

The Unexonerated

**Addressing the Problem of Wrongly Convicted
Innocent Persons in the U.S. at Risk of Never
Being Exonerated by Adversarial Remedies**

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**Value Relating
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“We know without doubt that the vast majority of innocent defendants who are convicted of crimes are never identified and cleared.”

- **Samuel Gross**, editor of the [National Registry of Exonerations](#), as reported in 2015 in the *Washington Post*.

Executive summary

Only about 15% of prisoners claim actual innocence, but a past bipartisan consensus perpetuated the myth that all prisoners claim innocence and wrongful convictions had to be rare. This view is finally changing. Upon this foundation of misinformation, clearance rates of wrongful convictions remain low.

My own unique experience shows how easy wrongful convictions do occur, and how hard to be exonerated. Not only do I lack a criminal history, my presence as one who exists outside of divisive norms to resolve neglected needs makes me an easy target for norm enforcers of all stripes. My being transgender and asexual was misconstrued as a sexual deviant, leading to an accusation and conviction based solely a child's manipulated testimony.

Academic writers bear witness to ongoing high rates of wrongful convictions. Writers working within the judicial system theorize a lower rate, while writers independent of the judiciary theorize higher rates. All but the lowest rates indicate the ongoing rates of wrongful convictions far outpaces the number being cleared by the courts.

The Innocence Project daily receives far more requests for conviction review than their limited resources can process. They must prioritize those cases most easily served. A vast number of viable claims of actual innocence remain unprocessed. The dearth of reporting masks the scope of the unexonerated problem.

This problem can be corrected by shifting from a traditional top-down approach to a bottom-up grassroots approach. Two alternatives are available that empowers the people to know for themselves what they can do about the unexonerated problem.

Informed Decisions Act. The unexonerated face discrimination from employers and renters with errant background checks. The **IDA** provides context to each conviction so screeners can decide for themselves to make better informed commercial decisions.

Estimated Innocence Form. The majority of unexonerated risk never being cleared through the resource-limited innocence movement. The **EIF** empowers claimants to identify and instantly publicize the viability of their innocence claims.

Innocence claims can now be taken more seriously. The needs of all affected can now be better served.

Claiming innocence

Which do you think is more likely?

Anyone in custody by professional law enforcement resists responsibility by proclaiming their innocence because that is what criminals do.

OR

Law enforcement imperfectly pursues those they believe are culpable to crimes and repeatedly convicts those totally innocent of such crimes.

No, all prisoners do not claim to be innocent

A widespread misconception persists that all prisoners claim innocence. Since prisoners seek to escape custody and avoid their responsibility, of course they will cry foul and try to manipulate others to get out of trouble.

This popular belief permits the public to dismiss anyone who consistently asserts their innocence. Law enforcement reinforces their suspicion when avoiding responsibility for their errors. If the police routinely convict the wrong person, knowing the actual perpetrators run loose could undermine public trust in their police departments. It feels safer to believe the police rarely make such mistakes.

According to research,³² only around 15% of prisoners claim actual innocence. The majority of prisoners admit they did the actions that resulted in their arrest and conviction, while minimizing the harm they did. Many will complain the sentence was excessive, and they often have a point. Few will insist year after year they did absolutely nothing against the law, and back it up with facts of the case. Lumping these viable claims of innocence with those admitting their actions betrays widespread ignorance to the scope of wrongful convictions.

When arrested, you naturally go through a grieving process of shock and denial. You can admit the deed, but not recognize how it was illegal. Many decompress from alcohol or drug influence, and may not recall the details of the harm they caused. Once in jail, their defense attorney encourages them to admit nothing, to position them for a favorable plea deal. From the public's perspective, this reinforces their stereotypes of criminals.

Up to 95% or more convictions result from plea bargains, under pressure of facing worse consequences. Implicit bias can coerce false confessions. It is now easier for the accused to admit to their human imperfections than for professional law enforcers to admit theirs.

If the public could quickly isolate viable claims of innocence from the more dubious ones, more public attention could be given to the immense scope of the problem around wrongful convictions. For now, they likely view the total of publicized exonerations as the actual number wrongly convicted. The public has yet to realize how these represent a small portion of those aptly called the *unexonerated*.

It is now easier for the individually accused to admit to their human imperfections than for more powerful authority figures to admit theirs.

Bipartisan issue

For now, the scope of wrongful convictions remains socially invisible. Past politics of fear converged to create a bipartisan pact that continues to hide the scope of the problem. In the name of safer communities, conservatives sidestepped their value for a most local level of safety when supporting liberals expanding the power of a paternalistic state. It is difficult to get either side to see the adversarial system's conflict of interest, to paraphrase Sinclair Lewis, when their power depends on them not seeing it.

While the **innocence movement** has spurred lawyers and journalists and now prosecutors to address the problem of wrongful convictions, their remedies continue to operate from within a conflicted adversarial process. While better than nothing, innocence lawyers expect the wrongly convicted to trust the adversarial process as the exclusive arbiter of justice. Offering adversarial remedies puts the onus upon the victims of wrongful convictions instead of those repeatedly making these same victimizing errors. The unexonerated need real justice instead of another court hearing.

Political power continues to keep the complexities of violence out of public view. In the past, conservatives jumped on the generalization to lock away offenders by taking the gloves off of police and prosecutors. Back then, liberals jumped on the bandwagon to generalize state prisons as a working solution. Two wrongs don't make a right, but sometimes they make a law.

Conservatives traditionally value smaller government, but often give these expansive powers of impersonal policing a pass. They bemoan the "nanny state" while accepting paternalistic policing and tyrannical judiciary applied to 'others'. As the state's overreach hits their communities, they now question such politics of the pasts.

Liberals traditionally value expansive government, as a referee to guard minority rights. They bemoan historical discrimination while accepting a one-size-fits-all approach of paternalistic policing and oppressive judiciary. As their tough-on-crime policies grew the mostly BIPOC prison population, they also question these politics of the pasts.

The dysfunctions of our current criminal justice system evolved in this overlap of excesses between conservatism defensive self-protection and liberalism state-run solutions. We cannot solve our specific problems from the level of generalizing that created them.

Solutions to wrongful convictions could appeal to conservatives by keeping the power of the state in check. Then appeal to liberals by addressing to the resulting discrimination. Lasting solutions depend on respecting the affected needs on both sides of the political spectrum.

Isn't it time we wean our addiction to the criminal justice system, in order to allow all the people it impacts to more freely resolve their needs? In this present crisis, to paraphrase Ronald Reagan, the criminal justice system is not the solution to the problem. The criminal justice system *is* the problem. For some of us, this problem hits painfully close to home.

Two wrongs don't make a right, but sometimes they make a law.

We cannot solve our specific problems from the level of generalizing that created them.

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Personalized problem

I came out as transgender to my family in early 1993. I connected with my MTF sister, who came out as transgender years before. By summer of that year, we were sharing an apartment in Grand Rapids.

In this religious conservative community, most of my neighbors believed LGBT+ people were sexual deviants and child recruiting predators. Later, I learned a young girl in our apartment complex kept gawking through our apartment window at my transgender sister. When caught for not being home on time, she claimed my sister sexually assaulted her in bizarre ways.

Despite never meeting this girl, I was accused of helping my sister molest her. We were both arrested and taken to jail. I was outed as a “crossdresser” by the local press. At the height of the sex abuse scare, this story about a “couple of crossdressing brothers molesting a girl” was sensational.

Since the alleged acts never occurred, I was confident the lack of evidence would result in acquittals. Discovery indicated the young complainant’s testimony was coached. She alleged we smeared jelly on my shirt to appear as if she stabbed me, then took a Polaroid picture of it. No jelly was ever found on my shirt, collected that same day. No evidence of the picture nor camera ever existed, since neither my sister nor I have ever possessed one.

At the start of the trial, however, I learned no corroborating evidence was necessary for a conviction. The prosecution claimed semen was found on a green blanket. Neither my sister nor I possessed a green blanket. Evidence of our transgender-related asexuality was duly ignored. Confirmation bias left no doubt in their tunnel vision assumption that trans persons like us must be the sexual deviants of their transphobic stereotypes. All evidence to the contrary was ignored. After a week-long joint trial followed closely by media, we were both convicted, by separate juries.

We were both sentenced in early 1994. My sister was given 30 to 50 years for allegedly kidnapping the girl and for what I learned was called ‘69’. The judge then sentenced me as an aider and abettor to 15 to 30 years. Despite knowing our transgender status, we were both sent to men’s prisons. Later, I was resentenced to 8 to 15 years. Shortly after, my sister died of cancer.

I was finally released from prison in 2005, ineligible for parole for maintaining the integrity of my innocence. I continue to struggle with this life sentence of “sex offender” registry. A background check reveals the prosecutor’s transphobic conclusions as public fact, while excluding the fact I am transgender and demisexual. And excluding factors supporting my innocence claim.

Now I am required by law to endure ongoing sexualization for the rest of my life for being trans, despite the public generally accepting transgender people like me are not sexual deviants. Despite earning multiple college degrees, I cannot get a meaningful job. Each time I have asked for help from innocence projects, I am told they must serve others whose liberty is at greater threat.

It appears I was accused because I’m transgender. My only sexual *crime* is being asexual.

During the height of the sex abuse panic, I was wrongly convicted of a sex crime that never even occurred.

I am now required by law to endure sexual violence every day. The adversarial process mandates it.

Living by a norm-threatening higher standard

I have no criminal history, despite this wrongful conviction. I am only a felon on paper. Ironically, my only sexual experience has been with my ex-wife, and none since we split. I have never been drunk nor indulge in such things as others often do, so I am a kind of deviant from expected norms.

I am compelled to transcend the gender binary, where it needlessly divides humanity and limits our full growth potential. That is why I am transgender. Similarly, I feel compelled to transcend other divisive binaries. In contrast to the win-lose standard of adversarial justice, I must always pursue a win-win outcome. A deeper spirituality compels me to respect the needs on all sides to a conflict. I must understand the needs affecting us all. I even wrote a [book](#) about it.

I am morally compelled to deviate from divisive norms. I am spiritually compelled to live by a higher standard. The more I transcend divisive norms to resolve underserved needs, the more I tend to be targeted by enforcers of divisive norms. Enforcing divisive norms usually prioritizes win-lose efforts to ease the pain of underserved needs. That easily impedes my spiritually compelled win-win efforts to resolve such needs.

Violating standard gender norms by being transgender exposed me to the power of the state to impose its divisive norms. The divisiveness of the adversarial judicial process pits itself against this higher standard. I am constantly vigilant for threats against me, by others personally or from the state, for exceeding their moral flaws. Even from those who perceive themselves as helpful to me.

My repeated attempts at seeking legal help remain fruitless and often traumatizing. I can no longer settle for the lower win-lose standard imposed by the adversarial justice system, and replicated by innocence activists with good intentions. When innocence entities turn down pleas for help from the unexonerated like me, where can we turn?

Out of principle, I must cease being complicit with the pathology of the adversarial system. Out of civil disobedience to bad law, I must refuse any further compliance with the sex offender registry mandate. Either I live as I honestly am and risk the consequences or resign to the self-serving violence of the misinformed state. Both present challenges to my wellbeing.

In the face of these threats to my wellbeing, I present viable alternatives to the adversarial process that aims to address the needs on all. Because I am spiritually compelled to address underlying needs to all conflicts, even at a risk to my life, I now publicly personalize the scope of this grossly ignored problem.

There is more to justice than citing misdeeds. There can be no justice without resolving needs.

There is no greater authority under heaven than resolved needs.

While no one sits above the law, no law sits above the needs it exists to serve.

Scope of the problem

If wrongful convictions are rare, as contended by judiciary professionals, then little reason exists to address this matter. If Innocence Projects and Conviction Integrity Units keep pace clearing miscarriages of justice, there is no reason for you to read any further.

An emerging academic literature estimating the rate of wrongful convictions in the United States suggests the Innocence Project, and others helping to address miscarriages of justice, falls severely behind in clearing wrongful convictions. Those working within the judiciary argue that the rate of wrongful convictions is low, while those independent of the judiciary (and less invested in wrongful acquittal risks) argue for much higher rates. You can follow this debate below, along with each one's argument for a theoretical rate of U.S. wrongful convictions.

Complicating the issue is the widespread misconception that all prisoners claim to be innocent. Research indicates only about 15% of prisoners claim actual innocence. That suggests about 330,000 prisoners among the 2.2 million in state and federal prisons would seek conviction review. Averaging all the academically evaluated wrongful conviction rates comes to 4.33%, suggesting at least 95,000 current prisoners are innocent. There could be more, with many cases blurring the meaning of wrongful conviction. This does not include those on parole or who have completed their sentence and must live the rest of their life with a wrongful felony record.

Innocence Projects must prioritize their limited resources to serve those cases they view as most likely to gain a hearing in court, and with the greatest chance of reversal. The total number of exonerations to date, as reported on the [National Exoneration Registry](#), reflects this sliver of cases. "We know without doubt," argues Samuel Gross, the NRE editor, "that the vast majority of innocent defendants who are convicted of crimes are never identified and cleared." Actual perpetrators then commit more crime.

Currently, the only official process to remedy these [Type 1 errors](#) is the same adversarial process who committed these errors in fear of [Type 2 errors](#). This exclusive process to correct wrongful convictions presents a conflict of interest. Its practice of [conviction finality](#) and a general lack of transparency and lack of alacrity undermines the greater interest of justice. Furthermore, the adversarial process sets a lower win-lose standard that requires one party to prevail over the other without respecting the affected needs on all sides. Unmet need ensures the process will be utilized again.

If the scope of this problem is large as this data below suggests, then we may need alternatives to complement, or compete, with our current disappointing remedies. Top-down elite-led generalizing institutions fail to resolve needs as nimbly as bottom-up grassroots nuanced entities closest to the problem. We cannot solve our specific problems from the level of generalizing that created them. We can dig deeper than the courts. So let's get to the specifics of how many remain unexonerated, down to each wrongly convicted individual the courts and innocence entities continue to overlook.

We cannot solve our specific problems from the level of generalizing that created them.

Academically estimated rates of wrongful convictions in US

The actual **rate of wrongful convictions in the United States** is not known, but potentially high enough to warrant significant policy changes. Among the millions in the United States with a **felony conviction** record,¹ scholars cited here estimate between **0.0016%** and **15.4%** are wrongly convicted. The estimated rate climbs much higher when including conviction reversals for those on **death row** avoiding **wrongful execution**.²

The range suggests as few as 35 prisoners are factually innocent to as many as 330,000 or more current prisoners are wrongly convicted. When including those with felony convictions who completed their sentence or were never incarcerated, the highest estimate nears to three million in the United States whose **rights remain curtailed by a wrongful conviction**.

Differences in these estimates reflect the scholar's definition of a **wrongful conviction**, types of cases focused upon, their methodology, institutional context, biases and other subtle differences. Once their estimate suggests the extent of the problem, their discussions spill over into better understanding the causes of wrongful convictions.³ And then disputes over what **policy changes**, if any or to what degree, should arguably follow.⁴

Range of estimated rates

While recognizing conviction error is not only a U.S. problem,⁵ the specific wrongful conviction rate anywhere remains unknown and unknowable.^{6,7,8} No legal or other scholar anywhere claims the criminal justice process of any jurisdiction *never* convicts an innocent person.⁹ They dispute how many become wrongly convicted. Scholars of diverse academic fields offer a variety of approaches to how best calculate an estimated range of wrongful convictions.

Calculating the estimate

To understand how these scholars arrive to such different conclusions, it helps to recognize each contributors' institutional contexts, their possible **activism**, the **types of cases** they focus upon, their definition of wrongful conviction, and any apparent ideological or other bias.⁸ The scholar's ideology and institutional context tends to affect how they define a *wrongful conviction*.

Source

Calculated estimates derive from reputable sources. The title of each source is provided with a link. Most are freely accessible online.

“We know without doubt that the vast majority of innocent defendants who are convicted of crimes are never identified and cleared.”

- **Academic article:** A scholarly study published in an [academic journal](#), such as a [law review](#) or [criminology journal](#).
- **Research report:** A federally funded research report, typically by the [U.S. Department of Justice, Office of Justice Programs](#).
- **Other:** Something other than the above items, such as an estimated rate coming from a [U.S. Supreme Court opinion](#).

[Authorship](#) comes from those either within the criminal justice system—such as judges or prosecutors—and those from without, such as law professors, criminologists, federally funded researchers, and innocence activists.

Year of publication demonstrates scholarly interest since the rapid rise in the [U.S. incarceration rate](#) occurring simultaneously with the [1990s drop in crime](#) and the advent of [DNA-based exonerations](#).^{10 11} The year of publication typically reflects the number of known exonerations at the time, and its implications for the emerging scope of conviction errors. Academic arguments for a low prevalence of wrongful conviction were easier to defend early in the [innocence movement](#), when innocence critics could anticipate [DNA testing](#) had discovered just about every factually innocent case. As the rate of exonerations soared,¹² relying less on clear-cut DNA evidence, these innocence critics noted an “expansion of exoneration” to include those still morally culpable yet legally not guilty. More recent scholarship typically addresses this definitional issue.

Methodology

This emerging scholarship attempts to calculate an estimated rate of wrongful convictions in the United States⁷ using available information and various research methods, typically the following five types.

- **Matched samples:** Contrasting a sample of known exonerations or [known conditions for wrongful convictions \(numerator\)](#), with data involving a matching population of all convictions during the same period ([denominator](#)). Typically involving cases with [DNA profiling](#).
- **Self-reporting:** Asking criminal justice officials or prisoners to fill out a [survey](#), and then controlling for [self-reporting bias](#).
- **Qualitative:** Examining the context in which errors occur, [both false positives and false negatives](#), typically addressing limits in the [quantitative approaches](#) mentioned above.
- **Public records:** Examining available court records, such as documentation of conviction reversals for capital cases.
- **Other:** Something other than a [rigorous methodology](#), such as quoting another source.

How the source derived the estimated rate from its methodology is briefly summarized. See the sourced article for how the authors specifically calculated their estimate.

Institutional context

The authors' role, at least at time of their contribution, suggest if incentivized to see a low or high rate of significant criminal justice errors. Those working within the criminal justice system present a different perspective than those working outside of it. Especially when defining an actionable *wrongful conviction*.

- **Judicial:** Scholars working within the criminal justice system typically narrow *wrongful conviction* to “actual innocence” (or factual innocence) to calculate their estimate. Wrongful convictions (type I “false positive” errors) typically occur in the context of trying to avoid wrongful acquittals (type II “false negative” errors).¹³ If responsible for the public’s safety while routinely encountering certain types of violence, you are understandably incentivized—even if unconsciously—to **err on the side of caution**.¹⁴ **Blackstone’s ratio** may seem an impractical ideal.
- **Nonjudicial:** Scholars outside of the criminal justice system, largely innocence activist law professors and criminologists without any custody responsibilities, may include “legal exoneration” that generally casts a wider net for their calculated findings. Innocence activists concerned by the “dark figure of crime” of unreported offenses are just as concerned over the growing “dark figure of innocence” of unknown wrongful convictions in that same place and time.¹⁵ Concern extends to victims of crimes and potential victims, recognizing how wrongful convictions allow actual perpetrators to commit more crime.¹⁶

Defining “wrongful conviction”

This scholarly debate revolves around defining *wrongful conviction*.

- **Legal exoneration:** Reversal of the conviction due to procedural error that raises question about the convicted person’s culpability.
- **Actual innocence:** Or factual innocence, where the convicted person played no role in the charged offense.

Initial studies by nonjudicial researchers accepted a broader definition. They naturally found a high rate. Judicial researchers argued this inflated the number basically for political reasons. After limiting their estimates to actual innocence, they found lower rates. Follow-up studies by nonjudicial researchers also narrowed their estimates to actual innocence, yet still found higher rates of wrongful conviction.

Addressing bias

Since good scholarship seeks to be aware and transparent of its own limits,¹⁷ some of each source’s limitations are briefly addressed.

List of scholarly estimates

1. 0.0016 - 1.95%

Source: *academic article*

Hoffman, Morris B. (2007). The Myth of Factual Innocence. *82 Chi.-Kent L. Rev.* 663.

Institutional context: *Judicial official.* Hoffman served as District Judge, Second Judicial District (Denver), State of Colorado.

Defining “wrongful conviction”: *Actual innocence;* the minority of defendants at trial typically contest moral guilt (their level of culpability) rather than actual guilt.

Methodology: *qualitative.* Hoffman starts with a lower range by carving out the 95% rate of plea deals.¹⁸ While admitting plea deals involve false confessions,¹⁹ he discounts their impact to 1 in 100. Just because one falsely confesses to a more serious charge for a plea deal doesn’t mean they’re not guilty of some culpability.

That leaves 5% of jury trial outcomes to calculate significant wrongful convictions. If juries were only 80% right, Hoffman grants as a stretch, that leaves only 1% for an overall wrongful conviction rate. Add in that “1 out of 100 innocent-but-pleading” percentage (95% x 1/100, plus 1%), he offers 1.95% as the upper limit of wrongful convictions.

For the lower end, Hoffman cites the 500 exonerations known at the time of the article. If a quarter of the two million trials resulted in acquittals over a 20-year period since the innocence movement began, that yields a .0033% rate (500/1,500,000). With only 5% of cases tried, that figure drops to .0016%.

Addressing bias: Excluding the bulk of plea deals skews Hoffman’s figure downward. In a footnote, he admits this could be problematic. While admitting his figure has flaws, he presses the point that a popular notion declaring half of all convictions as innocent is far more deeply flawed.

2. 0.016 - .062%

Source: *academic article*

Cassell, Paul G. (2018). Overstating America’s Wrongful Conviction Rate? Reassessing the Conventional Wisdom About the Prevalence of Wrongful Convictions. *Arizona Law Review*, 60:815.

Institutional context: *Judicial official.* Cassell formerly served as the U.S. District Judge in Utah. At time of authorship, Cassell served as the Distinguished Professor of Law at the S.J. Quinney College of Law at the University of Utah. He is a recognized victim’s rights proponent.

Defining “wrongful conviction”: *Actual innocence;* excluding mere legal innocence. Cassell takes issue with moral culpability present in some publicized wrongful conviction cases.

$$0.0016\% \times 2.2M = 35$$

$$1.95\% \times 2.2M = 42,900$$

$$35 - 2,775 = -2740$$

$$42,900 - 2,775 = 40,125$$

6.92% to over 100% cleared

$$0.016\% \times 2.2M = 352$$

$$0.062\% \times 2.2M = 1,364$$

$$352 - 2,775 = -2423$$

$$1,364 - 2,775 = -1411$$

over 100% cleared

Methodology: qualitative. Cassell calculates a much lower rate using what he calls the “component-parts methodology,” by looking at three components:

- 1) error rates at trial, given at .005;
- 2) the ratio of wrongful convictions obtained through trials versus plea bargains, given as 20/80; and
- 3) the percentage of cases resolved through pleas, given as 5/95.

Hence, $.005 \times 20/80$ (or $.25$) $\times 5/95$ (or $.052632$) = $.000066$, or “0.0066%, or 0.66 wrongful convictions out of 10,000 guilty pleas.” As Cassell explains,

“Then, using a weighted average to calculate the overall wrongful conviction rate—i.e., the 0.0066% wrongful conviction rate in guilty-plea cases and the 0.50% wrongful conviction rate in trials—leads to a wrongful conviction rate of $.00031$, or 0.031%, or 3.1 out of 10,000 violent crime convictions. Of course, this wrongful conviction rate is not precise. To avoid any suggestion of false precision, the wrongful conviction rate might be stated as a range, running from 50% below to 100% above the $.031\%$ rate—i.e., a wrongful conviction range of 0.016% to 0.062%.”

Addressing bias: Cassell raises a concern shared by others: how over-estimated error rates could hinder prosecuting the truly guilty.²⁰²¹

3. 0.027%

Source: U.S. Supreme Court opinion: *Kansas v. Marsh* (2006). U.S. Supreme Court Justice Antonin Scalia, quoting Joshua Marquis in U.S. Supreme Court opinion: Marquis, Joshua. (2005). *The Myth of Innocence*, 95 *J. Crim. L. & Criminology* 501.

Institutional context: Judicial: At time of authorship, Scalia served as a U.S. Supreme Court Justice. Marquis served as an Oregon district attorney.

Defining “wrongful conviction”: *Actual innocence*; As Marquis puts it, “they didn’t do it, weren’t there, didn’t participate.”

Methodology: quoting an opinion piece. In his 2006 editorial, Marquis glibly counters *Gross et al.* (2005)²³ by granting there could be up to ten times as many who are actually innocent among the 15 million felony cases prosecuted from 1989 to 2003. He throws out 4000 for that 10x figure, implied as a stable rate (i.e., 667 in each of those 15 years). 4000 divided by $15,000,000 = .027\%$ (or a 99.973% success rate).

This $.027\%$ figure is not from carefully analyzed empirical data, but rather from Marquis’s hypothetical retort to *Gross et al.* (2005). Marquis presents the figure to belittle that article’s findings for potentially higher rates resulting in wrongful convictions in the “thousands, perhaps tens of thousands.” Marquis criticizes *Gross et al.* for defining exoneration “as an official act declaring a defendant not guilty of a crime for which he or she had previously been convicted.” That same year, Scalia in *Kansas* cites Marquis’s critique of this expansive definition along with Marquis’s

$$0.027\% \times 2.2M = 594$$

$$594 - 2,775 = -2181$$

over 100% cleared

number as an available figure supporting his view that arguably “the system works.”

Gross et al. (2005), penned mostly by law professors, followed 340 DNA-based and non-DNA exonerations as examples of an increasing rate of wrongful convictions from 1989 to 2003. In response that year, *Marquis* decried “the myth of innocence” exemplified in legal exonerations that often include other elements of criminality or moral culpability. This “exoneration inflation”²² fuels much of the early divide between scholars working within the criminal justice system and those outside of it.

Scalia’s suspiciously low rate has spurred further scholarly debate on how to best estimate the probable rate of wrongful convictions in the U.S. criminal justice system. Apparently in response to this critique, subsequent scholarly estimates typically narrow to factual innocence, with cautiously conservative estimates. Some of that discussion is captured in these cited academic articles and in the further reading material below.

Addressing bias: Scalia cites 0.027% from quoting a *New York Times* opinion piece²³ penned by Joshua Marquis. In this article quoted by Scalia in *Kansas*, Marquis challenges a 2005 article by *Gross et al.*²⁴ that raised the alarm of a potentially high rate of wrongful convictions. In his concurring opinion, Scalia decries how his dissenting Kansas colleagues rely heavily on that *Gross* article, with “its inflation of the word ‘exoneration.’” Most of the scholars in this academic debate criticize the shortcomings in this figure. For example, *Roman et al.* point out how the numerator and denominator Marquis uses in his opinion piece retorting *Gross et al.* do not correspond to the same sampled population.²⁵

4. 0.5 - 1%

Source: Zalman, Marvin (2012). Qualitatively Estimating the Incidence of Wrongful Convictions. *Criminal Law Bulletin*, 48:2, 219-279.

Institutional context: Nonjudicial: Zalman serves as a criminal justice professor at Wayne State University.

Defining “wrongful conviction”: *Actual innocence*, or “factual innocence” and not “procedurally defective convictions.”

Methodology: qualitative. *Zalman* introduces a qualitative approach. He notes the limits faced by other scholars seeking a scientifically-based rate, based on limited data from more serious offenses. Bypassing a quantitative approach, he cites previous estimates from justice system professionals²⁶ where 71.8% surveyed estimated an error rate under 1% and 20.3% estimated error 1-5% of convictions. But then takes other complementary inputs into account, nodding to more recent scholarship.

Zalman offers a “generalized and nation-wide assumption” between one-half of one percent (.0005 or 0.5%) and one percent (.01 or 1%) for all felony convictions are factually innocent. He describes this as a subjective

$$0.5\% \times 2.2M = 11,000$$

$$1.0\% \times 2.2M = 22,000$$

$$11,000 - 2,775 = 8,225$$

$$22,000 - 2,775 = 19,225$$

14.43% to 33.74% cleared

estimate “not directly derived from the opinions of the justice system professionals surveyed.”

A 0.5% rate was originally published in 1996 by Ronald Huff, a colleague of Rattner, based on his survey of justice system personal.⁴ His finding raised an early alarm that up to 10,000 innocent defendants were being convicted each year.²⁷ Of the 1,993,880 convictions in 1990, 0.5% results in an estimated 9,969 false convictions. Huff considered this a conservative estimate, since most respondents were prosecutors and law enforcement officials with an apparent self-interest to defend conviction accuracies. *Ramsey & Frank* followed up this effort (see below).

Addressing bias: Zalman attempts to strike a balance between justice system actors and innocence critics on the one hand, who insist convictions of factual innocence are too “exceedingly rare” to warrant sweeping reforms, and “ideologically driven innocence activists” on the other hand, who propose responsive policy prescriptions.

5. 0.5 - 3%

Source: *academic article*

Ramsey, Robert H. and Frank, James (2007). Wrongful Conviction: Perceptions of Criminal Justice Professionals Regarding the Frequency of Wrongful Conviction and the Extent of System Errors. *Crime & Delinq*, 53:3, 436-470.

Institutional context: *Nonjudicial*: Serve as criminologist professors, Ramsey at Indiana University East and Frank at University of Cincinnati.

Defining “wrongful conviction”: *Actual innocence*; “For purposes of the survey, the term wrongful conviction is defined as people who have been convicted of a criminal offense but are in fact innocent” and this definition was included in the survey sent to respondents.

Methodology: *self-reporting*. A 53-item survey was sent to 1,500 criminal justice professionals in Ohio. Police, prosecutors, judges, and defense attorneys were asked to rate specific types of error or misconduct that could lead to wrongful convictions. For each type of error, respondents rated how often, from 1 (never) to 9 (always), they believed those in the named group committed that type of error.

Ramsey & Frank tabulates these responses by type of perceived error and type of criminal justice official. When aggregated into mean scores, survey results indicated a perception of 1% to 3% wrongful convictions occurring throughout the United States. But only .5% to 1% occurring in their own jurisdictions. While the overall range spans from .5% to 3%, most respondents (78% overall) admit anything over .5% is unacceptable. Less than 2% of respondents countenanced error rates of 4% or more.

Addressing bias: This study seeks to improve on previous self-reporting studies (*Rattner*, 1983,²⁸ and *Huff et al.*, 1986⁴) by including the perspective of defense attorneys.

$$0.5\% \times 2.2M = 11,000$$

$$3.0\% \times 2.2M = 66,000$$

$$11,000 - 2,775 = 8,225$$

$$66,000 - 2,775 = 63,225$$

4.39% to 33.74% cleared

6. 2.30%

Source: *academic article*

Gross, Samuel R. (2008). "Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases." B. O'Brien, co-author. *J. Empirical Legal Stud.* 5, no. 4: 927-6.

Institutional context: *Nonjudicial*: Gross served (and continues to serve) as law professor at the University of Michigan Law School, and editor of the National Registry of Exonerations project, where he continues to serve. O'Brien served as Assistant Professor of Law (and now as a full professor) at the Michigan State University College of Law and now also serves as an editor to the National Registry of Exonerations.

Defining "wrongful conviction": *Legal exoneration*: exoneration as officially pardoned, dismissed or acquitted; recognizing this could possibly include exonerates who participated to some degree in the crime, the authors are confident these are too few to discount exoneration as a useful proxy for innocence. They offset such cases by those who agreed during post-conviction relief to accept lesser non-capital sentences despite likely full innocence. They assert "there are many more false convictions than exonerations."

Methodology: *matched samples*. *Gross & O'Brien* uses death row exonerations data that occurred after Furman invalidated death penalty statutes. Capital cases provide ample data to compare exonerated with non-exonerated cases. Among the 2,394 sentenced to death from 1973 to 1984, and processed for post-conviction relief by 2004, 54 were exonerated (54/2394) = 2.3%. Among the 3,792 capital cases processed 15 years prior to 1989, 86 were exonerated (86/3792) = 2.3%.

Death row cases receive extraordinary level of attention. *Gross & O'Brien* concedes this increases the likelihood of exoneration. Once an innocent defendant is removed from death row to a life sentence or other outcome, they note, exoneration becomes less likely.²⁹ Applying this 2.3% estimate to non-capital cases appears less certain.

Addressing bias: *Gross & O'Brien* offers no perspective for criminal justice personnel, observing capital cases from an external perspective. They mention variability of geography (jurisdiction differences), mental illness, and race, but do not focus on these.

7. 3.3 - 5%

Source: *academic article*

Risinger, D. Michael (2007). Innocents Convicted: An Empirical Justified Factual Wrongful Conviction Rate, *J. Crim. L. & Criminology* 97:761.

Institutional context: *Nonjudicial*: Risinger served (and continues to serve at the of this writing) as Professor of Law at Seton Hall University School of Law. He has served professionally in various roles in the legal

$$2.30\% \times 2.2M = 50,600$$

$$50,600 - 2,775 = 8,225$$

5.80% cleared

$$3.3\% \times 2.2M = 72,600$$

$$5.0\% \times 2.2M = 110,000$$

$$72,000 - 2,775 = 69,825$$

$$110,200 - 2,775 = 107,225$$

2.59% to 3.59% cleared

field, developing an expertise on evidence. He regards himself as an Innocence Network activist.

Defining “wrongful conviction”: *Legal exonerations*; implied as factually innocence; since exonerations result from DNA evidence, specifically in rape-murder capital cases.

Methodology: matched samples. *Risinger* looks at capital rape-murders committed in the 1980s to establish an empirically-based wrongful conviction rate. Available data from this period can be compared to establish a numerator of exonerations to a denominator of all relevant cases.

For his numerator, *Risinger* looks at DNA exonerations in cases from 1982 to 1989 for reliable data. He finds 14 exonerated cases, but reduces this down to 11 qualifying DNA-based rape-murder cases. He further reduces this by half a case to control for error, resulting in a 10.5 numerator.

For his denominator, *Risinger* starts with 479 capital rape-murder cases in this period. He reduces this total by a third, the approximate percentage of rape-murder cases without usable DNA, resulting in 319. $10.5/319 = .0032881$, or 3.3% for his minimum estimate.

For his maximum estimate of 5%, *Risinger* cuts short a near doubling of the 3.3 floor to a 6.4% (moving toward a qualitative approach). To mitigate potential overestimation, he believes actual innocence runs reasonably as high as 5%. He considers his 3.3 to 5% a “conservative minimum factual innocence rate.”

Addressing bias: *Risinger* admits his motive is to challenge Scalia’s and Marquis’s low estimate of 0.027% (item #3 see above).

8. 4.10%

Source: academic article

Samuel R. Gross, Barbara O’Brien, Chen Hu, and Edward H. Kennedy (2014). Rate of False Conviction of Criminal Defendants Who are Sentenced to Death. *Proceedings of the National Academy of Science*, 111:2, 7230-7235.

Methodology: matched samples. *Gross et al.* follows the same 1973-2004 capital cases data utilized in their 2008 study, as also used in *Risinger* (above). They focus on death-sentenced defendants who remained under threat of execution from 1973 through 2004. “[F]alse convictions are far more likely to be detected among those cases that end in death sentences than in any other category of criminal convictions,” they explain.

Gross et al. uses the **Kaplan–Meier estimator** to calculate the percentage of wrongly convicted who remain on death row for the 21 years between 1973 and 2004. They hypothesized that the longer these defendants remained on death row, the greater the chance they would ultimately be exonerated. They took into account those cases removed from death row for various reasons. They found the likelihood of exoneration for this

$$4.1\% \times 2.2M = 90,200$$

$$90,200 - 2,775 = 87,425$$

3.17% cleared

population of capital cases that remained under threat of execution throughout this 21-year period to be 4.1%, or somewhere between 2.8 and 5.4% within a 95% confidence interval.

Institutional context: *Nonjudicial*: Gross served as law professor at the University of Michigan Law School, and editor of the National Registry of Exonerations project, where he continues to serve. O'Brien served as Assistant Professor of Law at the Michigan State University College of Law and now also serves as an editor to the National Registry of Exonerations. Chen Hu served as senior biostatistician at the American College of Radiology Clinical Research Center. Kennedy served as statistician from the University of Pennsylvania School of Medicine Department of Biostatistics and Epidemiology.

Defining "wrongful conviction": *Legal exoneration*: "Exoneration under threat of execution is defined as exoneration that resulted from legal proceedings that were initiated before the end of 2004 and while the defendant was under sentence of death."

Addressing bias: *Gross et al.* insists this calculated error rate is a conservative estimate, hinging on undercounts of innocent defendants. As they admit, "The main source of potential bias is the accuracy of our classification of cases as true or false conviction."

9. 5 - 15%

Source: *Research report* (of federally funded study)

John Roman, Kelly Walsh, Pamela Lachman, and Jennifer Yahner (2012). *Post-Conviction DNA Testing and Wrongful Conviction*. Urban Institute.

Institutional context: *Nonjudicial*: Contributors are listed as working for the Urban Institute. Roman and Walsh are each identified as having a PhD.

Defining "wrongful conviction": *Actual innocence*: where exoneration is not due merely to procedural errors, but where "the person convicted is factually innocent of the charges."

Methodology: *matched samples*. Retrospective DNA testing of physical evidence was funded by the U.S. Dept of Justice on sexual assault and homicide cases in Virginia from 1973 to 1987. Of the original 534,000 cases reviewed, only around 3,000 elicited physical evidence. These were narrowed to 2,100 where a suspect was identified. Cases with a usable DNA profile dropped the number of eligible cases below 800. Eligible cases were subjected to DNA testing for one of four outcomes: 1) indeterminate, 2) inculpatory, 3) exculpatory but insufficient, and 4) exculpatory supporting exoneration.

Of the 715 cases with a usable DNA profile, testing eliminated 56 of the convicted offenders as the source. $56/715=7.8\%$. Where testing appears to support exoneration, 38 eliminated the convicted offender as the source. $38/715=5.3\%$.

5% x 2.2M = 110,000
15% x 2.2M = 330,000

110,200 - 2,775 = 107,225
330,000 - 2,775 = 327,225

0.85% to 2.59% cleared

Where applied to homicides and sexual assault cases with exculpatory DNA testing supporting exoneration = 5% of convictions. Where applied to an unbiased sample of sexual assault convictions with exculpatory DNA testing supporting exoneration = 8 to 15% of convictions.

Addressing bias: The study admits to data limitations. The data being used lacked contextual information for the collected physical evidence, undermining the evidentiary value of the DNA testing results. Their follow-up report (below) addresses this shortcoming.

10. 6%

Source: *academic article*

Loeffler, C.E., Hyatt, J. & Ridgeway, G. (2019). Measuring Self-Reported Wrongful Convictions Among Prisoners. *J Quant Criminol* 35, 259–286.

Institutional context: *Nonjudicial*: Loeffler and Ridgeway served as Associate Professors of Criminology, and Hyatt served as a research associate, all three at the University of Pennsylvania. Hyatt has since moved to Drexel University to serve as an Assistant Professor of Criminology.

Defining “wrongful conviction”: *Actual innocence*; factual innocence, meaning respondent indicated they had zero involvement in their most recent conviction.

Methodology: *self-reporting*. *Loeffler et al.* dared to ask the prisoners themselves about their level of criminality. They surveyed nearly 3,000 prisoners entering the Pennsylvania state prison system. With assurances of anonymity, knowing their answers could never be traced back to them individually, respondents were surprisingly frank about their criminal history.

Two-thirds of respondents expressed full responsibility for their instant offense. One-fourth admitted partial responsibility. Only eight percent declared zero involvement in their most recent conviction. Accuracy of these responses were compared with data from prison staff, which remained highly aligned. Implausible responses were mitigated with statistical adjustments, dropping the 8% to 6%.

Additionally, the study illuminates the variability among conviction types. From only a 2% conviction error rate among DUI cases to 40% in rape convictions. The findings mirror the [RAND Note](#)³⁰ published in 1978 that found only 15% of prisoners claimed actual innocence. (See Poveda’s 15.4% rate below.)

Addressing bias: To date, this finding only represents one sampling of the Pennsylvania prison population. A replication study, especially for other populations, may produce different results. Self-reporting bias from respondents appear far less apparent than the popular notion that all prisoners claim they are innocent.

6% x 2.2M = 132,000

132,000 - 2,775 = 129,225

2.15% cleared

11. **11.60%**

Source: *Research report* (of federally funded study)

Walsh, K., Hussemann, J., Flynn, A., Yahner, J., Golian, L. (2017).
Estimating the Prevalence of Wrongful Conviction. Office of
Justice Programs' National Criminal Justice Reference Service.

Institutional context: *Nonjudicial*: The publication only states these are authors to this summary technical report. Walsh and Yahner also listed authors in the prior Urban Institute 2012 report (see above).

Defining "wrongful conviction": *Actual innocence*; "In this study, since DNA evidence is the tool used to detect wrongful convictions, we are solely concerned with those where factual innocence is the issue," according to the original 2012 study (see below).

Methodology: *matched samples*. Walsh *et al.* utilize a U.S. Justice Department grant to revisit a 2012 Urban Institute report (above), "Post-Conviction DNA Testing and Wrongful Conviction."²⁴ This study determined the estimate could be safely generalized to other states besides Virginia.

Its original 430 cases with a sexual assault component yielded 231 DNA findings for post-conviction review. Of these, 29 cases (12.6%) produced exculpatory DNA evidence sufficient enough to support exoneration. Probability weights corrected this rate of sexual assault cases to 11.6%.

Addressing bias: This study seeks to counter **sampling bias** inherent in other approaches to find a false conviction rate (see above). It bypasses individual claims by examining available DNA evidence upfront. Its relatively higher rate likely reflects its narrow focus on sexual assault cases.

11.6% x 2.2M = 255,200

255,200 - 2,775 = 250,425

1.10% cleared

12. **15.40%**

Source: *academic article*

Poveda, T.G. (2001). Estimating Wrongful Convictions. *Justice Quarterly*, 18:3, 689-708.

Institutional context: *Nonjudicial*: Sociology Professor in the Criminal Justice department at SUNY Plattsburgh.

Defining "wrongful conviction": *Actual innocence*; "Did no crime" response, suggesting a self-reported response of factual innocence, while those admitting some culpability were excluded from findings.

Methodology: *self-reporting*. Poveda utilized the RAND Inmate Survey³¹ which sampled inmates from prisons in California, Michigan and Texas. 2,190 prisoners filled out a questionnaire that was then compared to official prison records, showing remarkable agreement. Prisoner respondents reported more criminality than revealed in their official records.³² One of the questions asked respondents about their current conviction. The next question invited respondents to indicate their level of culpability. The last option for respondents to check was "Did no crime." Poveda analyzed these answers to calculate the rates of

15.4% x 2.2M = 338,800

338,800 - 2,775 = 336,025

0.83% cleared

self-reported denial of convicted offenses. The data showed wide variance depending on the type of offense, as illustrated in the following table. With minimal variance by state (14.1% in MI, 14.6% in CA, 16.7% in TX), respondents reported an overall “did no crime” rate of 15.4%.

Addressing bias: Self-reported innocence raises red flags, yet the willingness to report more criminality than reported in official records suggests the data is not as biased as one may presume. The high rates reported for rape and sexual-assault-other-than-rape (see table below) align closely with a previous study³³ finding 41% of forcible rapes reported to police in one U.S. city during a nine year period did not factually occur.

TABLE for Poveda’s study: Self-reported denial of convicted crime, using 2000 criminal justice data.

Convicted offense	“Did not commit”
Rape	37.70%
Sex offense (not rape)	26.90%
Murder	17.50%
Weapons	13.40%
Assault	12.80%
Robbery	11.50%
Forgery	9.90%
Burglary	9.00%
Drug sale	8.10%
Drug possession	5.20%
ALL OFFENSES	15.40%

The high rate of innocence claims among rape and sex offense cases fits the stereotype of criminal denial. As a case at the bottom of the prison pecking order, and arguably society itself, denial of culpability is often perceived as self-serving. However, the threshold for obtaining sex offense convictions is generally lower than other types of cases. For example, such a conviction can be based solely on the testimony of a child after being interviewed with leading questions.^{34 35}

13. **68%**

Not generalizable to all cases

Source: academic article

James S. Liebman, Jeffery Fagan, Valerie West & Jonathan Lloyd (2000). Capital Attrition: Error Rates in Capital Cases, 1973-1995, *78 Tex. L. Rev.* 1839.

Institutional context: Nonjudicial: Liebman served as Professor of Law at Columbia Law School, Fagan served as Professor of Public Health at Columbia University and visiting Professor at Columbia Law School, West was a doctoral candidate at New York University, and Lloyd was a JD candidate at Columbia Law School.

Defining “wrongful conviction”: *Legal exoneration*; reversal of capital case convictions, to avoid wrongful executions, often reduced to a non-capital sentence.

Methodology: *public records* (statistical study of appeals in capital cases). *Liebman et al.* examined the judicial review of 4,578 capital cases between 1973 and 1995. Capital cases are more thoroughly reviewed than cases without any death penalty. The added scrutiny reveals serious, reversible errors in the majority of capital sentences in the 23-year period. A portion of these were found innocent of the capital offense.

Liebman et al. found incompetent legal defense³⁶ and *Brady violations* as two key reversible errors. The study found similarly high error rates reversing capital cases convictions across the states reviewed, ranging from 52% to 70% or higher. The national average of reversed convictions in all capital cases from 1973 to 1995 reached 68%.

Addressing bias: This study focuses more on *wrongful executions* in the U.S. than wrongful exonerations. “This much error, and the time needed to cure it, impose terrible costs on taxpayers, victims’ families, the judicial system, and the wrongly condemned. And it renders unattainable the finality, retribution and deterrence that are the reasons usually given for having a death penalty.”

Applied to relevant populations in the U.S.

Felony arrests: As of 2014, there were over 105 million criminal history records in the United States, which covers individuals with multiple records.³⁷ This was up from 100 million records in 2012³⁸ and 92 million in 2008.³⁹ That number is steadily rising⁴⁰ and only recently showing signs of slowing.⁴¹ When distilled into how many individuals with a felony arrest record, the *FBI* reports a 73.5 million total in 2017.⁴²

Felony convictions: The exact number with a felony conviction is not precisely known. Data can be inferred from disparate sources.⁴³ Totals suggest there are up to 19 million,⁴⁴ 23 million,⁴⁵ or well over 24 million⁴⁶ felons in the U.S. Using the latest *corrections population data*⁴⁷ to appreciate the size of the issue,^a the table below applies these scholarly estimates to affected U.S. populations. Although applying each rate^b equally to each of these populations introduces significant *statistical error*, the table is offered less to provide specific numbers and more to demonstrate the approximated prevalence and incidence of wrongful convictions.

^a The 68% rate is excluded from the table since it applies only to capital cases and to conviction reversals, often to a lesser offense or lesser penalty.

^b These are the known rates I could find online when first researching this in 2019. More academic rates could be available but inadvertently overlooked here.

Prevalence

Prevalence indicates the overall occurrence (of wrongful convictions) in a given felony convicted population. For each of these populations segments, the given rate is divided by the given population to express the apparent prevalence of wrongful convictions in the U.S.

- **P1** = 2.2 million prison population
- **P2** = 6.9 million custody population⁴⁸ (includes jails, detention centers, probation, parole)^c
- **P3** = 9.7 million ex-prisoner population (typically with **rights-limiting collateral consequences of criminal conviction**)
- **P4** = 19 million felony population (also limited by an array of collateral consequences of criminal conviction^{49 50})

Incidence

Incidence is the number of occurrences within a given time period, often reported in the literature as the number of cases per 100,000 per year. To express the apparent incidence of wrongful convictions in the U.S. overall, the given rate is divided by the number of convictions per year.

- **I1** = 1.1 million felony convictions per year⁵¹
- **I2** = The 70% proportion of felony convictions that result in some form of incarceration

Prevalence and incidence calculations

Rank	Estimated rate	Estimate Author(s)	Published date	Prevalence				Incidence	
				P1 population	P2 population	P3 population	P4 population	I1 per year	I2 per year
1	0.00%	Hoffman (low end)	2007	35	110	155	304	18	12
2	0.02%	Cassell (low end)	2018	352	1,104	1,552	3,040	176	123
3	0.03%	Scalia (citing Marquis)	2006	594	1,863	2,619	5,130	297	208
4	0.06%	Cassell (high end)	2018	1,364	4,278	6,014	11,780	682	477
5	0.50%	Ramsey & Frank; Zalman (low end)	2007; 2012	11,000	34,500	48,500	95,000	5,500	3,850
6	1%	Zalman (high end)	2012	22,000	69,000	97,000	190,000	11,000	7,700
7	1.95%	Hoffman (high end)	2007	42,900	134,550	189,150	370,500	21,450	15,015

^c For states still offering parole, the unexonerated are typically compelled to serve their full sentence for failing to demonstrate contrition. This practice is starting to change in some jurisdictions.

8	2.30%	Gross & O'Brien	2008	50,600	158,700	223,100	437,000	25,300	17,710
9	3%	Ramsey & Frank (high end)	2007	66,000	207,000	291,000	570,000	33,000	23,100
10	3.30%	Risinger (low end)	2007	72,600	227,700	320,100	627,000	36,300	25,410
11	4.10%	Gross, O'Brien, Hu, & Kennedy	2014	90,200	282,900	397,700	779,000	45,100	31,570
12	5.00%	Risinger (high); Roman (low)	2007; 2012	110,000	345,000	485,000	950,000	55,000	38,500
13	6%	Loeffler et al.	2018	132,000	414,000	582,000	1,140,000	66,000	46,200
14	11.60%	Walsh et al.	2017	255,200	800,400	1,125,200	2,204,000	127,000	89,320
15	15%	Roman et al. (high end)	2012	330,000	1,035,000	1,455,000	2,850,000	165,000	115,500
16	15.40%	Poveda (overall average)	2001	338,000	1,062,600	1,493,800	2,926,000	169,400	118,580

The unexonerated population

The wrongly convicted not yet officially exonerated are aptly called the *unexonerated*.⁵² The lower estimated rates suggest the only unexonerated remaining are not factually innocent. The larger estimated rates suggest the bulk who are factually innocent are among thousands if not millions of these “unexonerated”.

Innocence movement triage: Among the 55,000 letters seeking help received by the Innocence Project’s first 25 years⁵³ only a small margin can receive assistance. This doesn’t include the countless letters sent to other innocence movement entities.

Innocence movement resources: Limited resources prevents innocence projects to respond to every request. The innocence movement must prioritize their efforts. So they tend to support those facing the greatest threat to their liberties, starting with death row cases.⁵⁴ Misdemeanor exonerations account for about 2% of known exonerations, while making up 80% of all criminal convictions in the U.S.⁵⁵ The countless wrongly convicted who have already served their sentence receive the least effort. The high volume of potentially unexonerated suggest **Innocence Projects** legitimately require more resources to process an overwhelming volume of viable innocence claims.⁵⁶

The current pace of clearing wrongful convictions risks **undertridage** where the severity of the problem is massively underestimated. If the criminal justice process was held to the same safety standards as other fields,⁵⁷ more attention could be given to the many viable claims of actual innocence. The unexonerated need viable alternatives to an adversarial court process whose denial of these costly errors creates a depressing conflict of interest and easily retraumatizes them.

Clearance rates versus the unexonerated

The 2,775 currently recorded exonerations by the [National Exoneration Registry](#) suggests a small dent in this overlooked crisis.

Estimated rate	P1 - NRE	Percent cleared	P2 - NRE	Percent cleared	P3 - NRE	Percent cleared	P4 - NRE	Percent cleared
0.0016%	-	-	-	-	-	-	-	-
0.016%	-	-	-	-	-	-	1,660	151%
0.027%	-	-	-	-	119	2101%	4,520	55.3%
0.062%	-	-	1,178	141%	3,514	71.1%	13,620	18.4%
0.5%	8,500	29.4%	32,000	7.81%	46,000	5.43%	127,500	1.96%
1%	19,500	12.82%	66,500	3.76%	94,500	2.65%	257,500	0.971%
1.95%	40,400	6.19%	132,050	1.89%	186,650	1.34%	504,500	0.496%
2.3%	48,100	5.20%	156,200	1.60%	220,600	1.13%	595,500	0.420%
3%	63,500	3.94%	404,500	1.22%	288,500	0.867%	777,500	0.322%
3.3%	70,100	3.57%	225,200	1.11%	317,600	0.787%	855,500	0.292%
4.1%	87,700	2.85%	280,400	0.892%	395,200	0.633%	1,063,500	0.235%
5.0%	107,500	2.33%	342,500	0.730%	482,500	0.518%	1,297,500	0.193%
6%	129,500	1.93%	411,500	0.608%	579,500	0.431%	1,557,500	0.161%
11.6%	252,700	0.989%	797,900	0.313%	1,122,700	0.233%	3,013,500	0.083%
15%	327,500	0.763%	1,032,500	0.242%	1,452,500	0.172%	3,897,500	0.064%
15.4%	336,300	0.74%	1,060,100	0.24%	1,491,300	0.17%	4,001,500	0.06%

Contrasted to the latest number of known exonerations,⁵⁸ this table suggests the gravity of the problem. As one of these scholars put it in an opinion piece for the *Washington Post*, “We know without doubt that the vast majority of innocent defendants who are [wrongly] convicted of crimes are never identified and cleared.”⁵⁹

Debating the wrongful conviction rate can be merely academic for the wrongly convicted themselves with little if any hope for exoneration. For those negatively impacted by such wrongful convictions, one is already one too many. So let’s look at some alternative solutions.

1. Informed Decisions Act

PROBLEM: The unexonerated continue to endure the injustice of economic discrimination. Routine criminal background checks rely on court provided conviction records. These records fail to provide sufficient context for the public to distinguish between viable innocence claims and the rightly guilty.

Innocence projects only serve a small portion of viable innocence claims, exposing the bulk of *unexonerated* to unjust discrimination—who cannot find meaningful job or a reliable income stream, left stuck in poverty to serve the uncompensated interest of the state.

SOLUTION: Propose legislation that makes the context of each criminal conviction transparently available to the public. Include in each publicly available conviction record a standard list of details significantly correlating with rightly or wrongful convictions, to allow anyone to distinguish between the rightly guilty and the wrongly convicted.

- **Adjudication type:** plea, bench trial, or jury trial.
- **Verdict type:** guilty, no contest, or not guilty.
- **Sentencing per guidelines:** lower than guidelines, within guidelines, or over guidelines (i.e., suggesting a trial penalty).
- **Incarceration record:** number of major misconducts, or any new criminal case.
- **Discharge context:** paroled, or denied parole for lack of contrition from maintaining innocence.
- **Criminal history:** no other criminal history, no prior criminal history, no follow-up charges, or no warrants.

Address the public need for public safety with better data.

Wrongly convicted and wrongly neglected

The latest count of 2,775+ exonerees in the US represent a mere fraction of the estimated hundreds of thousands of innocent prisoners. Countless more wrongly convicted have served their full sentence or were never imprisoned but remain stuck in second-class citizen status—jobless or underemployed, homeless or stuck in poor housing choices, cut off from quality healthcare, and worse.

Meanwhile, innocence projects receive far more requests for assistance than they can help. “We know without doubt,” the editor of the National Registry of Exonerations Professor Gross reported in 2015 in the *Washington Post*, “that the vast majority of innocent defendants who are convicted of crimes are never identified and cleared.” Not merely cases involving some technical legal error or contesting the level of culpability or sentence, but the countless who had no involvement whatsoever in the adjudicated crime.

The problem remains largely out of view as innocence projects rely on laborious paper forms to meticulously process only the most compelling cases. Because the scale of this problem remains largely hidden, innocence projects remain underfunded and understaffed. **Exonerating a couple hundred each year** barely puts a dent in the sheer volume of wrongful convictions.

Ironically, the harsher the case (homicide, sexual assault) and sentence (death row, life without parole), the more likely to be exonerated. The wrongly convicted drugfree “drug offender” excluded from Pell Grant eligibility may never be exonerated. Countless innocent lives—including affected family—remain left in painful limbo. The public interest for justice is not being justly served.

Informed Decisions Act logic model

Instead of relying on paper forms processed exclusively through the black box of legal experts, this problem could be alleviated with an easily accessible online form. The form could automatically estimate the viability of the claim. The more factors identified in previous exonerations, the higher the calculated likelihood of innocence. Let this logic model illustrate its potential.



INPUTS

Data on criminal court cases outcomes: Amending the current process of providing the public with court case outcomes to include this added context.

Court officials: Provide each listed factor for each adjudicated case outcome, to ensure they serve the public interest for justice more than serving the state’s interest for power.

Government administrators: Those entrusted to publish criminal records for background check services kept accountable to provide this context to accountably serve the public interest for justice over the state’s interest for power.

Reporting form: Publicly available record of convictions includes the above list of factors, or the public record deemed suspect if serving the state's interest over the public's interest for justice.

OUTPUTS

Activities

The state provides for the public interest of justice over its own interest to maintain power, or it risks losing legitimacy to assert such power. Democratic authority exists to serve public needs over elite interests narrowly serving a few. Activities of state are kept accountable to serving the public need for justice, and invites scrutiny to state actors rationalize state activities presenting more self-preservation than accountably serving the affected needs of the public.

Court official fills out reporting form. Each court official serving the state of Michigan includes the above listed factors whenever publicizing a conviction outcome to be accessible by any citizen of Michigan. Failure to provide due context subjects the state to the public questioning their legitimacy if presenting the interests of the state over the public's interest for justice.

Court official includes context for each conviction outcome. Court official responsible for providing each listed factor, or subject the court to critique of serving its own interest over the public's interest for justice.

Court files reporting form to relevant government administrators making conviction outcomes publicly available. Government administrators in executive branch receive court provided record of each adjudicated case, with its listed factors included, or risk subjecting the executive branch to serving its own power interest over the public's interest for justice.

Government administrator fields inputs from public to address any incorrect data. Since errors can occur, government administrators entrusted to provide accurate information on adjudicated court cases will respond to inquiries that challenge the accuracy of a publicly provided court record. For transparency, each piece of published information challenged for accuracy will be noted in the public record within a reasonable time (24 hours?) of it being questioned. The length of time it takes to correct or clear such challenges reflects on the state's commitment to serve the public's interest for justice over serving its own power.

Reach

This legislation seeks to serve those currently underserved by the current black-and-white public conviction records.

Innocence claimants not yet exonerated. This legislation recognizes the problem of wrongful conviction currently overwhelms the limited resources

of innocence projects and conviction integrity units. Without laboriously determining each adjudicated case with errors, this legislation offers a provisional alternative to affected individuals and populations suffering the injustice of wrongful convictions, many which may never be officially exonerated.

Wrongly required to register as sex offender. This legislation offers relief to those wrongly convicted as a sex offender and required by law to register as a sex offender, sometimes for life. Those using background screening services legally discriminate against wrongly convicted sex offenders long past the standard seven-year cutoff, despite the unexonerated person presenting strong correlation with innocence that a more robust public record to show.

Background check users, like employers and landlords. Without detailed conviction records, they must—in the interests of risk management—screen out unexonerated persons. For employers and landlords eager to expand their pool of applicants, and who need to trust these prospects are trustworthy, this legislation can provide the overlooked integrity of unexonerated persons in the face of immense challenges. This potentially allows those forced to become dependent upon others and the public for their survival to be more independent, and then meaningfully contribute to the economy.

Screeners provide background data discerning between rightly guilty and wrongly convicted. Background check companies, like [Checkr](#), enjoy access to better information around each adjudicated case, so they can provide better services for their clients. This legislation allows screening companies to better serve their clients with more accurate data, encouraging screeners to compete with one another with the most accurate backgrounds on adjudicated individuals.

Court officials can better serve public safety interest. This legislation replaces the current sledgehammer approach with the more delicate touch of a scalpel. It potentially shifts the state's apparent self-protection preserving its power to fulfill its democratic purpose of delivering outcomes serving the public's interest for justice

If victims of personal violence and victims of state violence of wrongful convicts are only offered relief from pain by adversarial judicial outcomes, and not empowered to resolve their affected needs through restorative justice, then how much is the state exploiting the grieved survivors of violence to serve its own power interests?

OUTCOMES

Short-term

The legitimacy of criminal justice can be enhanced when providing accountable outcomes serving the public interest for justice and safety.

Innocence claimants seek jobs and other screened accommodations with less fear of discrimination. When UNEXONERATED person applies for job, they can alert employer of the differentiated context of their dubious conviction. They can then pitch themselves as one with the integrity to maintain their innocence against pressures to compromise their integrity, offering tested value to the employer otherwise passing over these candidates.

Additional upfront work for state officials. Ensuring better and more accurate conviction date likely adds to the workload of court officials and government administrators. The value of their work will be enhanced by helping to solve this underserved state-complicit problem.

Adjustment for screeners processing criminal convictions. Companies providing background checking services will have more data to process. They may need to update their processing of conviction records. Competitive advantage is to incentivize this change.

Intermediate

Unexonerated persons can then emerge as an overlooked asset to employers and others.

Innocence claimants confident in job interviews. Unexonerated persons can then boldly share their adjudicated experience as a documented demonstration of their integrity.

More of the wrongly convicted offered meaningful work and housing. More unexonerated persons can transition from dependence upon others to providing for themselves and others.

Fewer wrongly convicted dependent upon public assistance and burdened families. More unexonerated persons hired and independently housed relieves the public and loved ones of the burden to provide for those routinely refused employment or housing from an errant background check.

Long-term

Resources wasted blacklisting unexonerated persons can turn around to enhance the public good.

Fewer wrongly convicted at risk of resorting to survival crimes. More unexonerated persons can establish self-sufficiency, and be less vulnerable to resorting to desperate acts to survive from the errant record.

More Michigan citizens fully employed and contributing more fully to the economy. Their shift from dependence to productivity benefits us all.

More wrongly convicted financially enabled to help similarly situated. Some unexonerated persons may create meaning out of their suffering by serving others in similar need, and with better jobs they have the means to support this need in more sustainable ways.

Fewer tax dollars expended on those who can better support themselves.

Tax revenue now invested in the economic safety net to support the many impoverished unexonerated persons can be invested elsewhere, as these unexonerated persons overcome barriers to meaningful employment.

ASSUMPTIONS

Employers and housing renters routinely exclude unexonerated persons by stereotyping all innocence claims as criminal denial. Wording of liability insurance may limit their discretion to employ or rent to anyone with a criminal conviction. Providing context for criminal convictions will add meaningfully to decision making of employers and housing renters, and challenge the widespread misconception that all felons claiming innocence must be avoiding criminal responsibility.

EVALUATIONS

An initial evaluation checks for the need and then adoption of the legislation. A survey is to be drafted to capture the interest and concerns of anyone affected by this worded legislation. Input is invited from:

- law enforcement,
- consumer background checking services,
- Innocence Projects and other defendant advocates,
- the public,

and anyone affected by background screening of innocence claimants.

Feedback from all affected can improve the wording of this bill, to respect the affected needs on all sides. The wording seeks to respect the values of both conservatives and liberals.

Both sides now: neutralizing political politicization

The bill is carefully worded to respect the affected values of both liberals and conservatives. Similar to how I transcend the gender binary, I transcend the political binary. I relate to the prioritized needs on all political sides.

Left: alleviate imposed poverty from prosecutorial overreach; reform criminal justice system to be more responsive to vulnerable populations.

Right: shift safety concern to those presenting greater risks of violence; fewer tax revenue to support those who could support themselves.

It appeals to those with liberal values by easing the poverty imposed from prosecutorial overreach. You can characterize it as criminal justice reform more responsive to vulnerable populations subjected to over-criminalization.

It appeals to those with conservative values by shifting their safety concern to those presenting actual risks of violence. You can characterize it as enabling fewer tax revenue to support those who could otherwise support themselves.

Politics is the art of generalizing how to agreeably address needs in differing social situations.

Michigan's SORA

Michigan recently replaced its sex offender registry statute, after the old one was identified as ineffective and then ruled unconstitutional in parts. SORAs tend to replicate the overgeneralizations of politically biased reactions, often lacking corrective inputs from all who are impacted. This IDA addresses the political bias that risks creating bad laws, which can privilege sexual violence. Many of the unexonerated endure the legally privileged violence of lifelong registration. Despite my own sexual innocence, I am blacklisted for life.

Whenever power is used to force the sexually innocent to register, this itself is a legally privileged sex offense by its broader definition. If they are equitably concerned about the risk from sex offenders, let them add their own names to the registry. *The standard applied sets a standard replied.*

IDA beyond Michigan

If successful to address this problem, this piece of legislation could be repeated in other states. Only a handful of states restrict reporting on convictions, and no state to date authorizes availability of information to give context to viable claims of innocence. This gap could be addressed on a national level with an upgrade to the Fair Credit Reporting Act.

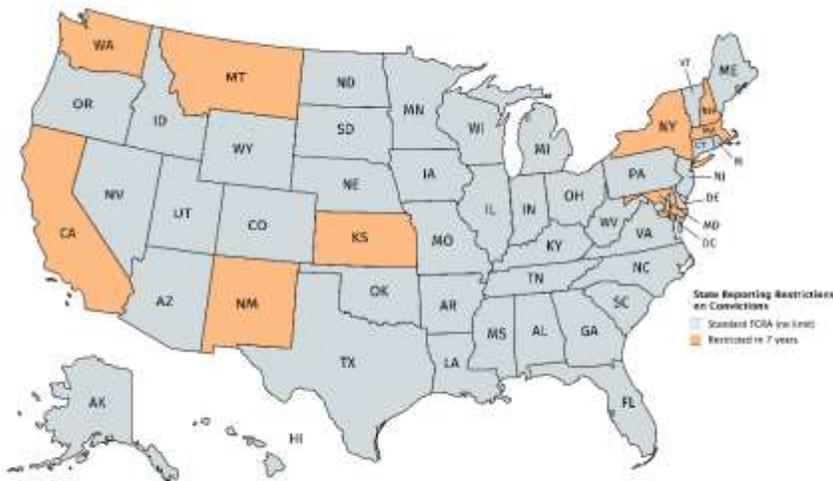


Image source: Checkr.com

Every county is autonomous and maintains (and makes available) their records differently. Current reporting norms biases the political status quo of stifling police authority, at odds with the American spirit of freedom. The current political climate is now ripe for criminal justice reform of all types. This legislation seeks to help the innocent continually victimized by state violence. Furthermore, the legislation aims to remedy the problem with the least cost to the public, by simply informing the public of detailed outcomes from its criminal justice institutions. It enables all affected to make a more informed decision in life.

The rush to politically fight can produce many a flaw. Two wrong don't make a right, but sometimes they make a law.

No one has authority over needs. Our factual needs exist prior to human law.

ATTACHMENT A: Informed Decisions Act bill**An Act
To Ease Discrimination Against the
Wrongly Convicted****Title of Bill: Informed Decisions Act**

Preamble: WHEREAS criminal convictions are increasingly revealed to be wrongful, through DNA and other available means, in which the convicted person is found actually innocent, meaning they performed no role in the reported crime;

WHEREAS the appellate process and innocence projects lack sufficient resources to fully process the high volume of compelling cases of actual innocence;

WHEREAS law enforcement and others involved in the adversarial criminal justice process historically made identifiable errors—confirmation bias leading to tunnel vision investigations, eyewitness misidentification, false confessions or admissions, official misconduct like noble cause corruption, unsupported forensic science, jail informant biased testimony, inadequate defense, Brady violations, and other errors—each contributing to the probability of wrongly convicting someone fully innocent of the reported crime;

WHEREAS publicly available conviction records fail to differentiate between unquestioned guilt and compelling claims of innocence yet to be processed for exoneration;

WHEREAS a consumer of public conviction records could decide trustworthiness for themselves if provided more context, such as if the person consistently maintained innocence by asserting a right to trial, was dubiously found guilty by a jury, willingly endured a trial penalty of a lengthier sentence, became a model prisoner, then denied parole for apparent lack of remorse, and since released from prison has remained recidivism free;

WHEREAS consumer reporting agencies rely on publicly available conviction records to serve their clients' needs for determining future behavior based upon reliable information about past behavior, who without a full conviction context cannot reliably distinguish between a criminal mindset and a wrongly convicted person's desirable integrity of maintaining and demonstrating innocence in the face of adversity, and who have little if any input as to the reliability of this overgeneralizing public criminal record;

WHEREAS those wrongly convicted and not yet exonerated who seek employment, housing, education and other opportunities repeatedly endure legally privileged but erroneous discrimination in employment, housing, education and other opportunities due in part to undifferentiated conviction records,

SECTION 1: BE IT ENACTED BY THE MICHIGAN LEGISLATURE this “Informed Decisions Act.”

SECTION 2: For the purposes of this act,

SUBSECTION A: “maintained innocence” means the person consistently claims actual innocence in regard to the instant offense, and

SUBSECTION B: “demonstrated innocence” means the claimant has not been involved in any other criminal activity since the conviction, and

SUBSECTION C: “undifferentiated criminal record” means no difference is accorded between convictions with compelling claims of actual innocence and other criminal convictions of unquestioned guilt.

SECTION 3: Publishing a criminal conviction shall include sufficient context to provide those utilizing such information to make informed decisions, not based narrowly upon court outcomes that erroneously imply to the information consumer that undifferentiated criminal records are basically the same.

SECTION 4: Context for a published criminal conviction shall include, but not necessarily limited to, the following:

SUBSECTION A: Adjudication type: plea, bench trial, or jury trial.

SUBSECTION B: Verdict type: guilty, no contest, or not guilty.

SUBSECTION C: Sentencing per guidelines: lower than guidelines, within guidelines, or over guidelines (i.e., suggesting a trial penalty).

SUBSECTION D: Incarceration record: number of major misconducts, or any new criminal case.

SUBSECTION E: Discharge context: paroled, or denied parole for lack of contrition from maintaining innocence.

SUBSECTION F: Criminal history: no other criminal history, no prior criminal history, no follow-up charges, or no warrants.

SECTION 5: A person claiming actual innocence, or another person or entity entrusted with power of attorney, may petition the government to include in that person's public criminal record their status of maintaining and demonstrating innocence, in contrast to the majority of convicted felons who do not claim nor demonstrate actual innocence, and to provide any working link of online information available to the public to verify or refute their claim of actual innocence.

SECTION 6: The person claiming actual innocence, or another person or entity entrusted with power of attorney, may petition the government to properly inform the public that they have always maintained and demonstrated innocence, or claimed innocence after recanting an alleged coerced confession and maintained and demonstrated their innocence since recantation. Claims of partial innocence, or of overcharging criminal complicity, or any other claim besides maintaining and demonstrating actual innocence does not fall under this act.

SECTION 7: The initial processing of these requests for accurate public criminal records shall be processed within the executive administrative branch, and remain independent of the adversarial judicial process to avoid any conflicts of interest that could undermine the reliability of the public record.

SECTION 8: The public record will provide the latest scholarly information including any scholarly debate for the estimated incidence of wrongful convictions, and provide the latest scholarly information including any scholarly debate for how frequent or infrequent felons actually claim full innocence.

SECTION 9: This bill shall go into effect 91 days after passage.

NOTE: The precise wording of this bill will likely change as all those affected by it agree to add their input, and provide a bill that is most responsive to all the affected needs.

2. Estimated Innocence Form

PROBLEM: Innocence Projects receive more requests for help to process wrongful conviction claims than they can keep pace to serve. Consequently, an unknown number of the wrongly convicted continue to suffer the injustice of prosecutorial overreach. Available data on wrongful conviction claims is currently not collected and collated to capture the scope of the problem. Consequently, policymakers and the public remain unaware of the vast scope of a problem undermining the integrity of our institutions.

SOLUTION: Provide innocence claimants with an alternative to legal claims, which

- 1) tend to replicate the errors of the adversarial judicial process;
- 2) are kept from public critique while in its bureaucratic black box; and
- 3) are processed too slowly with often arbitrary results.

Claimants are provided a **form** that captures the details of their claim, to elicit public support and scrutiny. The form automatically calculates the degree of validity based on the provided details, correlated with known exonerations. Data on the scope of the problem can quickly become visible, and actionable for policymakers.

Top down or bottom up?

Trust in longstanding institutions continues to decline. Including trust in the adversarial justice system. Those who encounter its limits are among the most vocal critics. Defenders of criminal justice status quo tend to have few encounters with the actual workings of the criminal adversarial process.

One contributing factor to decreasing trust in these top-down institutions is the promising empowerment of the digital age. Instead of relying blindly on lawyers and judicial officials to decide one's fate behind closed doors, technology could potentially enable those with a justice need to address the needs more directly among themselves. And then more effectively resolve justice needs by engaging all the impacted needs.

In short, a bottom-up process of accurate data collecting could break our current addiction to failed top-down paternalistic approaches. Instead of waiting for lawyers to draft legalese documents trying to convince a reticent court to accept more cases to its mounting docket, the public can instantly know the validity level of a viable claim of innocence. Unlike social media platforms, ownership of this data is retained by the one creating the data. In contrast to the adversarial system, this data prioritizes the social science discipline of the descriptive over the premature normative.

Higher standard of relief

In contrast to the win-lose standard of the adversarial judicial process, the Innocence Validity Estimation raises to a win-win standard by respecting all impacted needs. This includes raising the ethical standard for responding to the unexonerated's pleas for help. Since lawyers and activists are not held to the same **ethical standards as counselors**, which I am, the unexonerated risk retraumatization each time they seek help and get turned away. This appears as a huge problem overlooked by the current Innocence Project.

Understandably, innocence projects receive far more requests for help than they can serve. This itself suggests an immense ethical problem that the legal and judicial problem routinely overlooks. Either the unserved demand can be rationalized as desperate felons trying to game the system, or the legal profession presents a lapse in ethics. Failure to publicly admit the immense volume of viable innocence claims never served undermines the legitimacy and trustworthiness of the adversarial judicial process and the Innocence Project itself. Denials of service easily reinforces the cynicism that the justice system is not actually about justice.

Instead of banking on legal expertise, claims can be empirically compared to known cases of exonerations. The viability of the claim can be immediately calculated, instead of waiting years for a court to realize its errors. This can counter the biased results of the adversarial process trapped by its conflicts of interest. The results can be quickly made public.

This alternative complements and potentially replaces the slow legal process with a transparent empirically based option. The claimant immediately gets a *claim validity number* they can show to others doubting their innocence claim. The aggregate data this can produce can help policymakers understand the problem, and find meaningful solutions to the runaway problem of wrongful convictions in the United States.

How it works

The form is currently available as an Excel spreadsheet. The user would need a working copy of Microsoft Excel. The form can be downloaded [here](#) from ValueRelating.com. To utilize this spreadsheet, you will have to click 'Enable Editing' to escape PROTECTED VIEW. Go ahead, you can trust this one.

Claimants can fill out the form themselves or assign a proxy to fill it out on their behalf. They can invite family and friends to help verify the available documentation, to improve their validity score.

The current spreadsheet provides three main tabs.

- 1) An **input** tab for the claimant to provide details to their claim.
- 2) A **sample** tab to illustrate how a completed form could look.
- 3) A **display** tab that outputs the first page of the input tab.

The other tabs are part of an ambitious vision for involving family and friends in this group effort. As they help verify the claimant's innocence, they can encourage the claimant to more publicly assert their innocence.

Input tab

The input tab extends 50+ pages. It must be, to provide as much space as possible to collect all the relevant nuance in a claimant's case.

Lead "Innocence Claim" page

This top section can be printed out as a two pages on a standard size of paper.

Raw and adjusted scores

Two scores are provided: a raw score and adjusted score. The raw score immediately estimate's the claim's viability. The adjusted score relies on verification of the provided details.

Claimant's name and contact information

After providing the claimant's name and email address, space is provided for the proxy's name and contact info. A proxy may be necessary for claimants still incarcerated or who cannot access a computer. The proxy can also help the claimant through the risk of retraumatization when revisiting such details. The claimant is to provide a good photo of oneself, using [LinkedIn standards](#) for a [posted profile image](#).

Synopsis *through* Summary

No input here. This displays input entered in items #66 through #69 below.

You can help change a life for the better

This creates the second page of the document. It also can be printed out on a standard size of paper.

Collateral consequences *to* Takeaway

No input here. These are also display fields, with standard text. The text may change based on the inputs provided below.

Instructions with 3 options

Detailed instructions have yet to be drafted and added.

Contents of form

The remainder of the input tab invites the claimant to provide the details to their wrongful conviction claim. The requested information tends to be highly personal, so building trust is essential for its adoption as an alternative to the slow and often disappointing legal process. If revisiting these details risks retraumatizing the claimant, a proxy is strongly recommended to help fill out his part of the form.

A Case information

Provide basic information about the case. Use of dropdown menus streamlines this.

B Documentation for verification

Provide independently accessible documents that help support claims of innocence.

C.1 Common factors in wrongful convictions

These 6 items are common among exonerated cases.

C.2 Evidentiary factors

These 6 items increase likelihood of a wrongful conviction.

C.3 Investigative factors

These 6 items link flawed law enforcement investigations to wrongful convictions.

C.4 Complicating factors

These six items mix with other items to suggest likelihood of a wrongful conviction.

C.5 Claimant's demonstrable innocence

These 7 items contrast claimant with those of actual guilt.

C.6 Claimant's innocence recognized by others

These 7 items independently recognize claimant's actual innocence.

C.7 Other

Space to add contributing factors not already covered.

C.8 Process

Looks at risks of adversarial judicial process in creating a wrongful conviction.

D. Requests and responses for exoneration help

Names of those asked for professional legal help.

E. Collateral consequences of conviction

Background checks privilege discrimination with these specific items.

F. Claimant narrative

In your own words, what happened?

G. Dynamic relating

How has the experience affected your wellbeing?

H. Compensation

Compensation for exonerees, if your state has such a statute.

I. Options

DIY for free or receive help and build support innovatively, and cheaply for you.

J. Supporter(s)

Invite supporters, build a support team, share your costs and returns.

K. Notifying

Notify employers, landlords and others of your calculated estimate of innocence.

L. Independent verifier(s)

Boost your raw score of estimated innocence. Hire others to independently verify your claims.

M. Next

Concluding remarks, terms of service, etc.

Each section can be printed out onto standard size (8.5" x 11") paper.

Sample tab

This tab appears the same as the **input** tab. Use it as an example to see how to fill out the form. See the images at right. This sample is based on my own wrongful conviction. It shows how each answer slowly raises the innocence claim validity score. An instructions tab is in the works.

Display tab

This tab only displays the lead Innocence Claim page. It is identical to that page. The top of the page provides the current raw and adjusted score, based on the answers provided in the **input** tab.

Validity scores

The raw score assumes the claim as provided by the raw data. The adjusted score is lower until the raw claim can be independently verified by the available documentation.



Whenever the claimant can add links to documents to help verify the claim, the adjusted score goes up. The adjusted score goes higher when the claim can be independently verified. This should catch anyone trying to manipulate the score with disingenuous answers.

The more the details of the claimant's case fits known exoneration cases, the higher the estimated score of viable innocence. No one can score exactly 100% and scores do not promise actual innocence or discount actual innocence. Consider the score as a rough estimate of likely or unlikely innocence. The scores fall along five graded levels of viability of the innocence claim.

0-19%	20-39%	40-59%	60-79%	80-100%
weak claim	poor claim	fair claim	good claim	strong claim

A weak claim could still indicate a wrongful conviction, but unlikely. A strong claim could possibly point to a false positive, also unlikely. The unexonerated can use this score—along with a letter from an innocence entity stating they do not have the resources to review their case at this time—to show to potential employers and housing renters, in lieu of a court finding. Or they can use this score to show others while waiting for the courts to clear their wrongful conviction.

Claimant information

For now, the self-image has to be copied and pasted into the display tab here. Space provides for a 2"x2" image. The proxy information is only if the claim is provided by some assigned by the claimant to act on their behalf.

Synopsis through Summary

This automatically displays the text provided in the input tab, for items #66 through #69. To edit this display, go back to the input tab and scroll down to line 825 of the spreadsheet (or click on 'F' in the Contents menu of the input tab).

You can change a life for the better

The text now engages the public to take interest in the claimant's plight.

Collateral consequences

Here, the text invites readers to support the claim. It identifies how the wrongful conviction unjustly limits their life's potential.

Impacting other's lives

Here, the text includes the wrongful conviction's impact on other's in the claimant's life.

Challenging and inspiring

Here, the text shows how the claimant seeks to make the best of a bad situation.

No claimant is denied review. All claims are valuable, providing vital data to illuminate the ignored scope of the unexonerated problem.

Suffering discrimination

Here, the text illuminates the discrimination the claimant faces in their state due to a lack of legal protections for the unexonerated.

Removing threats for improving health

Here, the text identifies the ill effects endured by the unexonerated claimant. And links it to the economic impact of the wrongful conviction.

Takeaway

Here, the text emphasizes the need to rebuild the claimant's trust. And ties this to the public's awareness to the scope of problems endured by claimants who are not yet exonerated.

Publicizing the estimated validity score

In the future, completed forms could be posted to an online platform that publicizes the innocence claims. After a pilot phase to improve this process, the forms would be built into the website's program.

The site could be open to the public. Personal information would only be available to those registering to the site and who the claimant agrees to accept as trustworthy.

The idea is for anyone wanting to review the full form must agree to terms of service that protects the claimant's rights. This could be designed into an online platform, where anyone can register for free as a site user.

Claimants could then invite these site users to review their claim, and help independently verify the claims with the provided links to their case documents.

Until such a platform is available, the spreadsheet form can be offered to claimants ready and able to experiment with this fresh approach. Their input could help create value that remains missing in the standard legal process that apparently cannot keep pace with the need.

Potential

Innocence Projects turning down requests for help can offer this as a viable alternative. Not yet as a solution, but to both affirm a claimant's need for justice and to empower them to build support for their innocence claim. Tracking requests can capture the scope of the unexonerated problem.

Without such an alternative, individual innocence entities risk complicity with the scale of this injustice. Disillusioned claimants likely warn others to avoid such crushing disappointment. If numbering into the tens or hundreds of thousands, countless become traumatized instead of adding vital data to demonstrate the scope of the unexonerated problem.

Revenue model

When developed into an online tool, claimants post their claims at no cost. They invite others to follow, support or sponsor their claim. This model envisions a nonprofit platform, which still seeks compensation for value provided toward a public good.

Innocence Projects can offer this tool as an alternative to claimants they cannot serve. They can support claimants without dashing their hopes.

Followers join for free. They receive access to the claimant's full profile, and receive notification of any progress claimant makes toward exoneration.

Supporters pledge to support with a weekly amount. This could be as low as a couple dollars, or perhaps \$5 each week. Supporters invest in the claimant's viable claim, and have a voice in the claimant's decisions toward seeking exoneration. Claimant sets the details for such support.

Sponsors commit to sponsor the claim. They are challenged to match the current weekly level of support. They have a voice and a vote in the claimant's efforts toward exoneration. In return for sponsoring claimant, they earn greater legitimacy when learning how to respond specifically to the common needs among the unexonerated. Justice policymakers in need of quantitative and qualitative data are expected to sponsor viable claims.

The platform takes a set percentage of each support and sponsorship level. The claimant receives the bulk of this revenue into an online account. How they spend is agreed upon by their supporters and sponsors. The first expense to cover is the cost for independent verification of their provided documentation. They may need to cover the expense of locating some of these documents.

Inviting critique and improvements

Consider the current form as a work in progress. It calculates the factors that I know contribute to wrongful convictions. And the formulas are limited to my experience. Others are to add their expertise, their knowledge, and the valuable experience from diverse claimants for who this exists to serve.

I invite your feedback to this form. What does it miss? What is best removed? How can it be made better to serve the need?

I am only one person. If committed to the justice of clearing wrongful convictions, and helping the unexonerated to restore their lives, consider what you can bring to the table. Let's work to improve this together.

DOWNLOAD YOUR OWN INNOCENCE VALIDITY FORM



Press CTRL then click on this image to go the landing page.

About Steph Turner

At the root of my transgender transcendence of the gender binary is a spiritual compulsion to transcend any divisive binary in the way of resolving needs. Intuitively, I relate to the needs on both sides of divisive binaries and naturally seek to resolve such needs. I have refrained from presenting as trans in public or to family out of respect for their needs.

This binary-transcendent pull to resolve needs cuts against the grain of political and judicial norms. Their divisive norms are designed more for relieving pain than resolving needs. I cannot settle for the lower win-lose standard of political battles or court battles. I am morally compelled to pursue a higher win-win standard responsive to the needs of all involved.

I cannot join others in generalizing their side is good and the other as bad. My higher standard has never been embraced. Throughout my life, I have been denounced as a fence-sitter or worse because I decline to pit one person or group against another. Or I am excluded from spaces that insist I take sides on some matter.

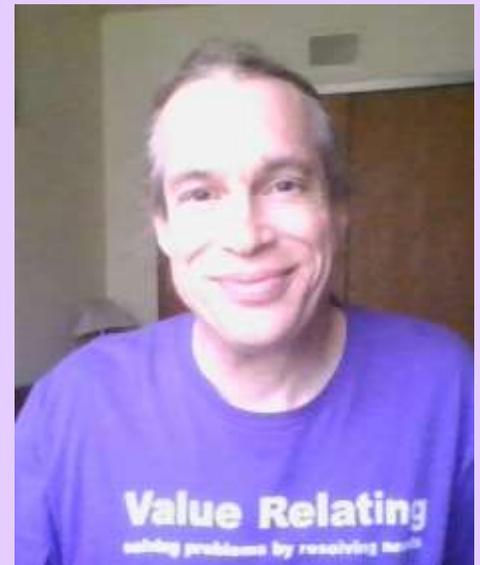
Worse, I am accused of a heinous crime that fits transphobic stereotypes and then convicted despite the exculpatory evidence. Instead of simply asking me what happened, now they can presume anything I say is an attempt to deny culpability. I learned how easy an accusation can undercut credibility. The adversarial system gains from this built-in conflict of interest.

I am grateful for the work by the Innocence Project, and others trying to help the unexonerated find relief in the courts. But I can never settle for a process that perpetuates the same problem it ostensibly seeks to solve. Just as I never could trust an airline to serve as the sole investigator to one of its own accidents. I cannot trust the adversarial judicial process to fully resolve justice needs, when it is not in their interest to fully resolve justice needs.

I see those living inside the bubble of the adversarial system incentivized to take opposing sides, to avoid fully resolving justice needs. Someone like me who exists outside of that bubble to fully resolve needs easily gets misidentified as a threat to be punished. Fully resolving needs to remove pain is a threat to the status quo of relying on opposing generalizations to relieve pain of these unmet needs. By law and custom, I am routinely excluded and blamed for the problems such normative dysfunction creates.

I was targeted with one of the most humiliating cases possible. I was publicly smeared as a feminine appearing pedophile and sent to a men's prison. Thanks to my spiritual insight into understanding and respecting other's needs, I was never sexually assaulted. But I continue to be excluded by anyone or any entity imposing binary options, including the adversarial judicial system. So I remain unexonerated because I am guilty of honoring the needs on all sides.

I find inspiration in Jesus, Apostle Paul, Gandhi, Dr. King and countless others who endured harsh punishments in their own time for going against the grain in order to resolve needs. Much of this understanding of needs will soon be available in a book I am writing.



Steph's viable innocence claim

My case serves as a model for identifying a profile of the unexonerated.

Correlates with exonerated cases	Correlates with admittedly guilty
No clear evidence of a crime.	Sufficient evidence of a crime.
Easily accused of LGBTQ stereotype amidst sex abuse panic.	Accuser initially hesitant to report assault, free of prejudices.
Complaint testimony coached to fit lack of evidence.	Complainant's testimony matches available evidence.
My own daughters never accused me of any sex abuse.	Sex abusers typically target own family members.
I refused any plea deal and asserted my right to trial.	Freely waives right to trial to take a plea deal.
Risked trial penalty without regret, despite longer sentence.	Avoids trial penalty and gets a shorter sentence.
Consistently maintained my full innocence throughout prison.	Admits culpability to criminal act even if minimizing its harm.
All my friends and family recognized my innocence.	Family and friends often recognize and call out culpability.
No diagnosable disorders nor any history of addictions.	Diagnosable behavioral disorders with history of addictions.
Knowingly lost parole eligibility for maintaining my innocence.	Eligible for parole after showing some remorse.
I have no criminal history.	Ongoing criminal history.
I completed many degrees.	Poorly or uneducated.

The longer the criminal justice system resists admitting its likely error, the greater the risk of losing its legitimacy. Without sufficient legitimacy, the question of guilt-or-innocence shifts from me to the judicial system. The lack of effort to identify these distinctions exposes the criminal justice system's complicity with the unaddressed problem of the countless unexonerated.

Steph's CV

Prior to this ordeal, I had earned an associates degree. Afterwards, I went on to complete my bachelor's and two graduate degrees. The wrongful conviction prevents me from using them to find a meaningful job.

Associate of Arts, Bible/Theology 5/84
Grace Bible College, Aug 1981 - May 1984. 2.1 GPA

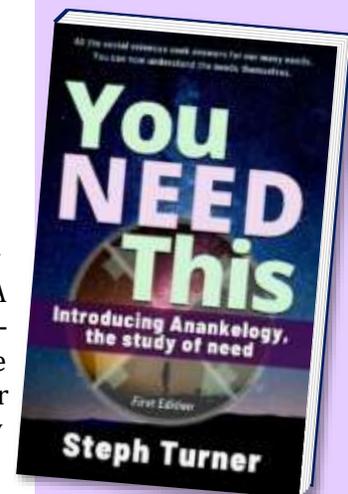
Bachelor of Arts, Sociology/Anthropology 5/08
Oakland University, Jan 2006 - Apr 2008. 3.85 GPA

Masters of Public Administration, Nonprofit Concentration 4/12
Oakland University, Aug 2009 - Apr 2012. 3.80 GPA

Masters in Counseling, Community Counseling 4/16
Oakland University, Aug 2012 - Apr 2016. 3.81 GPA

You NEED This: Introducing anankelogy, the study of need

I am now writing a book that proposes a new academic field to specifically understand our many needs—including justice needs—called anankelogy. A follow-up book is to introduce an applied version of anankelogy called need-response. It offers to complement the judiciary while also asserting it will be of a higher empirically based authority than the judiciary. The book is set for publication by fall of 2021. Recent challenges I have faced for being wrongly convicted makes it difficult to stay on track and finish on time.



Further reading

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Inquiries to this document can be sent to Steph Turner at valuerelating@gmail.com with the helpful subject line: **The Unexonerated document**. Thank you.

2021-05-25 8:00PM