

## Framing innocents: the wrongly convicted as victims of state harm

By: Sandra D. Westervelt and Kimberly J. Cook

Westervelt, S and Kimberly Cook. "Framing innocents: the wrongly convicted as victims of state harm." *Crime, Law, and Social Change*, vol. 53, pp. 259-275 (2010). DOI: 10.1007/s10611-009-9231-z

**Made available courtesy of Springer Verlag:** <http://www.springerlink.com/content/1487g5148552w7q7/>

\*\*\*Reprinted with permission. No further reproduction is authorized without written permission from the Springer Verlag. This version of the document is not the version of record. Figures and/or pictures may be missing from this format of the document.\*\*\*

### **Abstract:**

We adapt the victimology of ‘state harms’ framework outlined by Kauzlarich et al. (*Critical Criminology*, 10(3), 173–194, 2001) to understand the post-exoneration experiences of 18 death row exonerees. Kauzlarich et al. develop six points of commonality shared by most victims of state crime. Application of this framework to death row exonerees highlights the role the state plays in creating and exacerbating the harms they suffer. This analysis also lays a foundation for further theoretical inquiry into the wrongful conviction of the innocent as a form of state crime.

### **Article:**

In 2003, we began interviewing death row exonerees about their post-exoneration lives. This inquiry was prompted by the substantive growth in academic attention to cases and causes of wrongful convictions since the publication of Radelet, Bedau, and Putnam’s *In Spite of Innocence* [28] 10 years prior, and a substantive dearth of attention to the experiences of exonerees after their release from prison. We began with one primary question—What is the impact of a wrongful capital conviction and incarceration on those individuals who have been exonerated and released?—and several sub-questions: What are the primary issues and obstacles they confront when released? How do they cope with these issues? How do they rebuild their lives? What factors affect their abilities to cope and rebuild effectively?

The initial guiding theoretical frameworks in this investigation were drawn from the social psychological literature on trauma management and recovery. We did not explicitly aim to contribute to the state crime literature. But, because the approach has been inductive, rather than deductive [36], a theme pertinent to the state crime literature emerged from stories told by exonerees. Exonerees consistently focused on the state’s active contribution to their feelings of victimization before and after their exonerations. Kauzlarich, Matthews, and Miller in their 2001 article “Toward a Victimology of State Crime” [13] provide a valuable model for understanding exonerees’ experiences with the state.

While not a fully formed theory of wrongful convictions as state crime, the analysis offered here is a hopeful step in that direction. As noted by Leo [18; p. 213], the scholarly study of wrongful convictions is “theoretically impoverished.” Research is dominated by case studies, analyses of legal causes, and calls for reform but falls short of providing theoretical understanding of the production and consequences of wrongful convictions. Leo [18; p. 215] urges social scientists to “draw on existing social science frameworks . . . to identify the various levels of analysis on which comprehensive theory . . . might be built.” Here, we use Kauzlarich et al.’s [13] analysis of state crime victims to identify how the state produces and exacerbates the harms exonerees suffer after release. Analyses available in the state crime literature may provide inroads into theorizing wrongful convictions in response to Leo’s criticism.

Similar to Leo’s assessment of the wrongful conviction literature, Kauzlarich et al. [13; p. 174] criticize the rate of “theoretical and empirical” development in the study of state crime, especially with regard to the victimology of state crime. While a wide range of state crime victims have been identified [13; p. 175], the sub-field lacks

cohesion because of variation in definitions of state crime used by researchers identifying state crime victims. As Kauzlarich et al. [13; p. 175] argue, “An important task in developing a victimology of state crime is to enumerate the victims, a task hindered by the lack of a uniform definition of state crime.”

Scholars debate what constitutes state crime and who can be considered a victim of state crime. Areas of disagreement include whether state crime encompasses crimes committed for state or ruling class interests on behalf of individual or organizational needs and whether state crime should be defined by objective, legal standards or more subjectivist interpretations of harm-causing activities by the state [see 14, p. 242–244 for this discussion]. Most definitions fall into two broad categories—legalistic definitions that encompass acts defined as criminal by the state and ‘social harms’ definitions that include, more broadly, socially injurious acts committed by the state that cause harm or violate human rights (whether legally defined as ‘crime’ or not) [14, 22, 23, 30].

Kauzlarich et al. [13; p.175, 190] argue that regardless of whether state crimes are defined as “illegal, socially injurious, or unjust acts,” they cause harm and produce victims. Thus, to move the development of a victimology of state crime forward, they offer an inclusive definition of state crime victims, as opposed to state crime. This definition serves as a consistent starting point for future empirical and theoretical study of state crime victimization. They define state crime victims as:

individuals or groups of individuals who have experienced economic, cultural, or physical harm, pain, exclusion, or exploitation because of tacit or explicit state actions or policies which violate the law or generally defined human rights. [p. 176]

By shifting the discussion away from confining debates over what constitutes state crime, this sociology of ‘state harms,’ rather than ‘state crimes,’ encourages examination of the actual harms experienced by victims [22]. Kauzlarich and his colleagues [14] further develop the victimology of state crime by differentiating among crimes resulting from implicit or explicit acts of omission or commission. This model has been utilized by White [40] to examine the harms associated with depleted uranium use and Woolford and Wolejszo [41] to discuss compensation claims by Holocaust survivors.

The array of harms endured by death row exonerees illuminates this victimology perspective. Exonerees are victims of the state. They have been wrongly convicted and incarcerated for crimes they did not commit as a result of explicit illegal state action or the misapplication of state power. Whether the result of willful, illegal conduct by state officials, implicit public pressure on and tunnel vision by police, an imbalance of resources in favor of the state, or sheer carelessness by investigators and prosecutors, wrongful convictions cause harm and produce victims. Exonerees’ victimization continues after exoneration when the state fails to assist their reintegration efforts and recognize its responsibility in their wrongful convictions. The victimology perspective offered by Kauzlarich et al. [13] provides a framework for understanding victims of wrongful convictions as victims of state-produced harms.

### **Framing exonerees as victims of state harms**

Based on analyses of a broad range of state crime victims, Kauzlarich et al. offer six propositions that characterize experiences of state crime victims. When applied to death row exonerees, these propositions bring focus to the role the state plays in constructing the harms with which they struggle and the extent to which exonerees are similar to other state crime victims. (The propositions are taken directly from Kauzlarich et al. [13; p.183–189]).

- 1) Victims of state crime tend to be among the least socially powerful actors.

“Even a cursory examination of state crime reveals large power differentials between the victim and victimizer” [13; p.183]. State harms typically occur when state officials exercise power and inflict harm on vulnerable people who have little recourse to defend themselves or resist the harm imposed [22, 23].

This is certainly true for those wrongly convicted, especially for capital offenses. In the process where individuals are selected for execution by the state, the ‘victims’ (exonerees) and ‘perpetrators’ (state agents) are not equally matched. Prosecutors are relatively well-funded and have broad discretionary authority to bring charges against defendants. The average defendant in a capital case is poor and relies on an under-funded attorney, often court-appointed, with a heavy caseload and limited time, resources, and knowledge to adequately represent his/her client. This is certainly the case for the majority of exonerees in our study. It is not a level playing field where both prosecutors and defendants have equitable resources to collect, challenge, and present the evidence in search of ‘truth’ [8].

The state also maintains control over representations of the crime and defendant to the public via its relationship with the media. Media outlets rely heavily on police and prosecutors’ offices for information about crime and defendants [5]. Not surprisingly, media accounts of criminal investigations often are laden with official constructions of what happened, what evidence is available, and what type of person the suspect is. Such constructions legitimate activities of state agents involved in the investigation and prosecution while relying on stereotype, innuendo, and fear to create biased images of marginalized, uncooperative, or ‘typical’ suspects [21]. Defendants lack the ability to combat such constructions in the media that then follow them into the courtroom when they face the jury.

- 2) Victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies. If suffering and harm are acknowledged, it is often neutralized within the context of a sense of ‘entitlement.’

First, state officials responsible for the illegal and/or unethical acts that result in wrongful convictions are rarely held accountable [31, 35]. Police are protected by an internal culture that discourages whistle-blowing and an external culture that views criminal activity through a police-friendly lens [32, 33, 39]. Criminal justice officials operate mostly with a presumption of guilt, a presumption shared by the general public who believes that the police only arrest guilty people [4, 8]. If a police officer’s testimony conflicts with a suspect’s, about something like whether the suspect was physically abused during an interrogation, those within and outside the system are predisposed to believe the officer. Thus, police are insulated from inspection and accusation.

Also, prosecutors rarely face punishment for legal violations and/or unethical activities in the pursuit of a prosecution, and instead are rewarded for high conviction rates and their dogged pursuit of justice [7, 29, 35]. Prosecutors are immune from civil liability unless they can be shown to have pursued an innocent person with willful and malicious intent, a high standard indeed [7]. The judiciary partially shields prosecutors from punishment through use of the harmless error doctrine. This allows the judiciary to admonish prosecutors for overstepping bounds while maintaining that their behavior did not significantly impact the outcome of the case, in essence turning a blind eye to misbehavior [7, 35]. Amongst our sample of 18, we know of only one case, that of Alan Gell, in which a state agent received a punishment of some kind [24].

Second, state agents deny and neutralize the harmfulness of their policies and actions by denying the actual innocence of individuals, often long after their exonerations and release from prison. In numerous cases in our sample, prosecutors continued publicly to insist on the guilt of exonerees immediately on the heels of exoneration, even when based on DNA evidence [12]. Exonerees consistently note the unwillingness of state officials to acknowledge or apologize for their failures. The denial of the actual innocence of exonerees constitutes a refusal by state officials to recognize when they have committed harmful errors, and a reluctance

to examine their policies and practices. These neutralizations further victimize exonerees struggling to reintegrate into communities influenced by these official denials of innocence.

3) Victims of state crime are often blamed for their suffering.

“Victim blaming is unfortunately a common reaction to those most wounded by state crime” [13; p.186]. This is quite common among victims of wrongful convictions. Exonerees often hear from family, friends, community members, and state officials that they are responsible for their own plight: “they must have been guilty of something!” An equally common refrain is that exonerees are responsible for their convictions because they did not mount an aggressive defense. This latter argument overlooks the significance of proposition #1: victims of state harm tend to be among the least socially powerful actors.

4) Victims of state crime must generally rely on the victimizer, an associated institution, or civil social movements for redress.

Exonerees often must depend on the very police, prosecutors, and judges whose misconduct, carelessness, or oversight lead to their wrongful convictions to review the investigatory process, retest the evidence, and retry the case to secure exoneration. An exoneration requires that the state reassess its earlier behavior, one reason why the average time between a conviction and exoneration is 7–9 years. Following their release, exonerees must request that the courts expunge their records and/or grant compensation for their wrongful convictions (if available in their state). These processes are costly, time-consuming, and fraught with often insurmountable obstacles. The sheer irony of forcing exonerees to ask those who wrongly convicted them to uncover and repair their mistakes and provide redress via an expungement or compensation is not lost on several of the exonerees in our study. For example, Alan Gell notes:

You got to hire a lawyer to do an expungement. And you know, again I’d like to have it done. But the truth of the matter is, is if I had fifty million dollars I wouldn’t pay a damn lawyer a penny to do it. I think the governor should expunge it on his own. It shouldn’t cost me to expunge, to expunge what should’ve never been there . . . . I think they’ve got that whole process backwards. It’s not supposed to be me go to him and say, umm, “will you please pardon me for not doin’ what y’all said I did.”

Exonerees receive little, if anything, from the state upon release. What little help they may receive comes from one of the few non-profit organizations focused on addressing the needs of the exonerated (e.g., Witness to Innocence, Life after Exoneration, the Darryl Hunt Project for Freedom and Justice). Mainly, exonerees are aided by their families, friends, and attorneys, and in some cases advocates who fought for their release. Or for many, their needs simply go unmet.

5) Victims of state crime are easy targets for repeated victimization.

“The harm incurred by most victims of state crime does not decrease [over time] rather it merely takes another form” [13; p.187]. Once the actual wrongful conviction is identified, the ripple effects of that conviction and incarceration can be felt far into the future and take many forms. In some instances, the re-victimization of exonerees comes directly from state officials. Several exonerees in our study describe being subject to police surveillance after their release, and they fear attempts by officials to bait them into activities that could land them back in prison.

State officials directly influence the re-victimization of exonerees when they fail publicly to acknowledge actual innocence, fail to take responsibility for their own misconduct and abuses, fail to provide an apology, and fail to provide meaningful assistance towards establishing new lives for those they have harmed. The impact of these

failures includes: poor health, lack of access to healthcare, stifled family relationships, inability to have children, feelings of bitterness and anger, drug and alcohol addiction, poor job skills, unstable employment, lost time in building financial security through homeownership and retirement funds, and no immediate savings to secure a degree of comfort in the future. Many exonerees live with uncertainty and perpetual reminders of how the painful past continues to shape their futures.

- 6) Illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals.

It is important to conceptualize wrongful convictions as “the product of organizational pressures to achieve organizational goals. . . . [and to consider how] the organizational climate itself fosters, facilitates, or encourages such behavior” [13; p.188], rather than the consequences of a few ‘bad apples’ in the justice system. Within the organizational context of policing, investigations are typically premised on the belief that police are building a case against a guilty person. This bias creates a tunnel vision resulting in selection of evidence that supports the guilt of the suspect, minimizing (or discarding) evidence that might be exculpatory, and molding a crime narrative to fit a theory developed very early about what ‘really happened’ in a case [4, 8, 19, 21]. This organizational culture allows police to view wrongful convictions as unintentional outcomes of routine police practices and thus to distance themselves from the harm caused by their actions.

Prosecutors work within an organizational context also characterized by a presumption of guilt, tunnel vision, and public pressure. Additionally, prosecutors are elected officials judged by conviction rates who often are inadequately challenged by underfunded or underprepared defense counsel. This creates a culture conducive to producing wrongful convictions. In some jurisdictions, the pursuit of convictions becomes the primary objective to the point that an ‘ends justifies the means’ mentality sets in [21, 35]. Jurisdictions that use the death penalty are particularly at risk.

Finally, the incarceration and execution of the condemned are presented as meeting the presumed institutional goals of retribution and incapacitation [25]. Executions are publicly announced and celebrated as the ultimate power of the state to exact “justice” [6]. Politicians and public opinion makers claim that executions achieve the explicit goal of deterrence [3, 25]. Guards and prison officials who carry out executions believe they are simply fulfilling the will of the people [11]. The death penalty is legitimized because the public supports it, the system exercises it, and prosecutors and police celebrate it [3]. Thus, victims of wrongful convictions in capital cases are as much victims of these intransigent institutional cultures as anything else.

Application of Kauzlarich et al.’s [13] victimology framework reveals that the harms caused to the wrongfully convicted are those common to state crime victims across the spectrum. The state’s role in producing the trauma felt by exonerees is often obfuscated by criminal justice officials and media outlets. Criminal justice officials publicly deny responsibility for wrongful convictions. Media outlets broadcast images of tearful, joyous exonerees who, on the day of their release, are embraced by grateful and loving friends and family. Little attention is given to the challenging journey that awaits them. To understand fully life after release from death row, one must understand the role the state plays in it.

### **A catalogue of harms: struggling with exoneration**

Since 2003, we have completed 18 life story interviews with death row exonerees, 17 men and one woman, chosen from a list of death row exonerees maintained by the Death Penalty Information Center<sup>1</sup> [36].

Participants spent an average of 9.9 years in prison, ranging from 2 years to 26 years, and an average of 5.2 years actually on death row, with a range of 1 to 18 years. (See Table 1)

**Table 1** Biographical details of exonerees interviewed to date

| Name                | Sex | Race | Age at conviction | State where tried | Years in prison | Years on death row | Year of exoneration | DNA? | Actual offender[s] found? |
|---------------------|-----|------|-------------------|-------------------|-----------------|--------------------|---------------------|------|---------------------------|
| Fain                | M   | W    | 35                | ID                | 18              | 18                 | 2001                | yes  | no                        |
| Melendez            | M   | L    | 34                | FL                | 17.5            | 17.5               | 2002                | no   | yes                       |
| Tibbs               | M   | B    | 34                | FL                | 2               | 2                  | 1977                | no   | no                        |
| Gauger              | M   | W    | 41                | IL                | 3               | 1                  | 1996                | no   | yes                       |
| Krone               | M   | W    | 35                | AZ                | 9.5             | 2                  | 2002                | yes  | yes                       |
| Butler              | F   | B    | 19                | MS                | 5               | 2                  | 1995                | no   | no                        |
| Bloodsworth         | M   | W    | 23                | MD                | 8               | 1                  | 1993                | yes  | yes                       |
| Brown               | M   | B    | 25                | FL                | 14              | 14                 | 1987                | no   | no                        |
| Wilhoit             | M   | W    | 33                | OK                | 6               | 5                  | 1993                | no   | no                        |
| McMillian           | M   | B    | 47                | AL                | 6               | 6                  | 1993                | no   | no                        |
| James               | M   | B    | 23                | OH                | 26              | 1                  | 2003                | no   | no                        |
| Howard              | M   | B    | 23                | OH                | 26              | 1                  | 2003                | no   | no                        |
| Keaton              | M   | B    | 18                | FL                | 2               | 1                  | 1973                | no   | yes                       |
| Gell                | M   | W    | 23                | NC                | 8.5             | 5                  | 2004                | no   | no                        |
| Cobb                | M   | B    | 37                | IL                | 9               | 4                  | 1987                | no   | no                        |
| Taylor <sup>a</sup> | M   | B    | 29                | IL                | 13              | 10                 | 2003                | no   | no                        |
| Beeman              | M   | W    | 25                | OH                | 3               | 2                  | 1979                | no   | no                        |
| Rivera              | M   | L    | 28                | NC                | 2               | 1.5                | 1999                | no   | yes                       |

<sup>a</sup>This exoneree prefers to remain anonymous. We have chosen this pseudonym for him.

Here, we describe challenges exonerees confront: a battery of harms extending from their initial wrongful convictions, death sentences, and incarcerations. We focus primarily on harms they manage post-release and the state's role in aggravating these harms. Some of these harms are, no doubt, shared by parolees and others who have been incarcerated, whether wrongly convicted or not. Reintegration research on the incarcerated population indicates that, like exonerees, parolees struggle with problems related to housing, employment, social support, and stigma [26]. However, in addition to these, exonerees' transition difficulties are compounded by a host of unique experiences. Exonerees, for example, receive little to no notice of impending release, no access to halfway houses, no post-release job training, no assistance with drug rehabilitation services [37]. While true that parolees receive insufficient assistance from the state upon release, exonerees receive even less. But, more centrally, if not for the wrongful actions of the state in convicting an innocent person of a capital crime, exonerees would not suffer from any of these harms. In addition to being the cause of these harms via the wrongful conviction, the state actively exacerbates them after exonerees are released.

### **Confronting the possibility of death by court order**

Exonerees often discuss the fear, anger, loneliness, and feelings of inhumanity that come with facing execution for crimes they did not commit. Juan Melendez, for example, spent more than 17 years on death row in Florida. He notes:

That was one of the hardest parts of being there was when they kill somebody. You got to recognize this . . . . You got a man next door to you for 9 years . . . 10 years. You become attached without even knowing it. And now they come, they snatch him, they kill him. Then you think, "I'll probably be next." So that was the part that I say was the hardest part for me in there, when they kill people.

Walter MacMillian was held on death row while *awaiting* trial in Alabama. He believes the state held him in prison, rather than county jail lock-up, in order to intimidate him into confessing. His cell was diagonally across from the execution chamber, and a prisoner was killed only a few days after he arrived to 'the row.' He said:

Boy, they executed a lot of guys while I was down there. They executed one guy about 4 days after they got to keep me down there. That's why they done that, I think, to try to scare me, you know. They put me up high, upstairs, so I could look right over there . . . look right at the building with the chair in it. . . . And I just reckon they just done that to try to irritate me . . . try to make me give up, I reckon.

Shabaka Brown came within fifteen hours of his own very real electrocution in Florida. He was measured for his burial suit, and when he realized the prison guards were measuring him for that purpose, he lashed out, assaulted the officer, and lost some of his teeth in the brawl. He said:

The most telling thing during that time was when they took me out of that cell [on death watch]. And they had a civilian with them. . . . And the civilian had a tape measure in his hand. And they took the hand-cuffs off me, and asked me to raise my hands, like that. And the tape measure went around my chest, and around my waist, and the inseams of my leg. And then it struck me. Son of a bitch's measuring me for a burial suit, you know. And I struck out. I mean . . . they was doing this so mechanically. I mean, it was almost like . . . arghhh [bangs on table] . . . I was an inanimate object. And for some reason, something just . . . [shouts out in frustration]. And I was determined right then and there that if they were going to kill me, they were going to do it with some damn dignity.

Finally is the experience of Sabrina Butler, the only female exonerated from death row. Butler was sentenced to death in Mississippi; at the sentencing hearing, the judge announced her execution date would be July 2, 1990. Hearing that date seared into her consciousness as a traumatic life experience like none other. She did not understand or absorb the rest of the proceedings that day. She was not informed, in a way that she could grasp, that the execution date would be stayed pending appeals in the State Supreme Court. As the day approached, she became increasingly anxious and agitated. She heard from no one. She worried about what was likely to happen. She told us:

. . . July the 2nd of 1990 was my death date. And when that day came . . . I was the scariest person in the world. That is a feelin' that I wouldn't wish on my worst enemy. I stood there at the little old door . . . one slot had glass in it. And you just stand there and look. And I thought, by me watchin' TV, and stuff, that they was gonna come and get you, and you was gonna have this ball and chain on. And these people gonna be walkin' beside you. You goin' down this long hall, you know what I'm sayin.' . . . And I was scared to death, and the girl [in the cell next to her] kept tellin' me, "Sabrina, they're not gonna do nothin'. . . ." You know, I was standin' there cryin'. I kept telling her, "Yeah, they gonna kill me. They gonna kill me. Somebody call my mama, or somethin' and tell 'em that," you know, "I love 'em." You know, I was just sayin' everything 'cause I was scared [emotional]. And she kept tellin' me, "Don't cry. Don't cry. Don't cry. It's gonna be alright. It's gonna be alright." That whole day, I just sat in my room. I couldn't sleep. I couldn't eat [crying]. That is the most humiliating, scary thing that any person could ever go through. 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. Wasn't nobody there. . . . I don't never wanna go through that no more. I don't care what. I don't never wanna go through that anymore.

### **Problems of everyday living**

The problem that looms most immediately upon release is housing. With only an hour or a day's notice of impending release, exonerates have little time to plan for life after prison. Relying on their defense networks or family members for immediate housing is typical. Shabaka Brown lived with his post-conviction defense attorney for 6 months. Sabrina Butler was essentially 'kicked to the curb'—no phone call, no transportation, and

no one to pick her up: “They didn’t give me jack! They just took the handcuffs off me and sent me out the door. . . . Didn’t get nothin’ but ‘goodbye, we’ll holler at ya’.”

The most frequently mentioned problem facing exonerees is finding employment. While some manage to keep themselves gainfully employed (Gauger is a farmer; McMillian runs his own used auto parts business), most prefer occupations with relative isolation from the public. Exonerees are stymied in searching for meaningful employment by required criminal background checks despite their exonerations. To have civil rights restored and the wrongful conviction expunged, exonerees must hire an attorney, which they cannot afford. To skirt the requirement of reporting their felony convictions on job applications, some enclose their exoneration paperwork or write ‘Not Applicable’ on the forms. Such strategies have proven futile. For exonerees living in small communities, stigma can impede their employability. Kirk Bloodsworth and Sabrina Butler faced employment problems because they were such recognizable figures. Butler had been offered a job at a local grocery chain and was filling out the employment paperwork when an assistant manager recognized her and terminated her immediately.

Upon release, most exonerees have serious health problems (e.g., malnutrition, arthritis, asthma, muscular atrophy, digestive disorders, skin rashes, diabetes, hepatitis). Rebuilding their health is difficult because access to healthcare is largely determined by employment. The self-employed exonerees struggle to pay insurance premiums and may have pre-existing conditions that put premiums out of range. They seek help from Social Security or disability coverage and often are denied. As Alan Gell explains:

I went to the Department of Social Services, and I was like, you know, “I hadn’t got no money. I hadn’t got no job. I was just let out of, you know, out of prison, off of death row. There’s not healthcare for me whatsoever and I got these health problems. I got mental problems. I got some, you know, physical problems as far as like, uh, my foot being broken and never set. Is there any way I can get any help from you?” And they refused. I mean, they told me that, you know, the only way I could do it is if like I was a senior citizen or, umm, if I was pregnant.

Furthermore, the basics of everyday living confound exonerees. They must re-learn how to eat with utensils, how to grocery shop, how to sleep (especially with a significant other). Juan Melendez reports problems finding his way around buildings and frequently getting lost; that after nearly 18 years confined to a 5’ by 7’ cell, his sense of direction has suffered. In the first weeks after his release, Alan Gell reports having problems sleeping in the dark, because it is never truly dark in prison. Depending upon the length of incarceration, they may return to a world dramatically different from the one they left. Using modern technology may be difficult. Several exonerees had never seen a cell phone, CD player, DVD, computer, self-serve gas pump, or ATM machine, except on TV.

These practical problems become obstacles to social reintegration which ripple throughout their lifetimes: no home equity, no retirement funds, no prescription coverage, ruptured family relationships, and, in some cases, re-incarceration or early death. These are problems they face alone and without assistance from social service agencies, relying solely on the aid of family, friends, advocates, and attorneys willing to provide legal services, often for free. The state offers no post-exoneration aid to negotiate these difficulties, and in some ways, only creates additional obstacles by requiring exonerees to secure their own legal services to have records expunged, civil rights restored, and rights to compensation pursued. In many cases, they do not know when (or if) they will be released and thus are not able to make even the most basic plan about how to manage these practical issues when they get out.

### **Feelings of grief and loss**

Exonerees report confronting significant bouts of grief over losses they incurred during or due to their wrongful incarcerations: the loss of time, loss of feelings of security, loss of loved ones, and loss of self.

Juan Melendez said that after spending “17 years, 8 months, and 1 day” on death row for a crime he did not commit that “I became an old man in there.” Melendez, Delbert Tibbs, Gary Gauger, Greg Wilhoit and several others lament their loss of time with loved ones, especially children. Several exonerees went into prison leaving small children behind, and returned to grown children and even grandchildren they hardly knew. Some re-establish familial relationships after release, though others interact with their children infrequently and see their relationships as irreparable. Others, like Gary James who spent 26 years in prison, spent the better part of their childbearing years in prison and lament the lost opportunity to have had children: “I would like a family, but it’s kind of, like, unrealistic, you know. I don’t have no kids. . . . I don’t think I’m gonna have none. You know, at this point . . . that’s the only thing that I want. I would like to have at least one.”

Several exonerees describe a lost sense of security, especially when in public places. They feel vulnerable to police who resent their exonerations. The general public may see this as paranoia, yet to exonerees this is a legitimate fear in the wake of their wrongful capital convictions. For example, returning to Arizona where his wrongful conviction took place, Ray Krone describes taking the following precautions:

So I have been back to Arizona. I traveled in groups. I didn’t drive in a car or get by myself anywhere. I was actually in a bar one night havin’ some drinks and some trouble started. And I got the hell out of there quick! . . . I was very careful where I went. I took one of those little microphones . . . a little recorder along with me in my pocket, just in case I ever did get stopped I was gonna have that thing runnin’ . . . .

The most profound grief is revealed by exonerees who mourn lost loved ones. Four of our participants were accused of killing family members: Gauger, his elderly parents; Butler, her 9 month old son; Wilhoit, his wife; and Taylor, his wife and 15 month old son (and 5 others). They suffered the loss of their family members at the same time they were tried, convicted, and sentenced to death for those murders. Sabrina Butler recounts her confusion and feelings of helplessness while being interrogated by police at the hospital on the night her son died: “I’m sittin’ here holding [her deceased baby]. And everybody’s askin’ me [what happened]. I could have said I was a elephant! I don’t know what I said. . . . Everybody was askin’ me, ‘What happened?! Who did this?!’ . . . I don’t know what I said, what I didn’t say. . . . And nobody would help me. *Nobody*.” She still visits his grave every year on his birthday with a candle and a toy. Scott Taylor was convicted of killing his wife and toddler and five others in a fire and describes, with tears in his eyes, how he was unable to mourn their deaths until he saw their gravesite for the first time on his ride home from prison the day of his release. Gary Gauger’s pain was the most palpable as he describes managing the grief over the loss of his parents, whom he was convicted of killing:

The only way I could say I maybe had grieved a little bit was about a month and a half, 2 months after my arrest, I had a dream. And I was speaking with my mother. And then I realized, I said, “Oh, wait a minute, but you were killed.” And then she faded away. I asked for a hug [Gary begins to cry—whispering]. Man, I didn’t want to do this [deep breath and silence] . . . um, I asked for a hug and then she faded away, and I started crying. And I woke up crying, and I . . . that, I suppose would have been the . . . [speech slurs, crying]. . . . Oh man, oh man. I don’t even wanna come close to that. Um . . . that was as close as I had come to mourning their murders, their deaths. I would call that . . . I probably had four or five emotional episodes since then. This is pretty close to one right now. I feel like I’m a plastic barrier holding back the ocean. You know, not much substance and a lot of weight.

Debilitating grief and anger haunt other exonerees whose loved ones died while they were incarcerated. Kirk Bloodworth lost his mother, his primary supporter, 5 months before his exoneration and release. Fifteen years later, he still cannot discuss her death without crying: “. . . 5 months, that’s all it was, 5 months, and she was gone. I had to view her body in handcuffs, shackles and leg chains for 5 min before her funeral. It had literally killed her, this mess.”

Finally, exonerees report a feeling of loss of self and identity upon release. Their socially constructed self-concept was based on their family relationships, employment, friendships, most of which have disintegrated.

They struggle to carve out new identities through new relationships, new jobs, new spirituality, and even through the ‘exoneree’ identity itself. Gary Gauger articulates how profound this is: “My life is no longer my own. I really feel sometimes, I was actually murdered the same day my parents were, and this is like a alternate life I’m living. ‘Cause the difference is just so abrupt and different.”

Again, exonerees are given no resources with which to manage these losses post-release. They are not referred to counseling services or given names of individuals willing to aid them. They receive no decompression time in a halfway house after release, a resource made available to parolees in some states—no time to adjust to life as an ‘exoneree’ and seek assistance for the practical problems of life awaiting them. Instead, they are thrust into their new lives, often in full view of searing media and public scrutiny with little to no time to prepare.

### **Negotiation of stigma and reintegration**

Most exonerees experience painful stigma after release. Several were fortunate to return to communities that readily accepted them. However, in spite of actual innocence, many exonerees return to communities that are extremely hostile. A few, like Perry Cobb, move from where they were tried, hoping that anonymity will insulate them from stigma. But, with limited resources and families rooted in particular places, some exonerees return to neighborhoods and towns that know them well. Kirk Bloodsworth was greeted with fear from his neighbors, suspicion from people he had known since childhood, and messages of hate written in the dirt on his truck—‘child killer.’ Sabrina Butler cannot find employment in her small town of Columbus, Mississippi where her name is well-known. She was rejected by the church where she tried to seek sanctuary. She feels the searing glare of hatred from community members while grocery shopping or about town, so she rarely goes out: “I’m this person . . . this heinous murderer that stomped my baby. . . . they have just destroyed my life! And I’m angry. I am very angry because I can’t get back what they took from me!”

Managing social rejection can lead exonerees to retreat and isolate themselves. Some retreat into substance abuse, while others rarely leave their homes. Gary Gauger describes his tendency to choose isolation: “I hate to even have the phone ring. I don’t like to talk to people on the phone. So, what’s the point? 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 house.” Aside from an apology from state officials, acceptance is what exonerees want most. Kirk Bloodsworth explains what exonerees need most upon release: “A hug. He needs to be loved. . . . That was what I wanted more than anything. I wanted to be loved again. I wanted people to respect me. And I didn’t want people to think I was a child killer anymore. . . . I wanted love and acceptance.”

In many cases, the stigma and social rejection exonerees face is stirred by vocal police and prosecutors who insist on the guilt of exonerees at the very moment they are released. Such public pronouncements fuel suspicions and fears in the communities to which exonerees return and seal their fates as subjects of harsh social judgment.

While a relatively short account of the obstacles confronting exonerees after release, the variety and depth of the injuries with which they struggle are clear. Also clear is the role the state plays both in creating and aggravating these harms.

### **Discussion**

When discussing their experiences, exonerees consistently focus on the state’s responsibility for their victimizations; however, this has not been a central focus of social science or journalistic examinations of life after release. Kauzlarich et al.’s [13] victimology framework makes the state’s role central to understanding their experiences and reveals that the state-produced harms described by exonerees are common to a wide range of state crime victims. These are not harms of their own making. State agents actively seek to evade responsibility while engaging in activities that maintain and enhance these harms.

Framing innocents in this way draws attention to the damage suffered by the wrongly convicted, and, we believe, exonerees benefit from promoting an understanding of their experiences as state victimization. There is a problem that can no longer remain subterranean. Exonerees benefit when society acknowledges, understands, and embraces them as human beings. Wrongly convicted individuals benefit when their stories are compiled, preserved, analyzed, and disseminated as part of larger public debates about state policies and the impact of deadly practices. By recognizing exonerees' struggles, state officials might alter their practices to provide automatic expungements and compensation, healthcare, educational opportunities, and post-trauma therapeutic assistance. It is possible, though less likely, public officials will be held accountable for their harmful actions when exonerees' stories are known more widely.

For scholars, analyzing these experiences is one avenue to examine the direct role state officials play in generating harm, and how that harm is manifest for victims. Expansive research into the array of criminal activities and human rights violations perpetrated by states reveals the incomprehensible amounts of harm generated to large numbers of people around the world [9, 10, 14–16, 30, 34]. Exposing that to public gaze prefaces any discussion of what can then be done about it. For scholars, activists, and public officials, recognition that wrongful convictions are harms often generated by state agents and institutional contexts creates an opportunity for change.

The state crime literature has not yet been used to examine miscarriages of justice or the harms experienced by those wrongly convicted. In response to Leo's [18] call for theorizing wrongful convictions, existing state crime literature offers a place to begin. Framing wrongful convictions as state crime is partially dependent upon the definition of 'state crime' with which one begins. Chambliss's [2; p.184] original definition is indicative of those offered from the legalistic perspective: "acts defined by law as criminal and committed by state officials in the pursuit of their jobs as representatives of the state." When applied to wrongful convictions, this definition includes only outright illegal activities committed by state officials, primarily police and prosecutors, in the pursuit of prosecutions that result in the wrongful conviction of the innocent.

Such criminality has been documented in wrongful conviction cases. Police have beaten false confessions out of suspects, threatened suspects with execution if they did not confess or provide information, and failed to process exculpatory evidence, as required by law [4, 17, 27, 28, 42].<sup>2</sup> Lab scientists, working in police labs, have falsified, fabricated, and destroyed evidence [1, 20]. Prosecutors, too, have fabricated and falsified evidence and withheld exculpatory evidence from the defense [28, 31, 35].

These illegal activities, however, represent only one extreme of a broad continuum of official decisions that can result in a wrongful conviction. Thus, thinking about wrongful convictions as state crime solely from within a narrow legalistic discussion is limiting. Legalistic definitions leave out an array of human rights violations and 'socially injurious acts' committed by state agents that result in 'socially analogous harm' [22, 30]. The social harms approach recognizes that nothing is inherently criminal and that a legally bound definition of state crime is a state-constructed label, requiring state officials to criminalize the activities of other state officials [22, 30]. Use of the social harms perspective frees researchers to consider analogous types of behavior that are not illegal but do cause equally serious forms of harm. Kauzlarich et al. [13; p.175] offer one possible definition of state crime from within this more inclusive social harms approach: "illegal, socially injurious, or unjust acts which are committed for the benefit of a state or its agencies, and not for the personal gain of some individual agent of the state."

In the case of wrongful convictions, police and prosecutors (and judges on occasion) have engaged in activities that fall short of criminal behavior but nonetheless result in convictions of innocent people. These include wrongful convictions resulting from carelessness, sloppiness, shortcutting, cynicism, routine processing, stereotyping, tunnel vision, and/or the presumption of guilt. For example, police provide inducements to falsely confess, feed information to witnesses, conduct misleading lineups and photo arrays, lose and contaminate evidence, ignore conflicting evidence or alternative leads due to tunnel vision, and mishandle informants [28, 31, 38], to name a few. Prosecutors fail to provide complete files to the defense, lose evidence, mishandle

witnesses, use inflammatory and misleading evidence at trial, intentionally exempt people of color from juries, mischaracterize evidence in court, and provide inappropriate information to the media [35, 38]. And, of course, these most likely occur within a context marked by an unequal distribution of resources between the defendant and his/her defense counsel and the prosecution [8].

Thus, one starting point in theorizing wrongful convictions as state crime is to consider whether they result from direct, illegal acts or socially injurious (though legal) acts by state actors. However, Kauzlarich et al. [14] argue this dichotomy between illegal actions and legal, but socially injurious, actions oversimplifies the nature of state crime. They, instead, offer a “multidimensional continuum of state crime complicity” that includes acts of commission and omission and consideration of whether the crimes meet explicit or more implicit state goals [14; p. 241, 246]. This continuum may provide a more meaningful and nuanced model to explain the array of actions and inactions by state actors that lead to wrongful convictions. While only a brief outline of how wrongful convictions could be examined as a form of state crime, further examination along these lines may prove useful.

### **Conclusion**

Rather than recognizing the role state agents and organizational contexts play in producing and perpetuating wrongful convictions, state officials (with some notable exceptions) more often deny responsibility and even claim that exonerations are evidence of how well the system works. Ray Krone discusses what he sees as this failure of accountability:

I think that is [lack of accountability] actually truly the root cause because that's what allowed [the prosecution] to keep thinking, “I can get away with this.” And others see, “Well, we can get away with this.” All to get a conviction. . . . It ain't about, “I'm saving society because I got this murderer off the streets here.” It's about getting a conviction. And I know somewhere . . . along the line, a police officer, prosecutor, somebody in them offices had to look and say, “Wow, I wonder why this shit don't add up right? Ah . . . who cares.” . . . And they're dangerous. They talk about taking dangerous people off the streets. They tell the jury to send this dangerous person . . . take 'em out of society. I tell you, prosecutors like that are dangerous. Police officers like that are dangerous.

When asked to comment on the claim that his exoneration demonstrates that the ‘system works,’ Kirk Bloodsworth adamantly responds:

No sir! No Ma'am! No way! No how! The system didn't work. *I worked. I got myself out.* . . . I had a smart attorney who believed me. But, even he, he did what I told him to do. . . . The prosecutor, the day I got out, this is what she says, “Although we're releasing Mr. Bloodsworth, we're not prepared to say he's innocent. However if we had had this evidence in 1984, we wouldn't have prosecuted him.” They won't even own up to their stuff!

So, for exonerees who have been through the experience of a wrongful capital conviction and death sentence, the system is broken. It is not a matter of the ‘rotten apples’ in the system who have fallen short of their ethical obligations. Rather their cases point to the ‘contaminated orchard’ where the entire system—from arrest to prosecution to incarceration and ultimately to post-exoneration—inflicts injury, trauma, and irreversible damage to them, where the final insult is an inability by anyone to ‘own’ the state's role in the tragedy.

Thus, framing innocents as victims of state harms puts a human face on the need for changes in state acknowledgment and policy to more effectively address the needs and challenges faced by innocents when they finally are released.

**Acknowledgments** We would like to thank the following for their contributions to the completion of this manuscript: Ray Michalowski, who helped focus our ideas on the primary story we had to tell; Amy Ernestes, who gathered research on state crime; our colleagues at Griffith University and Australian National University

in Australia for comments on early versions of the paper; and the anonymous reviewers. This paper was first presented to participants in the “State Crime in the Global Age” conference in Oñati, Spain, May 2008. We thank all conference participants for their contributions. We also are grateful for Michael Radelet’s support and guidance. Mostly, we thank the generosity of our research participants for trusting us with their stories. Funding for this research has been provided by: the External Proposal Development Incentive Program, Office of the Associate Provost of Research, The University of North Carolina at Greensboro, and the American Sociological Association’s Fund for Advancement of the Discipline Award supported by the American Sociological Association and the National Science Foundation.

## References

1. Castelle, G. (1999). Lessons learned from the ‘Fred Zain affair’. *The Champion*, 23, 12–16, 52–57.
2. Chambliss, W. (1989). State organized crime. *Criminology*, 27(2), 183–208.
3. Cook, K. (1998). *Divided passions: Public opinions on abortion and the death penalty*. Boston: Northeastern University Press.
4. Fisher, S. (1993). “Just the facts, ma’am”: lying and the omission of exculpatory evidence in police reports. *New England Law Review*, 28, 1–62.
5. Fishman, M. (1978). Crime waves as ideology. *Social Problems*, 25(4), 531–543.
6. Garland, D. (1990). *Punishment and modern society: A study of social theory*. Chicago: University of Chicago Press.
7. Gershman, B. (1986). Why prosecutors misbehave. *Criminal Law Bulletin*, 22(2), 131–143.
8. Givelber, D. (2002). The adversary system and historical accuracy: Can we do better? In S. Westervelt & J. Humphrey (Eds.), *Wrongly convicted: Perspectives on failed justice* (pp. 253–268). Newark: Rutgers University Press.
9. Green, B., & Ward, T. (2000). State crime, human rights: the limits of criminology. *Social Justice*, 27(1), 101–115.
10. Green, P. (2005). Disaster by design: corruption, construction and catastrophe. *British Journal of Criminology*, 45(4), 528–546.
11. Johnson, R. (1998). *Death work: A study of the modern execution process*. Belmont: West/Wadsworth.
12. Junkin, T. (2004). *Bloodsworth*. Chapel Hill: Algonquin.
13. Kauzlarich, D., Matthews, R., & Miller, W. (2001). Toward a victimology of state crime. *Critical Criminology*, 10(3), 173–194.
14. Kauzlarich, D., Mullins, C., & Matthews, R. (2003). A complicity continuum of state crime. *Contemporary*

*Justice Review*, 6(3), 241–254.

15. Kramer, R., & Michalowski, R. (2005). War, aggression and state crime. *British Journal of Criminology*, 45(4), 446–469.
16. Lenning, E. (2007). Execution for body parts: a case of state crime. *Contemporary Justice Review*, 10(2), 173–191.
17. Leo, R. (2008). *Police interrogation and American justice*. Cambridge: Harvard University Press.
18. Leo, R. (2007). Rethinking the study of miscarriages of justice: developing a criminology of wrongful conviction. *Journal of Contemporary Criminal Justice*, 21(3), 201–223.
19. Lofquist, W. (2002). Whodunit? An examination of the production of wrongful convictions. In S. Westervelt & J. Humphrey (Eds.), *Wrongly convicted: Perspectives on failed justice* (pp. 174–196). Newark: Rutgers University Press.
20. Luscombe, B. (2001). When the evidence lies. *Time*, 13 May. Online.
21. Martin, D. (2002). The police role in wrongful convictions: An international comparative study. In S. Westervelt & J. Humphrey (Eds.), *Wrongly convicted: Perspectives on failed justice* (pp. 77–95). Newark: Rutgers University Press.
22. Matthews, R., & Kauzlarich, D. (2007). State crime and state harms: a tale of two definitional frameworks. *Crime, Law & Social Change*, 48(1–2), 43–55.
23. Michalowski, R. (1985). *Order, law, and crime*. New York: Random House.
24. Neff, J. (2004). NC bar hearing provokes more anger. *The News and Observer*, 21 October.
25. Paternoster, R., Braeme, R., & Bacon, S. (2008). *The death penalty: America's experience with capital punishment*. New York: Oxford University Press.
26. Petersilia, J. (2003). *When prisoners come home*. New York: Oxford University Press.
27. Protess, D., & Warden, R. (1998). *A promise of justice*. New York: Hyperion.
28. Radelet, M., Bedau, H., & Putnam, C. (1992). *In spite of innocence*. Boston: Northeastern University Press.
29. Rosen, R. (1987). Disciplinary sanctions against prosecutors for *Brady* violations: Paper tiger. *North Carolina Law Review*, 65, 693–744.
30. Rothe, D., & Friedrichs, D. (2006). The state of the criminology of crimes of the state. *Social Justice*, 33(1), 147–161.

31. Scheck, B., Neufeld, P., & Dwyer, J. (2000). *Actual innocence*. New York: Doubleday.
32. Surette, R. (1992). *Media, crime & criminal justice*. Belmont: Wadsworth.
33. Walker, S. (1999). *The police in America*. Boston: McGraw-Hill.
34. Ward, T. (2005). State crime in the heart of darkness. *British Journal of Criminology*, 45(4), 434–445.
35. Weinberg, S., Gordon, N., & Williams, B. (2006). *Harmful error: Investigating America's local prosecutors*. Washington, DC: Center for Public Integrity.
36. Westervelt, S., & Cook, K. (2007). Feminist research methods in theory and action: Learning from death row exonerees. In S. Miller (Ed.), *Criminal justice research and practice: Diverse voices from the field* (pp. 21–38). Boston: University Press of New England.
37. Westervelt, S., & Cook, K. (2008). Coping with innocence after death row. *Contexts*, 7(4), 32–37.
38. Westervelt, S., & Humphrey, J. (2002). *Wrongly convicted: Perspectives on failed justice*. Newark: Rutgers University Press.
39. Westley, W. (1970). *Violence and the police*. Cambridge: MIT.
40. White, R. (2008). Depleted uranium, state crime and the politics of knowing. *Theoretical Criminology*, 12(1), 31–54.
41. Woolford, A., & Wolejszo, S. (2006). Collecting on moral debts: reparations for the holocaust and porajmos. *Law & Society Review*, 40(4), 871–902.
42. Zimmerman, C. (2002). From the jailhouse to the courthouse: The role of informants in wrongful convictions. In S. Westervelt & J. Humphrey (Eds.), *Wrongly convicted: Perspectives on failed justice* (pp. 55–76). Newark: Rutgers University Press.

## Footnotes

<sup>1</sup> Available on line at: [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)

<sup>2</sup> *Brady v. Maryland* (1963) prohibits police and prosecutors from pursuing a prosecution while withholding evidence favorable to the defendant. Violations of this principle are known as *Brady* violations. *Giglio v. US* (1972) stipulates that prosecutors have an obligation to disclose evidence impacting on the reliability and credibility of prosecution witnesses and to find and disclose any exculpatory evidence in the hands of police.