
- Bedau, H. A. & Radelet, M. L. (1987). Miscarriages of justice in potentially capital cases. *Stanford Law Review*, 40(1), 21–179.
- Bernhard, A. (2004). Justice still fails: a review of recent efforts to compensate individuals who have been unjustly convicted and later exonerated. *Drake Law Review*, 52, 703-738.
- CNN/ORC Poll. (2011, Oct. 12). Retrieved from <http://www.deathpenaltyinfo.org/documents/re116j.pdf>
- Cook, K. J. (1998). *Divided Passions: Public Opinions on Abortion and the Death Penalty*. Boston, MA: Northeastern University Press.
- Cook, P. J. (2009). Potential savings from abolition of the death penalty in North Carolina. *American Law and Economics Review*, 11(2), 498-529.
- Death Penalty Information Center (DPIC). (2013). <http://www.deathpenaltyinfo.org/>.
- Elliott, A. (2003). City gives \$5 million to man wrongly imprisoned in child's rape. *New York Times*, December 16.
- Garland, D. (2010). *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Cambridge: Harvard University Press.

- Gross, S. R., Jacoby, K., Matheson, D. J., Montgomery, N., & Patil, P. (2005). Exonerations in the United States 1989 through 2003. *Journal of Criminal Law and Criminology*, 95(2), 523–560.
- Furman v. Georgia*, 408 U.S. 238, (1972).
- Innocence Project. (2009). Making up for lost time: what the wrongfully convicted endure 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).
- Innocence Project. (2013). <http://www.innocenceproject.org>.
- Kotch, S. & Mosteller, R. P. (2010). The Racial Justice Act and the long struggle with race and the death penalty in North Carolina. *UNC Law Review*, 88, 2031-2132.
- Lindsay, R.C.L., & Wells, G. (1985). Improving eyewitness identifications from lineups: simultaneous versus sequential lineup presentation. *Journal of Applied Psychology*, 70, 556-564.
- Loyal, A. D. (2013). The Decline of the Death Penalty as seen through a Legislative Perspective. Senior Thesis. Department of Political Science, University of North Carolina at Chapel Hill. Available at:  
[http://www.unc.edu/~fbaum/teaching/Misc/Loyal\\_Thesis\\_2013.pdf](http://www.unc.edu/~fbaum/teaching/Misc/Loyal_Thesis_2013.pdf).
- Mims, B. (2013). “Ex-prosecutor stands by murder conviction of exonerated man.” WRAL.com. Online at <http://www.wral.com/ex-prosecutor-stands-by-murder-conviction-of-exonerated-man/12781871/>. Posted August 15.
- National Registry of Exonerations. (2013).  
<http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

- Norris, R. J., Bonventre, C. L., Redlich, A. D., & Acker, J. A. (2010 / 2011). "Than that one innocent suffer": Evaluating state safeguards against wrongful convictions. *Albany Law Review*, 74(3), 1301-1364.
- Norris, R. J. (2012). Assessing compensation statutes for the wrongly convicted. *Criminal Justice Policy Review*, 23(3), 352-374.
- O'Brien, B. & Grosso, C. M. (2011). Confronting race: How a confluence of social movements convinced North Carolina to go where the McCleskey Court wouldn't. *Michigan State Law Review*, 2011, 463-504.
- Pew Research Center for the People and the Press. (2012, Jan. 6), *Continued majority support for the death penalty: More concern among opponents about wrongful convictions*. Retrieved from <http://www.people-press.org/2012/01/06/continued-majority-support-for-death-penalty/>
- Radelet, M. L., Bedau, H. A., & Putnam, C. (1994). *In Spite of Innocence*. Boston: Northeastern University Press.
- Radelet, M. L., & Borg, M. J. (2000). The changing nature of the death penalty debates. *Annual Review of Sociology*, 26, 43-61.
- Scheck, B., Neufeld, P. & Dwyer, J. (2000). *Actual Innocence: Five Days to Execution, and Other Dispatches from the Wrongly Convicted*. New York, N.Y.: Doubleday.
- Schneider, A. & Ingram, H. (1993). Social Construction of Target Populations: Implications for Politics and Policy. *American Political Science Review* 87 (2): 334-47.
- Warden, R., & Radelet, M. L. (2008). *Encyclopedia of Wrongful Convictions*. Evanston, Ill.: Northwestern University Press.

- Wells, G. & Bradfield, A. (1998). 'Good, you identified the suspect': Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology*, 83, 360-376.
- Wells, G., Small, M., Penrod, S., Malpass, R., Fulero, S. & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.
- Westervelt, S. D. & Cook, K. J. (2013). Policy implications of wrongful convictions and the impact on the accused. Presentation given at North Carolina Central University School of Law, Raleigh, NC. April 17.
- Westervelt, S. D. & Cook, K. J. 2012a. *Life After Death Row: Exonerees' Search for Community and Identity*. New Brunswick, NJ: Rutgers University Press.
- Westervelt, S. D. & Cook, K. J. (Eds.). (2012b). *Albany Law Review: Revealing the Impact & Aftermath of Miscarriages of Justice*, 73(3).
- Westervelt, S. D. & Cook, K. J. 2010. Framing innocents: the wrongly convicted as victims of state harm. *Crime, Law and Social Change* 53 (3): 259-275.
- Westervelt, S. D., & Humphrey, J. A. (Eds.). (2001). *Wrongly Convicted: Perspectives on Failed Justice*. New Brunswick, NJ: Rutgers University Press.