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As of December 2016, 156 individuals have been exonerated from death row in the United States because of their factual innocence. Although the Supreme Court has declared that exonerees suffer physical and psychological damage equal to that of torture (Battaglia 2012), the government has not created a mechanism to provide financial redress to death row exonerees (Costa 2005). While the research in the area addresses the need for such redress and the legal obstacles that often prevent redress, few scholars have examined the factors that influence when redress is provided. This paper examines the legal and extra-legal factors that influence whether a death row exoneree receives financial redress for his wrongful conviction. To answer this question, I collected data about the redress received by all 156 death row exonerees and the legal and extra-legal factors that may influence the receipt of financial redress. These data show that the majority of death row exonerees do not receive financial redress for their years of wrongful conviction and incarceration. I found certain legal variables and extra-legal variables impact successful obtainment of redress. Exonerees who were wrongfully convicted due to official misconduct or false confessions were more likely to receive redress. Exonerees who wrongfully convicted of killing a minority victim, or a male are more likely to receive financial redress. In sum, extra-legal factors affect which death row exonerees receive financial redress.

LEGAL AND EXTRA-LEGAL FACTORS THAT  
INFLUENCE REDRESS RECEIVED  
BY DEATH ROW EXONEREES

by

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## CHAPTER I

### INTRODUCTION

As of November 2016, 156 individuals have been exonerated from death row in the United States. This does not prove that the criminal justice system is in working order because it prevented the execution of 156 innocent individuals. It instead reveals the failure of the system that was supposed to protect the innocent and convict only the guilty. These individuals were labelled by society as unfit for life and banished to the closest definition of hell on earth than can be experienced.

While exonerations are generally celebrated in the public eye, many do not realize the long road of painful recovery that death row exonerees face. Their wrongful capital convictions leave death row exonerees with emotional, psychological, and physical harm (Battaglia 2012). Generally, society does not welcome death row exonerees with open arms or aid their recovery. Instead, it creates institutional obstacles, stigmas, and a generally unwelcome environment that creates many struggles for death row exonerees trying to survive life outside of prison walls (Travis 2005; Vartkessian and Tyler 2012; Battaglia 2012; Westervelt and Cook 2012; Shlosberg, Mandery, West, and Callaghan 2014).

## **Definitions**

It is important to define what I mean by “death row exoneree” for the duration of this paper. This definition comes from the Death Penalty Information Center which keeps account of all death row exonerees in the U.S.: “Exonerees must have been convicted, sentenced to death and subsequently either; a. been acquitted of all charges related to the crime that placed them on death row, or; b. had all charges related to the crime that placed them on death row dismissed by the prosecution, or; c. been granted a complete pardon based on evidence of innocence” ([www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)). To be brief, these are innocent people who survived death row. It is also important to define the meaning of “financial reparations” and “compensation” for the purpose of this paper. I use the term financial reparations to refer to any monies received by the exoneree as a result of a civil lawsuit, or statutory compensation used to repay the exoneree for the injustice of being wrongfully convicted. Compensation is included as reparations, but is a separate entity. Compensation refers only to money that comes from a state or federally established statute enacted for the sole purpose of repaying those wrongfully convicted in that criminal justice jurisdiction. I will use the terms financial redress and financial reparations to refer to both of these forms of receiving money.

What can be done to address the depths of harm caused to a death row exoneree? While it is true that money can’t buy back the years of freedom, life moments, and time spent with family members, it can go a long way to providing housing, food, clothing, life necessities, and reimbursement for court, medical, and child support costs.

Unfortunately, financial redress provided to exonerees for all that has been taken from them during their wrongful convictions is shockingly low.

Financial redress for exonerees are rare and seldom automatic (Westervelt and Cook 2012). Literature before 1989 indicates that the majority of exonerees do not receive money for their time spent wrongfully incarcerated (Huff, Rattner, and Sagarin 1996). During the years that most compensation statutes were introduced, redress continued to be given to a small number of exonerees. For example, estimates based on the Innocence Project DNA exonerees reveal that 9% received redress through a privately sponsored legislative bill, 28% through civil lawsuit, and 33% through statutory compensation (Innocence Project 2009). However, it is important to note these estimates are for Innocence Project clients only. These exonerees benefit from the persistent and organized advocacy of a team of Innocence Project attorneys with specialization in this area. This leaves reason to believe that these numbers may well be higher than for the general exoneree population. Essentially, financial reparations for exonerees are lacking despite the public perception that they are provided for upon release.

Even a brief look at the current status of financial redress received by exonerees raises the question as to why some exonerees receive it and others do not. All exonerees are robbed of liberty and harmed by the state. The Supreme Court equates this physical, emotional, and psychological harm to that of torture (Battaglia 2012). The question then becomes, even though *all* death row survivors suffered unimaginable harms and have *all* been declared innocent, why don't *all* receive financial redress?

## CHAPTER II

### LITERATURE REVIEW

While many scholars have examined the factors leading to wrongful conviction and exoneration, few have addressed the aftermath of an exoneration. The limited research in this area often focuses on the provision of financial indemnity to those wrongfully convicted. These discussions are generally limited to why exonerees deserve redress rather than examining the factors that influence who receives it and who does not.

The success of an exoneree receiving financial redress relies on legal factors and extra-legal factors. In this literature review, I will focus on what we currently know about the general trend of financial redress received by death row exonerees, and the factors that influence if exonerees receive financial redress or not. Most of these factors are determined by state statutes, civil case law, and private legislation. These factors are the legal factors, also known as the jurisprudential factors. They are the factors that determine how a case should be decided based on rules and logic (Black 1993). So, first I discuss the legal factors that create obstacles preventing exonerees from receiving financial redress. Then I discuss the extra-legal factors that contribute to an exonerees' wrongful conviction and exoneration, and how these factors also may continue to influence who receives financial redress. In an ideal legal system, law would be applied only on the basis of jurisprudential factors. The consequences for violating a law would

be the same for every person regardless of skin color, national origin, age, economic standing, or relationship to the offended. Since the United States of America does not embody this ideal legal system, it would be irrelevant to discuss decisions made within the criminal justice system without considering the extra-legal, or social factors. According to Donald Black, the social structure of a case is a better predictor of sentencing outcomes than the legal structure (Black 1993). Therefore, it is important to consider the effects of extra-legal factors after an exoneration on the redress received by exonerees.

### **Legal Factors Determining Financial Redress Received by Exonerees**

One form of financial redress available to exonerees is by action taken through the Civil Rights Act of 1871 (King 1970; Bernhard 1999,2004; Lopez 2001; Blackerby 2003; Armbrust 2004; Master 2004; Boucher 2006; Clarke 2010; Kahn 2010; Griffiths and Owens 2014; Westervelt and Cook 2012; Brooks and Simpson 2012). These are motions brought against state or federal constitutions based on violations claimed by the exoneree (Blackerby 2003). These claims can be made about violations of prosecutors, lab workers, police, and defense attorneys. Successful civil claims provide proof that a malicious actor of the criminal justice system caused most of the deception that lead to the wrongful conviction of an exoneree (Lopez 2001; Griffiths and Owens 2014; *Goodson v City of Corpus Christi* 2000). Few exonerees are able to allege these constitutional offenses by state actors. If these violations can be proved, many state actors

are protected by immunity that also disqualify exonerees from winning civil law action (Armbrust 2004).

Most exonerees experience official misconduct in their wrongful conviction ([www.law.umich.edu/special/exoneration/Pages/about.aspx](http://www.law.umich.edu/special/exoneration/Pages/about.aspx)), which is coincidentally the hardest misconduct to bring civil action against due to the formidable burden of proof required. Official misconduct includes prosecutorial and police violations against the exoneree during their investigations or trials. For example, claimants wishing to prove prosecutorial misconduct must have evidence that the prosecutor either violated conditions stated in *Brady v. Maryland*, called a *Brady* violation (Armbrust 2004), or that the prosecutor had no probable cause to carry out legal action against the exoneree (Bernhard 1999). In the ruling of *Brady v. Maryland* in 1963, the courts determined that it is unconstitutional for prosecutors to hide exculpatory evidence. If an exoneree wishes to argue the prosecutor committed a *Brady* violation, he/she must provide the evidence hidden by the prosecutor, as well as the intentional actions of the prosecutor to hide this evidence.

Even if this proof can be established, exonerees wishing successfully to receive compensation by claiming violation of a state actor are prevented from receiving compensation due to the sovereign immunities guarding most actors of the state (King 1970; Bernhard 1999; Fite 2005; De Geest 2012). Usually, prosecutors and police only have to establish that they had probable cause to arrest or charge, and they are shielded by immunities from civil suits (Bernhard 1999; Lopez 2001; Armbrust 2004). If police can justify they had probable cause to arrest the exoneree before their wrongful

conviction, the police have no duty to continue investigating other evidence which might prove the innocence of the exoneree (Bernhard 1999). Police in particular have “Qualified Immunity,” which means if they can convince the court their conduct in the wrongful conviction did not violate existing statutory or constitutional rights that an average person would have known, their actions are justified (*Harlow v Fitzgerald* 1982 in De Geest 2012).

The Supreme Court ruled in *Pierson v Ray* 1967 that if the officer arrested someone “in good faith” and with probable cause, he is covered under the shield of immunity for his conduct. As it turns out, the standard for probable cause is extremely low and therefore easy for police officers and prosecutors to use to justify their conduct (Lopez 2001). Even attachés to police officers who commit perjury in court can be covered by sovereign immunity (Lopez 2001). The courts further justify this immunity by arguing that second guessing officials in these positions must be prevented for the sake of the criminal justice system (Lopez 2001). Unfortunately, it serves as an armament to excuse the mistakes of powerful officials in the criminal justice system and decreases exonerees’ chances for financial atonement. Because of the legal barriers holding officials accountable for official misconduct in a civil lawsuit, I suspect redress will be less likely for exonerees who were wrongfully convicted due to official misconduct.

Even defense attorneys, the opposition to the state, are protected by strictly mandated guidelines set down by the Supreme Court. If claimants wish to bring action against their legal defense, first they must prove an attorney-client relationship existed and that the attorney had a duty to defend the innocence of the exoneree in the case. They

must then provide evidence the attorney failed to meet this standard, and that damage resulted from this failure to act that directly caused their wrongful conviction (Law of Torts § 30 at 164-165; *Shaw v. State* 1993; *Shulman v. Terrence J. O'Hagen* 1988; *Krahn v. Kinney* 1989 in Bernhard 1999). In essence, the exoneree would have to provide a case that could have refuted the prosecutions original case that sent him or her to prison in the first place.

Another method exonerees can use to receive financial reparation is to lobby their state legislature for a private compensation bill. This type of legislation results in compensation coming directly from the state treasury to the exoneree (Armbrust 2004). If an exoneree can convince a legislator or lawyer to lobby for a private compensation bill, he or she will not run into as many obstacles, such as proving malicious action of a state actor or coming up against sovereign immunity. Successful private bill compensation comes from the result of having a well-connected lawyer or connections to a legislator and the political will for that state to enact the statute (Armbrust 2004; Griffiths and Owens 2014).

A customized compensation bill developed for a specific exoneree seems appealing, but is rarely effective in granting compensation for exonerees. It is difficult to pass a compensation bill for someone who was once considered “unfit” for society (Brooks and Simpson 2012 in Armbrust 2004). If a compensation bill is passed by this method, it may come with conditions designed by legislative and gubernatorial powers to discipline exonerees, such as requiring drug testing or that the exoneree be employed in order to receive compensation (Griffiths and Owens 2014). Private legislation may not

necessarily grant compensation, even if the bill can be passed by the legislators. For example, a private bill passed for Isadora Zimmerman, who spent 24 years in prison for her wrongful conviction, was passed by the legislators but vetoed by the governor three times (Radelet, Bedau, and Putnam (1994) in Armbrust 2004). Despite the appeal a customized bill may have for exonerees, it is an unreliable method to obtain financial redress (Bernhard 2004).

One of the most common, and some argue preferred, methods of seeking financial redress for a wrongful conviction is through a state statute (Boucher 2006). State statutes are enacted by the legislature of a state listing requirements for an exoneree to meet before receiving some sort of redress, either financial or some other kind of assistance. In most states, exonerees must apply for this compensation through a committee or directly to the state legislature after exoneration; it is not automatic (Cook, Westervelt, and Maruna 2014).

Although the United Nations demands compensation provisions granted to those wrongfully convicted by governments in countries through Article 14.6, the United States government interpreted this in a way that creates mechanisms for exonerees to apply for compensation, but did not make compensation an absolute right for them (Costa 2005). The majority of state statutes do not guarantee compensation, but create obstacles (Blackerby 2003). The stringent disqualifications in compensation bills make them an ineffective method of repaying exonerees for their wrongful convictions (Boucher 2006). In addition, no disciplinarian role exists in the federal government that holds states responsible for the damage caused to exonerees by the state (Westervelt and Cook 2012).

The first to write about statutory compensation was Edwin Borchard in his article “State Indemnity for Errors of Criminal Justice” (Borchard 1914). During the time he wrote this article, he had little material to work with because only three state compensation statutes existed. Besides the limited compensation statutes available in 1914, Borchard did not have data about death row exonerees or compensation received by them. The disturbing fact about literature in the area of compensation for all exonerees, death row and other, is that the majority of it has done little to evolve in content since Borchard’s publication in 1914. Even with more information about death row exonerees and compensation statutes, minimal connections have been made between the two. Of the little research done regarding compensation, the majority is not comprehensive or systematic (Norris 2011).

Certainly the most important determinant of who receives compensation is whether the state in which they are convicted has a compensation statute. Compensation statutes have an early starting point, but a slow growth rate. The first statute took root in Massachusetts in June 1911 (Borchard 1914). Two more statutes came in the states of California and Wisconsin in 1913 (Borchard 1914). For 64 years, legislation enacting compensation for exonerees fell silent, until New Hampshire and Oklahoma developed statutes in the 1970s. Statutes continued to be enacted minimally and sporadically until the millennium, when 16 states enacted statutes within a 15-year span from 2000 to 2015. These 15 years showed rapid advancement in the compensation legislation movement in comparison to the glacial speed of the 90 years prior. In 1989, a wave of exonerations began due to the advancements in DNA technology (Kahn 2010; Rosenthal 2010). This

wave of exonerations created widespread support of reparations for wrongful convictions (Kahn 2010; Rosenthal 2010). The frequency of compensation statutes being introduced could be credited to the “Discovery of Innocence” that took place during the late ‘90s and early 2000’s (Baumgartner, Westervelt, and Cook 2014). The “Discovery of Innocence” refers to the time period when public perception towards the death penalty dramatically shifted and influenced policy towards capital punishment as the public became more aware of the high number of wrongful death convictions (Baumgartner et al. 2014).

As the number of statutes increased, many existing statutes began to evolve. During the rapid proliferation of compensation statutes, five of the pre-millennium statutes were amended from their beginnings to include larger financial amounts, additional services, or further limitations. Most modern statutes generally involve financial redress available for exonerees who meet certain criteria, with some statutes providing additional services to assist in the re-entry process. For example, the first statute in Massachusetts introduced in 1911 offered compensation for lost income during the time exonerees spent waiting for trial in excess of 6 months (Borchard 1914). The statute was revised in 2004 to include financial redress for physical and emotional trauma caused by the wrongful incarceration to exonerees who did not plead guilty and who file for compensation within two years of their exoneration.

The 31 state and federal statutes currently enacted are diverse in their design for specifying amounts of financial compensation or additional resources. Norris (2011) developed a systematic and comprehensive guide to compensation statutes in 2011. Norris created a coding system to arrange the statutes along a spectrum indicating their

quality and providing a better picture of the many offerings within state statutes. Of the compensation statutes he studied, 96.4% provide financial redress. The amounts provided in the statutes are based on time served by the exoneree per year or per day, or are lump sums determined by officials in charge of compensation decisions. These amounts range from \$5,000 to \$60,000 per year of wrongful conviction, \$100 per day of wrongful incarceration, or lump sums, such as \$20,000 for the entirety of wrongful incarceration. Out of these statutes, 14 enact a maximum amount ranging from \$20,000 to \$2,000,000. In addition to financial redress, 16 states offer other forms of assistance including scholarships and repayment for attorney fees (offered by 8 states), vocational training (offered by 5 states), repayment for court costs or fines (offered by 5 states), physical or mental health services (offered by 4 states), repayment for lost wages (offered by 3 states), repayment for detention facility fines (offered by 2 states), and Texas even provides for backlogged child support payments incurred during wrongful incarceration. The description of these statutes seems luxurious and guaranteed provision for exonerees; however, this method usually offers less money in total for exonerees than successful civil and private litigation (Kahn 2010).

The bulk of compensation statutes and assistance they purport to provide create a façade of the true reality of compensation received by death row exonerees through state compensation statutes. State statutes, are in essence, symbolic support, rather than actual support for exonerees (Bernhard 2004). According to the Innocence Project, 33% of the DNA exonerees who receive compensation receive it through state statutes (Innocence Project 2009). One study of the aftermath experienced by 18 death row exonerees

revealed that only two of 18 (11%) received statutory compensation; six of 18 (33%) successfully sued state or local officials while over half (55%) received nothing (Westervelt and Cook 2012).

The lack of compensation provided through state statutes for death row exonerees is not unexpected upon close inspection of the disqualifications within statutes.

According to Jean Blackerby (2003), in most compensation proceedings involving state statutes, the presumption of innocence applied to exonerate the individual is no longer valid in post-conviction matters. She points out that in order to prove their innocence to meet the first eligibility requirement of a statute, exonerees must prove that either the crime didn't occur or that someone else did it. Norris found that 25 state statutes require the exoneree to prove innocence yet again post-exoneration to qualify for compensation (Norris 2011). It is strange that little deference is given to past decisions about the exoneree's innocence (Brooks and Simpson 2012). Even though exonerees have been found innocent enough to be released from prison and have all charges dismissed, they are not found innocent enough to receive compensation (Brooks and Simpson 2012).

Some of the burden of proof relies on the obtainment of a gubernatorial pardon or writ of innocence. This requirement almost certainly excludes most exonerees in these jurisdictions, as pardons are almost never given (Brooks and Simpson 2012). In the states that require exonerees to obtain a pardon before receiving compensation (Maine, Maryland, North Carolina, Oklahoma, Tennessee, Texas, and Virginia), few exonerees are able to justify their deserving of a pardon to a governor, and it seems only those who are political friends of outgoing governors are able to receive pardons (Brooks and

Simpson 2012). The problem with pardons is that they expose compensation to “political manipulation” (Westervelt and Cook 2012: 203). Some governors who like to maintain the stance of being “tough on crime” may deny pardons due to the threat of political repercussions (Westervelt and Cook 2012). Or, some governors may be concerned for the state budget and deny compensation because of budgetary constraints (Westervelt and Cook 2012). Another reason pardons are hard to obtain for exonerees is the number of other priorities government offices are faced with, decreasing the time they have to spend on issuing pardons (Kahn 2010). With the lack of a requirement to force governors to award pardons to deserving parties, some exonerees are denied pardons for purely illogical reasons, or for no reason at all as governors need not justify their decisions. For example, Governor James Thompson of Illinois refused a pardon to exoneree Gary Dobson, even though a witness admitted to perjuring his testimony about Dobson, because Thompson claimed that he did not grant pardons on the basis of innocence (Armbrust 2004).

The volume of statutory limitations imposed on death row exonerees is the main reason they do not receive compensation through state statutes (Baumgartner et al. 2014). Time limits restricting the amount of time to apply for compensation make it difficult for exonerees to gather the financial and legal assistance they need before they miss the application deadline (Norris 2011). The statutes have been established in a manner that makes it very difficult for death row exonerees to meet the requirements. “Yet when the liberty of an individual is taken for public use...right to compensation is apparently overlooked” (Borchard 1914: 109)

It is almost as if statutes were intentionally written to exclude exonerees from compensation. The obscurities and uncertainties within statutes are the weakest point in compensation through this method (Norris 2011). State statutes vary in many ways, but share one thing in common: few guarantee restitution (Blackerby 2003).

Compensation statutes disqualify exonerees from compensation based on previous records and means of conviction or exoneration. The burden of proof required to prove eligibility ranges from preponderance of evidence to exculpatory DNA evidence. Disqualifications within statutes render claimants ineligible for compensation for a host of reasons: claimant was wrongfully convicted while serving time for a concurrent crime (12 statutes), claimant has previous felony convictions (5 statutes), or the claimant plead guilty, contributed to his/her conviction, or fabricated evidence (Norris 2011). All of these disqualifications are strategically planted in compensation statutes to render the majority of exonerees without compensation. I suspect exonerees who were exonerated by DNA will receive redress more frequently since they will be better able to meet the statutory requirements of many states. On the other hand, I predict that exonerees who falsely confessed to the crime will receive redress less frequently since this is designated in many statutes as them having “contributed to their wrongful conviction.”

No method of receiving financial redress described above is “prompt.” In most cases any kind of reparation received by an exoneree requires an agonizing wait. It seems that the wait for financial reparations is based on the whims of the criminal justice system. Some exonerees have received financial redress within a record time of 6 months, while others wait for over a decade. Generally, those lucky enough to receive

financial redress must wait years for the process to come to an end (Kahn 2010; Cook et al. 2014). Some of the first literature available about actual financial reparations received by exonerees cites a Congressional record in 1970 that revealed 80% of claims for financial reparations for exonerees took four years to reach a final decision (King 1970). Thirty-nine years later, the Innocence Project (2009) found that, regardless of the method exonerees used to pursue financial reparations, it still took at least two years to manifest. For example, death row exoneree Perry Cobb was exonerated in 1987, but did not receive compensation until 2000 (Westervelt and Cook 2012). Research indicates the average wait time to receive financial reparation under successful private legislation is 1.8 years (Clarke 2010). The average time for statutory compensation is 2.8 years, if exonerees meet the requirements. And the average time for law suits ranges from three to nine years. In conclusion, all receivers of financial redress suffer a delay between their freedom and recovery of reparations (Clarke 2010).

It would seem plausible for an exoneree to try all three methods of receiving financial reparations to increase their chances. Unfortunately, exonerees are faced with a choice about which method to pursue, because often they can only choose one. In 90% of compensation statutes, an exoneree is not allowed to file for a civil suit if they applied for and received statutory compensation (Norris 2011). This is justified under the 11<sup>th</sup> Amendment that bars the state from being sued (*Arnold v. McClain* 1991 in Armbrust 2004). On the flip side, if an exoneree brings civil action against the state or federal government seeking compensation, he/she is often barred from the state compensation statute regardless of the result of the suit (Blackerby 2003). Therefore, exonerees are left

to decide which method of financial redress might be the most fruitful, even though none are guaranteed.

Legal factors serve as government approved disqualifications from financial redress. These factors are codified in laws and compensation statutes as a means to protect the government from paying for their mistakes. Legal factors establish the boundaries of financial redress in the sphere of compensation statutes as well as tort law. Exonerees can be disqualified from financial redress according to these factors depending on how they were wrongly convicted as well as how they were exonerated.

### **Extra-legal Factors That May Influence Financial Redress**

It is also possible that extra-legal factors affect the process. Sociological analyses of the criminal justice system have long shown that the social structure of a case impacts case outcomes (Radelet 1981; Black 1993; Spohn 2002; Ulmer and Johnson 2004). Certain extra-legal variables seem to attract more attention from the law, which generally results in harsher consequences for the defendants. Such of the harsher consequences include receiving a longer sentence instead of a shorter sentence, or receiving a capital conviction instead of a non-capital conviction. It only makes sense that extra-legal case factors may contribute to death row exonerees' access to and receipt of financial reparations. In terms of redress proceedings, I suspect the same variables that lead to negative outcomes for defendants in the criminal justice system also lead to negative outcomes for receiving redress.

For a full understanding of the potential effects of race on receipt of financial redress, the race of the exoneree and the original crime victim need to be analysed. It is now taken for granted that the network of organizations and institutions in the criminal justice system have entrenched racial inequality (Lynch 2013). Black people are scrutinized and arrested more frequently than white people (Spohn 2002; Lynch 2013). Black exonerees are incarcerated more frequently and for longer amounts of time than white exonerees (Radelet 1981; Black 1993; Spohn 2002; Radelet and Pierce 2011; Lynch 2013; Olney and Bonn 2015). Despite efforts to remove racial disparities in death sentencing through *Furman v. Georgia* 1972, recent studies show that race of the victim plays a significant role in the decision to convict someone of a capital crime (Spohn 2002; Harmon and Lofquist 2005; Lynch 2013; Baumgartner 2016). Additional studies show that the relationship between the defendant and the victim's race is a strong predictor of who is sentenced to death (Radelet 1981). Studies looking at the relationship between race and sentencing outcomes have pointed to the detrimental effects of omitting the victim's characteristics when trying to understand sentencing outcomes (Radelet 1981). Therefore, it may be that in addition to the race of the exoneree, the race of the original crime victim may influence if the exoneree receives financial redress.

Based on the literature, I suspect that the race of the primary victim and race of the exoneree will influence the receipt of financial redress. Due to the increased attention from the law and harsher consequences that result when a white victim is involved in the case, I suspect that exonerees with a white primary victim involved in the case will receive redress less frequently. In terms of the exonerees' race, I suspect black exonerees

will receive redress less frequently than other exonerees. I think black exonerees will be at a disadvantage due to the negative outcomes that are typically associated with their race.

Whether or not the victim is a child or an adult may have implications for case outcomes. While researchers debate the impact of a child victim on homicide case sentencing (Baumer, Messner, and Felson 2006), research on non-homicide cases indicates that sentences vary depending on if a child victim is present or not. In sexual assault cases, offenders with child victims generally receive more severe sentences (Spohn 1994). Some states have even passed laws making it an offense deserving of the death penalty if a child is raped (Fleming 1999; Bell 2007). Given the negative impact a child victim has had in some areas of the criminal justice system, it is important to investigate if the presence of a child victim in the homicide has a negative effect on the redress received by the exoneree. Exonerees with a child victim involved in the original crime may not receive redress as frequently as exonerees with an adult victim involved.

Another important factor to look at in homicide cases is what Black (1993) calls relational distance, or “degrees of intimacy”. This refers to the relationship between the victim and the exoneree, such as whether they are family, friends, acquaintances, or strangers. The relational distance between the parties involved in the case is one of the most influential factors in legal outcomes, especially in capital convictions (Black 1976). Sexual assault cases involving a stranger often receive more attention than cases with a family or friend who is the offender (Spears and Spohn 2006). Data show that stranger killers are more likely to receive harsher sentencing than filial killers (Wilczynski 1997).

Relatives and associates of their homicide victims are generally able to escape severe punishments more than non-familial offenders in homicide cases (Lundsgaarde 1977). Black (1993) says the more intimacy in a relationship means the more immunity from the law in murder cases. This means that the more information we know about the relational distance between the two parties, the better we can predict which will attract more law (such as formal charges, length of sentence, and even whether it will be tried as a capital case) (Black 1993). Since the relationship between the original homicide crime victim and the exoneree most likely played a part in the wrongful conviction, it is possible this relationship continues to affect the financial redress process post-exoneration. Specifically, it may be that a more distant exoneree-victim relationship results in a negative redress outcome such as no redress received just as more distant relationships between the convicted and the victim result in more negative redress outcomes in general.

The gender of the victim has debatable influence on sentence severity, although scholars looking into capital cases have concluded a definite pattern in sentence severity for defendants with female victims. Those who victimize females generally experience harsher or longer sentences. In non-homicide cases, it is debatable how much the gender of the victim influences outcomes (Curry, Lee, and Rodriguez 2004). So far, the only proven influence of a victim's gender on outcomes in non-homicide crimes is increasing sentence length. Scholars found that offenders who victimize females receive longer sentences (Curry et al. 2004). Research conducted on the decision to impose the death penalty is even more conclusive, with results showing that the death penalty is more likely to be used in cases with female victims (Holscomb, Williams, and Demuth 2006;

Vito, Higgins, and Vito 2014). In addition, the majority of people executed since 1977 had a female victim involved in the homicide ([www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)). Since it appears that the presence of a female victim not only draws more legal attention but also more severe case outcomes, it may be that exonerees with a female victim involved in the crime do not receive positive redress outcomes and are less likely to receive redress.

### **A Note on Social Status**

One potential pivotal extra-legal factor influencing conviction decisions is social status. Donald Black (1993) states that law varies directly with social status. According to him, those in the lower classes who victimize their peers will generally receive less law and fewer consequences. Those with more wealth enjoy the privilege of more law involved in offenses against them. If someone of lower status offends someone of higher status, he/she will experience more law, harsher charges, and more severe sentencing (Black 1976, 1993; Radelet 1981). Based on these facts, I propose that the social status of the exoneree at the time of the original crime in relation to the social status of the homicide victim might contribute to the financial redress received by the exoneree. Although I have considered the implications of the social status differences between the exoneree at the time of wrongful conviction and the homicide victim, I do not have enough of this information to carry out any statistical analysis.

## **Conclusion**

It is difficult to make an argument that financial reparations are undeserved for those wrongfully convicted of crimes; the justice underlying financial reparation is undeniable (Borchard 1914). In theory, compensation statutes were intended to be an administrative process that granted actual money to exonerees. The process was supposed to be more efficient than civil lawsuits (Brooks and Simpson 2012). Although compensation statutes have been reported to be the most efficient and best method of compensating exonerees (Clarke 2010), they come with a host of problems of their own (Kahn 2010). Gaps exist between promises made by state statutes and actual money received due to the limitations and eligibility requirements within each statute (Baumgartner et al. 2014). A state may have a nice looking statute on paper, while still denying many exonerees compensation (Norris 2011). Other mechanisms for providing redress fair no better. It is clear from the body of literature, the process of issuing financial redress for exonerees has failed.

Further research needs to identify patterns that determine who receives financial redress to create solutions that guarantee restitution for all death row exonerees. The government has stopped too short by only exonerating people from death row. The act of exonerating an innocent person from death row does not exempt the state from the responsibility to do all things necessary to attempt to compensate the exoneree for his/her wrongful conviction. Given what little is known about the array of factors that may influence financial redress, I ask what factors – legal and extra-legal – influence if a death row exoneree receives financial redress?

## CHAPTER III

### METHODS

#### **Definitions**

Those wrongly convicted and exonerated of capital crimes often do not receive financial redress after they are released. Virtually no literature examines the factors that are related to who receives reparations. Given this, I ask which legal and extra-legal factors determine if a death row exoneree receives financial reparations. All death row exonerees in this paper meet the definition used by the Death Penalty Information Center: “Exonerees must have been convicted, sentenced to death and subsequently either; a. been acquitted of all charges related to the crime that placed them on death row, or; b. had all charges related to the crime that placed them on death row dismissed by the prosecution, or; c. been granted a complete pardon based on evidence of innocence” ([www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)).

The list of death row exonerees included in this study comes from the Death Penalty Information Center. As of January 2017, the Death Penalty Information Center lists 156 death row exonerees since 1973<sup>1</sup>. This list includes more death row exonerees than those listed by the Innocence Project and the National Registry of Exonerations. The

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<sup>1</sup> In January 2017, Isaiah McCoy was exonerated from Delaware’s death row. Since I had already completed data collection and begun analysis without his information, this case is not included in my study. As of March 2017, 157 people have been exonerated from death row. I will include Mr. McCoy’s information in the database after finishing this thesis.

Innocence Project only lists death row exonerees who were exonerated based on pivotal DNA evidence brought forward to prove their innocence, which does not apply to everyone exonerated from death row. The National Registry of Exonerations lists 116 death row exonerees since 1989. Thus, in order to be the most inclusive of all who were sentenced and exonerated from death row, research in this paper will include information from those who meet the definition of a death row exoneree as stated by the Death Penalty Information website, which includes all death row exonerees since 1973.

### *Variables*

The factors I examine to explain the variation in who receives redress and who does not can be grouped into two categories, legal and extra-legal factors. Legal factors include the contributing factors to the wrongful conviction such as official misconduct, if the exoneree falsely confessed, and if the exoneree was exonerated by DNA. These must be taken as legal factors because some statutes codify these categories as reasons to deny compensation. Extra-legal factors are those factors that are unrelated to the legalities of the case and include: race of the primary victim, race of the exoneree, age of the primary victim, the relationship of the exoneree to the primary victim, and the gender of the primary victim. I do not discuss the implications of gender of the exoneree in this study because only two death row exonerees are female, thus this is not enough variation for analysis.

All exonerees in this database were wrongfully convicted of murdering at least one victim, with the exception of one exoneree who was sentenced to death for burglary.

At this time, the database does not include information about the race, age, and gender of each victim in the original crime. Victims for which I could find the most information are labeled “primary victim.” The use of the word “primary” does not indicate any other meaning about the victim other than this victim has the most available information. Racial information for the primary victim is contained in one variable noting the races black and white, as well as the ethnicity Hispanic. The same information about the race of the exoneree is contained in a similar variable with an additional category for the Middle Eastern ethnicity. Primary victims who died at the age of 17 or under are labeled children, while victims who died at the age of 18 or higher are recorded as adults. The relationship between the victim and the exoneree is measured along four different dimensions – family, friend, acquaintance, or stranger. If the records explicitly indicate the exoneree was a friend or family member of the victim, he/she is recorded as such. Primary victims receive the acquaintance classification if records indicate the exoneree had contact with the victim prior to death, such as frequenting an establishment at which the victim worked, working with the victim, or if they knew each other’s names. Primary victims receive the stranger classification if no records indicate the exoneree had contact with the victim before.

The main dependent variable is if financial redress was received by the exoneree. Financial redress includes any monetary payment to the exoneree because of his/her exoneration through a civil law suit or state compensation statute.

The variables noting if the exoneree was convicted due to official misconduct or a false confession, if the exoneree was exonerated by DNA evidence, if the victim was a

child, and the primary victim's gender are all dummy coded. The variables noting the race of the victim, race of the exoneree, and exoneree's relationship to the victim are nominally coded. All coding values are shown in Table 1 of Chapter IV: Results.

### **Data Collection**

No database including all variables for this study currently exists for all death row exonerees. Even though the Death Penalty Information Center and the National Registry of Exonerations have information about the case, conviction factors, exoneree demographics, and exoneration type for the exonerees listed on each respective site, neither contain enough information about extra-legal factors or financial redress to address my research question. Therefore, I created a database including the legal factors, extra-legal factors, and financial redress information for all 156 death row exonerees listed on the Death Penalty Information Center website. For 116 of these exonerees, I took the existing records from the National Registry of Exonerations. I found information for the remaining 40 exonerees not listed on the National Registry of Exonerations by reading the Death Penalty Information Center case information and conducting an extensive media search for information on these cases. If I needed more information about the exoneree after exhausting those two mechanisms, I did a google search for more articles. I did extensive research to find additional extra-legal factors, mostly regarding the victim(s) of the original crime. First, I had to read the case descriptions of each wrongful conviction to find the names of the victims (if available), date of the crime, and specific city or county where the victims died. After I found this information, I

searched for the death certificates of all victims who were in the records of Ancestry.com. By locating their death certificates, I could usually find the race, gender, and age at death for the victims. While looking for information about each victim's name, I often found information about the exoneree's compensation or monies through a civil lawsuit after exoneration. This database is now complete and contains case details, conviction factors, exoneree demographics, exoneration type, victim demographics, and financial redress information for all 156 death row exonerees listed on the Death Penalty Information Center list.

### **Data Analysis**

I use quantitative analysis techniques to determine if any relationships exist between my independent and dependent variables. Even though I have the entire population of death row exonerees, I do use inferential analysis techniques. I instead analyze associations and trends in the data. First, I provide descriptives about each variable. Then I conduct cross tabulations to isolate which factors determine the success of a death row exoneree receiving financial redress.

CHAPTER IV  
RESULTS

**Univariate Descriptives**

Table 1 presents the descriptives for the dependent variable. The dependent variable for the analysis is if the exoneree received redress or not. As discussed earlier, redress can take the form of compensation from the government or funds from a civil settlement. I am unable to determine redress information for 36.5% (n=57) of cases. Of the 156 total cases, 38.5% (n=60) have received redress, and 25% (n=39) have not received redress. Although these results may indicate death row exonerees are more likely to receive redress than not, the category “missing cases” generally means they have not received redress. Since the event of a lawsuit or government pay out typically draws attention from the media, missing data likely means no redress was received.

Table 1. Descriptive Statistics of Dependent Variable

	Frequency	Percent	Mode
<b>Redress Received</b>			
<i>No</i>	39	25%	
<i>Yes</i>	60	38.5%	<i>Mode</i>
<i>Missing cases</i>	57	36.5%	

### *Legal Variables*

Table 2 presents the descriptive statistics for the independent variables of interest. As mentioned before, these variables include the legal variables of official misconduct, false confession, and DNA exoneration, along with the extra-legal variables of race of victim and exoneree, age of victim, relationship between exoneree and victim, and gender of the primary victim.

First, I discuss the independent legal variables. The first legal variable is if official misconduct led to the wrongful conviction. This data set is missing 11 (7.1%) cases due to unavailable information about the factors of conviction. Official misconduct led to 64% (n=99) of the wrongful convictions in this dataset. The other legal variable measures if the exoneree was wrongfully convicted due to a false confession. This data set is missing 11 (7.1%) cases due to unavailable information about the factors of conviction. Only 13.5% (n=21) of death row exonerees were wrongfully convicted due to falsely confessing to the crime. The last legal variable records if DNA evidence led to the exoneration of the exoneree. This data set is missing the information for three (1.9%) exonerees due to unavailable information about their exoneration details. Most death row exonerees were not exonerated by the discovery of DNA (82.1%, n=128).

Table 2. Descriptive Statistics of Independent Variables

	Frequency	Percent	Mode
<b>Independent Legal Variables</b>			
<b><i>Official Misconduct</i></b>			
<i>Not a factor in conviction 0</i>	46	29.5%	
<i>Lead to conviction 1</i>	99	63.5%	<i>Mode</i>
<i>Missing cases</i>	11	7%	
<b><i>False Confession</i></b>			
<i>Not a factor in conviction 0</i>	124	79.5%	<i>Mode</i>
<i>Lead to conviction 1</i>	21	13.5%	
<i>Missing cases</i>	11	7%	
<b><i>Exonerated by DNA</i></b>			
<i>No 0</i>	128	82.1%	<i>Mode</i>
<i>Yes 1</i>	25	16%	
<i>Missing cases</i>	3	1.9%	
Independent Extra-Legal Variables			
<b><i>Race of Victim</i></b>			
<i>Hispanic 0</i>	3	1.9%	
<i>Black 1</i>	22	14.1%	
<i>White 2</i>	78	50%	<i>Mode</i>
<i>Missing cases</i>	53	33.9%	
<b><i>Race of Exoneree</i></b>			
<i>Hispanic 0</i>	12	7.7%	
<i>Black 1</i>	82	52.6%	<i>Mode</i>
<i>White 2</i>	58	37.2%	
<i>Middle Eastern 3</i>	1	0.6%	
<i>Missing cases</i>	4	2.5%	
<b><i>Age of Victim</i></b>			
<i>Adult (18 and over) 0</i>	67	42.9%	<i>Mode</i>
<i>Child (17 and under) 1</i>	23	14.7%	

	Frequency	Percent	Mode
<i>Missing cases</i>	66	42.2%	
<b><i>Relationship to Victim</i></b>			
<i>Strangers 0</i>	84	53.8%	<i>Mode</i>
<i>Acquaintance 1</i>	19	12.2%	
<i>Friend 2</i>	6	3.8%	
<i>Family 3</i>	15	9.6%	
<i>Missing cases</i>	32	20.5%	
<b><i>Gender of Victim</i></b>			
<i>Female 0</i>	65	41.7%	<i>Mode</i>
<i>Male 1</i>	78	50%	
<i>Missing cases</i>	13	8.3%	

### *Extra-legal Variables*

Next, I discuss the independent extra-legal variables of interest. Information about the race of the primary victim was available in only 103 cases. Thus, this database is missing the racial information for 34% (n=53) of the primary victims. Lack of information about race results when I was unable to find the victims' name, a death certificate in Ancestry.com, or racial information on the death certificate. The majority of primary victims are white (50%, n=78), with the remaining victims as 14.1% (n=22) black and 1.9% (n=3) Hispanic.

I was unable to find the racial information for four (2.6%) exonerees after searching the National Registry of Exonerations, Death Penalty Information Center, and correctional institution websites. Out of all 156 exonerees, 37.2% (n=58) are white, 52.6% (n=82) are black, 7.1% (n=11) are Hispanic, and 0.6% (n=1) are Middle Eastern. I would like to note that the racial distribution between exonerees and victims is not

similar; that is, the majority of victims are white while the majority of exonerees are minorities.

The next independent variable notes if the primary victim is a child or not. The age information is missing for 66 (42.2%) primary victims again because the victim's death certificate could not be found. The majority (42.9%, n=67) of primary victims in this dataset were adults at their time of death. Only 14.7% (n=23) of the primary victims were children at their time of death.

This database is missing information about the relationship between the exonerees and primary victims in 20.5% (n=32) of cases. Most (53.8%, n=84) of the primary victims in this database are strangers to the exoneree wrongfully convicted of their murder. Only 12.2% (n=19) of the primary victims in this dataset are acquaintances with the exoneree prior to their death. Primary victims who are friends and family to the exoneree occurs least frequently, with 3.8% (n=6) marked as friends and 9.6% (n=15) marked as family.

The last independent variable records the information about gender of the primary crime victims. Information on 8.3% (n=13) of the primary victims' gender is unavailable because the name is not known or the gender not indicated in the records. The majority of the primary victims in this data set are male (50%, n=78), with female victims making up the remainder (41.7%, n=65).

## Bivariate Analysis: Crosstabulations

### *Legal Variables*

I employed a series of cross tabulations to investigate the relationships between the redress received by the exonerees and the legal independent variables. The first cross tabulation shows the relationship between redress and if official misconduct was a factor in the wrongful conviction (see Table 3). This cross tabulation is missing 58 (37.2%) cases due to lack of information about redress and the factors leading to the wrongful conviction. The chi-square is not statistically significant at the 0.05 level ( $\chi^2=0.967$ ;  $p$ -value=0.32), indicating that redress is not statistically related to official misconduct leading to the wrongful conviction.

Table 3. Crosstabulation and Chi-Square of Official Misconduct and Redress Received

N=98	Not a factor in conviction	Factor in conviction
Redress Received	15 (53.6%)	45 (64.3%)
Redress Not Received	13 (46.4%)	25 (35.7%)
Chi-Square=0.967 $p$ -value=0.32		

The next relationship I investigate is between redress and if the exoneree falsely confessed to the original crime (see Table 4). As mentioned previously, this cross tabulation is missing 58 (37.3%) cases due to lack of information about redress and the factors leading to the wrongful conviction. The chi-square indicates a statistically significant ( $\chi^2=5.2$ ;  $p$ -value= 0.02) relationship between redress and if the exoneree falsely confessed to the crime. Exonerees who did not falsely confess to the crime

received redress in nearly 56% (n=44) of cases. Exonerees who falsely confessed to the crime received redress in 84.2% (n=16) of cases.

Table 4. Crosstabulation and Chi-Square of False Confession and Redress Received

N=98	Not a factor in conviction	Factor in conviction
Redress Received	44 (55.7%)	16 (84.2%)
Redress Not Received	35 (44.3%)	3 (15.8%)
Chi-Square=5.246		
<i>p-value</i> =0.02		

The last cross tabulation shows the relationship between redress and if DNA evidence led to the exoneration (see Table 5). The data set is missing information about 58 (37.2%) cases due to lack of information about redress and the factors leading to the exoneration. The chi-square does not indicate a statistically significant relationship ( $\chi^2=0.578$ , *p-value*= 0.44), thus redress is not statistically associated with DNA evidence leading to exoneration.

Table 5. Crosstabulation and Chi-Square of DNA Exoneration and Redress Received

N=98	Not exonerated by DNA	Exonerated by DNA
Redress Received	45 (59.2%)	15 (68.2%)
Redress Not Received	31 (40.8%)	7 (31.8%)
Chi-Square=0.578		
<i>p-value</i> =0.44		

### *Extra-Legal Variables*

In addition to examining bivariate analysis of redress and the legal independent variables, I also examine the effect of the extra-legal variables on redress. The first cross tabulation shows the relationship between redress and the race of the original crime victim (see Table 6). This cross tabulation is missing 90 (57.7%) cases due to the unavailable information about the race of the primary crime victim. I computed a chi-square and did not find statistical significance at the 0.05 level ( $\chi^2=4.59$ ; p-value=0.1). Although this chi-square and associated p-value exceeds the standard of 0.05, given the fact that my dataset includes the whole population, I would like to evaluate this cross tabulation by the significance level of 0.1. By increasing the value of the confidence interval, this chi-square indicates a meaningful relationship between the redress received by the exoneree and the race of the primary victim. Exonerees who were convicted of harming a Hispanic victim received redress in each case (100%, n=2). Of exonerees convicted of harming a black victim, 75% (n=12) received redress. Finally, exonerees who were convicted of harming a white victim were as equally likely to receive redress (50%, n=24) as not (50%, n=24). I would like to note that cases with a minority victim were less common than those with a white victim; however, exonerees in cases with minority victims are more likely to receive redress than those with a white victim.

Table 6. Crosstabulation and Chi-Square of Race of Victim and Redress Received

N=66	Hispanic Victim	Black Victim	White Victim
Redress Received	2 (100%)	12 (75%)	24 (50%)
Redress Not Received	0 (0%)	4 (25%)	24 (50%)
Chi-Square=4.590			
<i>p-value</i> =0.101			

Next, I investigate the relationship between redress and the exonerees' race (see Table 7). This cross tabulation is missing 59 (37.8%) cases due to the difficulties in finding the racial and redress information discussed previously. A chi-square statistic between these two variables reveals a statistically significant relationship ( $\chi^2=8.132$ ; *p-value*=0.04). The data show that, of the cases included, Hispanic exonerees received redress in 33% (n=2) of cases. Black exonerees received redress in 70% (n=39) of cases, and white exonerees received redress in about half of cases (45%, n=16). Finally, the single Middle Eastern exoneree received redress (100%, n=1). Proportionally speaking, black exonerees, who comprise 52.6% of all death row exonerees, appear to receive redress more often.

Table 7. Crosstabulation and Chi-Square of Race of Exoneree and Redress Received

N=97	Hispanic Exoneree	Black Exoneree	White Exoneree	Middle Eastern Exoneree
Redress Received	2 (33.3%)	39 (70.9%)	16 (45.7%)	1 (100%)
Redress Not Received	4 (66.7%)	16 (29.1%)	19 (54.3%)	0 (0.0%)
Chi-Square=8.132				
<i>p-value</i> =0.04				

The next cross tabulation shows the relationship between redress and the effects of having a child victim involved in the wrongful conviction (see Table 8). This cross tabulation is missing 95 (60.9%) cases due to lack of information about the victim's age and redress. The chi-square analysis for this cross tabulation is not statistically significant ( $\chi^2=0.658$ ,  $p\text{-value}=0.41$ ), indicating that the receipt of redress is not affected by the primary victim's status as a child or adult.

Table 8. Crosstabulation and Chi-Square of Victim's Age and Redress Received

N=61	Child Victim	Adult Victim
Redress Received	8 (44.4%)	24 (55.8%)
Redress Not Received	10 (55.6%)	19 (44.2%)
Chi-Square=0.658		
<i>p-value</i> =0.41		

Next, I investigate the relationship between redress and gender of the primary victim (see Table 9). This cross tabulation is missing 66 (42.3%) cases due to missing gender and redress information. The relationship between redress and gender of primary victim is statistically significant ( $\chi^2=5.403$ ;  $p\text{-value}=0.02$ ). Exonerees convicted of harming a male victim received redress in almost 72% ( $n=33$ ) of cases, while exonerees convicted of harming a female victim received redress in only 52% ( $n=23$ ) of cases.

Table 9. Crosstabulation and Chi-Square of Victim's Gender and Redress Received

N=66	Female Victim	Male Victim
Redress Received	21 (47.7%)	33 (71.7%)
Redress Not Received	23 (52.3%)	13 (28.3%)
Chi-Square=5.403		
<i>p-value</i> =0.02		

The cross tabulation examining redress and the relationship between the exoneree and primary victim is missing 72 (46.2%) cases due to lack of information in the original records (see Table 10). This relationship is not statistically significant.

Table 10. Crosstabulation and Chi-Square of Relationship to Victim and Redress Received

N=72	Stranger	Acquaintance	Friend	Family
Redress Received	38 (63.3%)	4 (44.4%)	3 (75%)	8 (72.7%)
Redress Not Received	22 (36.7%)	5 (55.6%)	1 (25%)	3 (27.3%)
Chi-Square=2.028				
<i>p-value</i> =0.56				

### **Bivariate Analysis: Correlations**

Because I have dummy coded the majority of my independent variables and dependent variable, I also am able to conduct a Pearson correlation analysis. Although these results mirror those of the crosstabs reported above, the Pearson correlation coefficients allow for an understanding of the statistical significance, direction, and strength of the relationship between each of the dummy coded independent variables and my dependent variable. These variables were not dummy coded and therefore not

included in this correlation analysis: race of victim, race of exoneree, and relationship of exoneree to victim. In Table 11, I report the Pearson correlation coefficients.

Table 11. Bivariate Pearson Correlation Coefficients by the Dependent Variable, Redress

Independent Variable	Pearson Correlation Coefficient	p-value
Official Misconduct	0.099	0.33
False Confession	0.231	0.022
Exonerated by DNA	0.077	0.452
Age of Victim	-0.104	0.426
Gender of Victim	0.245	0.02

As previously noted about the legal independent variables, there is a weak, positive correlation between the presence of a false confession in the wrongful conviction case and the redress received by the exonerees ( $r=0.231$ ,  $p=0.022$ ). Those who give a false confession are more likely than those who do not to receive redress. The only significant relationship between redress and the extra-legal independent variables, according to the Pearson coefficients, is the weak, positive correlation between the case having a male victim and receipt of redress by the exonerees ( $r=0.245$ ,  $p=0.02$ ). Exonerees in cases with male victims receive redress more often than exonerees in cases with female victims.

Taken together, the cross tabulations and Pearson coefficient reveal that more extra-legal variables impact who receives redress than legal variables. Death row exonerees who receive redress are more likely to be in cases characterized by a false confession, a black primary victim, a black exoneree, and a male victim.

## CHAPTER V

### CONCLUSION

The 156 death row survivors in this study were wrongfully convicted, incarcerated, tortured, and nearly executed. Not only were they wrongfully convicted, but nearly murdered via state approved execution by the system that is supposed to protect them. For many of these survivors, the only action taken to provide amends for the harm done to them was to set them free from death row. While it is a relief they were not executed, it is discouraging that little has been done to repay them.

In this research, I examine the question of why some death row exonerees receive financial redress and others receive nothing. To do this, I first created a database of information about death row survivors. The database I built in order to investigate my research question contains legal and extra-legal variables concerning the cases of all 156 death row exonerees listed on the Death Penalty Information Center website as of January 2017. After compilation, I conducted an introductory investigation into the legal and extra-legal variables that influence if an exoneree receives financial redress or not. Now I discuss the implications of my findings within the context of my expectations based on the literature.

## **Discussion**

Most importantly, this database showcases that not all death row exonerees have received financial redress for their wrongful capital convictions. Although I could not find the redress information for 57 (36.5%) exonerees, it is most likely that they did not receive redress. The event of a successful lawsuit or statutory compensation usually generates media attention; therefore, if they received redress, I probably would have found a record about it. It is safe to assume these 57 exonerees did not receive financial redress. Therefore, combining missing cases with those who did not receive redress, 61.5% (n=96) of death row exonerees have not received financial redress, while only 38.5% (n=60) have received financial redress.

More often than not, official misconduct lead to the wrongful conviction of these death row survivors (n=99, 63.5%), whereas fewer were wrongfully convicted due to a false confession (n=21, 13.5%). These percentages are consistent with other databases that show these variables. The National Registry of Exonerations reports 68% of the wrongful homicide convictions were due to official misconduct, and 12% were due to false confessions. The Innocence Project database of DNA exonerations does not include a number for those convicted by official misconduct, but 10% were wrongfully convicted due to false confessions. Contrary to public opinion, most death row exonerees are not exonerated using DNA evidence, as DNA was only used to exonerate 16% (n=25) of these death row survivors. Only 5% (n=20) of the DNA exonerees in the Innocence Project came from death row, and only 22% (n=442) of all exonerees in the National Registry of Exonerations were exonerated by DNA.

Death row survivors are most likely black males. Most of the primary victims in this database are white. The greater number of black exonerees in this database (n=82, 52.6%) is similar to the percent found in the National Registry of Exonerations (n=940, 47%) and among the Innocence Project DNA exonerees (n=217, 62%). Although no other database of exonerations shows the race of victims involved in the wrongful conviction, I would like to note the similarities between the race of victim in this database and the race of the victims for which people have been executed in the U.S. since 1975 (see the Death Penalty Information Center database, at [www.deathpenalty.org](http://www.deathpenalty.org)). The majority of executions have involved a white victim in the homicide (n=1132, 78%), just like the majority of wrongful death convictions in this database involved a white victim (n=78, 50%). In most cases, the black male did not have a previous relationship with the white victim.

The relationship between redress received by exonerees and the effect of legal variables defied most of my preconceived notions based on the literature review. I expected exonerees wrongfully convicted by official misconduct to be less likely to receive redress. The literature indicates that official misconduct as a factor of conviction can automatically bar exonerees from success in a civil settlement because the sovereign immunity protecting officials prohibits the civil settlement from moving forward. However, most exonerees who received redress (n=45, 64.3%) experienced official misconduct as a reason for their wrongful conviction.

I expected exonerees who falsely confessed to the crime to receive redress less frequently than those who did not falsely confess to the crime since 29% of the state

statutes applicable to these death row exonerees bar compensation based on a false confession. However, the cross tabulation between redress received and if the exoneree falsely confessed indicates that this factor had a favorable impact on the redress received by exonerees (n=16, 84.2%). It is possible the exonerees received redress through a settlement rather than a compensation statute, therefore bypassing this disqualifier. Or, a more reasonable conclusion is that if the exoneree admitted to falsely confessing, the state was not as hesitant to provide redress because it meant they were not admitting their own mistake through official misconduct or mishandling of evidence.

Finally, I expected those exonerated by DNA to receive redress more frequently than those who were not exonerated by DNA because the presence of DNA provides undeniable proof of innocence. DNA evidence not only helps exonerees meet the requirements of many statutes, but also helps dissolve any preconceived notions that the exoneree is not actually innocent as they go before the court to receive redress through a civil settlement. Although the majority of those exonerated by DNA did receive redress, I expected the results to vary more substantially among those who had DNA evidence to prove innocence (n=15, 68.2%) and those who did not (n=45, 59.2%).

While the findings around the legal variables were surprising, those around the extra-legal variables generally were more expected; race of the primary victim, age of the victim, relationship of exoneree to victim, and gender of the victim all worked in the expected ways. The only extra-legal variable with an unexpected impact on the receipt of redress was the race of the exoneree.

The relationship between the victims' race and redress received by the exoneree validates my prediction. Originally, I thought exonerees with a white victim involved in the case would receive redress less frequently than those with a victim of color involved in the case. I based this expectation on the literature indicating the increased severity of consequences (i.e, negative outcomes) that result with the presence of a white victim (Spohn 2002; Harmon and Lofquist 2005; Lynch 2013; Baumgartner 2016). My results show that exonerees wrongfully convicted of killing a victim of color were more likely to receive redress (black victims: n= 12, 75%; Hispanic victims: n=3, 100%) than those convicted of killing a white victim (n=24, 50%). While it is inconclusive if the presence of a white victim negatively impacts the receipt of redress for death row survivors, I can conclude that the presence of a victim of color is more likely to lead to redress.

The status of a victim being a child or an adult affected redress the way I suspected based on prior research. The literature indicates homicides or sex crimes with child victims have a greater likelihood of a capital conviction than if the victim is an adult. With the knowledge that cases with child victims have more negative outcomes, and often result in more severe punishments from the criminal justice system, I expected exonerees with children involved in the case as victims to have more difficulty receiving redress. While the results did not show statistical significance, the trend merits discussion. Exonerees with an adult victim involved in the case received redress more frequently than exonerees with a child victim involved in the case. It appears that having an adult victim involved in the case increases the likelihood for receiving redress.

Even without statistical significance, the effects of the exoneree-victim relationship produced interesting redress results. Past research suggests the closer the relationship between two parties the less the likelihood of legal action involved (Black 1993; Spears and Spohn 2006). In homicide cases, this means those accused of killing a family member or close friend are less likely to receive the death penalty, while those convicted of killing an acquaintance or stranger are more likely to receive the death penalty (Lundsgaarde 1977; Black 1993). Therefore, those accused of killing a family member or friend will receive significantly lighter consequences in the criminal justice system. With this in mind, I expected that exonerees with a victim who was a family member or a friend would receive redress more frequently than exonerees with a victim who was a stranger or acquaintance. The data support my expectations, revealing exonerees wrongfully convicted of killing a family member (n=8, 75%) or friend (n=3, 75%) have a greater likelihood of receiving financial redress, and those wrongfully convicted of killing a stranger (n=38, 63.3%) or acquaintance (n=4, 44.4%) are less likely to receive redress.

The data support my expectations of the effect of the primary victims' gender on who receives redress. Previous literature indicates the likelihood of more negative outcomes in homicide cases when a female victim is involved (usually a white female victim) (Holscomb, Williams and Demuth 2006; [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)). Based on this, I expected exonerees with female victims involved in the case to be less likely to receive redress. With a statistically significant p-value of 0.02 and noticeable variation among exonerees with male victims who received redress, I propose that the gender of

the victim seems to be the extra-legal variable with the most impact on whether exonerees receive financial redress. Thus, exonerees with a male victim involved in the case appear more likely to receive redress.

One puzzling result of this research regards the relationship between the race of the exoneree and the redress received. Contrary to what I expected, black exonerees (n=39; 70%) are more likely to receive redress than white exonerees (n=16, 45%). It seems possible that these unexpected results support the theories regarding the impact of race on death sentences, in that it is more important to look at the race of the victim than the race of the defendant, or in this case, the exoneree wrongfully convicted of killing the victim.

The data allow for several clear conclusions to be drawn. First, the legal variables, which are supposed to have the most influence on financial redress received by exonerees, actually have less impact than expected. This suggests that discussions about the redress received by exonerees cannot only circulate around jurisprudential factors. Second, according to the statistically significant results of select extra-legal variables, characteristics of the victim (in this case gender and race) involved in the original case have a significant impact on the redress received by death row survivors. Furthermore, these extra-legal factors may have more impact on financial redress than legal factors. Above all else, my data show that financial support for death row survivors is minimal and is best explained by extra-legal characteristics of cases.

## **Conclusion**

Ideally, no variation should exist in who receives financial redress and who does not; all who are exonerated should receive financial redress under Article 14.6 of United Nations law. The results of this study spark questions about which legal and extra-legal variables have the most impact on an exoneree's receipt of financial redress. This research establishes that extra-legal variables are significantly associated with the redress received by exonerees, possibly more so than the legal variables. Furthermore, this is evidence that the policies surrounding post-exoneration care of exonerees operate under discriminatory practices.

In light of this, I suggest others in the field of criminology join the effort to investigate the reasons why exonerees do not receive financial redress. Although the solution for providing more exonerees with financial redress does not rely on determining which legal or extra-legal factors have the most impact, providing evidence that variation exists in the application of current policies is important, especially if that evidence indicates that the social structure of cases carries more weight than the legal requirements of the policies themselves.

Legal scholars and those in the innocence movement need to combine forces to overhaul existing policy regarding the post-exoneration care of exonerees. The first step would be to ensure every state has a compensation statute. Second, every compensation statute needs to be examined for discriminatory and exclusionary language. Ideally, compensation statutes would be uniform across states based on recommendations

established by organizations dedicated to the care of exonerees such as Witness to Innocence or The Innocence Project.

Besides implementing new and improved policies, a system to regulate the redress process needs to be created. Even the most inclusive compensation statutes can be rendered useless if they are never enforced. A regulatory system would be the best way to ensure every person exonerated in that state receives financial redress. This system would take the best form through a committee of dedicated researchers who carefully examine the trends of redress every year to ensure compensation statutes are functioning to deliver funds to anyone declared factually innocent and released from wrongful incarceration. The committee should report annually to the United Nations as well as the federal government. It is too much to expect of one source to provide the finances to fund the entire committee at once. I propose the innocence organizations such as The Innocence Project, Witness to Innocence, Healing Justice, and The National Registry of Exonerations allot hours to one of their worker's time in order to join this team. Or, these organizations could recruit undergraduate and graduate students to conduct this research for them. After the students collect the information, members of their organizations can compile the reports to deliver to the United Nations and the federal government. One way or another, a mechanism to enforce compensation that exists outside of the statutes or civil settlements must be established.

The main reason most death row exonerees do not receive financial or other support is weak, irresponsible policy in every jurisdiction in which wrongful convictions take place. This paper presents empirical data as evidence that the United States has

violated United Nations law Article 14.6 ordering countries to provide compensation for those wrongfully convicted and proven factually innocent. Without more investigations into the disparities of who receives financial redress, we are unable to fully understand the problem and the means to a solution. Current policies to provide reparations for exonerees are stagnant and do not guarantee redress to the majority of those who suffer a wrongful conviction. These policies need not only to be rewritten, but regulated to make sure they are delivering on the promises codified within them. While money cannot buy back years of life taken from someone, or erase the painful trauma experienced on death row, it is a start to helping death row survivors reclaim their lives.

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APPENDIX A

STATE STATUTES AND THEIR DISQUALIFICATIONS  
IN JURISDICTIONS WITH DEATH ROW EXONEREES

**State statutes and their disqualifications in jurisdictions with death row exonerees**

State Statute	False Confession	Prior Record or Serving Concurrent Sentence During Wrongful Conviction	Pardon Required
Alabama	<i>No disqualifications</i>		
California	<i>No disqualifications</i>		
Florida			
Illinois			
Louisiana	<i>No disqualifications</i>		
Maryland			
Massachusetts			
Mississippi			
Missouri	<i>No disqualifications</i>		
Nevada			
North Carolina			
Ohio			
Oklahoma			
Tennessee	<i>No disqualifications</i>		
Texas			
Virginia			
Washington			