

RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES

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Executive Summary

African Americans are only 13% of the American population but a majority of innocent defendants wrongfully convicted of crimes and later exonerated. They constitute 47% of the 1,900 exonerations listed in the National Registry of Exonerations (as of October 2016), and the great majority of more than 1,800 additional innocent defendants who were framed and convicted of crimes in 15 large-scale police scandals and later cleared in “group exonerations.” **p. 1**

We see this racial disparity for all major crime categories, but we examine it in this report in the context of the three types of crime that produce the largest numbers of exonerations in the Registry: murder, sexual assault, and drug crimes. **p. 1**

I. Murder

- Judging from exonerations, innocent black people are about seven times more likely to be convicted of murder than innocent white people. A major cause of the high number of black murder exonerations is the high homicide rate in the black community—a tragedy that kills many African Americans and sends many others to prison. Innocent defendants who are falsely convicted and exonerated do not contribute to this high homicide rate. They—like the families of victims who are killed—are deeply harmed by murders committed by others. **p. 4**

- African-American prisoners who are convicted of murder are about 50% more likely to be innocent than other convicted murderers. Part of that disparity is tied to the race of the victim. African Americans imprisoned for murder are more likely to be innocent if they were convicted of killing white victims. Only about 15% of murders by African Americans have white victims, but 31% of innocent African-American murder exonerees were convicted of killing white people. **pp. 4-6**

- The convictions that led to murder exonerations with black defendants were 22% more likely to include misconduct by police officers than those with white defendants. In addition, on average black murder exonerees spent three years longer in prison before release than white murder exonerees, and those sentenced to death spent four years longer. **pp. 6-9**

- Many of the convictions of African-American murder exonerees were affected by a wide range of types of racial discrimination, from unconscious bias and institutional discrimination to explicit racism. **pp. 9-11**

- Most wrongful convictions are never discovered. We have no direct measure of the number of all convictions of innocent murder defendants, but our best estimate suggests that they outnumber those we know about many times over. Judging from exonerations, half of those innocent murder defendants are African Americans. **pp. 11-12**

II. Sexual Assault

- Judging from exonerations, a black prisoner serving time for sexual assault is three-and-a-half times more likely to be innocent than a white sexual assault convict. The major cause for this huge racial disparity appears to be the high danger of mistaken eyewitness identification by white victims in violent crimes with black assailants. **pp. 12-13**
- Assaults on white women by African-American men are a small minority of all sexual assaults in the United States, but they constitute half of sexual assaults with eyewitness misidentifications that led to exoneration. (The unreliability of cross-racial eyewitness identification also appears to have contributed to racial disparities in false convictions for other crimes, but to a lesser extent.) **p. 13**
- Eyewitness misidentifications do not completely explain the racial disparity in sexual assault exonerations. Some misidentifications themselves are in part the products of racial bias, and other convictions that led to sexual assault exonerations were marred by implicit biases, racially tainted official misconduct and, in some cases, explicit racism. **pp. 13-15**
- African-American sexual assault exonerees received much longer prison sentences than white sexual assault exonerees, and they spent on average almost four-and-a-half years longer in prison before exoneration. It appears that innocent black sexual assault defendants receive harsher sentences than whites if they are convicted, and then face greater resistance to exoneration even in cases in which they are ultimately released. **pp. 15-16**

III. Drug Crimes

- The best national evidence on drug use shows that African Americans and whites use illegal drugs at about the same rate. Nonetheless, African Americans are about five times as likely to go to prison for drug possession as whites—and judging from exonerations, innocent black people are about 12 times more likely to be convicted of drug crimes than innocent white people. **pp.16-17**
- In general, very few ordinary, low-level drug convictions result in exoneration, regardless of innocence, because the stakes are too low. In Harris County, Texas, however, there have been 133 exonerations in ordinary drug possession cases in the last few years. These are cases in which defendants pled guilty, and were exonerated after routine lab tests showed they were not carrying illegal drugs. Sixty-two percent of the Harris County drug-crime guilty plea exonerees were African American in a county with 20% black residents. **pp. 18-19**
- The main reason for this racial disproportion in convictions of innocent drug defendants is that police enforce drug laws more vigorously against African Americans than against members of the white majority, despite strong evidence that both groups use drugs **pp. 20-21**

at equivalent rates. African Americans are more frequently stopped, searched, arrested, and convicted—including in cases in which they are innocent. The extreme form of this practice is systematic racial profiling in drug-law enforcement.

- Since 1989, more than 1,800 defendants have been cleared in “group exonerations” that followed 15 large-scale police scandals in which officers systematically framed innocent defendants. The great majority were African-American defendants who were framed for drug crimes that never occurred. There are almost certainly many more such cases that remain hidden. **pp. 21-25**

- Why do police officers who conduct these outrageous programs of framing innocent drug defendants concentrate on African Americans? The simple answer: Because that’s what they do in *all* aspects of drug-law enforcement. Guilty or innocent, they always focus disproportionately on African Americans. Of the many costs that the War on Drugs inflicts on the black community, the practice of deliberately charging innocent defendants with fabricated crimes may be the most shameful. **pp. 26-27**

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RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES

I. Introduction

Race is central to every aspect of criminal justice in the United States. The conviction of innocent defendants is no exception.

As of October 15, 2016, the National Registry of Exonerations listed 1,900 defendants who were convicted of crimes and later exonerated because they were innocent; 47% of them were African Americans, three times their rate in the population.¹ About 1,900 additional innocent defendants who had been framed and convicted of crimes in 15 large-scale police scandals were cleared in “group exonerations;” the great majority of those defendants were also black. Judging from the cases we know, a substantial majority of innocent people who are convicted of crimes in the United States are African Americans.

What explains this stark racial disparity? We study that question by examining exonerations for murder, sexual assault and drug crimes, the three types of crime that produce the largest numbers of exonerations.² What we see—as so often in considering the role of race in America—is complex and disturbing, familiar but frequently ignored.

¹ All National Registry data reported in this paper are as of October 15, 2016, when the Registry listed 1,900 individual exonerations. Information about any individual exonerations we discuss may be found by searching for the exonerees by name on the [Registry web site](#).

² African Americans are over-represented among exonerations for other crimes as well. Table A displays the racial breakdown of exonerations in the Registry for all major crime categories.

TABLE A: EXONERATIONS BY RACE OF DEFENDANT AND TYPE OF CRIME (N=1,900)

	White	Black	Hispanic	Other	TOTAL
Murder (762)	36%	50%	12%	2%	100%
Sexual Assault (289)	34%	59%	6%	1%	100%
Child Sex Abuse (212)	64%	25%	9%	2%	101%
Robbery (100)	20%	62%	15%	3%	100%
Other Violent Crimes (200)	46%	36%	13%	5%	100%
Drug Crimes (221)	24%	55%	19%	2%	100%
Other Non-Violent Crimes (116)	59%	22%	15%	4%	100%
ALL CRIMES (1,900)	39%	47%	12%	2%	100%

As used in Table A, on the Registry, and throughout this report, the categories “White” and “Black” do not include individuals who identify themselves as Hispanic or Latino. We do not discuss false convictions and exonerations of Hispanic or Latino defendants (except in passing) because to do so we would need national criminal justice statistics on reported crimes, arrests, convictions and imprisonment, and the studies that are available use inconsistent standards for tabulating that ethnic category, suffer from high rates of missing data, or fail to address the issue entirely.

There is no one explanation for the heavy concentration of black defendants among those convicted of crimes they did not commit. The causes we have identified run from inevitable consequences of patterns in crime and punishment to deliberate acts of racism, with many stops in between. They differ sharply from one type of crime to another.

A major cause of the high number of black murder exonerations is the high murder rate in the black community—a tragedy that kills many African Americans and sends many others to prison. Exonerated defendants go to prison, but not because they deserve to; they, like those who are killed, are innocent victims of crimes committed by others. But homicide rates alone do not explain the high number of African Americans who were falsely convicted of murder or the length of time they spent in prison before release. Misconduct and discrimination also played major parts.

Most innocent African American defendants who were exonerated for sexual assault had been convicted of raping white women. The leading cause of these false convictions was mistaken eyewitness identifications—a notoriously error-prone process when white Americans are asked to identify black strangers. As with murder exonerations, however, the leading cause is far from the only one. We see clear evidence of racial bias, ranging from unconscious bias to explicit racism. And, as with murder if not more so, black sexual assault exonerees spent more time in prison than their white counterparts.

Prosecutions for drug offenses take a different path from murder and rape cases. A murder or rape investigation is initiated when a violent crime is reported to the police, usually by a victim, or when a dead body is found. Drug transactions and drug possession have no immediate victims. With rare exceptions, drug investigations are initiated by the police themselves, who go searching for crimes that are almost never reported. The police have essentially unlimited discretion to choose how and where to enforce drug laws, and against whom, which opens the door to pervasive discrimination. We see the effects in two settings. In routine drug possession cases, African Americans are more likely than whites to be convicted by mistake because—guilty or innocent—they are more likely to be stopped, searched and arrested. Some false drug convictions, however, are not mistakes. African Americans are also the main targets in a shocking series of scandals in which police officers systematically framed innocent defendants for drug crimes that never occurred.

II. Murder

1. *Basic racial patterns in murders and exonerations*

Half of all defendants exonerated for murder are African Americans (380/762), who make up only 13% of the population of the United States.³ For the population at large, that's seven times the rate for whites, who are 64% of the population⁴ but comprise only 36% of murder exonerations. Much of this racial disparity can be traced to a comparable disparity in murder convictions. African Americans are more than seven times more likely to be imprisoned for murder than white Americans,⁵ and more than six times as likely to be killed in a homicide.⁶ Murder in America is overwhelmingly intra-racial: 84% of white murder victims and 93% of black murder victims are killed by members of their own race.⁷

This high murder rate means that African Americans are far more likely than whites to be investigated, arrested and convicted of murder. Mostly, those who are investigated and convicted are guilty. But *innocent* African Americans also face a much higher risk of being suspected of murder, and of being convicted despite their innocence.

Innocent black murder suspects, especially those who are falsely convicted—like the families of those who are killed—are additional victims of murders committed by others. Those who have been exonerated spent on average more than 14 years in prison before they were released. Many more have not been exonerated at all; more often than not, they will die in prison.

2. *Additional racial disparities in murder exonerations*

Differences in homicide rates may explain most of the enormous racial disparity in exoneration rates for murder, but not all. Forty percent of defendants imprisoned for murder are African

³ Rastogi, Sonya, Tallese D. Johnson, Elizabeth M. Hoeffel, and Malcolm P. Drewery, Jr. [The Black Population: 2010. 2010 Census Briefs](#). (September 2011): p. 6, Table 3.

⁴ U.S. Census Bureau. [QuickFacts - United States](#). (July 2016).

⁵ Bureau of Justice Statistics, U.S. Dep't of Justice. [Prisoners in 2015](#). (December 2016): p.30, Appendix Table 5. The numbers of prisoners reported in this study by the United States Bureau of Justice Statistics are estimates of the prison population on a particular date, in this case December 31, 2015. So are most of the general statistics we discuss on arrest, conviction and imprisonment. The murder exonerations to which we compare these numbers are based on convictions that occurred over decades, from the 1960s through 2016—almost all since 1980—and the proportions of crimes and convictions by race have varied over that period. As a result, throughout this report, all rates and comparisons we discuss that depend on general criminal justice statistics are estimates or illustrations.

⁶ Bureau of Justice Statistics, U.S. Dep't of Justice. [Homicide Trends in the United States, 1980-2008](#). (November 2011): p. 3, Table 1. The rates of homicide victimization by race reported in this study are for all black and white victims, including those who identify as Hispanic or Latino.

⁷ Bureau of Justice Statistics, U.S. Dep't of Justice. [Homicide Trends in the United States, 1980-2008](#). November 2011); Sherman, Amy. [An updated look at statistics on black-on-black murders](#). *PolitiFact Florida*. (May 2015).

American⁸ but they account for 50% of murder exonerations, including 53% of those who were sentenced to death. Unless some unknown and improbable process gives innocent black convicts a big advantage in obtaining exonerations, that means that African American prisoners who were convicted of murder are about 50% more likely to be innocent than other convicted murderers.

(a) Race of victim

About 42% of murder victims in the United States are white.⁹ The proportion of murder exonerees of all races who were convicted of killing white victims is somewhat higher, 52% of the cases in which we know the race of the victim (350/670).¹⁰ The concentration of murder defendants who were convicted of killing white victims is considerably greater among exonerees who were sentenced to death, 74% (77/106).

Many studies in at least 15 states have shown that defendants who are charged with killing white victims, regardless of their own race, are more likely to be sentenced to death than those charged with killing black victims.¹¹ Since 1976, 76% of executions in the United States were for murders of white victims.¹² The disparities we see in our data suggest that innocent defendants who are charged with killing white victims are more likely to be sentenced to death, and sometimes no doubt executed, than those charged with killing black victims.

There are also sentencing disparities among murder exonerees who avoided death sentences. About half of non-capital murder exonerees were sentenced to life imprisonment, or to life without the possibility of parole¹³ (321/647), and the rest were sentenced to prison for terms shorter than life. Sixty percent of non-capital murder exonerees who were convicted of killing white victims

⁸ Bureau of Justice Statistics, U.S. Dep't of Justice. [Prisoners in 2015](#). (December 2016): p.30, Appendix Table 5.

⁹ The only national statistics on the race of murder victims come from [the FBI's Supplementary Homicide Reports](#). These data have three limitations: (i) They are incomplete. (ii) They combine murder and non-negligent manslaughter. (iii) They do not identify Hispanic or Latino victims, so their racial categories—"white" and "black"—are not limited, as ours are, to non-Hispanic white and black victims. The estimate in the text is the average percent of "white" victims reported by the FBI from 2001 through 2010, multiplied by 0.88 to correct for the 12% of "whites" who were identified as Hispanic or Latino in the 2010 census. U.S. Census Bureau. [QuickFacts - United States](#). (July 2016).

¹⁰ We classify a murder exoneration as a "white victim" case if it included at least one murder victim who was white. Ten cases in the Registry with multiple murder victims had both at least one white victim and at least one black victim each. They are coded as white victim cases.

¹¹ For reviews of the literature on this issue, see Grosso, Catherine M., Barbara O'Brien, Abijah Taylor, and George Woodworth. "Race Discrimination and the Death Penalty: An Empirical and Legal Overview." *America's Experiment with Capital Punishment* 525 (James R. Acker, Robert M. Bohm, & Charles S. Lanier, eds., 3d ed. 2014); O'Brien, Barbara, Catherine M. Grosso, George Woodworth, and Abijah Taylor. "Untangling the Role of Race in Capital Charging and Sentencing in North Carolina, 1990-2009." *94 N.C. L. Rev.* 1997 (2016).

¹² Death Penalty Information Center. [Race of Victims Since 1976](#). (February 2017).

¹³ This category also includes any sentence of 99 years in prison or longer.

were sentenced to life imprisonment (165/273), compared to 39% of those who were convicted of killing black victims (76/194).

In other words, judging from exonerations, the pattern of harsh sentencing for murder convictions with white victims and lighter sentencing for those with black victims is not restricted to death sentences. If they avoid the death penalty, innocent murder defendants in white-victim cases are also more likely to be sentenced to life in prison than those charged with killing black victims.

The race-of-victim disparity in murder exonerations also interacts with the race-of-defendant disparity. Only about 15% of murders by African Americans have white victims,¹⁴ but 31% of innocent African American murder exonerees were convicted of killing white people (106/341). This is a considerable disparity; it could explain most or all of the difference in murder exonerations by race beyond general homicide rates.

Part of the explanation for the high number of black murder exonerees who were convicted of killing white victims may be the perils of cross-racial eyewitness identification. We discuss that issue in more detail in the next section, on sexual assault exonerations, where it looms larger.¹⁵ Beyond that, it is no news that inter-racial violence by African Americans is punished more harshly than intra-racial violence. It would not be surprising to learn that it is also pursued with greater ferocity, and less accuracy.

(b) Misconduct and delay

Two racial differences in murder exonerations might help explain the disproportionate number of murder exonerations with black defendants.

Misconduct: Official misconduct is more common in murder convictions that lead to exonerations of black defendants than in those with white defendants.

Delay: Exonerations of black murder defendants take longer than exonerations of white murder defendants.

Misconduct. Seventy percent of the murder prosecutions that led to exoneration included official misconduct that we know about. We have identified many different types of misconduct. The most common is concealing exculpatory evidence—often called “Brady violations” after the

¹⁴ Federal Bureau of Investigation. [2014 – Crime in the United States](#). (2015). The estimate in the text is the proportion “White” victims for “Black or African American” offenders, multiplied by 0.88 to correct for the 12% of “whites” who were identified as Hispanic or Latino in the 2010 census. See *supra*, note 9.

¹⁵ Only 30% of murder exonerations of African Americans convicted of killing white victims included eyewitness misidentifications (32/106), compared to 83% of sexual assault exonerations of African American men who were convicted of sexual assaults on white women (83/100).

landmark 1963 Supreme Court case *Brady v. Maryland*¹⁶—which occurred in just over half the cases. The next most common type is witness tampering—everything from misleading a witness at a lineup, to threatening a witness, to suborning perjury—which occurred in 31% of murder exoneration cases; followed by perjury by a state official, which happened in 11% of the cases.

The rate of official misconduct is considerably higher among murder exonerations with black defendants than those with white defendants, 76% compared to 63%. The rate of misconduct is higher overall in capital cases, and the difference by race is greater: 87% of black exonerees who were sentenced to death were victims of official misconduct, compared to 67% of white death-row exonerees.

For the most part, these differences by race are due to misconduct by police officers. The rate of misconduct by prosecutors is about the same for all murder exonerations regardless of race, 44% for black defendants and 46% for whites. (There is a modest difference in prosecutorial misconduct among capital exonerations, 59% for black defendants compared 53% of whites.) On the other hand, there is a large difference in the rate of misconduct by police: 55% for black murder exonerees compared to 33% for whites (and 59% compared to 44% among death-sentenced exonerees).

The high rate of misconduct by police in murder cases with black defendants is reflected in the nature of the misconduct that occurs. Concealing exculpatory evidence, the most common type, is primarily a form of prosecutorial misconduct; there is relatively little difference in its frequency by race: 53% for black murder exonerees and 49% for whites. On the other hand, witness tampering is committed almost exclusively by police officers. It occurred in 21% of murder exonerations with white defendants but in 39% of those with black defendants, nearly twice as often.

We only know about misconduct that is reported in the documents we can obtain. Official misconduct in criminal cases is under-reported because, by its very nature, most misconduct is deliberately concealed—and much if not most remains hidden.¹⁷ That means that wrongful murder

¹⁶ *Brady v. Maryland*, 73 U.S. 83 (1963).

¹⁷ In some contexts, the fact that we can only report on misconduct that has been uncovered can lead to reporting biases. For example, the rate of observed misconduct in death penalty exonerations is twice the rate for sexual assault exonerations, 78% vs. 39%. That may be due to a higher rate of misconduct in capital murder investigations and prosecutions, at least among cases that end in exoneration; it may also be due, at least in part, to a higher rate of uncovering whatever misconduct occurred in post-conviction investigations in capital cases. Death sentences are re-examined more thoroughly than other crimes, and the trials that produce them are heavily litigated in successive reviews. As a result, we are more likely to know if misconduct was committed in capital cases. By contrast, many rape exonerations are based entirely on DNA tests that clear the innocent defendant but provide no information about any chicanery that may have led to the false conviction—which can create a false impression that no misconduct occurred. Because of the danger of biases such as this, we are generally cautious in making generalizations about patterns of misconduct from the data in the Registry. That danger does not apply here. We can think of no plausible reason why official misconduct leading to a murder conviction of an innocent person is more likely to come to light

convictions are also more likely to include *undiscovered misconduct* when the defendant is black: in exonerations for which some misconduct already is known, in those with no known misconduct, and among false murder convictions that have not resulted in exoneration.

Delay. Exonerations of innocent murder defendants take longer if the defendant is black, 14.2 years on average, than if he is white, 11.2 years. For death row exonerations in the Registry the average delays and the difference by race are larger, 16 years for black defendants and 12 years for whites.¹⁸ In other words, black murder exonerees average about three more years in prison than white murder exonerees—which means that, at any given time, a larger proportion of black murder defendants who will eventually be exonerated are still in prison

Part of the reason may be that authorities are more likely to resist exoneration in cases where there was official misconduct, which is more common when the exoneree is black. Murder exonerations with known misconduct do take longer than those without, 13.8 years to 10.1 years, on average. But differences by race persist even after controlling for official misconduct. Among murder exonerations with official misconduct, the average time to exoneration is 15 years for black exonerees and 12.5 years for white exonerees; among murder exonerations without misconduct, it's 11.4 years for black exonerees and 9.2 for whites.

It seems that innocent African Americans who are convicted of murder are at a disadvantage not only because their convictions were more likely to have been influenced by official misconduct, but also simply because of their race.

Consider this case:

In 1984, 19-year-old [Henry McCollum](#) and his 15-year-old half-brother [Leon Brown](#) were sentenced to death for the rape and murder of 11-year-old Sabrina Buie in Robeson County, North Carolina. McCollum and Brown were from New Jersey; they were visiting relatives in North Carolina. Both were intellectually disabled, and both falsely confessed under pressure from police. No physical evidence connected them to the crime.

In 2010, after decades of unsuccessful efforts to prove their innocence through the courts, the North Carolina Innocence Inquiry Commission agreed to investigate the

if the defendant is black than if he is white. The racial disparities we see seem to be caused by real differences in the rates of official misconduct in murder cases, mostly by police officers

¹⁸ The average length of the delays between conviction and exoneration for death sentences has been increasing over time. That may simply reflect a buildup of older cases on death rows across the country since 1972, when the Supreme Court vacated all existing death sentences in *Furman v. Georgia*, 408 U.S. 238 (1972), and the sharp decrease in the number of new death sentences in recent years, which dropped from a high of over 300 a year in the mid-1990s to a mere 30 in 2016. See Death Penalty Information Center. [Death Sentences in the United States](#). (February 2017). The six death-row exonerations in 2014 are a telling example. They averaged 35 years from conviction to exoneration—which, of course, could not have happened in 1990 or even 2000.

case. It determined that DNA from a cigarette butt found at the scene of the crime came from Roscoe Artis, a proven serial murderer and rapist who was himself sentenced to death for raping and killing an 18-year-old woman in the same county about a month after McCollum and Brown had confessed.

Artis had been a suspect in the Sabrina Buie rape-murder. In 1984, the police had asked the North Carolina State Bureau of Investigations to compare the fingerprints found on beer cans at the crime to those of Artis—but they hid that request from the defense. The authorities also concealed the fact that a witness who testified at trial that McCollum and Brown had admitted to the murder, had not only previously denied knowing anything about the case, but had taken a lie detector test that confirmed his denial.

McCollum and Brown were exonerated in 2014, after nearly 31 years in prison. They were pardoned by the Governor of North Carolina in 2015, and received \$750,000 each in compensation from the state. Even so, after their release the prosecutor who sent them to death row told *The New York Times*: “No question about it, absolutely they are guilty.”

Certainly there was misconduct that contributed to the conviction of McCollum and Brown, and that may have contributed to the decades of resistance to reopening the case. Did it also matter that the defendants were African Americans—as well as strangers to the community, and mentally handicapped? Did their race contribute to authorities’ unjustified and apparently unexamined confidence in their guilt even as evidence of innocence mounted? That would fit the data we see across cases.

McCollum and Brown are two of eight innocent death-row defendants who have been exonerated since the beginning of 2012 after spending between 30 and 39 years in prison. All eight are African Americans.

(c) Intentional and structural discrimination

In some cases, it’s easy to spot racism in the investigations or the prosecutions that led to the false convictions that we study:

In 1980, a Texas Ranger investigating the rape-murder of a high school student described what was coming to the two custodians who found the body, [Clarence Brandley](#) and a white colleague. He said “One of you is going to have to hang for this” and, turning to Brandley, added, “Since you’re the nigger, you’re elected.” Brandley was sentenced to death in 1981 and exonerated in 1990.

In 1987, in Monroeville, Alabama, police framed [Walter McMillian](#) for the murder of a white woman who worked as a clerk at a dry cleaner’s. McMillian, a 46-year old African-American man, had numerous alibi witnesses, all black: he was at a fish fry at the time of the killing. The only reason to suspect him was that he had a white girlfriend. McMillian was sentenced to death in 1988 and exonerated in 1993.

More often, discrimination is less overt:

In 2014, [Glenn Ford](#) was exonerated after 30 years on death row in Louisiana. He was released because over the decades after his conviction, his lawyers discovered several facts that undermined the state's case: trial testimony by the state's experts witnesses was false or misleading; police officers lied to the jury about what Ford said to them; hidden police reports included tips from informants that implicated two other suspects, but not Ford; and one of those two suspects admitted that he was the actual killer.

In 2015, A.M. "Marty" Stroud III, the former trial prosecutor who put Ford on death row in 1984, published a remarkable apology: "Glenn Ford was an innocent man. He was released from the hell hole he had endured for the last three decades."¹⁹

Stroud takes painful personal responsibility for the tragedy, but not because of deliberate misconduct. He was inattentive: "My fault was that I was too passive. I did not consider the rumors about the involvement of parties other than Mr. Ford to be credible.... Had I been more inquisitive, perhaps the evidence would have come to light years ago."

Stroud describes how he played by rules that gave him an unfair advantage over an innocent man: "I did not question the unfairness of Mr. Ford having appointed counsel who had never tried a criminal jury case much less a capital one." Even more troubling: "The jury was all white, Mr. Ford was African-American. Potential African-American jurors were struck with little thought about potential discrimination because at that time a claim of racial discrimination in the selection of jurors could not be successful...."²⁰

Stroud is unsparingly self-critical, but he does not describe himself as a racist: "In 1984, I was 33 years old. I was arrogant, judgmental, narcissistic and very full of myself. I was not as interested in justice as I was in winning." He believed Ford was guilty and did not question that belief. The same is probably true of the police officers who concealed information about the real killers, the judge who presided over the selection of an all-white jury, and the jury itself, which sentenced Ford to death.

Police and prosecutors may habitually assume that any black murder suspect they deal with is a killer. That's false, of course, and it's a form of racial profiling. If they are white, they may mistrust

¹⁹ Stroud III, A.M. "Marty". [Lead Prosecutor Apologizes for Role in Sending Man to Death Row](#). *Shreveport Times*. (March 2015).

²⁰ Ford was convicted two years before the landmark case of *Batson v. Kentucky*, 476 U.S. 79 (1986), in which the Supreme Court for the first time created a procedure for challenging the use of peremptory challenges to create all white criminal trial juries.

claims of innocence by black defendants and alibi evidence from black witnesses because black people are unfamiliar and seem less trustworthy than those who are more similar to themselves.

All of us, judges and jurors as well as lawyers and police, are subject to unconscious racial biases—and all of us are prone to going along with accepted practices. Routine, institutional discrimination is more common than intentional racism, and probably harder to detect and correct. Perhaps that is one reason why Clarence Brandley, the target of explicit racism, was exonerated nine years after he was convicted, while Glenn Ford had to wait 30 years.

Would Glenn Ford have been convicted and sentenced to death if he had not been a black man charged with killing a white victim? There's no way to know. Hundreds of white defendants have also been falsely convicted of murder, and most of their cases included serious official misconduct. But we do know that innocent black murder defendants as a group are at a disadvantage because of their race, and that sometimes it costs them their freedom and most or all of their remaining years.

3. The net effect

We don't know the number of false criminal convictions, for murder or any other crime. Most by far remain hidden—false convictions far outnumber exonerations—and we have too little information to estimate that hidden figure.²¹ Except in one context: death sentences.

Death sentences have a far higher rate of exoneration than other crimes, and we have far more detailed data on them than any other category of criminal sentences. A study published in the Proceedings of the National Academy of Sciences made use of these unique characteristics to calculate “a conservative estimate of the proportion of false conviction among death sentences in the United States”—4.1%.²²

As the study is careful to point out, this estimate is for death sentences only. It cannot be applied to all crimes, or even to all murders. Still, it's a starting point; it suggests that the rate of miscarriages of justice for murders in general is somewhere in the general vicinity of the rate for capital murders.

Assume for a moment that the proportion of innocent defendants among all murder convictions is half the rate for death sentences, 2%. That would mean there would be about 3,400 innocent defendants among the estimated 171,700 inmates who are in American prisons for murder

²¹ Gross, Samuel R. [What We Think, What We Know, and What We Think We Know About False Convictions](#). forthcoming in *Ohio State J. of Crim Law*, Vol. 14, No. 2 (Spring 2017): pp. 12-16.

²² Gross, Samuel R., O'Brien, Barbara, Hu, Chen and Kennedy, Edward. [Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death](#). *Proceedings of the National Academy of Sciences*, Vol. 111, No. 20 (May 20, 2014); pp. 7230-7235.

convictions,²³ plus thousands more among the comparable number of defendants who were convicted of murder in the past 40 years but are not now in prison because they were released or have died, or both.

In short, it is likely that at least several thousand defendants have been falsely convicted of murder in the time period covered by the Registry, and—judging from the exonerations we have seen—about half of them were African Americans.

III. Sexual Assault

Fifty-nine percent of sexual assault exonerees are African Americans, four-and-a-half times their proportion in the population; thirty-four percent are white. Unlike murder, these numbers are way out of line with the racial composition of sexual assault convictions. As of the end of 2014, 22% of American prisoners convicted of sexual assault were black, 44% were white and 19% Hispanic.²⁴ Judging from known erroneous convictions, a prisoner serving time for sexual assault is three-and-a-half times as likely to be innocent if he is black than if he is white.

1. *Eyewitness misidentification*

Ninety-nine percent of the victims in sexual assault exonerations—like more than 90% of all sexual assault victims in the United States²⁵—are women. Strangers commit only about one-fifth of sexual assaults on women,²⁶ but they account for 71% of the false convictions that result in exoneration (204/289).

The leading cause of false sexual assault convictions is eyewitness misidentification of defendants who are strangers to the victims. In 79% of sexual assault exonerations (228/289), the identity of the man who committed the rape was the only issue at trial;²⁷ 86% of those cases were rapes by strangers (195/228), and 88% included mistaken eyewitness identifications (200/228).

There were eyewitness misidentifications in 69% of all sexual assault exonerations (200/289), including 86% of the cases in which the defendants were strangers to the victims (176/204). The

²³ Bureau of Justice Statistics, U.S. Dep't of Justice. [Prisoners in 2015](#). (December 2016): p.30, Appendix Table 5.

²⁴ *Id.* (the remaining 15% were American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races).

²⁵ *See, e.g.*, Bureau of Justice Statistics, U.S. Dep't of Justice. [Special Report: National Crime Victimization Survey, Violence against Women: Estimates from the Redesigned Survey](#). (August 1995). This study and similar ones by the Bureau of Justice Statistics of the Department of Justice are based on a survey of the population and include data on sexual assaults that were not reported to the authorities as well as those that were.

²⁶ *Id.* p. 1.

²⁷ In the remaining 21% of sexual assault exonerations the assault never happened. Instead, the supposed victim lied about a consensual sexual encounter or fabricated an attack from scratch. In 86% of these “no-crime” exonerations, the complainant knew the innocent defendant; none involved eyewitness misidentification.

rate of eyewitness errors is much higher for innocent black defendants—79% (135/170)—than for whites, 51% (50/99).

In half of all sexual assault exonerations with eyewitness misidentifications, black men were convicted of raping white women,²⁸ a racial combination that appears in less than 11% of sexual assaults in the United States.²⁹ According to surveys of crime victims, about 70% of white sexual assault victims were attacked by white men and only about 13% by black men.³⁰ But 57% of white-victim sexual assault exonerees are black (101/177), and 37% are white—which suggests that black defendants convicted of raping white women are about eight times more likely to be innocent than white men convicted of raping women of their own race.

There are many possible explanations for this disturbing pattern, but the simplest is probably the most powerful: the perils of cross-racial identification. One of the oldest and most consistent findings of systematic studies of eyewitness identification is that white Americans are much more likely to mistake one black person for another than to mistakenly identify members of their own race.³¹

2. Other causes for the racial disparity in sexual assault exonerations

Eyewitness misidentifications do not occur in a vacuum. Some are the products of racial bias.

[Marvin Anderson](#) was suspected of rape in Virginia because the real rapist told his victim that he “had a white girl,” and Anderson was the only black man known to the local police who lived with a white woman. Anderson had no criminal record, so an officer showed his color employment identification photo to the victim together with half dozen black-and-white mug shots of other men, and asked her to

²⁸ To be precise, this ratio is the number of sexual assault exonerations with black defendants and white victims, divided by the number of all sexual assault exonerations for which the races of the defendants and the victims are known (77/150).

²⁹ Black offenders accounted for an average of approximately 11% of all rapes and sexual assaults of white victims from 1996 through 2008. Bureau of Justice Statistics, U.S. Dep’t of Justice. [Criminal Victimization in the United States, 1996-2008](#) (based on the National Criminal Victimization Survey; the statistic fluctuates because for each year it is usually extrapolated from a sample of ten or fewer survey responses).

³⁰ *Id.*

³¹ See Meissner, Christian A. and John C. Brigham. “Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review.” 7 *Psychol., Pub. Pol’y & L.* 3 (2001). The problem of cross-racial identification is greater for black defendants than for white defendants for two reasons. First, a lower proportion of sexual assaults committed by white perpetrators are cross-racial. Most sexual assaults are committed against victims known to the attacker, who are likely to be of the same race; but if the crime is against a stranger, the victim is likely to be white regardless of the race of the attacker simply because whites are the great majority of the population. Second, white subjects show stronger “own race bias” than black subjects—they tend to be worse at identifying members of the other race—perhaps because as members of the majority group, many white Americans have little contact with African Americans, while almost all African Americans have regular contacts with whites. *Id.* at p.18.

pick the perpetrator. Naturally, she chose Anderson, who spent 15 years in prison before he was exonerated by DNA.

Black defendants also account for 40% of rape exonerations that do not include eyewitness mistakes. In some cases, the evidence that convicted the innocent defendant was produced by racially tainted investigations.

In 1983, [Stanley Wrice](#), an African American man, was convicted of participating in a vicious gang rape of a white woman in Chicago and sentenced to life in prison. The victim did not identify Wrice, but he had confessed and two witnesses testified that they saw him participate in the rape. Wrice was exonerated in 2013 after it was established that he had been tortured into confessing by two officers in a Chicago police unit that specialized in obtaining confessions by torture, mostly from black suspects. (Two years earlier, their commander, Lieutenant Jon Burge, was sent to federal prison for committing perjury in testimony about the unit.) By then, one of the two supposed eyewitnesses, also a black man, had recanted and stated under oath that he too had been tortured, to force him to testify against Wrice; the other witness had died.

In other cases, the critical players may have been defense attorneys, judges or jurors, rather than prosecutors or police officers.

In 1990, [Michael Phillips](#), an African American man, pled guilty in Dallas to the rape of a 16-year old white girl who misidentified him. Phillips later said he entered the plea because his lawyer (who never investigated his claim of innocence) told him he would get life in prison if he went to trial and that no jury would believe a black man over a white girl. He spent 12 years in prison, an unusually long term for a rape by a defendant with no prior record for violence or sexual misconduct. Phillips was exonerated in 2014 when the rape kit was finally tested for DNA.

In some cases, the presence of racism is unmistakable.

In 1991, [Marcus Lyons](#) had recently been released from prison after completing a sentence for rape. He tried to call attention to his case by putting on his Navy uniform, going to steps of the DuPage County, Illinois, courthouse, and nailing his foot to a cross made out of railroad ties. One of the officers who stopped him said “Come on nigger, your 15 minutes of fame are over.” Lyons was exonerated in 2007, by DNA testing of semen found on underpants worn by the victim. He would have been cleared in 1988 if blood-type testing had been done on those underpants, but they were concealed by the police.

In others, the impact of race is less explicit.

In 1984, [Ulysses Charles](#), a black immigrant from Trinidad who spoke with a strong Caribbean accent, was convicted of raping three women in Boston. All three victims misidentified Charles as the rapist, even though they had told police that the rapist had an American accent, and had failed to mention Charles’s dreadlocks

and gold front teeth. Before trial, tests on crime scene evidence found seminal fluid from the rapist and showed that the attacker had blood type O; Charles, as the police knew, had blood type B. That evidence was concealed, and at trial the prosecutor called a forensic analyst who testified falsely that the rapist had not ejaculated. Charles was exonerated by DNA testing in 2001, after 20 years in prison.

Would the extreme misconduct that sent Charles to prison have occurred if he had been white? Would the victims have been confident of their identifications, despite the fact that he did not resemble the man they had earlier described? Would the jurors? Maybe—but it seems unlikely.

Of all the problems that plague American criminal justice, few if any are as incendiary as the relationship between rape and race. From the Reconstruction through the first half of the twentieth century, claims that black men raped white women triggered countless lynchings, riots and even massacres of African Americans. Those horrors have stopped, but the fears and biases that fed them have not disappeared. It should be no surprise that racial bias and outright racism also play a role in wrongful convictions for sexual assault.

3. *Sentencing and time in prison before exoneration*

On average, African American sexual assault exonerees spent considerably longer in prison than white sexual assault exonerees, 13.3 years compared to 8.9 years. Much of this disparity is caused by a comparatively small number of exonerees who were imprisoned for decades. Twenty-five sexual assault exonerees spent 25 years in prison or longer; all but one were exonerated in the past nine years. Of those, 88% were black, including all five who were imprisoned for 30 to 35 years.

Black sexual assault exonerees also received harsher sentences than whites: 28% were sentenced to life imprisonment compared to 17% for white sexual assault exonerees, and the average *minimum* term for those who were not sentenced to life was 29 years for African Americans and 19 years for whites.

These are extremely severe sentences, by any measure, for white and black sexual assault exonerees alike. In 2000, for example, only 1.6% of all sexual assault defendants convicted in state courts were sentenced to life imprisonment, the average *maximum* term of incarceration was 7 years, and 16% received probation (as did *one* of 289 sexual assault exonerees, 0.3%).³² Part of the explanation is the process that produced these sentences. Eighty-eight percent of sexual assault convictions in state courts in 2000 were based on guilty pleas, almost all pursuant to plea bargains, but 96% of assault exonerees went to trial. From the look of it, they paid heavily for their day in court—especially the African Americans. Very likely, many innocent defendants who have not been exonerated decided not to take that risk.

³² Bureau of Justice Statistics, U.S. Dep't of Justice. [Felonies Sentences in State Courts](#). (2000).

Our data are limited. We have only sketchy information on racial patterns in sentencing for sexual assault convictions in general, none for those with innocent defendants who were not exonerated, and incomplete data on the details of the crimes and the process of obtaining exonerations even for the cases we know best, those that we list in the Registry.

We cannot say for sure why so many African American sexual assault exonerees received such extreme sentences, even by comparison to the draconian sentences meted out to white sexual assault defendants who were later exonerated. Differences in criminal history cannot explain the gap: Among sexual assault exonerees who had no prior criminal convictions, the only two who received life sentences were African Americans. The average term for the rest was 32 years for black exonerees and 19 years for white exonerees. Our best guess is that black sexual assault defendants who insisted on their innocence and refused to plead guilty were punished more harshly for doing so than innocent white defendants who followed the same course.

Sentence length has an obvious impact on the time an exonerated defendant may spend in prison: the longer the sentence, the longer the time the defendant might spend in prison before exoneration. But it does not entirely explain the racial difference in prison time before exoneration for sexual assault. Controlling for length of sentence, black sexual assault exonerees served about three years longer before release than whites.³³

As with sentence length, we know too little to say for sure why African American sexual assault exonerees spent more time in prison before release than white sexual assault exonerees. The simplest explanation, however, seems most plausible: they received longer sentences when convicted, and they faced greater resistance to exoneration, even in cases in which they were ultimately released.

IV. Drug Crimes

1. Individual drug-crime exonerations

Drug law enforcement bears little resemblance to the enforcement of laws against violent crime. Illegal drug use is the quintessential “victimless crime”—the only person who may be injured as a direct consequence is the one who breaks the law. As a result, drug crimes are rarely reported to the police, so we have no direct information on the frequency or characteristics of drug offenses. The only systematic data on illicit drug use in the United States come from anonymous annual surveys by the federal Department of Health and Human Services. The most recent survey to

³³ We computed the following ordinary least squares regression analysis with Years Lost before exoneration as the dependent variable, and Sentence in years, Race (1 if defendant is black; 0 otherwise), and the interaction of Sentence and Race as the independent variables:

$$\text{Years Lost} = 3.7376 + 0.2292 \text{ Sentence} + 3.5456 \text{ Race} - 0.1010 \text{ Sentence} * \text{Race}.$$

The coefficients for all three independent variables are highly statistically significant.

include data on race was in 2013. Like earlier ones, it found that about 10% of the population over 12 years of age had used illegal drugs in the previous year, and that this use was more or less evenly distributed across the largest racial groups: 8.8% for Hispanics, 9.5% for whites and 10.5% percent for African Americans.³⁴

Convictions for drug crimes are another matter entirely. Thirty-three percent of those serving prison terms for drug offenses are African Americans, two-and-a-half times their proportion in the population.³⁵

Most of these prisoners were convicted of drug trafficking. We don't have decent data on the number of drug sellers by race, or any other characteristic. There is some evidence that white adolescents are more likely to sell drugs than black adolescents, but it's hard to interpret.³⁶ The number of African American drug dealers on the street could conceivably be proportional to their number in prison, but it is highly unlikely since most users get drugs from members of their own race. In any event, 35% of those imprisoned for drug *possession* are also black, compared to 38% who are white, despite the fact that African Americans are 13% of the population and use drugs at about the same rate as whites.

Drug crime exonerations are even more racially concentrated: 55% (121/221) have black defendants and 24% (54/221) white defendants. Overall African Americans are about five times as likely to go to prison for drug possession as whites, and judging from exonerations, innocent black people are about 12 times more likely to be convicted of drug crimes than innocent white people. (If that were not true, it would mean that for some unknown reason innocent African Americans convicted of drug crimes are much more likely to be exonerated than innocent white drug convicts.)

Most drug defendants are convicted of misdemeanors, and even among those convicted of felonies, relatively few go to prison.³⁷ Few defendants with such comparatively light penalties are ever exonerated, for any crime, regardless of innocence.

³⁴ Substance Abuse and Mental Health Services Administration, U.S. Dep't of Health and Human Services. [Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings](#). The rate was considerably lower for Asian, 3.1%.

³⁵ Bureau of Justice Statistics, U.S. Dep't of Justice. [Prisoners in 2015](#). (December 2016): Appendix Tables 4. A 2009 study by Human Rights Watch found comparable racial ratios for drug crime arrests from 1983 through 2007. Human Rights Watch. [A Decade of Disparity: Drug Arrests and Race in the United States](#). (March 2009). A study by the Sentencing Project in 2009 found that from 1995 to 2005, African Americans comprised approximately 13% of drug users, but 36% of drug arrests and 46% of those convicted for drug offenses. Mauer, Marc. [The changing racial dynamics of the war on drugs](#). *The Sentencing Project* (2009).

³⁶ Rothwell, Jonathan. [How the War on Drugs Damages Black Social Mobility](#). *The Brookings Institute* (September 30, 2014).

³⁷ Bureau of Justice Statistics, U.S. Dep't of Justice. [Felony Sentences in State Courts](#). (2000).

Most of the effort that goes into addressing wrongful convictions is devoted to defendants with extreme sentences. As a result, the distribution of exonerations is heavily lopsided. At the top of the range, defendants who are sentenced to death are about six times as likely to be exonerated as those convicted of murder and not sentenced to death, and hundreds of times more likely than defendants convicted of robbery.³⁸

And so on down the line. Non-violent crimes comprise more than 80% of felony convictions³⁹ but fewer than 20% of exonerations; there are, for example, about three times as many felony convictions for theft as for robbery but one-eighth the number of exonerations. Misdemeanor convictions outnumber felonies by at least four to one,⁴⁰ but account for less than *four percent* of exonerations (70/1900). Clearly, only a tiny fraction of innocent defendants who are convicted of misdemeanors or non-violent felonies are ever exonerated.

Most innocent defendants with relatively light sentences probably never try to clear their names. They serve their time and do what they can to put the past behind them. If they do seek justice, they are unlikely to find help. The Center on Wrongful Convictions at Northwestern University School of Law, for example, tells prisoners who ask for assistance that unless they have at least 10 years *remaining* on their sentences, the Center will not be able to help them because it's overloaded with cases in which the stakes are much higher.

Whatever the reason, we can infer very little about false convictions by studying exonerations for misdemeanors and non-violent felonies—in general. But we do have a unique window on errors in ordinary, low-level drug cases.

Sixty percent of the drug exonerations we know about occurred in Harris County, Texas, home to Houston (133/221). The defendants in these cases pled guilty to drug possession before the supposed drugs they possessed were tested in a crime lab, and were exonerated weeks, months or years later after testing was done and no illegal drugs were found.

Why did these defendants plead guilty even though they possessed no controlled substances? Some may have had powders or pills that they *thought* contained illegal drugs but did not. As far as we can tell, however, most pled guilty to get out of jail.

In a typical case, the defendant had a criminal record⁴¹ and could not post the comparatively high bail that was set. At the first court appearance, the prosecutor made a for-today-only take-it-or-

³⁸ Gross, Samuel. [What We Think, What We Know, and What We Think We Know About False Convictions](#). forthcoming in *Ohio State J. of Crim. Law*, Vol. 14, No. 2 (Spring 2017): pp. 13-16.

³⁹ Bureau of Justice Statistics, U.S. Dep't of Justice. [Felony Sentences in State Courts](#). (2000).

⁴⁰ Natapoff, Alexandra. [Misdemeanors](#). *Southern California Law Review*, Vol. 85, Iss. 5 (2012). pp. 1313–1375.

⁴¹ Seventy-four of the 133 Harris County drug-guilty plea exonerees had felony records, overwhelmingly drug and other non-violent felony convictions; another 30 had prior misdemeanor convictions.

leave-it offer to the defendant: plead guilty and go home immediately, or in a few days or weeks. If the defendant pled not guilty, however, she would remain in jail until trial—usually for months, sometimes for a year or longer—and then risk years in prison if convicted. It’s hardly surprising that many innocent defendants took the deal.

The only reason we know about these false guilty pleas is that the Harris County and Houston Police crime labs test the materials seized from the drug defendants after they enter guilty pleas. Few crime labs do that, which means that lab tests are rarely done in routine drug cases, since 95% or more of drug possession convictions are based on guilty pleas that are usually entered before lab tests. If crime labs across the country routinely conducted post-plea drug tests, we would learn about thousands of additional false drug convictions in other counties.

Thirty-nine percent of the Harris County guilty-plea drug exonerations were misdemeanors (53/133)—compared to 1% for the rest of the Registry (18/1,882). Only 5% of the Harris County drug exonerees (7/133) were sentenced to prison, all but two of them for two years each. By contrast, 66% of the other drug exonerees in the Registry (58/88) were sent to prison for two years or longer, including seven who got life sentences.

In other words, the Harris County guilty-plea exonerations look a lot more like routine drug prosecutions than the other drug exonerations we know about. The reason is simple: the Harris County drug defendants were exonerated by a fortuity—routine post-conviction drug tests that just happened to show up—rather than as a result of deliberate case-by-case investigations by the defense or the prosecution.

Despite the unique setting, the racial composition of the Harris County drug exonerations is familiar: 62% of the exonerees are African American in a county with 20% black residents, about seven times the rate for other racial groups.

Most, if not all of these innocent black defendants in Harris County pled guilty rather than go to trial because it was their best option, given that they had been arrested and charged, and were held in jail. But why were so many innocent black defendants arrested for drug possession when there is no reason to believe that African Americans are more likely than whites to use illegal drugs?

Two-thirds of the arrests in the Harris County guilty-plea exoneration cases (89/133) were based on cheap and notoriously inaccurate “presumptive” field tests for drugs, usually on substances found in searches following traffic stops.⁴² Anybody who is subjected to that process is at risk of

⁴² Gabrielson, Ryan and Topher Sanders. [How a \\$2 Roadside Drug Test Sends Innocent People to Jail](#). *New York Times*. (July 7, 2016). Recently the Texas panel on wrongful convictions recommended that lab tests for drugs be required as a basis for criminal prosecutions. See Gabrielson, Ryan. [Texas Panel on Wrongful Convictions Calls for Ending Use of Unverified Drug Field Tests](#). *ProPublica*. (Jan. 18, 2017).

false arrest and conviction.⁴³ Across the country, African Americans drivers are about as likely to be stopped as white drivers, but after that, they are three times as likely to be searched.⁴⁴ As a result, they bear much of the brunt of drug-law enforcement—including false drug possession convictions, which may number in the thousands if not tens of thousands a year.

Why do officers search African-Americans for drugs at such a high rate? The short answer is that the War on Drugs is pursued more aggressively against minority group suspects, African Americans in particular, than against members of the white majority. Several overlapping strands contribute to this practice.

Some drug arrests are the result overt racial discrimination. In June 2016, for example, a federal judge found “substantial evidence of racially selective [drug-law] enforcement by the San Francisco Police Department”⁴⁵ in a program that resulted in the indictment of 37 defendants for drug dealing, all African Americans. The officers involved made derogatory comments about “black males” and ignored drug dealers of other races. Six months later, all pending charges were dismissed.

More often, however, the discrimination is not explicit.

African Americans are subject to more attention and surveillance from police than whites. One reason that is often offered is that they are more likely to live in high crime areas, but that is not a complete explanation. In 2013, for example, a federal judge found that New York City’s notorious stop-and-frisk program—under which police made more than 4.4 million street stops from 2004 through 2012, 80% of them of African Americans or Hispanics—could not be justified on that basis because the stops were more closely linked to the racial composition of the neighborhoods and the race of those detained than to crime rates.⁴⁶

Once stopped, African Americans are more likely to be searched. An explanation that is sometimes given is that they are more likely than white suspects to have criminal records, but that explanation is partly circular, especially for drug crimes. A major reason that African Americans are more likely to have drug-crime records is that police are more likely to stop, search and arrest them. Those records, however obtained, also mean that bail is likely to be higher. As a result, African American drug defendants are more likely than whites to face the Hobson’s choice of plea bargaining: plead guilty or stay in jail.

⁴³ See, e.g. Cardona, Claire. [Texas Man Arrested on Meth Possession Charge Says Substance Deputy Found was Cat Litter](#). *Dallas Morning News*. (January 10, 2017).

⁴⁴ Bureau of Justice Statistics, U.S. Dep’t of Justice. [Contacts between Police and the Public, 2008](#). Tables 9 and 14.

⁴⁵ Ho, Vivian. [Charges dropped in SF Drug Busts that Prompted Racial Bias Claims](#). *San Francisco Chronicle*. (January 24, 2017).

⁴⁶ *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y., 2013).

And, of course, African Americans are the prime targets of racial profiling—especially in the context of drug-law enforcement. Racial profiling was first named in the late 1990s when it was identified with “driving while black”—systematic programs of police officers trolling for drugs on the highway by searching cars with black or Hispanic drivers.⁴⁷ The practice has been widely condemned, but it continues and not just on highways. For example, the stop-and-frisk program in New York that was declared unconstitutional in 2013 was racial profiling on city sidewalks.

Wherever they are conducted, most of the victims of these illegal searches are inconvenienced, scared and humiliated, but they are not arrested because no drugs are found. Some, however, are arrested and convicted of drug possession. Judging from what we see in Harris County, quite a few of them are innocent.

2. *Group exonerations*

Many exonerations that we know about are not included in the Registry. Since 1989, in addition to the 1,900 individual exonerations in the Registry, a nearly equal number of defendants were cleared in 15 “group exonerations” in 13 cities and counties across the country. The great majority of these defendants were African Americans.

Exonerations can be “grouped” in many ways. What we mean by “*group exoneration*” is very specific: *The exoneration of a group of defendants who were falsely convicted of crimes as a result of a large-scale pattern of police perjury and corruption.* These are highly important cases, but—as we explain—they cannot usefully be studied in the same database as individual exonerations.

When we released our first Report, in May 2012, we discussed 12 group exonerations that included “at least 1,100” defendants.⁴⁸ We now know of 15 group exonerations, and the total of exonerated defendants has climbed to at least 1,840, the great majority of whom were framed for drug crimes that never happened.

Two of the best-known group exonerations illustrate the range of police behavior that produced these frame-ups:

- *Los Angeles, California, 1999-2000.* In 1999, authorities learned that for several years or longer, a group of officers in the Rampart division of the Los Angeles Police Department had routinely lied in arrest reports and testimony, and framed many innocent defendants by planting drugs or guns on them. On several occasions, they had shot and wounded unarmed suspects, and then planted guns on them. In the aftermath of this scandal, “approximately 156” criminal defendants had their convictions vacated and dismissed by Los Angeles County judges in late 1999 and

⁴⁷ See Gross, Samuel R. [The Rhetoric of Racial Profiling, in Social Consciousness](#). *Legal Decision Making: Psychological Perspectives*. R. Wiener, B. Bornstein, R. Schopp & S. Willborn, eds. (Springer: New York, 2007).

⁴⁸ Gross, Samuel R. and Michael Shaffer. [Exonerations in the United States, 1989-2012](#). (2012): p. 84.

2000. The great majority were young Hispanic men who were believed to be gang members. Almost all pled guilty to false felony drug or gun charges.⁴⁹

- *Tulia, Texas, 2003*. In 1999 and 2000, 39 defendants, almost all of them black, were convicted of selling cocaine in Tulia, Texas, on the uncorroborated word of a corrupt undercover narcotics agent named Tom Coleman. In 2003, 35 of them—all who were technically eligible—were pardoned by the governor after a judge investigated the cases and concluded that Coleman had engaged in “blatant perjury” and was “the most devious ... law enforcement witness this court has witnessed....” The investigation revealed that Coleman had charged the defendants with selling quantities of highly diluted cocaine that he actually took from a personal drug stash. Two additional defendants were exonerated when their convictions were vacated and dismissed by courts. In 2005, Coleman was convicted of perjury.⁵⁰

Table 1 summarizes basic information on the group exonerations we know about. A short description of each of these scandals is included in the Appendix. One of the oldest—from Oaklyn, New Jersey, in 1991—is an outlier: 155 convictions for driving under the influence of alcohol were dismissed because a single police officer faked the results of breathalyzer tests, and then stole money from the wallets and purses of the suspects he arrested. All of the rest consisted primarily or exclusively of bogus drug cases.

⁴⁹ Covey, Russell. [Police Misconduct as a Cause of Wrongful Convictions](#). *90 Wash. U. L. Rev.* 1133 (2013).

⁵⁰ *Id.*; Barnes, Steve. [Rogue Narcotics Agent in Texas Is Found Guilty of Perjury](#). *New York Times* (January 15, 2005).

Table 1: Group Exonerations, 1995- 2017

PLACE AND DATE	NUMBER OF EXONERATED DEFENDANTS	CRIMES CHARGED	RACIAL AND ETHNIC IDENTITY OF DEFENDANTS
Washington DC 1990	32	Drugs	Overwhelmingly Black
Oaklyn NJ 1995	155	Drunk driving	Unknown
Philadelphia PA 1995-1998	Approximately 230	Mostly drugs	Overwhelmingly Black
Los Angeles CA 1999-2000	Approximately 156	Mostly drugs & gun possession	Overwhelmingly Hispanic
Los Angeles CA 2001-2002	At least 10	Drugs	Overwhelmingly Black
Dallas TX 2002	6 to 15	Drugs	Overwhelmingly Hispanic
Oakland CA 2003	76	Mostly drugs	Overwhelmingly Black
Tulsa TX 2003	37	Drugs	Overwhelmingly Black
Louisville KY 2004	Approximately 50	Mostly drugs	Overwhelmingly Black
Tulsa OK 2009-2012	At least 28	Mostly drugs	Unknown
Benton Harbor MI 2010-2012	At least 69	Mostly drugs	Overwhelmingly Black
Camden NJ 2010-2012	193	Mostly drugs	Overwhelmingly Black
Mansfield OH 2012	20	Drugs	Overwhelmingly Black
Philadelphia PA 2013-2016	812	Mostly Drugs	Overwhelmingly Black
East Cleveland OH 2016-2017	43	Drugs	Overwhelmingly Black
ALL CASES	AT LEAST 1,840	PRIMARILY DRUG CHARGES	PRIMARILY BLACK

The biggest change from the list we published in 2012 is the addition of more than 700 exonerations in Philadelphia—which leads the nation in this category of injustice by a huge margin and accounts for a majority of all known group exonerations.

A couple of examples from Philadelphia illustrate the range of penalties suffered by the victims of these frame-ups:

In March 2005, Jeffrey Walker and other narcotics unit officers arrested Mia Whittaker on drug charges in her Philadelphia home. Despite her claim that the drugs were planted, Whittaker pled guilty and was sentenced to three years' probation. In May 2013, the FBI arrested Walker in a sting; ultimately he admitted that he and other officers had fabricated the case against Whittaker and hundreds of other defendants over more than a decade. In November 2013, Whittaker's conviction was vacated and the charge was dismissed.

In January 2001, 23-year-old Kareem Torain was arrested by Officer Walker and charged with possession of drugs. He refused to plead guilty and denied that he was carrying any drugs. In May 2002, Torain was convicted at a trial and sentenced to 12½ to 22½ years in prison. He was exonerated and released in February 2014, after more than 13 years in prison.

Sentences imposed by courts are only part of the undeserved punishment meted out in many of these scandals. Some suspects were beaten, had property stolen, or both—including some who were never charged with crimes. For example, the initial investigation that led to the first Philadelphia group exoneration was instigated by an event in 1991 when narcotics officers in the police department's 39th district arrested an African American college student named Arthur Colbert. Over a period of six hours, they called him “nigger,” took him to an abandoned crack house where they beat him, took him to the precinct where they continued to beat him, held a loaded pistol to his head and threatened to kill him, broke into his apartment and searched it—and eventually released him, after promising to kill him if they ever saw him again.⁵¹

The list in Table 1 is far from complete. We have not conducted a systematic, in-depth search for group exonerations. They are not easy to study from a distance. Most do not receive national attention; some barely make regional news beyond a few articles about the corrupt officers, and local news coverage is often sketchy. We have probably missed more group exonerations than we have found.

We also know of several police corruption scandals that did not produce group exonerations, but might have if the authorities had identified defendants with tainted convictions and exonerated them. In some instances, prosecutors did not conduct systematic reviews of the cases the corrupt

⁵¹ Kramer, Michael. “How Cops Go Bad.” *Time*. (December 15, 1997).

officers had brought.⁵² In others, they left it up to the convicted defendants themselves to seek dismissal of their convictions, if they learned that it was possible and had the resources to try; it rarely happened.⁵³

Wholesale police frame-ups of innocent defendants are at one end of a continuum of deliberate false convictions. At the opposite end are isolated acts of perjury in particular cases; some individual exonerations that include police perjury fit that mold. In between, there are serial perjurers: officers who frame innocent defendants occasionally over the course their careers, but not as part of a concerted plan or large scale conspiracy. In all likelihood, the great majority of false convictions that result are never discovered, from one end of the spectrum to the other.

As we have noted, the group exonerations we have found are primarily cases in which police officers planted drugs on suspects. It takes a lot to overcome the practical presumption that police tell the truth in court, especially when the competing story comes from the accused. The cases that come to light are those in which the evidence of corruption becomes overwhelming, which is most likely in scandals with many innocent victims. When that point is reached, the dam breaks and a flood of dozens or hundreds of convictions are recognized as unreliable or baseless.

In sum, as with individual exonerations, there clearly are many more false convictions of drug defendants who were framed by police than we have identified in these 15 groups.

Group exonerations are fundamentally different from exonerations based on individual investigations and cannot usefully be studied together.

⁵² For example, beginning in the 1990s and extending into the late 2000s, a series of Chicago police corruption scandals resulted in convictions of more than a dozen police officers on charges relating to the falsification of drug cases, theft of narcotics from drug dealers and users, and the filing of false reports. Possley, Maurice. [When Cops Go Bad, Everyone Pays](#). *Chicago Tribune*. (October 22, 2006); Main, Frank. “‘Cops’ Arrests Get 10 Felony Cases Tossed Out.” *Chicago Sun-Times*. (May 9, 2005); Possley, Maurice and Gary Marx. “Austin 7 Arrests Fall Apart In Court.” *Chicago Tribune*. (January 25, 1997); Warnick, Mark. “City Cop Scandals Dash Drug Trials.” *Chicago Tribune*. (December 25, 1997); Heinzmann, David and Annie Sweeney. “Federal Probe Nets 4 SOS Cops, No Brass.” *Chicago Tribune*. (April 8, 2011). The Cook County State’s Attorney’s office told us it has no idea how many convictions were later dismissed, although a review of federal lawsuits reveals that several defendants sued the City of Chicago after their convictions were vacated. Email from Andrew Conklin, Media Spokesperson, Cook County State’s Attorney’s Office (March 2012).

⁵³ In 2002, for example, the Dallas District Attorney’s Office dismissed pending charges against 20 defendants who were apparently framed by two former Dallas police officers who were themselves convicted of stealing money from suspects and falsifying reports. Three convicted defendants who were still imprisoned also had their convictions reversed, but prosecutors made no attempt to identify other defendants who had been falsely convicted in this conspiracy on the ground that it was “up to the individual defendant.” Bensman, Todd. “False Drug Convictions May Linger.” *Dallas Morning News*. (September 8, 2002).

The unit of observation for an individual exoneration is the defendant and his case. The investigations that lead to these exonerations produce a great deal of information about each case, and much of that information is publicly reported.

The defining feature of a group exoneration is the corrupt officer or the police conspiracy. Once that picture comes into focus, specific exonerations may be handled summarily and receive little or no separate attention. As a result, many group exonerations are for comparatively minor false convictions that would never be reinvestigated on their own. For example, 27 of the 37 Tulia exonerees pled guilty; most of them received probation and fines or short periods of incarceration. It is nearly prohibitively expensive to establish the innocence of the defendants in such cases. It almost never happens—except in the context of group exonerations, or in some other situation that obviates the need for costly investigation, such as the drug testing in the Harris County drug guilty-plea exonerations.

Because of this summary process, we know next to nothing about many of the individual cases that were dismissed in these groups: not the dates of arrest, conviction and exoneration; not the facts of the alleged crimes; not the mode of conviction or the sentence; sometimes, not even the names of the exonerated defendants. For the Rampart scandal in Los Angeles, for example, we don't even know the number of exonerated defendants. (On the other hand, we have detailed information on each defendant in the Tulia group exoneration.⁵⁴)

For some group exonerations, it is also likely that quite a few of the defendants who were cleared were in fact guilty. Professor Russell Covey has assembled reasonably detailed information on 87 of the Rampart exonerations in Los Angeles.⁵⁵ He concluded that 38 cases qualified as exonerations by the Registry's criteria, and the defendants are highly likely to be innocent; 27 cases included "evidence of criminal culpability" by the defendant; and 22 cases were too unclear to call. This suggests that half or more of the Rampart exonerees were innocent, but many others were not. On the other hand, Covey concluded that with one or two unlikely exceptions, all the exonerated Tulia defendants were innocent;⁵⁶ based on the evidence we have reviewed, we agree.

In short, we have too little information on most group exonerations to include them in our database of individual exonerations; and in any event, the two categories should be studied separately rather than mixed together.

Perhaps the most striking aspect of group exonerations for drug crimes is their racial composition. In almost every jurisdiction, over a period of decades, the exonerated drug defendants were overwhelmingly minority group members. In Los Angeles and Dallas they were Hispanic;

⁵⁴ See Blakeslee, Nate. *Tulia: Race, Cocaine, and Corruption in a Small Texas Town*. (2005).

⁵⁵ Covey, Russell. [Police Misconduct as a Cause of Wrongful Convictions](#). *90 Wash. U. L. Rev.* 1133 (2013).

⁵⁶ *Id.* at pp. 1150-51.

everywhere else, they were African American. In Philadelphia, where a majority of all group exonerations took place, Bradley Bridge, a Deputy Public Defender who has been handling and tracking that city's group exonerations for decades, estimates that "at least 95%" of the more than 1,000 exonerated defendants are minorities,⁵⁷ and the vast majority are black.

Why did these scandals happen?

We don't *know* the motives of the dishonest officers who framed all these defendants, but there are a few obvious possibilities. Some of the corrupt officers involved took bribes or stole money and drugs from real drug traffickers and may have framed innocent defendants to deflect suspicion. Some probably did it because they believed the defendants they framed were drug dealers or gang members or both and deserved to be sent to prison, even by dishonest means. And some did it to build their careers. Tom Coleman, for example, lost his job as a deputy sheriff and was then indicted for theft in a different Texas county before he was hired as an undercover agent in Tulia. After he arrested 46 people on fabricated drug charges, the Texas Department of Public Safety named him as the 1999 Outstanding Lawman of the Year.⁵⁸

But why did they focus so heavily on minorities, especially African Americans?

It's impossible to miss the obvious racism at the core of some of these cases. In addition, many black defendants—especially poor, inner-city dwellers in Philadelphia, Camden, Oakland, and elsewhere—have limited resources and little political clout. They are unlikely to be able to defend themselves successfully, even if innocent.

But the most powerful reason the officers who carry out these outrages focus on African Americans is simple: That's what they always do. Drug-law enforcement in general bears more heavily on African Americans than on whites, as we saw in Harris County. As any forger knows, the way to create convincing fakes is to make them look like the real thing. For drug cases, that means arresting mostly black suspects.

One of the many costs that the War on Drugs inflicts on the black community is this outrageous practice of framing innocent defendants. We have no idea how often it really occurs.

V. Conclusion

Most innocent defendants who have been exonerated in the United States in the past 28 years are African Americans—almost half of the nearly 2,000 individual exonerations that we know about,

⁵⁷ Email, Bradley S. Bridge to Maurice J. Possley. (December 5, 2016).

⁵⁸ Blakeslee, Nate. [The Color of Justice](#). *Texas Observer*. (June 2000).

and the great majority of a similar number of group exonerations. There is every reason to believe that this is also true of the much larger group of all wrongful criminal convictions.

There is no single explanation for this huge racial disparity. It has several causes, all of which point in the same direction.

- *The high homicide rate in the African American community.* This is a major cause of the high number of African American murder exonerees. If the real criminal is black, anybody who is mistakenly convicted for that crime will almost inevitably be black as well. These exonerated defendants, and a much larger group of falsely convicted murder defendants who have not been exonerated, are innocent casualties of the high homicide rates in some African American communities.
- *The risk of eyewitness misidentification in cross-racial crimes.* We see this most starkly for sexual assaults: Most African American sexual assault exonerees were misidentified by white victims. The same problem very likely contributes to the high proportion of black exonerees in murder cases, but to a lesser extent. It probably also contributes to false convictions for other violent crimes that we have not examined in detail.
- *Race-of-victim disparities.* Murder exonerations include about twice as many cases with African American defendants and white victims as all murders in America. Some of that difference may be due to cross-racial eyewitness misidentifications, as we have noted, but not all. Investigations of murders in which African Americans killed white victims are less accurate than other murder investigations even when eyewitness identification is not a factor.
- *African Americans are more often stopped, questioned and searched than whites.* This appears to be the major cause for the heavy over-representation of African Americans among innocent defendants exonerated for drug crimes. There might be legitimate justifications for some of these practices, but there is strong evidence that they also reflect racial profiling and other forms of discrimination against African Americans in drug-law enforcement.
- *Black suspects and defendants are more likely to be the targets of police and prosecutorial misconduct.* Racial profiling, which we just mentioned, is a type of misconduct that is inherently racially discriminatory. Other forms of official misconduct show racially disparate patterns as well:
 - *Murder exonerations.* Official misconduct occurred in fewer than two-thirds of murder exonerations with white defendants but more than three-quarters of those with black defendants—and that difference is greater among exonerations of

defendants who were sentenced to death. Most of the racial disparity is caused by a higher rates of misconduct by police officers rather than prosecutors.

- *Group exonerations.* More than 1,800 exonerations since 1989 are for convictions of groups of innocent defendants who were systematically framed by police for fictitious crimes. The great majority were black defendants who were convicted of drug crimes that never occurred. This may be the most shocking example of the many ways in which the War on Drugs bears most heavily on minorities, especially African Americans.
- *African-American exonerees spent more time in prison before they were released than did white exonerees.* African American murder exonerees were imprisoned for three years longer than white exonerees; those exonerated for sexual assault spent almost four-and-a-half more years in prison than white sexual assault exonerees. For both crimes, a large portion of the difference reflects a heavy concentration of African Americans among those exonerees who served 25 years in prison or longer. Some of these differences reflect longer average sentences imposed on the innocent black defendants, but the data also suggest that there is more resistance to releasing innocent defendants if they are black.
- *Many innocent black defendants encounter bias and discrimination throughout their ordeals.* Several of the factors we have identified embody racial discrimination—racial profiling in drug-law enforcement, for example, and especially the systematic framing of innocent black drug defendants in group exonerations. Other types of discrimination are more subtle and harder to spot but may be equally pernicious. Unconscious bias, for example, may explain why some black exonerees were convicted despite overwhelming alibi evidence from black witnesses who testified at trial. In some cases, there is no need to speculate: the racism of those who investigated, prosecuted and punished the innocent black defendants is explicit and unmistakable.

APPENDIX – Group Exonerations

1. **Washington, D.C. 1990.** In 1990, U.S. Attorney Jay Stephens obtained dismissals of 32 drug convictions following an investigation of narcotics cases handled by D.C. Metropolitan police officer Lugenia Dorothy King. King's cases came under scrutiny after she tested positive for cocaine use in 1989.⁵⁹
2. **Oaklyn, New Jersey, 1995.** In August, 1991, Oaklyn police officer Robert Kane pled guilty and was sentenced to prison for falsifying the results of breathalyzer tests on drivers he stopped for drunk driving, and stealing money from their purses and wallets when he booked them. In 1995, a total of 155 convictions for driving under the influence were dismissed.⁶⁰
3. **Philadelphia, Pennsylvania, 1995-1998.** On February 28, 1995, five narcotics officers of the 39th District of the Philadelphia Police Department were indicted by a federal grand jury for a variety of felonies stemming from a long-standing pattern of theft, perjury, deception and violence. Among other crimes, they planted drugs and manufactured evidence in numerous cases. Over the next several years, felony convictions were dismissed against 138 defendants from the 39th District. The investigation of the 39th spread to other districts and ultimately resulted in the dismissal of nearly 100 additional convictions.⁶¹
4. **Los Angeles, California, 1999-2000.** In 1999, authorities learned that for several years or longer, a group of officers in the Rampart division of the Los Angeles Police Department had routinely lied in arrest reports and testimony, and framed many innocent defendants by planting drugs or guns on them. On several occasions, they had shot and wounded unarmed suspects, and then planted guns on them. In the aftermath of this scandal, "approximately 156" criminal defendants had their convictions vacated and dismissed by Los Angeles County judges in late 1999 and 2000. The great majority were young Hispanic men who were believed to be gang members. Almost all pled guilty to false felony drug or gun charges.⁶²

⁵⁹ Gellman, Barton. "'Interests Of Justice' Often Slow; Few Freed Despite Tainted Drug Cases." *Washington Post*. (February 3, 1990); see also Interview with Jay Stephens, Former U.S. Attorney (March 2012).

⁶⁰ Jennings, John Way and Larry Lewis. "Judge Overturns Convictions Of 155." *Philadelphia Inquirer*. (July 20, 1995).

⁶¹ Bowden, Mark and Mark Fazlollah. "Lying Officer Never Counted On FBI; Officer John Baird Had Beaten 22 Complaints. Then Came Case 23." *The Philadelphia Inquirer*. (September 12, 1995); Terry, Don. "Philadelphia Shaken by Criminal Police Officers." *The New York Times*. (August 28, 1995); Kramer, Michael. "How Cops Go Bad." *Time*. (December 15, 1997); Slobodzian, Joseph A. "Jailed Officer Set To Go Home." *Philadelphia Inquirer*. (Nov. 21, 2000); see also Interview with Bradley S. Bridge, Attorney, Philadelphia Defender Association (March 2012).

⁶² Covey, Russell. [Police Misconduct as a Cause of Wrongful Convictions](#). *90 Wash. U. L. Rev.* 1133 (2013).

5. ***Los Angeles, California, 2001-2002.*** As the Los Angeles Police Department's Ramparts District scandal was unraveling in the late 1990's, two officers assigned to the Department's Central District, Christopher Coppock and David Cochrane, were found to have arrested numerous homeless people and planted drugs on them. The officers were charged with assaulting a homeless man in 1997 and later pleaded no-contest and were sentenced to a year in prison. Ultimately, at least 10 defendants had their drug convictions set aside and the cases dismissed in 2001 and 2002.⁶³
6. ***Dallas, Texas, 2002.*** The Dallas "Sheetrock Scandal" came to light in January of 2002. At least 80 defendants in Dallas, Texas, were falsely charged with possession of quantities of "cocaine" that turned out, when finally analyzed, to consist of powdered gypsum, the primary constituent of the building product Sheetrock. Most of the Sheetrock cases were dismissed before trial, but some innocent defendants had pled guilty and were in prison or had been deported to Mexico.⁶⁴
7. ***Oakland, California, 2003.*** In November 2000, four Oakland police officers known as "The Riders" were charged with assault, making false arrests, filing false reports and other crimes. One officer remains a fugitive. The other three were tried twice, but the charges were dismissed after the juries deadlocked in both trials. Oakland settled lawsuits for more than \$11 million brought on behalf of more than 120 people who alleged they were victimized by the officers. By 2003, a total of 76 convictions had been set aside and another 25 probation or parole revocations also were dismissed.⁶⁵
8. ***Tulia, Texas, 2003.*** *Tulia, Texas, 2003.* In 1999 and 2000, 39 defendants, almost all of them black, were convicted of selling cocaine in Tulia, Texas, on the uncorroborated word of a corrupt undercover narcotics agent named Tom Coleman. In 2003, 35 of them—all who were technically eligible—were pardoned by the governor after a judge investigated the cases and concluded that Coleman had engaged in "blatant perjury" and was "the most devious...law enforcement witness this court has witnessed..." The investigation revealed that Coleman had charged the defendants with selling quantities of highly diluted cocaine that he actually took from a personal drug stash. Two additional defendants were exonerated when their convictions

⁶³ Glover, Scott and Henry Weinstein. "Lawsuit accuses 2 LAPD Officers of Wrongful Arrest." *Los Angeles Times*. (December 16, 1999); Glover, Scott and Matt Lait. "2 Former LAPD Officers Indicted in Assault Case." *Los Angeles Times*. (October 20, 2000); Berry, Steve. "Ex-Officers Face Jail in Assault." *Los Angeles Times*. (August 2, 2002).

⁶⁴ Donald, Mark. [Dirty or Duped?: Who's to Blame for the Fake-Drug Scandal Rocking Dallas Police? Virtually Everyone.](#) *Dallas Observer*. (May 2, 2002); Duggan, Paul. "'Sheetrock Scandal' Hits Dallas Police." *Washington Post*. (January 18, 2002).

⁶⁵ Ashley, Guy. "'Riders' Suits Settled; \$11 million." *Contra Costa Times*. (February 21, 2003); see also interview with James Chanin, Plaintiffs' attorney in lawsuit, Berkeley, CA (March 2012).

were vacated and dismissed by courts. In 2005, Coleman was convicted of perjury.⁶⁶

9. **Louisville, Kentucky, 2004.** In 2003, two detectives assigned to a narcotics unit staffed by Louisville and Jefferson County law enforcement were convicted of obtaining warrants with false affidavits and pocketing money meant for informants. By 2004, Jefferson County prosecutors had dismissed about 50 convictions.⁶⁷
10. **Tulsa, Oklahoma, 2009-2012.** In 2010, six Tulsa police officers and one federal agent were indicted after a federal investigation of law enforcement corruption in Tulsa on charges that included planting drugs and faking drug buys. By 2012, at least 28 convicted defendants were released from prison after drug and related charges were dismissed.⁶⁸
11. **Benton Harbor, Michigan, 2010-2012.** In 2009 and 2010, two Benton Harbor police officers were indicted on federal corruption charges related to dozens of drug arrests from 2006 to 2008. Among other crimes, they were charged with embezzling money from the police department, stealing from suspects, fabricating drug buys, and planting drugs on suspects or in their homes. They were eventually sentenced to 37 months and 30 months in prison. By 2012, at least 69 defendants who were convicted of drug crimes based on testimony by those officers had their convictions vacated and charges dismissed.⁶⁹
12. **Camden, New Jersey, 2010-2012.** In the summer of 2008, the new Camden police chief initiated an investigation into corruption in his own department, which he later turned over to the FBI. By 2012, three former Camden police officers had pleaded guilty to federal conspiracy charges, another officer was convicted at trial and a fifth officer was acquitted. As a result, 193 drug convictions were dismissed.⁷⁰
13. **Mansfield, Ohio, 2012.** In May 2007, Jerrel Bray, a long-time drug dealer and police informant

⁶⁶ Covey, Russell. [Police Misconduct as a Cause of Wrongful Convictions](#). *90 Wash. U. L. Rev.* 1133 (2013); Barnes, Steve. [Rogue Narcotics Agent in Texas Is Found Guilty of Perjury](#). *New York Times*. (January 15, 2005). Blakeslee, Nate. "Tulia: Race, Cocaine, and Corruption in a Small Texas Town." (2005).

⁶⁷ Hall, Gregory A. "Police-Corruption Trial Opens Tomorrow." *Courier-Journal*. (January 13, 2003); see also Interview with Harry Rothgerber, First Assistant, Commonwealth's Attorney's Office, Jefferson County, Kentucky (March 2012); Flack, Eric. "Convicted Cop Says He 'Just Got Lost.'" *Wave 3 News*. (February 12, 2004).

⁶⁸ Harper, David. [Case linked to Tulsa police probe dismissed, inmate freed](#). *Tulsa World* (February 2, 2012); see also Interview and E-mail with James D. Dunn, Assistant District Attorney, Tulsa County District Attorney's Office (March 2012).

⁶⁹ Melzer, Eartha Jane. "Drug Cases Dismissed Following Pleas by Corrupt Narcotics Cops." *Michigan Messenger*. (September 28, 2009); Swidwa, Julie. "Hall sentenced to 30 months: Prosecutor, police chief say Bernard Hall and Andrew Collins' actions will have lingering effects." *The Herald-Palladium*. (March 5, 2010); See also interview with Arthur Cotter, Berrien County District Attorney (March 2012).

⁷⁰ Anastasia, George. "Former Camden Officer's Appeals Rejected in Corruption Case." *Philadelphia Inquirer*. (March 8, 2012); E-mail from Jason Laughlin, Spokesman for Camden County Prosecutor's Office (March 2012).

from Mansfield, Ohio, was in jail in nearby Cleveland for shooting a man in a drug deal. A public defender came to talk to him about a different drug case in which Bray had provided evidence against the lawyer's client. Bray—who was worried that his work as a snitch might get him killed in jail—began to talk about how he and his police handlers had faked evidence in dozens of drug cases, among other crimes. Ultimately, a Richland County sheriff's detective pled guilty to perjury during a drug trial, and a federal Drug Enforcement Administration agent was indicted and acquitted of charges of perjury and false arrests. By 2012, 20 convicted drug defendants had been exonerated and released.⁷¹

14. ***Philadelphia, Pennsylvania, 2013-2016.*** In May 2013, Philadelphia police narcotics officer Jeffrey Walker was arrested in an FBI sting for trying to shake down a drug dealer for drugs and cash. Walker cooperated in a federal investigation that led to the indictment in 2014 of six other narcotics unit members for framing defendants on drug charges dating back to 2006—although authorities believe the illegal conduct dated as far back as 2000. Through 2016, a total of 812 convictions attributed to the seven officers had been vacated and dismissed. The total is expected to surpass 1,000 when the investigation is complete.⁷²

15. ***East Cleveland, Ohio, 2016-2017.*** In 2016, the conviction integrity unit of the Cuyahoga County Prosecutor's office said it had begun vacating convictions and dismissing the cases of more than 40 defendants who were framed by three East Cleveland police officers. The officers pled guilty to federal crimes and were imprisoned for planting drugs, stealing cash and filing false search warrants. Sgt. Torris Moore and fellow officers Eric Jones and Antonio Malone admitted framing suspected drug dealers—all of whom were black—after they were charged in October 2015 following a two-year FBI investigation. As of November 2016, the conviction integrity unit had identified 43 defendants whose convictions would be vacated and dismissed.⁷³

⁷¹ Caudill, Mark. "Deputy Gets Probation, Weekend Jail." *Mansfield News Journal*. (February 17, 2010); see also E-mail from Jon Loevy, attorney for exonerated defendants in federal civil rights lawsuit (March 2012).

⁷² Slobodzian, Joseph A. "Philadelphia Judge tosses 7 drug convictions tainted by police corruption probe." *Philly.com*. (November 16, 2016); email, Bradley S. Bridge, Attorney, Philadelphia Defender Association, (November 2016).

⁷³ Interview with Jose Ortiz, Assistant Prosecuting Attorney, head of conviction integrity unit, Cuyahoga County Office of the Prosecutor, (November 28, 2016).