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RIGHTING THE WRONGFULLY CONVICTED: HOW KANSAS'S NEW EXONEREE COMPENSATION STATUTE SETS A STANDARD FOR THE UNITED STATES

SCOTT CONNOLLY[†]

INTRODUCTION

In the dark of night on July 29, 1989, Han Tak Lee¹ woke up to a choking smoke.² His severely mentally ill twenty-year-old daughter had recently been experiencing homicidal and suicidal ideation, and after a particularly traumatic episode, Lee took her to a cabin for a religious retreat in Pennsylvania at the recommendation of his pastor.³ Somehow, the cabin caught fire, and despite repeated attempts to rescue Lee's daughter from the flames, she did not escape.⁴ Lee was arrested a week later, convicted of first degree murder and arson on September 17, 1990, and sentenced to life in prison.⁵ He alleges that while serving his sentence he was sexually victimized by other inmates, discriminated against by prisoners and staff alike, and prevented from reading because Pennsylvania prisons do not provide reading

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¹ Chris Fuchs, *After 24 Years of Wrongful Imprisonment, Han Tak Lee Finally Has Some 'Fresh Air'*, NBC NEWS (Mar. 14, 2016, 4:29 PM), <https://www.nbcnews.com/news/asian-america/after-24-years-wrongful-imprisonment-han-tak-lee-finally-has-n537856>. Mr. Lee is a naturalized citizen from South Korea who moved to Queens, New York in 1978.

² *Id.*

³ *Id.*; Han Tak Lee v. Houtzdale SCI, 798 F.3d 159, 161 (3d Cir. 2015).

⁴ Fuchs, *supra* note 1.

⁵ Maurice Possley, *Han Tak Lee*, NAT'L REGISTRY OF EXONERATIONS (Dec. 28, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4820>.

materials in Korean.⁶ His conviction was later overturned because it had been based on unreliable and discredited fire science,⁷ and Lee was able to walk free.

At the time of his exoneration, Han Tak Lee had spent twenty-four years behind bars.⁸ During that time, his wife divorced him.⁹ As a man in his eighties, he stepped out into the world with little possibility for employment. He had lost his preconviction source of income: the store that he had established with money that he had earned from working odd jobs upon his arrival in the United States.¹⁰ After his release, Lee was able to pay bills with charity he received from a Korean-American support group and from his former church.¹¹ Eventually, those funds dried up, and Lee received rent vouchers provided by the New York City Human Resources Administration, but the sustainability of that income and his future financial security remain uncertain.¹² Pennsylvania has no wrongful conviction compensation statute, so the state that convicted him and took almost a quarter century of his life away, legally owes him nothing.¹³

Both Lee's financial woes and the hardships that he experienced while incarcerated are common among exonerees.¹⁴ Serving time in prison is difficult and often traumatic. Jails and prisons in the United States are notoriously brutal¹⁵—United States Supreme Court Justice Clarence Thomas has referred to

⁶ Fuchs, *supra* note 1.

⁷ Han Tak Lee v. Tennis, No. 4:08-CV-1972, 2014 WL 3894306, at *15–16 (M.D. Pa. June 13, 2014), *aff'd*, Lee v. Houtzdale SCI, 798 F.3d 159 (3d Cir. 2015); *see also* Possley, *supra* note 5 (describing the forty-six page affidavit from an arson expert determining that the evidence was “consistent with an accidental fire”).

⁸ Possley, *supra* note 5.

⁹ Fuchs, *supra* note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Compensation Statutes: A National Overview*, NAT'L REGISTRY OF EXONERATIONS 12, https://www.law.umich.edu/special/exoneration/Documents/CompensationByState_InnocenceProject.pdf (last updated May 21, 2018) (depicting a comprehensive chart of statutory compensation by state; however, Pennsylvania is noticeably absent).

¹⁴ *Infra* Part II.

¹⁵ Human Rights Watch has noted that the United States “criminal justice system . . . is plagued with injustices” and “[j]ail and prison conditions are in many respects unsafe and inhumane.” *Criminal Justice*, HUM. RIGHTS WATCH, <https://www.hrw.org/united-states/criminal-justice> (last visited Sept. 24, 2019).

prisons as “necessarily dangerous places.”¹⁶ As Lee’s account of his experiences demonstrates,¹⁷ part of that violence is sexual. Correctional law authority James E. Robertson describes sexual violence in prisons as “the most tolerated act of terrorism in the United States. As one inmate stated, ‘Sexual assaults . . . have become unspoken, de facto parts of court-imposed punishments.’”¹⁸ Prison rape “occurs with frightening regularity and brutality.”¹⁹ The general effects on mental health in jails and prisons can be devastating—the leading cause of death in jails since 2000 has been suicide.²⁰ More specifically, methods of punishment employed within jail and prison walls, such as solitary confinement, can have far-reaching and long lasting consequences on the human psyche.²¹

Beyond the terror of being helplessly locked in a prison, the very idea of false imprisonment is an affront to one of our society’s fundamental principles: the presumption of innocence.²² In our interpretation of life in this country, we expect—in fact, demand—fairness and justice, and the idea that one has been wrongfully convicted shakes our faith in the American way of life

¹⁶ *Farmer v. Brennan*, 511 U.S. 825, 858 (1994) (Thomas, J., concurring). Justice Thomas goes on to quote Seventh Circuit Judge Easterbrook’s opinion in *McGill v. Duckworth*, which suggests that prisoner-on-prisoner brutality and sexual aggression are inevitable unless all prisoners are sedated and sequestered away from one another. *Id.* at 858–59; see also *McGill v. Duckworth*, 944 F.2d 344, 348 (7th Cir. 1991), *aff’d*, *McGill v. Faulkner*, 18 F.3d 456 (7th Cir. 1994).

¹⁷ Fuchs, *supra* note 1.

¹⁸ James E. Robertson, *A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison*, 81 N.C. L. REV. 433, 436 (2003) (ellipses in original).

¹⁹ Richard D. Vetstein, Note, *Rape and AIDS in Prison: On a Collision Course to a New Death Penalty*, 30 SUFFOLK U. L. REV. 863, 868 (1997).

²⁰ Kyla Magun, Note, *A Changing Landscape for Pretrial Detainees? The Potential Impact of Kingsley v. Hendrickson on Jail-Suicide Litigation*, 116 COLUM. L. REV. 2059, 2060 (2016).

²¹ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL’Y 325, 333 (2006).

²² The presumption of innocence is inarguably a pillar of United States jurisprudence, established as “undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453 (1895).

to its very core.²³ Our court system, and the criminal law philosophy of much of the Western world, is founded upon the expectation that innocence will ultimately prevail.²⁴

Fortunately, the past quarter-century has seen an explosion of evidence-based exonerations and proven false confessions.²⁵ Technological and scientific breakthroughs like DNA testing, increased awareness of the efficacy of law enforcement tactics, and an increase in studies about the prevalence and causes of wrongful convictions have all revolutionized postconviction legal work and restored freedom to those who have been wrongly incarcerated. Two prominent cases that brought about mainstream awareness of wrongful convictions are those of the Central Park Five²⁶ and

²³ The philosophy that “it is better that ten guilty persons escape than that one innocent suffer” is known as Blackstone’s ratio. *Id.* at 456 (citation omitted). Blackstone’s ratio is so significant in the American philosophy of criminal law that Alexander Volokh’s article, n *Guilty Men*, not only documents the many times the essence of the phrase has been quoted by prominent legal scholars, it attempts, at length, to deduce the accurate number of individuals that would be the maximum allowed in exchange for the suffering of one innocent. *See generally* Alexander Volokh, n *Guilty Men*, 146 U. PA. L. REV. 173 (1997) (providing a more in depth discussion of Blackstone’s ratio within American criminal law).

²⁴ The United Nations codified the right to a presumption of innocence as a human right in Article 11 of the Universal Declaration of Human Rights. *See* G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 11 (Dec. 10, 1948). Despite the Supreme Court of the United States’s rejection of the Universal Declaration of Human Rights as a binding authority in *Sosa v. Alvarez-Machain*, Justice Souter does concede that the document has had significant impact on international law. 542 U.S. 692, 734–35 (2004); *see also* Hamish Stewart, *The Right To Be Presumed Innocent*, 8 CRIM. L. & PHIL. 407, 409 (2014) (taking a particularly interesting approach to the concept of a presumption of innocence, finding its roots in Kant’s philosophy).

²⁵ *Exonerations in 2017*, NAT’L REGISTRY OF EXONERATIONS (Mar. 14, 2018), <http://www.law.umich.edu/special/exoneration/Documents/ExonerationsIn2017.pdf> (noting that there have been 2,161 recorded exonerations between 1989 and 2017); *see also* Emily Barone, *The Wrongly Convicted: Why More Falsely Accused People are Being Exonerated Today than Ever Before*, TIME, <http://time.com/wrongly-convicted/> (last visited Sept. 24, 2019) (demonstrating that 47 wrongly convicted people were exonerated in 1996, while 166 were exonerated in 2016).

²⁶ Referred to as “one of the most widely publicized crimes of the 1980’s,” the Central Park Five case involved a jogger being violently accosted and sexually assaulted in Central Park in 1989. M.A. Farber, ‘Smart, Driven’ Woman Overcomes Reluctance, N.Y. TIMES (July 17, 1990), <https://www.nytimes.com/1990/07/17/nyregion/smart-driven-woman-overcomes-reluctance.html> [https://nyti.ms/29uLOx1]. Five young men of color were convicted. Sydney H. Schanberg, *A Journey Through the Tangled Case of the Central Park Jogger*, VILLAGE VOICE (Nov. 19, 2002), <https://www.villagevoice.com/2002/11/19/a-journey-through-the-tangled-case-of-the-central-park-jogger/>. This case saw an early analysis of DNA evidence, which the District Attorney’s office refused to reveal, as it was allegedly of “poor quality.” *Id.* The five men made false confessions and remained in prison until 2002, when another rapist named Matias Reyes confessed to the crime, which DNA evidence confirmed. Robert J. Norris & Allison D. Redlich, *Seeking Justice, Compromising*

the West Memphis Three.²⁷ These cases demonstrate the fact that even incredibly well publicized court proceedings are susceptible to flawed results and miscarriages of justice.

While there has been a significant increase in the number of exonerations, legislatures on both the state and federal levels have been slow to address the problems faced by exonerees. Almost thirty years after the first DNA exoneration,²⁸ seventeen states still do not have a law to provide compensation for the wrongfully convicted.²⁹ Further, many existing wrongful compensation laws are inadequate and insufficiently address the true scope of harm done by the imprisonment of innocent citizens. The destruction caused by wrongful convictions extends far beyond the walls of a prison, and our justice system must address the financial, emotional, familial, and professional damage imposed upon exonerated members of our community.³⁰

The state of Kansas, however, presents one striking example of legislation which provides a new, high standard of compensation for the wrongfully convicted through the passage of House Bill

Truth? Criminal Admissions and the Prisoner's Dilemma, 77 ALB. L. REV. 1005, 1006 (2014). It has been described as “an infamous stain on the fabric of American criminal justice, displaying the fragility and vulnerability of the system to error.” *Id.*

²⁷ The West Memphis Three, consisting of Damien Echols, Jessie Misskelley, and Jason Baldwin, are men from Arkansas who were accused and convicted as teenagers of murdering and mutilating three eight-year-old boys in 1993. Mara Leveritt, *Are “Voices for Justice” Heard?: A Star-Studded Rally on Behalf of the West Memphis Three Prompts the Delicate Question*, 33 U. ARK. LITTLE ROCK L. REV. 137, 139 (2011). The case attracted significant media attention and led to an HBO documentary series, *Paradise Lost*, as it was associated with “Satanic Panic”—a social phenomenon in which gruesome crimes were falsely attributed to Satanic rituals. *Id.* at 138; *see also* Hon. Dan Stidham et al., *Satanic Panic and Defending the West Memphis Three: How Cultural Differences Can Play a Major Role in Criminal Cases*, 42 U. MEMPHIS L. REV. 1061, 1065, 1083 (2012) (alluding to the fact that in Echols’s and Baldwin’s case, this was largely attributed to their interest in heavy metal music and the occult). Their cause was taken up by celebrities including Eddie Vedder of Pearl Jam, Natalie Maines, Patti Smith, and Johnny Depp. Leveritt, *supra*, at 137. The three accepted Alford pleas after DNA evidence raised significant doubt of their involvement in the killings. Stidham et al., *supra*, at 1099.

²⁸ Gary Dotson, sentenced to twenty-five to fifty years on aggravated kidnapping and rape convictions stemming from a 1977 incident, was exonerated in 1989 based on DNA evidence found from a semen sample. *Gary Dotson*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/gary-dotson/> (last visited Sept. 24, 2019) (serving over ten years in prison).

²⁹ *Let's Compensate the Innocent in All 50 States!*, INNOCENCE PROJECT, <https://www.innocenceproject.org/compensation-all-50-states/> (last visited Sept. 24, 2019).

³⁰ John Martinez, *Wrongful Convictions as Rightful Takings: Protecting “Liberty-Property”*, 59 HASTINGS L.J. 515, 516 (2008).

Number 2579 in May of 2018.³¹ This was a landmark development in the crusade to reform such laws nationwide. The statute addresses many of the issues exonerees face, including financial woes, difficulty reintegrating into society, lack of a support system, access to health care, and reputational ruin that one encounters upon release. Additionally, unlike some other laws that attempt to compensate the wrongly convicted, it does not contain legal loopholes³² that might deprive someone of compensation that he or she is due.

Part I of this Note will document the increasing prevalence of exonerations and provide a perspective on how significantly the landscape of postconviction justice has developed since the late 1980s. Such developments include DNA testing, greater awareness of false confessions, and a more thorough understanding of the unreliability of eyewitnesses. Part II will demonstrate the devastating impact that wrongful imprisonment has on exonerees. Finally, Part III of this Note will provide a snapshot of the current landscape of exoneree compensation laws. It will highlight the fact that many of the laws that exist do not provide sufficient resources and financial support for the postexoneration lives of the wrongfully convicted.³³ Ultimately, this Note will offer a suggestion for the implementation of a nationwide standard that adequately and comprehensively provides for the reintegration of the wrongfully convicted back into society.

I. CAUSES OF WRONGFUL IMPRISONMENT

Wrongful imprisonment is a significant problem plaguing the United States. Conservative figures estimate that between 46,000 and 230,000 innocent people are currently in prison.³⁴ Barry Scheck, founder of The Innocence Project, a wrongful conviction

³¹ H.B. 2579, 87th Leg., Reg. Sess. (Kan. 2018) The bill was enacted as Kan. Stat. Ann. § 60-5004 (2018).

³² See *infra* Section III.B.

³³ *Compensating the Wrongfully Convicted*, INNOCENCE PROJECT, <https://www.innocenceproject.org/compensating-wrongly-convicted/> (last visited Sept. 24, 2019).

³⁴ John Grisham, Opinion, *Eight Reasons for America's Shameful Number of Wrongful Convictions*, L.A. TIMES (Mar. 11, 2018, 5:15 AM), <https://www.latimes.com/opinion/op-ed/la-oe-grisham-wrongful-convictions-20180311-story.html>; see also Michele W. Berger, *Wrongful Convictions Reported for 6 Percent of Crimes*, PENN TODAY (May 8, 2018), <https://penntoday.upenn.edu/news/first-estimate-wrongful-convictions-general-prison-population> (documenting a study that estimates up to six percent of prisoners in Pennsylvania were wrongfully convicted).

advocacy group, has said that the introduction of DNA evidence into the United States justice system has exposed the fact that “there are more innocent people in jail than we ever thought,” without even accounting for the wrongful convictions that do not have the benefit of DNA evidence.³⁵ Wrongful convictions may be the natural byproduct of a justice system that is founded on a jury of one’s peers as the triers of fact, with the fallibility of human beings being an unfortunate inevitability. Or, perhaps the aggressive, adversarial nature of our approach to justice prioritizes definitive results over protection of the innocent.³⁶ While the actual scope of the issue of wrongful imprisonment is almost impossible to ascertain,³⁷ the New York State Bar Association considers the following factors to be primary causes of wrongful convictions: (1) errors by a government actor; (2) mishandling of forensic evidence; (3) use of false testimony from a jailhouse informant; (4) errors by the falsely accused’s attorney; (5) use of false confessions; and (6) misidentification of the accused by an eyewitness.³⁸ Certainly, each of these six root causes represents a tremendous failure of the justice system which must be addressed. For the purposes of this Note, two of these factors will be highlighted: false confessions and misidentification of the falsely accused.³⁹ The frequency and ease with which each of these errors occurs underscores how easily innocent people can be deprived of their freedom.

³⁵ *Interview with Barry Scheck*, FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/case/interviews/scheck.html> (last visited Sept. 24, 2019).

³⁶ Keith A. Findley, co-founder of the Wisconsin Innocence Project, argues that the entire adversarial system in the United States is incapable of ascertaining the truth while simultaneously protecting the innocent from wrongful convictions. See Keith A. Findley, *Adversarial Inquisitions: Rethinking the Search for the Truth*, 56 N.Y.L. SCH. L. REV. 911, 912 (2011–2012); see also Hon. Alex Kozinski, *Criminal Law 2.0*, Preface to 44 GEO. L.J. ANN. REV. CRIM. PROC. iii, xiii (2015) (offering a substantial list of reasons for concern regarding the integrity of the criminal justice system).

³⁷ Kozinski, *supra* note 36, at xv–xvi.

³⁸ *Final Report of the New York State Bar Association’s Task Force on Wrongful Convictions*, N.Y. ST. BAR ASS’N 1, 6 (Apr. 4, 2009), <https://www.nysba.org/wcreport/>. Use of false testimony from a jailhouse informant, or a “snitch[],” is a considerably problematic phenomenon, worthy of deep analysis. Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 GOLDEN GATE U. L. REV. 107, 107 (2006).

³⁹ While all of the failures of the justice system are worthy of study, a full inquiry into all of them is beyond the scope of this Note.

A. *False Confessions*

Historically, confessions have been considered reliable indicators of guilt.⁴⁰ Confessions are so persuasive, in fact, that they can “dominate all other case evidence and lead a trier of fact to convict the defendant.”⁴¹ This weight given to confessions makes the admission of a false or coerced confession an especially egregious miscarriage of justice.⁴² Unfortunately, false confessions are a regular occurrence. Steven A. Drizin, an expert authority in criminal law and specifically an expert in wrongful convictions, noted that as of 2004, twenty-five percent of those exonerated through use of DNA evidence had been wrongly convicted based on false confessions.⁴³ Richard Leo and Richard Ofshe, academics on wrongful convictions, stated that “[p]olice elicit false confessions so frequently that social science researchers, legal scholars, and journalists have discovered and documented numerous case examples in [the 1990s] alone.”⁴⁴ Given their persuasive power, it is essential to recognize the presence of false confessions in our justice system and to analyze their causes.

⁴⁰ See *Bruton v. United States*, 391 U.S. 123, 139 (1968) (White, J., dissenting) (“[T]he defendant’s own confession is probably the most probative and damaging evidence that can be admitted against him.”); see also Frances E. Chapman, *Coerced Internalized False Confessions and Police Interrogations: The Power of Coercion*, 37 L. & PSYCHOL. REV. 159, 162 (2013) (“A confession has long been held as the key in any case”); Laura Hoffman Roppé, Comment, *True Blue? Whether Police Should Be Allowed to Use Trickery and Deception to Extract Confessions*, 31 SAN DIEGO L. REV. 729, 730 (1994) (“Even when other evidence is available, a police officer will try vigorously to procure a confession for a variety of reasons: a confession is powerfully persuasive to a jury.”); Eugene R. Milhizer, *Rethinking Police Interrogation: Encouraging Reliable Confessions While Respecting Suspects’ Dignity*, 41 VAL. U. L. REV. 1, 7 (2006) (“Oftentimes a confession is the most compelling evidence of guilt presented to the fact-finder, and it has long been recognized that a voluntary confession is among the most powerful modes of proving guilt known in the law.”).

⁴¹ Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 429 (1998).

⁴² *Id.* (“A false confession is therefore an exceptionally dangerous piece of evidence to put before anyone adjudicating a case.”); see also *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (citation omitted) (“Triers of fact accord confessions such heavy weight in their determinations that the introduction of a confession makes the other aspects of a trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained.” (internal quotation marks omitted)).

⁴³ Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 905 (2004).

⁴⁴ Leo & Ofshe, *supra* note 41, at 430.

1. Causes of False Confessions

It is impossible to ignore the role that police work plays in the coercion of false confessions. One significant factor is police misconduct.⁴⁵ In some cases, police departments are so poisoned by corruption that their officers induce false confessions and then retaliate when the coerced nature of the confessions comes to light.⁴⁶ In other cases, knowingly illegal or inadmissible interrogation tactics are used to lead police in the direction of other helpful evidence.⁴⁷ Further adding to the potential for police misconduct in interrogations is that there is little delineation between what is considered merely hardnosed questioning and what crosses the line into the realm of improper coercion; it is entirely possible for a police officer to work within the parameters of what he or she believes to be honest, ethical police work and to unwittingly cross the line into coercion.⁴⁸

Not all issues pertaining to police interrogation involve incompetence or corruption. In fact, the very nature of police work is conducive to causing false confessions.⁴⁹ The intent to deceive is

⁴⁵ One of the most well-known cases involving false confessions, the case of the Norfolk Four, involved interrogation by a detective named Robert Glenn Ford, who is alleged to have told the suspects that they would die if they did not tell the truth and is further alleged to have denied at least one suspect the opportunity to speak to his attorney for eleven hours; Ford was later sentenced to twelve years in prison on unrelated misconduct charges. Priyanka Boghani, “Norfolk Four” Pardoned 20 Years After False Confessions, FRONTLINE (Mar. 22, 2017), <https://www.pbs.org/wgbh/frontline/article/norfolk-four-pardoned-20-years-after-false-confessions/>; see also Laurie Magid, *Deceptive Police Interrogation Practices: How Far is Too Far?*, 99 MICH. L. REV. 1168, 1168 (2001) (“Virtually all interrogations—or at least virtually all successful interrogations—involve some deception.”); George C. Thomas III, *Regulating Police Deception During Interrogation*, 39 TEX. TECH L. REV. 1293, 1294 (2007) (“In some cases, police trick or coerce a suspect into signing a false confession.”).

⁴⁶ Drizin & Leo, *supra* note 43, at 993–95. Drizin and Leo recount the stories of two individuals who suffered not only from being convicted on the basis of coerced confessions, but also had to take pleas to “hindering prosecution” and “obstructing justice” for their false confessions. *Id.*

⁴⁷ David A. Wollin, *Policing the Police: Should Miranda Violations Bear Fruit?*, 53 OHIO ST. L.J. 805, 845 (1992) (“Indeed, there are many reported cases where the police have arrested suspects and interrogated them without the *Miranda* warnings in order to discover the existence or location of nontestimonial evidence. This should not come as a surprise to those knowledgeable about police practices.”).

⁴⁸ Daniel W. Sasaki, Note, *Guarding the Guardians: Police Trickery and Confessions*, 40 STAN. L. REV. 1593, 1596–97 (1988) (“Courts and commentators discussing police trickery have not precisely defined the term.”).

⁴⁹ Chapman, *supra* note 40, at 162 (“Police are trained to elicit confessions, and this function is considered an integral part of police enforcement.”).

not necessary,⁵⁰ as legal guilt-presumptive interrogation creates an environment in which contamination can thrive. Police interrogators can, and often do, unintentionally contaminate confessions by providing suspects with nonpublic information that strongly indicates that a suspect has intimate and specific knowledge of a crime or of a crime scene.⁵¹

Further, there is extraordinary pressure on police departments to demonstrate efficacy and success in deterring crime by providing strong crime reduction statistics.⁵² The use of quantitative performance statistics as a measure of the quality of police work can adversely affect the evenhanded administration of justice. It creates an incentive to obtain arrests and convictions in pursuit of better statistics and opens the door for shoddy or even unethical policing and abuses of justice.⁵³ This approach may create pressure for police interrogators to pursue *any* confession, rather than the *right* confession.⁵⁴ Not only can this lead to unsavory police work, but it can also lead to the outright

⁵⁰ Richard Leo, a frequently cited and widely published authority on false confessions, has stated that “[m]ost of what police do in interrogations that lead to false confessions is legal.” Gretchen Gavett, *A Rare Look at the Police Tactics That Can Lead to False Confessions*, FRONTLINE (Dec. 9, 2011), <https://www.pbs.org/wgbh/frontline/article/a-rare-look-at-the-police-tactics-that-can-lead-to-false-confessions/>.

⁵¹ Richard A. Leo et al., *Promoting Accuracy in the Use of Confession Evidence: An Argument for Pretrial Reliability Assessments to Prevent Wrongful Convictions*, 85 TEMP. L. REV. 759, 767–69 (2013).

⁵² Chapman, *supra* note 40, at 164 (“[T]he number of confessions an officer obtains is linked to his or her interviewing competence.”); see also *Compstat: Its Origins, Evolution, and Future in Law Enforcement Agencies*, BUREAU OF JUST. ASSISTANCE & POLICE EXECUTIVE RES. F.1, 4 (2013), <https://www.bja.gov/publications/perf-compstat.pdf> (quoting an internal memo from the New York Police Department claiming that “[c]rime statistics have become the department’s bottom line, the best indicator of how police are doing precinct by precinct and nationwide”).

⁵³ “Police department activity quotas reduce police officer discretion and promote the use of enforcement activity for reasons outside of law enforcement’s legitimate goals.” Nathaniel Bronstein, *Police Management and Quotas: Governance in the Compstat Era*, 48 COLUM. J.L. & SOC. PROBS. 543, 543 (2015); see also Al Baker & Joseph Goldstein, *Police Tactic: Keeping Crime Reports Off the Books*, N.Y. TIMES (Dec. 30, 2011), <https://www.nytimes.com/2011/12/31/nyregion/nypd-leaves-offenses-unrecorded-to-keep-crime-rates-down.html> (discussing the failure of the New York Police Department to take reports on crimes with a low likelihood of being solved to maintain statistics indicating low crime rates); Joseph L. Giacalone & Alex S. Vitale, Opinion, *When Policing Stats Do More Harm than Good: Column*, USA TODAY (last updated Feb. 10, 2017, 8:34 PM), <https://www.usatoday.com/story/opinion/policing/spotlight/2017/02/09/compstat-computer-police-policing-the-usa-community/97568874>.

⁵⁴ Chapman, *supra* note 40, at 164.

manipulation of statistics for the purposes of reaching quotas or meeting public expectations.⁵⁵ In worst case scenarios, it might even lead to racial profiling and prejudice that contaminates police departments from top to bottom.⁵⁶

The improper training of police officers is another source of wrongful convictions. This is especially true in false confession cases.⁵⁷ One example is the use of the “Reid technique,” a controversial method of interrogation designed to create a high tension environment to induce confessions; over 150,000 officers have been trained in the method.⁵⁸ The essence of the approach is that, with proper training, an interrogator can detect subconscious behavior of a suspect that indicates guilt and then obtain a confession through psychological persuasion.⁵⁹ A nationwide survey of police executives indicated that “two-thirds of departments reported ‘most’ or ‘some’ of its officers had been trained in the ‘Reid method,’” with many believing that it is the most effective method of performing interrogations.⁶⁰ One study found that officers trained in the Reid method were significantly more likely to use manipulative tactics outside of the context of interrogation than those without such training.⁶¹ That same study revealed another problem: some officers received little or no interrogation training at all. Among those police officers observed in the study, ninety-one percent reported that their interrogation training occurred in an informal, “on the job” manner.⁶² The Reid approach has become so controversial that the influential police consulting group Wicklander-Zulawski & Associates has

⁵⁵ Chris Francescani, *NYPD Report Confirms Manipulation of Crime Stats*, REUTERS (Mar. 9, 2012, 3:25 PM), <https://www.reuters.com/article/us-crime-newyork-statistics/nypd-report-confirms-manipulation-of-crime-stats-idUSBRE82818620120309>.

⁵⁶ Charles Rabin et al., *The Chief Wanted Perfect Stats, So Cops Were Told to Pin Crimes on Black People, Probe Found*, MIAMI HERALD (last updated July 12, 2018, 11:00 PM), <https://www.miamiherald.com/news/local/crime/article213647764.html>.

⁵⁷ Leo & Ofshe, *supra* note 41, at 440.

⁵⁸ Saul M. Kassin, *Human Judges of Truth, Deception, and Credibility: Confident but Erroneous*, 23 CARDOZO L. REV. 809, 812 (2002).

⁵⁹ Jonathan Goodman, *Getting to the Truth: Analysis and Argument in Support of the Reid Technique of Interview and Interrogation*, 21 ME. B.J. 20, 20 (2006).

⁶⁰ Marvin Zalman & Brad W. Smith, *The Attitudes of Police Executives Toward Miranda and Interrogation Policies*, 97 J. CRIM. L. & CRIMINOLOGY 873, 920 (2007).

⁶¹ Hayley M.D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40 L. & HUM. BEHAV. 270, 270 (2016).

⁶² *Id.*

abandoned the method, reversing over thirty years of training practice, citing the potential for its confrontational style to elicit false confessions.⁶³

2. Who Would Confess to a Crime He or She Did Not Commit?

Presumably, an individual of sound, sober mind would not confess to a crime that he or she did not actually commit. As recently as the early twentieth century, the idea of a false confession was dismissed as a near impossibility.⁶⁴ This belief has been largely dispelled within the criminal justice community, thanks in no small part to a surge in such cases coming to light.⁶⁵ Complex psychological circumstances may lead to false confessions that are so convincing that they lead to conviction. These psychological elements, when paired with particularly aggressive or improper interrogation techniques, could blend untrue or nonpublic facts with actual reality in the mind of a suspect, resulting in a confession that is so specific it seems it must be true.⁶⁶ Contamination in the interrogation process may plant a seed that can lead to presumably ironclad confessional accounts.⁶⁷ False confessions in convictions that were later overturned can contain strikingly specific and accurate detail.⁶⁸ A study

⁶³ Eli Hager, *The Seismic Change in Police Interrogations*, MARSHALL PROJECT (Mar. 7, 2017, 10:00 PM), <https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations>.

⁶⁴ Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1052 (2010) (referencing the work of John Henry Wigmore in the 1920s that referred to false confessions as “scarcely conceivable” among other dismissive opinions).

⁶⁵ Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 L. & HUM. BEHAV. 381, 382 (2007) (discussing how “a steady stream of false confession stories emanating from New York, Los Angeles, Chicago, Miami, and other major United States cities are inundating newspapers and television news media on a regular basis”).

⁶⁶ Leo et al., *supra* note 51, at 766 (noting “[i]f police interrogators elicit a false confession from an innocent suspect whom they have contaminated, he will likely incorporate the contaminated information—sometimes referred to as ‘misleading specialized knowledge’—into his false postadmission narrative. The presence of these nonpublic crime details in the suspect’s postadmission account creates the illusion that his confession is thus corroborated and therefore verifiably true”).

⁶⁷ *Id.* (“The process of contamination during interrogation substantially increases the risk that a factually false confession will appear true and persuasive, and that as a result it will lead to a wrongful conviction.”).

⁶⁸ Laura H. Nirider et al., *Combating Contamination in Confession Cases*, 79 U. CHI. L. REV. 837, 846 (2012) (finding that “in thirty-eight of the forty false confessions” in a study “the confessions were detailed and often factually accurate descriptions of the criminal acts”).

conducted in 2015 found that not only can one coerce an innocent person into confessing to a crime, but also that doing so is not especially difficult.⁶⁹ The study involved an experiment on thirty college-aged individuals who were provided with details based on familiar knowledge—that is, known people or places—and, when subjected to certain interrogation techniques, seventy percent of the participants were convinced they had committed a crime during adolescence that had never actually happened.⁷⁰ Although it might seem counterintuitive and irrational, the idea that individuals confess to crimes they did not commit is not only possible, but unfortunately occurs more frequently than originally thought.

3. Reform

With the prevalence of false confessions more widely acknowledged, there have been proposals aimed at preventing false confessions from continuing to help convict innocent people. For example, one measure implemented in twenty-four states across the United States⁷¹ requires that interrogations be recorded.⁷² Saul Kassin argues that the presence of a camera not only makes detectives immediately more accountable for their actions and methods of questioning, but it also prevents them from engaging in especially aggressive behavior toward suspects.⁷³ Further, he suggests that taping all interrogations in their entirety would allow judges to consider the context of confessions and see if the conditions, process, and environment were indicative of coercion or impropriety.⁷⁴ Significantly, this would also reduce

⁶⁹ Robert Kolker, *Nothing but the Truth*, MARSHALL PROJECT, (May 24, 2016, 7:00 AM), <https://www.themarshallproject.org/2016/05/24/nothing-but-the-truth>.

⁷⁰ *Id.*

⁷¹ *False Confessions & Recording of Custodial Interrogations*, INNOCENCE PROJECT, <https://www.innocenceproject.org/false-confessions-recording-interrogations/> (last visited Sept. 24, 2019).

⁷² Seth Miller & Michelle Feldman, Opinion, *Preventing the Next Biscayne Park Scandal*, FLA. POLS. (Sept. 4, 2018), <http://floridapolitics.com/archives/273817-seth-miller-michelle-feldman-preventing-the-next-biscayne-park-scandal>; see also Saul Kassin, *False Confessions and the Jogger Case*, N.Y. TIMES, Nov. 1, 2002 at A31 (detailing the fact that the Central Park Five confessions occurred after the teenaged suspects had been interrogated on and off for up to thirty hours, the vast majority of that time being unrecorded).

⁷³ Evan Nesterak, *Coerced to Confess: The Psychology of False Confessions*, PSYCH REP. (Oct. 21, 2014), <http://thepsychreport.com/conversations/coerced-to-confess-the-psychology-of-false-confessions/>.

⁷⁴ *Id.*; see also Thomas, *supra* note 45, at 1296 (“In a world with a videotaping requirement, the courts would have indisputable evidence of what was said and by

the amount of time and effort police officers would have to spend defending their methodology and integrity.⁷⁵ Another reform that may reduce the amount of false confessions is the movement of the nation's largest police consulting firm away from the Reid technique.⁷⁶ Shane Sturman, the president and CEO of Wicklander-Zulawski & Associates, said, "Confrontation is not an effective way of getting truthful information."⁷⁷

Unfortunately, preventing future false confessions does not address the injustice faced by those already wrongfully convicted. Given the enormous scale of incarcerated persons in the United States and the weight our society places on confessions as crucial evidence in convicting defendants, it is statistically possible that thousands of individuals may be sitting in prison cells based upon flimsy or outright false confessions.⁷⁸

B. *Eyewitness Misidentification*

Along with confessions, eyewitness testimony has historically been a cornerstone of securing convictions in the United States criminal justice system.⁷⁹ Not only is eyewitness testimony an *important* element of a criminal case, in some instances, it is the *only* form of evidence.⁸⁰ Unfortunately—while their use is incredibly common—it has been known for generations that eyewitness accounts can be unreliable as a method of accurately

whom during the interrogation. Courts and legislatures could then impose some fairly precise regulations on interrogation.”).

⁷⁵ Nesterak, *supra* note 73.

⁷⁶ Hager, *supra* note 63.

⁷⁷ *Id.*

⁷⁸ See Thomas, *supra* note 45, at 1293 (“First, far too many innocent defendants are convicted of crime, a figure that I estimate as between 18,000 and 180,000 per year if we include guilty pleas and misdemeanors.”).

⁷⁹ See Daniel Goleman, *Studies Point to Flaws in Lineups of Suspects*, N.Y. TIMES (Jan. 17, 1995), <https://www.nytimes.com/1995/01/17/science/studies-point-to-flaws-in-lineups-of-suspects.html%201> [<https://nyti.ms/29cZ6hv>] (“A 1987 study concluded that close to 80,000 trials in this country each year rely mainly on eyewitness testimony.”); see also *Watkins v. Sowders*, 449 U.S. 341, 352 (1981) (Brennan, J., dissenting) (“[D]espite its inherent unreliability, much eyewitness identification evidence has a powerful impact on juries. Juries seem most receptive to, and not inclined to discredit, testimony of a witness who states that he saw the defendant commit the crime.”).

⁸⁰ Richard A. Wise et al., *How to Analyze the Accuracy of Eyewitness Testimony in A Criminal Case*, 42 CONN. L. REV. 435, 442 (2009) (“The prevalence of eyewitness error poses a major dilemma for the criminal justice system because it is frequently the only or primary evidence available in a criminal case.”).

identifying criminals.⁸¹ The human mind is malleable and prone to misremembrances and biases⁸² that can be further complicated by stressful situations, such as being a victim of or a witness to a crime.⁸³ The brain works in abstract ways, and in its pursuit of processing data it can combine many thoughts, images, and emotions into a picture that may not represent reality.⁸⁴ This is compounded by the fact that, as discussed, police officers—even those with good intentions—are susceptible to the pressure to make arrests, which subsequently lead to convictions.⁸⁵

Despite the well documented deficiencies of relying on eyewitness accounts, however, misidentifications continue to present significant problems. While false confessions may be present in twenty-five percent of convictions overturned by forensic evidence,⁸⁶ some estimates place the prevalence of misidentification in subsequently overturned cases at seventy percent.⁸⁷ In an assessment of the first 250 DNA exonerations, the number was even larger; more than seventy-five percent of the convictions involved eyewitness error.⁸⁸ One prominent example of misidentification leading to a wrongful conviction occurred in the rape of Jennifer Thompson. Ms. Thompson, a

⁸¹ U.S. v. Wade, 388 U.S. 218, 228–29 (1967), *abrogated by* U. S. v. Ash, 413 U.S. 300, 317, 320 (1973) (“The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification A commentator has observed that ‘the influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor—perhaps it is responsible for more such errors than all other factors combined.’”).

⁸² Zak Stambor, *How Reliable is Eyewitness Testimony?*, AM. PSYCHOL. ASS'N (Apr. 2006), <https://www.apa.org/monitor/apr06/eyewitness.aspx>.

⁸³ Charles A. Morgan III et al., *Accuracy of Eyewitness Memory for Persons Encountered During Exposure to Highly Intense Stress*, 27 INT'L J.L. & PSYCHIATRY 265, 276 (2004).

⁸⁴ See *id.* at 265, 276; see also Sandra E. Garcia, *Jasmine Barnes Case Shows How Trauma Can Affect Memory*, N.Y. TIMES (Jan. 6, 2019), <https://www.nytimes.com/2019/01/06/science/stress-trauma-eyewitness-events.html>.

⁸⁵ The flawed nature of eyewitness accounts “creates a serious danger of mistake in cases where there is pressure on the observer to identify someone.” U.S. v. Butler, 636 F.2d 727, 733 (D.C. Cir. 1980) (Bazelon, J., dissenting); see also *supra* Section I.A.1.

⁸⁶ Drizin & Leo, *supra* note 43, at 905.

⁸⁷ Tim Fenster, *Misidentification Common in Wrongful Arrests*, LOCKPORT UNION-SUN & J. (July 23, 2018), http://www.lockportjournal.com/news/local_news/misidentification-common-in-wrongful-arrests/article_4f534b30-c8be-5d29-8ad0-d2208663ec78.html.

⁸⁸ Brandon L. Garrett, *Paper Symposium Introduction: New England Law Review Symposium on “Convicting the Innocent,”* 46 NEW ENG. L. REV. 671, 671, 676 (2012).

twenty-two-year-old college student, was violently raped at knifepoint in a home invasion, during which she could visibly observe her attacker.⁸⁹ She gave a description to a composite artist and later confidently picked a man out of a photo array—Ronald Cotton—who had not committed the attack.⁹⁰ In a later physical lineup, she picked Cotton based on what she later realized to be “subconscious[]” psychological biases: rather than picking out the person who looked like her *actual* attacker, she chose the person who most resembled the composite sketch.⁹¹ Thus, even the victim herself misidentified the attacker despite concerted efforts to remember his characteristics.⁹² Ms. Thompson even experienced nightmares of Mr. Cotton attacking her; the complex psychology that caused her to misidentify Mr. Cotton was compounded by legal proceedings until she had no doubts whatsoever that he had raped her.⁹³ Further, as evidenced in Ms. Thompson’s case, even well-intended police procedures—such as providing confidence and reassurance to the victim and double-checking to make sure she is certain about her selection—can actually strengthen the witness’s resolve and cause the witness to incorrectly identify an assailant.⁹⁴ Mr. Cotton was later exonerated by DNA evidence.⁹⁵ Unfortunately, DNA evidence is not available in all cases, and a countless number of individuals remain behind bars having been convicted based on flawed eyewitness testimony.⁹⁶

⁸⁹ Phoebe Judge, *Jennifer Thompson—After Innocence: Exoneration in America*, AM. PUB. MEDIA: THE STORY (June 13, 2013), <http://www.thestory.org/stories/2013-06/jennifer-thompson>.

⁹⁰ Brandon L. Garrett, *How Eyewitnesses Can Send Innocents to Jail*, SLATE (Apr. 12, 2011, 5:13 PM), <https://slate.com/news-and-politics/2011/04/how-eye-witnesses-can-send-innocents-to-jail.html>.

⁹¹ Ms. Thompson recalled, “I picked out Ronald because, subconsciously, in my mind, he resembled the photo, which resembled the composite, which resembled the attacker. All the images became enmeshed in one image that became Ron, and Ron became my attacker.” Taryn Simon, *Freedom Row*, N.Y. TIMES MAG. (Jan. 26, 2003), <https://www.nytimes.com/2003/01/26/magazine/freedom-row.html>.

⁹² *Id.*

⁹³ Laura Hastay, *How Do Eyewitnesses Make Mistakes?*, PICKING COTTON BOOK, <http://www.pickingcottonbook.com/eyewitness-id> (last visited Sept. 24, 2019).

⁹⁴ Garrett, *supra* note 90.

⁹⁵ *About the Book*, PICKING COTTON BOOK, <https://www.pickingcottonbook.com> (last visited Sept. 24, 2019) (showing that Ms. Thompson and Mr. Cotton later became friends and allies in the fight against wrongful conviction, having teamed up to write a book about the ordeal called *Picking Cotton*).

⁹⁶ Gary L. Wells & Elizabeth Loftus, *Eyewitness Memory for People and Events*, in HANDBOOK OF PSYCHOLOGY, 627 (R.K. Otto and I.B. Weiner eds., 2nd ed., vol. 11 2013) (“Hence, for every one DNA-proven mistaken-identification exoneration

The criminal justice system has made tremendous strides over the past several decades in recognizing the sorts of errors and systemic flaws that lead to wrongful convictions. As causes continue to be identified and understood and the number of exonerees grows, the harms of wrongful convictions will need to be addressed with adequate compensation legislation.

II. THE HARMS OF WRONGFUL IMPRISONMENT

The societal problems caused by the wrongful incarceration of innocent individuals are numerous. Among the most profound issues that wrongful incarceration presents are the costs levied on the justice system, the miscarriage of justice when true criminals get away with their crimes, and the possibility that the actual perpetrator is free to commit further crimes. But the suffering inflicted upon the wrongfully convicted individual is especially egregious. The first and most fundamental hardship suffered by those who are wrongly convicted is how difficult it is to prove one's innocence once incarcerated.⁹⁷ But even when this is accomplished, there are daunting obstacles to be faced by exonerees. The entirety of the wrongs inflicted upon the innocent through unjust imprisonment is not corrected by merely letting the wrongfully convicted leave their cells. There are deep, scarring traumas, broken families, and permanent opportunity costs. As discussed, the nature and culture of prisons are unspeakably violent, which undoubtedly leads to psychological trauma.⁹⁸ The injustice of wrongful convictions touches several aspects of an exoneree's life—from reputational harm to pure financial ruin.

A. *Financial Ramifications*

The financial damage suffered by the wrongfully convicted is staggering. Legal representation is expensive to begin with, and the continued motions and appeals required to assert one's innocence after being convicted results in mountains of legal bills.⁹⁹ Beyond that, the opportunity cost of wrongful imprisonment is significant. The years stolen from the wrongfully

discovered, there may be 20 undiscovered due to the absence of DNA to the innocence claim.”).

⁹⁷ Kozinski, *supra* note 36, at xv–xvi.

⁹⁸ See *supra* Introduction.

⁹⁹ Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703, 715, 722 (2004) (DNA “[t]ests cost money that must be raised”).

convicted are years during which these individuals could have been acquiring wealth, learning a trade, and getting an education. As a result, exonerees are released from prison and sent out into the world ill-equipped, untrained, and with little financial support.¹⁰⁰ Dale Helmig, an exoneree from Missouri, struggled upon release from prison. He might have been homeless without the financial support of his brother, as he was unable to acquire a job or to secure other living arrangements.¹⁰¹ Other exonerees, such as Ellen Reasonover, actually do find themselves on the streets, adrift without the financial security to even provide food for themselves.¹⁰² After suffering this financial devastation upon her release, Ms. Reasonover even stated, "Sometimes I wish they'd never let me out."¹⁰³ Larry Youngblood, falsely convicted for the molestation of a young boy, spent the years after his exoneration panhandling in the streets of Tucson, Arizona before his life was claimed by drugs in 2007.¹⁰⁴ He spent seventeen years behind bars for a crime that he did not commit, and he later stated, "They took the best years of my life."¹⁰⁵

Exonerees commonly experience financial difficulties. Frontline reports that over ninety percent of exonerees lose all of their assets, including savings, vehicles, and houses, while imprisoned.¹⁰⁶ The prospects of employment after release are just as bleak: forty-three percent earn less than their preconviction wages, thirty-nine percent earn similar wages, and only seventeen percent eventually reach salaries higher than those they enjoyed

¹⁰⁰ Michael A. Fuoco, *Wrongfully Incarcerated for 34 Years, Indiana County Man Struggling to Adjust to Real World*, PITTSBURGH POST-GAZETTE (Nov. 22, 2015, 12:00 AM), <http://www.post-gazette.com/local/region/2015/11/22/Wrongfully-incarcerated-for-34-years-Indiana-County-man-Lewis-Jim-Fogle-tries-to-adjust-to-real-world/stories/201511170228>.

¹⁰¹ Amanda St. Amand, *Central Missouri Man Struggles After Wrongful Conviction Release*, ST. LOUIS POST-DISPATCH (Dec. 28, 2011), https://www.stltoday.com/news/local/crime-and-courts/central-missouri-man-struggles-after-wrongful-conviction-release/article_277e6a1c-3183-11e1-aea7-0019bb30f31a.html.

¹⁰² Najeeb Hasan, *Show Me the Money*, RIVERFRONT TIMES (Apr. 11, 2001), <https://www.riverfronttimes.com/stlouis/show-me-the-money/Content?oid=2471989>.

¹⁰³ *Id.* Additionally, Ms. Reasonover lamented her financial situation, stating, "I just want enough to pay rent, electric, gas, phone bill, get enough to eat. That's all." *Id.*

¹⁰⁴ Marc Bookman, *Does an Innocent Man Have the Right To Be Exonerated?*, THE ATLANTIC (Dec. 6, 2014), <https://www.theatlantic.com/national/archive/2014/12/does-an-innocent-man-have-the-right-to-be-exonerated/383343/>.

¹⁰⁵ *Id.*

¹⁰⁶ *Frequently Asked Questions*, FRONTLINE: BURDEN OF INNOCENCE (May 1, 2003), <https://www.pbs.org/wgbh/pages/frontline/shows/burden/etc/faqsreal.html>.

before their wrongful imprisonment.¹⁰⁷ Reporter Connie Schultz's seminal work chronicling exoneree Michael Green's release from prison after thirteen years documents the financial and cultural hardships Green experienced, including entering the world as an adult without a driver's license, relying on others for minor essential expenses like the purchase of a toothbrush, and the persistent inability to be considered for jobs.¹⁰⁸ Despite receiving an education in prison and having his conviction expunged, Green was repeatedly rejected by potential employers—a low paying job at a local McDonald's was the only position offered to him for six months.¹⁰⁹

B. *Familial Hardship*

The families of exonerees are victimized by unjust imprisonment as well. Without the income and support provided by those who have been locked up, families struggle to make ends meet. Emotionally, exonerees and their families must work to repair broken and burdened relationships caused by the years apart. The lost time with children and romantic partners leaves a palpable pain as the relationships will always be haunted by the thoughts of everything that was missed.¹¹⁰ The emotional toll of wrongful imprisonment can have ramifications on the interpersonal interactions between exonerees and loved ones.¹¹¹ The time apart can lead to the complete severance of relationships

¹⁰⁷ *Id.*

¹⁰⁸ Connie Schultz, *Freedom and Frustrations: The Burden of Innocence (Part 3)*, CLEVELAND.COM (Oct. 15, 2002), https://www.cleveland.com/metro/index.ssf/2002/10/freedom_and_frustrations_the_b.html.

¹⁰⁹ *Id.*; Connie Schultz, *Looking in the Mirror: The Burden of Innocence (Part 4)*, CLEVELAND.COM (Oct. 16, 2002), https://www.cleveland.com/metro/index.ssf/2002/10/looking_in_the_mirror_the_burd.html.

¹¹⁰ Cele Ferner Hahn, *Going to Bat for an Ex-Con*, CELE FERNER HAHN (Aug. 17, 2002), http://www.celehahn.org/cele_columns_1997_-_2002/columns_2002/going-to-bat-for-an-ex-con.html (“No, no amount of money can make things right. No amount of money can erase the memories or the conviction or bring back jobs and families and homes. No amount of money can bring back youth, free time, walks in the park, softball games, picnics with the kids.”).

¹¹¹ Erik Ortiz, *Fernando Bermudez and Other Wrongly Convicted Fight for Compensation*, NBC NEWS (Apr. 12, 2015, 5:15 AM), <https://www.nbcnews.com/news/crime-courts/fernando-bermudez-other-wrongly-convicted-fight-compensation-n338306>.

and, more grimly, can cause people to miss the passing of close friends and family, depriving them of the opportunity to bid loved ones a final goodbye.¹¹²

C. *Mental Health Problems*

The long term effects of imprisonment on the human psyche are devastating. In the face of their new hardships and having to adjust to the outside world all over again, many exonerees find themselves using drugs¹¹³ and alcohol¹¹⁴ to cope. It is common for exonerees to find themselves unable to assimilate back into society, and many die premature deaths from addiction, crime, suicide, or the stress forced upon them by their legal problems.¹¹⁵ Post-traumatic stress disorder haunts exonerees, stripping them of the ability to fully enjoy their hard-fought freedom.¹¹⁶ One exoneree from New York has been so traumatized by violence in prison that something as minor as a certain aroma will trigger his memories of witnessing a fellow prisoner being stabbed.¹¹⁷ Dr. Zieva Dauber Konvisser, Ph.D., has compared the trauma suffered by the wrongly imprisoned to that of war veterans, “torture

¹¹² Jeff Chinn, *The Importance of Family to Exoneree Brian Banks*, CAL. INNOCENCE PROJECT (Mar. 25, 2013), <https://californiainnocenceproject.org/2013/03/the-importance-of-family-to-exoneree-brian-banks/> (“When a person is convicted, many family members may distance themselves from the inmate regardless of their claims of innocence. There are also situations where exonerees are incarcerated for such a long period of time that relatives who supported them (grandparents, parents, etc [sic] pass away.”); see also John Simerman & Katy Reckdahl, *Former Death Row Inmate John Thompson, Who Became Advocate for the Exonerated, Dies at 55*, NEW ORLEANS ADVOC. (Oct. 3, 2017, 8:33 PM), https://www.theadvocate.com/new-orleans/news/article_ffc7f03a-a8a3-11e7-9321-bf5918f03592.html (documenting the life of exoneree John Thompson, who lost both his father and the grandmother who raised him while on death row for a crime he did not commit).

¹¹³ Bookman, *supra* note 104.

¹¹⁴ Jon Schuppe, *Wrongfully Convicted Man Gets \$175,000 for 13 Years in Prison*, NBC NEWS (Mar. 9, 2017, 11:21 AM), <https://www.nbcnews.com/news/us-news/wrongfully-convicted-man-gets-175-000-13-years-prison-n730796>.

¹¹⁵ See generally Matthew Clarke, *Tragic Justice: Wrongfully Convicted Prisoners Die Shortly After Exoneration*, PRISON LEGAL NEWS (Mar. 9, 2017), <https://www.prisonlegalnews.org/news/2017/mar/9/tragic-justice-wrongfully-convicted-prisoners-die-shortly-after-exoneration/>.

¹¹⁶ Yamiche Alcindor, *Many Wrongfully Convicted are Simply on Their Own*, USA TODAY (May 5, 2014, 12:00 PM), <https://www.usatoday.com/story/news/nation/2014/05/04/wrongfully-convicted-suffer-long-after-release/8480237/>.

¹¹⁷ *Id.*

survivors, concentration camp survivors, and refugees.”¹¹⁸ The amount and severity of mental health issues among exonerees is especially problematic because so many lack access to mental health services, are not equipped to utilize available services, and—in some particularly troublesome cases—do not have health insurance.¹¹⁹

III. COMPENSATING THE WRONGFULLY ACCUSED

As demonstrated above, the hardships suffered by those who are wrongfully imprisoned extend far beyond prison walls and infiltrate their lives in devastating ways. As a society, we have a responsibility to confront the unfortunate and uncomfortable truth that our justice system has failed many of our citizens and to correct the wrongs inflicted upon innocent people through adequate and comprehensive compensation legislation.¹²⁰ Historically, the United States has not been at the forefront of providing compensation to the wrongfully convicted.¹²¹ Currently, thirty-three states, the federal government, and Washington, D.C. have statutes to provide compensation for the wrongfully convicted, but seventeen states remain without any such laws.¹²² But even

¹¹⁸ Zieva Dauber Konvisser, Ph.D., *Psychological Consequences of Wrongful Conviction in Women and the Possibility of Positive Change*, 5 DEPAUL J. FOR SOC. JUST. 221, 238–39 (2012).

¹¹⁹ In a study of 583 exonerees in forty-eight states, over one third were not getting the full health care they were eligible for, and nearly half of them did not know what benefits they had or how to use them. AFTER INNOCENCE: IMPACT, <https://www.afterinnocence.org/impact/> (last visited Sept. 24, 2019); see also Rachel Siegel, *How a Lawyer Gave Up Corporate Work to Help Exonerees Re-enter Society*, MARSHALL PROJECT (June 22, 2016, 10:00 PM), <https://www.themarshallproject.org/2016/06/22/how-a-lawyer-gave-up-corporate-work-to-help-exonerees-re-enter-society> (documenting Jon Eldan’s work in helping the exonerated acquire resources to allow for smoother reintegration).

¹²⁰ In cases of wrongful imprisonment, “the system’s errors have imposed significant harm on innocent individuals—harms that deserve to be taken seriously by scholars and policy-makers.” Drizin & Leo, *supra* note 43, at 950.

¹²¹ Bruce Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029, 1063 (2004) (“When a small piece of property is taken by the government to build a new highway, the owner is constitutionally guaranteed fair market compensation, even if owed a relatively trivial sum. But when an innocent person is wrongly convicted by the criminal justice system, he or she is not guaranteed a dime when the mistake is discovered afterward, despite the scars of long years of incarceration. The Constitution’s requirement of ‘just compensation’ has never been interpreted to include this particularly devastating loss of human capital. Worse yet, American legislators have been remarkably deficient in providing statutory relief.”).

¹²² INNOCENCE PROJECT, *supra* note 29; see also Gwyn Garrison, *Why the Pennsylvania Innocence Project is a Hub of Hope for the Wrongfully Convicted*,

among those laws there exists a spectrum, with some providing significantly more comprehensive compensation to exonerees than others. The pursuit of justice, a fundamental tenet of our nation, requires the establishment of a national standard that provides financial compensation and access to resources that will allow the wrongfully convicted to resume as close to a normal, productive life as can be provided given the circumstances.

A. *States Lacking Compensation Laws*

Currently, seventeen states have no statute providing compensation to the wrongfully convicted.¹²³ This leaves them with no framework for addressing wrongful convictions despite some of these states having a significant number of exonerations. Pennsylvania, for example, has exonerated seventy-seven men and women whose collective time in prison totals more than 807 years.¹²⁴ In addition to the lack of compensation, exonerees in Pennsylvania are not provided access to social services to allow them to reintegrate back into society, such as housing, job training, or medical care.¹²⁵ Indiana and Georgia have had thirty-six and thirty-seven exonerations respectively, with an average of more than nine years lost per exoneree in each state.¹²⁶ The lack of a national standard has led to a level of inconsistency that is frustrating and, frankly, mind-boggling. For example, if one is wrongfully convicted of a federal crime, he or she is entitled to one of the highest standards of compensation law.¹²⁷ Meanwhile, if wrongfully convicted of a crime of the exact same nature in one of the seventeen aforementioned states, he or she will not be eligible for any compensation at all.

B. *Insufficient Laws*

While having no compensation law is a problem, many of the compensation laws that have been passed are woefully inadequate to enable the wrongfully convicted to reintegrate into society or

GENEROCITY (Mar. 20, 2018, 12:45 PM), <https://generocity.org/philly/2018/03/20/pennsylvania-innocence-project-crowdfunding-conference-exonerees/>.

¹²³ INNOCENCE PROJECT, *supra* note 29.

¹²⁴ *Exonerations by State*, NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last updated June 6, 2019).

¹²⁵ Garrison, *supra* note 122.

¹²⁶ *Exonerations by State*, *supra* note 124.

¹²⁷ 28 U.S.C. § 2513(e) (2018).

experience justice in any meaningful way. Some of these are insufficient in that they provide very little in the way of financial support, resources, or both. New Hampshire, for example, offers a maximum of \$20,000 in compensation, an amount so meager as to be insulting.¹²⁸ Oklahoma provides compensation capped at \$175,000, a number unlikely to come close to making up for the years of lost wages and legal fees accrued during the fight for exoneration.¹²⁹ Even that amount can be difficult to receive, as exoneree Thomas Webb discovered when his application for compensation was denied, and he needed intervention from the Oklahoma Innocence Project to get paid.¹³⁰

Some compensation laws are insufficient because they are severely limiting in scope, providing compensation for only a small fraction of those who are wrongfully convicted or making the burden of eligibility incredibly arduous to overcome. One such example is the statute in Missouri, which restricts collection of compensation to those whose innocence is proven by DNA evidence.¹³¹ Those exonerated by proving a coerced confession, misidentification by a witness, or another of the numerous means through which wrongful conviction occurs are therefore excluded from being compensated in the state of Missouri.¹³² Similarly, Iowa, New Jersey, Oklahoma, and Ohio do not provide compensation for anyone who confessed, even if the confession was coerced.¹³³ Furthermore, Florida prevents anyone convicted of committing a violent felony before or during his or her wrongful conviction from exoneration compensation, even when that felony had no relationship to the wrongful conviction.¹³⁴ Not only does Montana exclude anyone exonerated by means other than DNA evidence, but it also restricts its compensation to educational aid at in-state colleges in the form of tuition, books, fees, and room and board.¹³⁵ Another significant hurdle to compensation is the requirement that the governor pardon the exoneree, as seen in Maryland, Maine, and Tennessee.¹³⁶

¹²⁸ N.H. REV. STAT. ANN. § 541-B:14(II) (2018).

¹²⁹ Schuppe, *supra* note 114.

¹³⁰ *Id.*

¹³¹ MO. ANN. STAT. § 650.058(1) (West 2016).

¹³² *Id.*

¹³³ Jeffrey S. Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 MO. L. REV. 369, 396 (2017).

¹³⁴ FLA. STAT. ANN. § 961.04 (West 2017).

¹³⁵ MONT. CODE ANN. § 53-1-214 (West 2003).

¹³⁶ Gutman, *supra* note 133, at 395–96.

Even some statutes that are seemingly robust and comprehensive have stipulations that can prevent exonerees from receiving just compensation. The compensation statutes of New Jersey, New York, Washington, D.C., West Virginia, and Wisconsin, as well as the federal statute, include provisions preventing compensation for those who bring about the conviction by some fault of their own.¹³⁷ This exception is troublesome if for no other reason than its ambiguity. This open-ended provision leaves the door open for the denial of compensation based on any number of criteria, such as a false confession.¹³⁸ In fact, this interpretation of the New York law has already prevented a man who had falsely confessed from collecting under the statute.¹³⁹

C. *Stronger State Laws*

There are, however, some state laws that can serve as an example for compensation for the wrongfully convicted. Minnesota's law, for instance, provides for up to \$100,000 per year of wrongful incarceration and up to \$50,000 per year on supervised release or as a registered offender, and the award may include reimbursement for defense fees, medical and dental expenses, noneconomic damages, tuition and fees for a four-year public college education, child support payments, and costs of immediate services upon release.¹⁴⁰ Although capped at \$750,000 total, North

¹³⁷ While the language varies—New York's says that one must not have "by his own conduct cause[d] or br[ought] about his conviction," and Wisconsin's says compensation is due only to those who did not "by his or her act or failure to act contribute to bring about the conviction and imprisonment"—the essence remains the same across all six statutes. See N.Y. CT. CL. ACT § 8-b (McKinney 2007); WIS. STAT. ANN. § 775.05 (West 2019); N.J. STAT. ANN. § 52:4C-3 (West 2013); D.C. CODE ANN. § 2-422 (West 2017); W. VA. CODE ANN. § 14-2-13a (West 2014); 28 U.S.C. § 2513 (2018).

¹³⁸ Gregory P. Scholand, Note, *Re-Punishing the Innocent: False Confession as an Unjust Obstacle to Compensation for the Wrongfully Convicted*, 63 CASE W. RES. L. REV. 1393, 1394 (2013).

¹³⁹ *Id.* In 2006, Douglas Warney was exonerated after spending nine years in prison based on a wrongful murder conviction. He had falsely confessed and later recanted, with DNA evidence ultimately proving that someone else had committed the crime. Warney is intellectually disabled, with an IQ of only sixty-eight. He is also an AIDS patient who suffers from AIDS-related dementia. New York state denied his application for compensation at the time of his release due to his having confessed to the crime, his exoneration notwithstanding. In 2011, the City of Rochester paid him \$3.75 million after he sued. *Id.*; see also *Rochester Man with a Mental Disability Might Get \$3.75 Million After Being Cleared of a Murder*, SYRACUSE.COM (last updated Mar. 22, 2019), https://www.syracuse.com/news/index.ssf/2011/12/rochester_man_with_a_mental_di.html.

¹⁴⁰ MINN. STAT. ANN. § 611.365 (West 2014).

Carolina's statute offers up to \$50,000 per year of incarceration, the possibility of job skills training for at least one year, and tuition reimbursement at any North Carolina community college or state institution, as well as assistance in meeting any admissions standards, including satisfying the requirements for the completion of secondary education.¹⁴¹ Prior to the passing of Kansas's landmark bill, the compensation law of Texas was the strongest in the nation, offering \$80,000 per year of incarceration plus an annuity, financial assistance for reintegration into society up to \$10,000, attorneys' fees, lost wages, counseling up to one year, child support compensation in arrears, payment for up to 120 academic credit hours, any mandatory fees for education, state guidance and assistance in developing a comprehensive plan to reintegrate into society, and health coverage.¹⁴²

D. A New Standard

In May 2018, Kansas established a new standard for compensation laws that should be replicated as a baseline policy nationwide: House Bill No. 2579.¹⁴³ The bill establishes a strong foundation for the financial freedom of exonerees and sets them up for a more seamless and effective reintegration back into society. It provides \$65,000 for each year of imprisonment, and \$25,000 per year for each additional year of parole, supervised release, or forced registration with the state of Kansas as an offender, whichever is greater.¹⁴⁴ Some language in the bill seems problematic at first glance. For example, as with the qualifying language in the statutes of five states and the federal code discussed above, it prevents compensation if the individual brought about the wrongful conviction by his or her "own conduct."¹⁴⁵ However, the state mitigates concern that this clause will be abused in the manner discussed in Section III.B above, with the Conference Committee Report Brief on the bill clarifying:

¹⁴¹ N.C. GEN. STAT. ANN. § 148-84 (West 2010).

¹⁴² TEX. CIV. PRAC. & REM. CODE ANN. § 103.052 (West 2009); TEX. CIV. PRAC. & REM. CODE ANN. § 103.001 (West 2011); TEX. CIV. PRAC. & REM. CODE ANN. § 103.101 (West 2011); TEX. CIV. PRAC. & REM. CODE ANN. § 103.053 (West 2015); TEX. CIV. PRAC. & REM. CODE ANN. § 103.054 (West 2011). One deficiency in Texas's compensation is that exonerees' right to compensation terminates if they commit a felony subsequent to their exoneration. TEX. CIV. PRAC. & REM. CODE ANN. § 103.154 (West 2015).

¹⁴³ H.B. 2579, 87th Leg., Reg. Sess. (Kan. 2018).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

[N]either a confession nor admission later found to be false or a guilty plea would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about the conviction. Additionally, the bill would allow the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, in the interest of justice, to give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by such person or those acting on their behalf.¹⁴⁶

Exonerees are also entitled to reimbursement of “reasonable” attorneys’ fees of up to \$25,000, with the court having discretion to provide an even greater amount.¹⁴⁷ This will have a tremendous impact on exonerees’ ability to repay outstanding legal bills and resume their lives without significant financial burdens.¹⁴⁸

In addition to financial compensation, the bill also provides the exonerated with reintegration assistance.¹⁴⁹ As discussed, one of the most difficult aspects of life after exoneration is reintegrating into society.¹⁵⁰ To address this problem, the bill provides exonerees with counseling, housing assistance, and personal financial literacy assistance to help ease the difficult transition back to life outside of a cell.¹⁵¹ Compounding the debts and expenses confronted by exonerees upon release is the difficulty many find in acquiring productive, meaningful employment.¹⁵² The bill attempts to remedy this with additional accommodations, including tuition assistance in the form of 130 credits to a municipal university, community college, technical college or

¹⁴⁶ CONFERENCE COMMITTEE REPORT BRIEF, H. 87-2579, Reg. Sess., at 2 (Kan. 2018).

¹⁴⁷ Kan. H.B. 2579.

¹⁴⁸ Thomas Webb III, emotionally and financially devastated from his ordeal, became a homeless addict upon his release from prison. His relationship with his wife, who bankrolled his exoneration efforts, was destroyed and ended in divorce. Upon his eventual award—a mere \$175,000—he prioritized paying his ex-wife back for what she had lost in legal fees. *See* Schuppe, *supra* note 114.

¹⁴⁹ Kan. H.B. 2579.

¹⁵⁰ *Supra* Part II.

¹⁵¹ Kan. H.B. 2579. To emphasize how important this assistance is, many exonerees reenter the outside world woefully ill equipped to manage their legal and financial affairs, compounding the issues they face upon release. *AFTER INNOCENCE: IMPACT*, *supra* note 119.

¹⁵² One particularly poignant example that demonstrates the hardship experienced by many exonerees is the devastating saga of Anthony Michael Green’s quest for employment upon his release in 2001. He was so insolvent that he had to borrow money for the \$16.50 it required to get a driver’s license to increase his chances at employment. Schultz, *supra* note 108.

institution of technology within the state of Kansas.¹⁵³ Exonerees are also eligible to participate in the state healthcare benefits program that is offered to state employees; in conjunction with social programs to assist with reintegration, health insurance has historically remained out of the reach of many exonerees.¹⁵⁴ Additionally, the housing assistance provision is vital because the amount of exonerees who become homeless or reliant upon family members for basic shelter is extraordinary.¹⁵⁵

Significantly, the bill lays out a robust plan for total expungement of the convictions of exonerees.¹⁵⁶ Some of the most damaging aspects of wrongful convictions are impossible to quantify. Certainly, one can measure the duration of time spent behind bars and attempt to determine lost wages and legal fees. However, devising a remedy for the damage done to one's reputation, sense of self, relationships with others, and dignity is less easily calculated. Exonerees must confront the world with a blemished record and a damaged reputation that may never be repaired, and they must navigate this intimidating and uncertain version of the world they once knew with a cloud of suspicion remaining ever-present above their heads.¹⁵⁷ While this may be impossible to cure, steps can be taken to help clear these individuals' names.¹⁵⁸ The bill provides that all state and federal records of the wrongful arrest and conviction will be cleared and

¹⁵³ Despite teaching courses in prison to fellow inmates, his lack of a formal education prevented Anthony Michael Green from getting hired for many jobs. *Id.*

¹⁵⁴ Kan. H.B. 2579. Even among those eligible for some form of health care, a significant amount of exonerees are unaware of or unsure about how to access such benefits. AFTER INNOCENCE: IMPACT, *supra* note 119.

¹⁵⁵ Kan. H.B. 2579; *see also* St. Amand, *supra* note 101; Hasan, *supra* note 102.

¹⁵⁶ Kan. H.B. 2579.

¹⁵⁷ Exoneree Gary Wayne Drinkard, for instance, had his overturned murder conviction pop up on a background check during a routine traffic stop, causing him to be detained in a police vehicle for thirty minutes. Jack Healy, *Wrongfully Convicted Often Find Their Record, Unexpunged, Haunts Them*, N.Y. TIMES (May 5, 2013), <https://www.nytimes.com/2013/05/06/us/wrongfully-convicted-find-their-record-haunts-them.html>. Sabrina Butler, a Mississippi exoneree, was unable to get work in restaurants or retail stores and failed to pass a background check to purchase a shotgun as a result of the conviction that remained on her record. *Id.*

¹⁵⁸ Further underscoring the importance of the steps of sealing or completely clearing records, this study connects recidivism with failure to seal or expunge:

A study of 118 exonerated inmates led by Evan Mandery and Amy Shlosberg, two criminal-justice researchers, found that one-third still had criminal records, sometimes more than a decade after their release. They found that former convicts with clean records were less likely to return to prison than those whose records had not been expunged.

Id.

that the exoneree will be provided with a certificate of innocence.¹⁵⁹ This is a notable step toward restoring as much dignity as possible to the innocent victims of wrongful convictions. It allows them to fully clear their names and move beyond this painful, unjust ordeal and look toward rebuilding lives for themselves.

The bill represents a standard of wrongful conviction compensation to which this entire nation should aspire, and it should serve as a template for a federal mandate. Every victim of the injustice of wrongful convictions nationwide deserves to have his or her life repaired in the fundamental ways offered by the bill. It provides a level of financial support that helps mitigate the harms inflicted upon exonerees. Additionally, it provides an amount that would represent a healthy salary for the years lost to incarceration, along with attorneys' fees to help offset the debts accrued during expensive court proceedings. The bill will empower the wrongfully convicted, as it provides a foundation of education and reintegration support upon which exonerees can build self-sufficient lives. The damage to the dignity of exonerees will be cured to the best of the justice system's ability through the full expungement of convictions. Finally, and perhaps most importantly, there are no glaring caveats or conditions through which the state can deny exonerees fair and just compensation.

CONCLUSION

The idea that innocent members of our society are tried, convicted, sentenced, and incarcerated for heinous crimes that they did not commit is an abomination. While the causes of such injustices remain, and will perhaps never be eradicated entirely, we continue to witness the devastation and havoc wrongful imprisonment inflicts upon such individuals and the lives of those around them. This awareness, coupled with a dramatically increased ability to right these wrongs with DNA evidence and an understanding of coerced confessions and eyewitness misidentification,¹⁶⁰ has made the deficiencies of current wrongful

¹⁵⁹ Kan. H.B. 2579. In addition to the dignity this restores to otherwise brutally demoralized individuals, it is sometimes a necessary element of gaining employment, as experienced by Anthony Michael Green, who repeatedly failed to get hired because he lacked documentation of his innocence. Schultz, *supra* note 108. Likewise, an exoneree named Audrey Edmunds served eleven years before having her conviction overturned, after which she could not find employment due to background checks showing her conviction. Healy, *supra* note 157.

¹⁶⁰ Drizin & Leo, *supra* note 43, at 903.

conviction compensation statutes abundantly clear. Moreover, it has emphasized the atrocity that some states provide no compensation at all. In order to sufficiently address the wrongs inflicted on members of our society by wrongful convictions, there must be a national standard to address the problems created when one's life is unjustly ripped away, including financial issues, the lack of reintegration assistance and support, medical and mental health complications, and the damage done to one's dignity and reputation. The compensation provided to exonerees by the bill should not be a compassionate outlier among such laws but should instead represent the baseline standard followed across the United States of America.