coping with innocence after death row

by Saundra D. Westervelt and Kimberly J. Cook
Kennedy Brewer spent 13 years behind bars—seven on death row—for the rape and murder of a 3-year-old girl. On February 15, 2008, he became the 127th death row inmate in the United States exonerated and released from prison.

The crime was heinous, the police needed a suspect, and Brewer was the last man known to see the girl alive. The primary evidence used against him was the testimony of a dentist, widely discredited at the time, who claimed bite marks on the girl matched Brewer’s teeth.

In 2001, Brewer’s appellate attorneys presented DNA evidence of an exact match to another suspect who has since confessed to the crime. Based on this evidence, the court vacated Brewer’s conviction but the district attorney—the same one who presided over Brewer’s initial conviction—kept him in jail for five more years, claiming he planned to retry the case.

Finally, after intervention by the Mississippi Attorney General’s Office and the Innocence Project at Cardozo Law School, the charges against him were dismissed.

The enduring images of exonerees are of vindicated individuals reunited with family and friends in a moment of happiness and relief, tearful men embraced by supporters who have long fought for their release. We think of these moments as conclusions, but really they’re the start of a new story, one that social science is beginning to tell about how exonerees are greeted by their communities, their homes, and their families, and how they cope with the injustice of their confinement and rebuild their lives on the outside.

understanding exoneration

The ranks of those exonerated of crimes they didn’t commit increases every year. Some sources report the number of exonerees now tops 340 for murder or sexual assault since 1989, 200 for DNA exonerations secured by the Innocence Project, and 129 for exonerees released from death row since 1973. The true number of exonerees is no doubt larger, but no system keeps an accurate count.

The swell in the ranks of the exonerated raises questions central to society’s ideas about fairness, justice, and responsibility.

Studies of wrongful convictions document the scope of the problem, detail individual cases of wrongful conviction, and identify the legal and social factors leading to wrongful convictions. To date, only two have addressed the consequences of a wrongful conviction for the innocent exoneree—a study by Kathryn Campbell and Myriam Denov of the post-release experiences of five Canadian exonerees and Adrian Grounds’ study of the psychiatric assessments of 18 British exonerees. Neither focuses on American exonerees or capital cases.

While the scholarly literature is scant, the struggles of exonerees receive sustained attention in the popular press. Most articles focus on individual cases, describing the numerous obstacles exonerees encounter. But a November 2007 article in The New York Times by Janet Roberts and Elizabeth Stanton provides an in-depth examination of the experiences of more than 100 DNA exonerees and is coupled with an online multimedia presentation that includes audio clips of exonerees discussing their experiences.

Sociological research can help us understand exonerees in ways that go beyond basic descriptive and journalistic accounts. We begin, strangely enough, with studies of responses to disasters.

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*This exoneree prefers to remain anonymous. We have chosen this pseudonym for him.
Robert Lifton argues that some disasters are short-lived events with a distinct beginning and end—such as floods, tornadoes, or bombings. Others are “sustained catastrophes” that extend over long periods, like those experienced by abuse victims or prisoners of war.

If incarceration of an innocent person can be considered a sustained catastrophe, we can understand the human suffering experienced by exonerees just as we do other trauma survivors. Models of trauma, coping, and stigma management help explain the “life after death” experiences of those we most often think of as surviving sustained catastrophes (cancer and AIDS patients, abuse victims). So, too, these ideas help us understand how death row exonerees negotiate trauma after release.

**the exonerees**

Since 2003, with the help of funding from The University of North Carolina at Greensboro and the American Sociological Association, we’ve conducted 18 life-story interviews with death row exonerees. After years of hearing their stories told by attorneys, judges, and the media, we wanted to give them a venue to speak for themselves and claim their own stories. They came from varying backgrounds and had spent anywhere from two years to 26 years in prison and one year to 18 years on death row (see table). All were convicted of heinous and stigmatizing crimes.

Kirk Bloodsworth and Charles Fain were accused of raping and killing young girls. Delbert Tibbs, Walter McMillian, and Shabaka Brown are African-American men accused of raping and/or killing white victims in the Deep South.

Four of our interviewees experienced the trauma of confronting a death in the family while being wrongfully tried, convicted, and sentenced to death for the murder. Gary Gauger was convicted of murdering his elderly parents, Sabrina Butler her 9-month-old son, Greg Wilhoit his wife, and Scott Taylor* his wife and 15 month old son, along with five other non-family members.

Two of the exonerees we met came close to an execution date. Brown came within 15 hours of electrocution and had been measured for his burial suit. Butler expected to be executed and waited all day for someone to escort her to the execution chamber.

She recalls crying, “they gonna kill me, they gonna kill me,” and thinking, “I was scared to death because I thought that they was gonna kill me for somethin’ that I didn’t do. And I couldn’t tell nobody to help me.” No one came that day—she’d received a stay of execution, but nobody told her.

We know that in general, survivors often feel guilty for living when others die and experience hyper-arousal, intrusive thoughts, and feelings of hopelessness and apathy. They tend to have difficulty envisioning the future and connecting to others emotionally, and struggle with feelings of fear, worthlessness, helplessness, isolation, and rejection. And we saw similar survivor’s guilt among these exonerees.

Juan Melendez told us that hundreds of death row inmates applauded his departure. Yet, he couldn’t bring himself to write them letters, saying, “they aren’t outside, they are in there, it don’t feel right.”

“I can’t write letters. I can’t talk on the phone. I don’t like to visit. I don’t like to go anywhere. I don’t like to leave the

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house. What’s the point? ... So ... the days go by, and pretty soon it’s one year, it’s three years, it’s five years, it’s, you know? ... Don’t wanna bust out of my comfort zone. Don’t wanna grow,” Gauger said of the apathy he feels about maintaining relationships with those close to him.

Wilhoit puts it succinctly: “People say that I’m emotionally unavailable.”

Fear of repeat accusations also curtails much of exonerees’ social activity. Bloodsworth is careful to let his wife know exactly where he is at all times, refusing to be alone unless someone can verify his whereabouts.

Many exonerees simply feel helpless. Depending on their length of incarceration, they return to a world dramatically different from the one they left. Technology such as ATM machines or cell phones is confounding and many struggle just to relearn the basics of walking (for sustained periods or by negotiating space), eating with utensils, and sleeping.

“I can’t really see more than two weeks in advance,” said Gauger, describing his inability to envision the future. “I’ve lost the ability to really comprehend that. I think I got that at Statesville (prison) ‘cause commissary comes every two weeks.”

Learning to manage stigma is a challenge for exonerees just as it is other survivors. The debilitating effects of stigma for exonerees echo those described in the classic work by Erving Goffman, who introduced the concept of stigma and “spoiled identity” to sociologists.

Several exonerees were greeted with fear from neighbors, suspicion from family, and hate messages from others. Frequently, community members still see them as guilty criminals who “beat the system.” Bloodsworth often found “child killer” written in the dirt on his truck, and neighbors told Butler’s children their mother was a “baby killer.” Because of her notoriety, Butler can’t find employment in her Mississippi hometown. Rejected by her church, she still feels searing glares while grocery shopping or about town. So she rarely goes out. Some exonerees move away from the communities in which they were tried, hoping anonymity will insulate them from stigma.

Two factors affect how much stigma exonerees experience—whether they receive a public apology from legal officials upon release and whether the actual offender is identified in their case. Both profoundly impact community opinion and influence how community members view and treat exonerees.

Without an apology or formal “delabeling,” exonerees struggle to reshape their identities as “innocent,” especially when public officials continue to doubt them. Prosecutors, in particular, often publicly maintain exonerees’ guilt, even in the face of overwhelming evidence of their innocence. Media often report these public comments but rarely provide full coverage of the evidence.

Such prosecutorial proclamations, combined with the public’s general belief that officials rarely pursue cases against “good” people and the cynical barb that “everyone in prison is innocent,” lead the public to believe exonerees “got out on a technicality.” Thus, while family and friends partially insulate exonerees from stigma, the real power to destigmatize lies, cruelly, with those most responsible for their wrongful convictions.

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negotiating exoneration

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continuing controversy

A hallmark of the U.S. legal system is its foundation on the due process rights of the accused to prevent mistakes. The conviction and incarceration of an innocent person, especially in a capital case, represents a grave failure of that process. At present, the consequences of such failures have received little informed evaluation.

Despite a decade of raised public awareness of wrongful convictions, exonerations are still rife with controversy. They provide a window into the competing value systems embedded in both the criminal justice system and public opinion about the administration of justice. While some recognize the mistakes and abuses in the system that lead to wrongful convictions, others remain skeptical about the true innocence of exonerees. The public is therefore torn between believing the evidence of innocence before them and a strong desire to believe in the accuracy and virtue of the system. Cynics hold that if exonerees didn’t do what they were convicted of this time, no doubt they did do something along the way to merit the punishment they received. Perhaps the reality of long, painful, and undeserved punishment is too horrible for us to confront.

The U.S. legal system provides as many rights to the accused and safeguards against wrongful conviction as almost any nation in the world. In establishing the current slate of due process rights, lawmakers took to heart the adage that it's better to have 10 guilty people go free than convict one innocent person.

Yet, at odds with this fundamental principle are the pressures on the criminal justice system to arrest, convict, and incarcerate in the name of public safety that we see today. Exonerations draw these competing values to the surface. While on one hand Americans want to convict the guilty and only the guilty, on the other they want to give those in the system wide latitude to arrest and convict offenders to keep us safe.

Exonerations expose these tensions by forcing us to weigh which of these competing principles is more important. Is justice best served when the system operates accurately but slowly and some guilty individuals slip through the cracks? Or when the system swiftly processes the guilty at the expense of a few—or a few hundred, or a few thousand—innocent lives along the way? Which type of error shall we tolerate?

Exonerations also raise the difficult issue of responsibility. In studies of wrongful convictions we typically ask the question of responsibility this way: if an innocent person is wrongly convicted, who is responsible—the police, prosecutor, judge, public, media, or “the system” writ large? When examining exonerations rather than wrongful convictions, however, the question of responsibility is inextricably linked to the question of “justice.” If innocent people are exonerated of crimes, what is our responsibility to them? How do we create, or recreate, justice for the exonerated?

In comparison to the parolees convicted for crimes they committed, we currently provide even less help to exonerees upon release. Exonerees get no time in a halfway house; no access to drug rehabilitation; no help with job skills, housing, or employment; and no bus fare, not even pocket change to make a phone call from the prison lobby for a ride home. Exonerees rarely even get something as seemingly simple as an apology, a recognition by someone in power that the exoneree was wronged, a recognition of responsibility.

We seem unable to fully embrace the idea that justice for exonerees requires official recognition of responsibility to aid them in rebuilding a life. Our hesitancy in this regard may be entangled with our competing need to believe in the efficacy of the system. To publicly acknowledge our responsibility to exonerees is also to acknowledge a flawed system—and the other innocent people in prison awaiting vindication.

Without an apology or formal “delabeling,” exonerees struggle to reshape their identities as innocent.

recommended resources


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