5-1-2021

Official Misconduct and Error Correction Mechanisms in Exonerated Death Penalty Cases

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OFFICIAL MISCONDUCT AND ERROR CORRECTION MECHANISMS

IN EXONERATED DEATH PENALTY CASES

By

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Bachelor of Arts – Psychology
University of California, Irvine
2019

A thesis submitted in partial fulfillment
of the requirements for the

Master of Arts – Criminal Justice

Department of Criminal Justice
Greenspun College of Urban Affairs
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University of Nevada, Las Vegas
May 2021

Thesis Approval

The Graduate College
The University of Nevada, Las Vegas

April 7, 2021

This thesis prepared by

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entitled

Official Misconduct and Error Correction Mechanisms in Exonerated Death Penalty Cases

is approved in partial fulfillment of the requirements for the degree of

Master of Arts – Criminal Justice
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ii

Abstract

There has been an average of approximately 3.9 death penalty exonerations annually in the United States since 1973 (DPIC, 2021). Wrongful convictions and executions constitute grave and irreversible errors. Studies show official misconduct is one of the leading causes for wrongful convictions and exonerations. Misconduct by police, prosecutors, and judges includes a wide range of behaviors such as coercing confessions, depriving rights to legal counsel, threatening witnesses, and concealing evidence. Operating under the due process model, the adversarial legal system is designed to detect and prevent any procedural violations of defendant's rights, including official misconduct. Utilizing Packer's (1964) due process and crime control models, and major criminal justice theories such as subculture and rational choice as interpretive frameworks, the current study examines the nature of official misconduct and its impact on exoneration. Drawing on 167 exonerated death penalty cases from the Death Penalty Information Center's website and employing the content analysis methodology, the current study generated several key findings. First, official misconduct was prevalent among these exonerated death penalty cases, with 60%, 65%, and 17% of the cases involving police, prosecutorial, and judicial misconduct respectively. Second, major typologies of official misconduct were identified, such as coercing defendants and witness, evidence tampering, and violating procedural rules. Third, police misconduct was significantly correlated with longer exoneration processes and exonerations through forces external to the criminal justice system. Major theoretical and policy implications for the effectiveness of the due process model in error corrections are discussed.

Keywords: official misconduct, death penalty, wrongful conviction, exoneration, error correction

Acknowledgements

I would like acknowledge and express my sincerest gratitude to those who have supported me in the completion of this thesis project as well as throughout the entirety of my Master's degree.

First, I would like to give a tremendous thank you to my thesis chair, Dr. Hong Lu. I greatly appreciate not only your willingness to take on this project with me, but for also providing continual mentorship and opportunities for me to further my research and grow as a graduate student. Thank you for your continued guidance, patience, and support.

Next, I would like to thank my committee members, Dr. Melissa Rorie, Dr. William Sousa, and Dr. Stephen Bates. I am sincerely grateful for your unwavering support. Your feedback and expertise has helped me expand my own viewpoints and embrace new perspectives in research.

Finally, I would like to thank my family, partner, and friends for their constant support, motivation, and kindness. Thank you for always believing in me and keeping my spirits high even when challenges arose. Without you all, this thesis would not have been possible.

Table of Contents

List of Tables

Chapter 1: Introduction

The actions of criminal justice officials, namely police, prosecutors, and judges, have been widely connected to wrongful convictions in criminal cases (Bedau & Radelet, 1987; Gross, 1998; Gross & O'Brien, 2008; Huff, 2003). While certain types of misconduct are formally illegal, other actions may technically be legal but still violate professional ethics and public trust (Stern, 1987). Official misconduct occurs at various levels of the justice system and in different case types, including cases that involve the death penalty. Such misconduct includes a variety of behaviors, such as concealing or altering evidence, witness tampering, coercing confessions, torture, bribery, and perjury (Alschuler, 1972; Bishopp et al., 2016; Buckley, 1969; Butler, 2014; Covey, 2013; Gross et al., 2020; Hamilton & Foote, 2018; Kane, 2002; Kirchmeier et al., 2009; Minsker, 2009; Yaroshefsky, 2004), and may contribute to wrongful convictions.

Wrongful convictions undermine the criminal justice system because for every innocent person wrongfully punished, the actual offender remains free and could pose a threat to public safety. A wrongful conviction in a death penalty case may result in even graver harm as it would be an irreversible error if an execution is carried out. These concerns highlight the importance of examining the factors that contribute to both wrongful convictions as well as exonerations, particularly involving official misconduct.

Theory and Background

Packer's (1964) crime control and due process models provide a theoretical framework for examining both official misconduct and error correction mechanisms in exonerated death penalty cases. Under the crime control model, the primary purpose of the criminal justice system is controlling crime. Misconduct engaged in by the police, prosecutors, and judges may be

tolerated to a certain degree for pursuing system efficiency and finality. Conversely, under the due process model, the primary goal of the justice system is protecting the defendant's rights. Controlling crime is of secondary importance to ensuring that individuals receive a fair and impartial trial.

As an adversarial common law system (Cohen, 1989; LexisNexis, 1997) the due process model ensures defendants procedural rights and protections, especially in capital cases. For example, the U.S. Constitution asserts that individuals have equal protection under the law (U.S. Const. amend XIV), the right to a fair trial (U.S. Const amend VI), security against unreasonable searches, seizures, and interrogation techniques (U.S. Const. amend IV), and cruel and unusual punishment (U.S. Const. Amend. VIII). Additionally, defendants have rights to various appeals and habeas corpus procedures (e.g., argue to state or federal court that constitutional rights violations, such as official misconduct, occurred in the case) (American Bar Association, 2019). The appellate court has the authority to modify or reverse the original ruling, or to remand a new trial, upon identifying a substantive error or constitutional violation.

Despite the procedural safeguards in the Constitution and error correction mechanisms in place to prevent, detect, and address official misconduct, research has found that official misconduct is one of the leading causes for wrongful conviction in capital cases (DPIC, 2020; Gross & O'Brien, 2008; Krieger, 2011; Leo, 2005; O'Brien et al., 2019; Rafail & Mahoney, 2019). Other common errors involve witness misidentification and perjury, inadequate defense counsel and forensic errors (Gross & O'Brien, 2008; Huff 2002; Huff 2003; Kassin et al., 2012; Krieger, 2011; Leo, 2005; O'Brien et al., 2019; Olney & Bonn, 2015; Ramsey & Frank, 2007). Relevant theories such as rational choice, discretion, subculture, and the criminal justice system as an assembly line have been widely discussed to account for various acts of official misconduct

(Alschuler, 1975; Cornish & Clarke, 1986; Goldsmith, 1990; Gross, 1996; Herbert, 1998; Klein, 2006; Klockars et al., 2000; Minsker, 2009; Reiss, 1984).

Death sentences have generally decreased, yet the number of exonerations has increased since 1976 (DPIC, n.d.; Ellsworth & Gross, 2012). Many of the factors leading to exonerations seemed to be through mechanisms 'external' to the justice system (e.g., through DNA testing, involvement of a third party such as NGOs, or emergence of the real offender) (Gould and Leo, 2015). This suggests that the criminal justice system might not be effective in timely preventing, detecting, and self-correcting errors, which may contribute to both wrongful convictions and difficulties in exonerations.

Purpose and Significance of the Current Study

As the death penalty is the most serious punishment a defendant can receive, it is crucial to form a more complete understanding of the criminal process in capital cases. With the number of exonerated death row prisoners growing each year in the United States, further investigations regarding the factors involved in such exonerations is warranted. Past research has documented that official misconduct does indeed contribute to wrongful convictions, yet few studies have actually detailed the specific types of misconduct that happen and the extent to which such behavior occurs. There is also limited research on how official misconduct is detected and handled in capital cases specifically. Employing Packer's (1964) due process and crime control models, and other related criminal justice theories (e.g., rational choice theory, subculture theory) as the interpretive framework, the current study seeks to explore the relationship between official misconduct and the mechanisms that contribute to exoneration.

Using a sample of 167 exonerated death penalty cases spanning 1973 to 2019 (Death Penalty Information Center, n.d.), the current study investigates the types and extent of official

misconduct involved in exonerated death penalty cases. Since capital cases often receive more resources and attention than other criminal cases (Gross & O'Brien, 2008), there is greater information available about each case, making exonerated death penalty cases a valuable sample for examination. Manifest and latent content analyses are utilized along with an open-ended codebook to gather data on official misconduct, error correction mechanisms, and characteristics of the offender and offense. Using such data, the current study seeks to determine the types and extent of official misconduct involved in exonerated death penalty cases. The study also explores the association between official misconduct and the length and types of exoneration. More specifically, the current study examines if an exoneration takes a longer time, and if it is more likely to occur through internal criminal justice system's mechanisms (e.g., by the due process protections already in place) or by mechanisms external to the system (e.g., involving elements outside to the criminal justice system) when official misconduct is involved

There are multiple benefits for further investigating the role of official misconduct in contributing to wrongful convictions as well as the mechanisms that work to correct errors and act as a catalyst for exoneration. Little research has examined police, prosecutorial, and judicial misconduct simultaneously and in death penalty cases specifically. This study will thus help address this gap in the criminological literature, increase awareness of official misconduct, and potentially yield solutions to the problem through policy recommendations. Moreover, examining how the system detects and corrects errors in case processing may work to improve protection of individual rights, help prevent official abuse of power, and ultimately work to reduce the number of miscarriages of justice and wrongful convictions.

As such, the following chapters will provide a more in-depth discussion of official misconduct and error correction in death penalty cases. Next, chapter two includes an overview

of Packer's due process and crime control models as well as literature on official misconduct, error correction mechanisms, and exonerations. Chapter three focuses on the specific research questions and methodologies utilized in this study, while chapter four presents statistical analyses and supplemental case narratives. Finally, chapter five consists of a summary of the main findings, the limitations of the current study, and implications for future research and public policy.

Chapter 2: Due Process, Official Misconduct, and Exoneration

Following the common law tradition (Cohen, 1989; LexisNexis, 1997), the American criminal justice system is designed to prevent government abuse of power and to ensure individuals' due process rights. This implies that there are mechanisms in place to prevent, detect, and correct errors like official misconduct throughout the criminal process in order to adequately protect the rights of defendants. This chapter first provides an overview of Packer's (194) due process and crime control models, which serves as a broad interpretive framework for understanding the operation of the criminal justice system in the United States. The chapter then reviews the literature regarding police, prosecutorial, and judicial misconduct in terms of primary characteristics as well as theoretical explanations. Lastly, this chapter provides background on the death penalty system in the U.S., so as to situate discussions of exonerations and error correction mechanisms within the death penalty process.

Packer's Due Process and Crime Control Models

Packer (1964) proposed the due process and crime control models as a means of assessing the criminal process and forming a better understanding of the criminal justice system. The criminal justice system operates under the idea that the criminal process is invoked once there is presumption that a criminal law has been violated. Those who actually carry out the criminal process, namely police, prosecutors, and judiciaries, have great amounts of power and discretion in their abilities. However, there must be a balance where the criminal process is carried out appropriately and effectively while also ensuring that the due process rights of individuals are protected. This implies that governmental power must be constrained to safeguard individual rights, while also ensuring system efficiency. As such, the crime control and

due process models constitute two extremes of the same continuum, with the actual criminal process falling somewhere in between the two ends.

The crime control model centers primarily around crime control and prevention. The dominant idea is that if crime is not adequately controlled, then social controls will break down, crime will flourish, society will be in disarray, and individual freedom will be lost. Suppressing the rights of individuals to an extent is seen as acceptable in order to impede crime and preserve social order. According to Packer (1964), under the crime control model, the criminal process must work swiftly and uniformly with few procedural limitations. Police, prosecutors, and judges should be trusted to carry out their duties properly with little intervention. Police officers are primarily entrusted to determine a suspect's guilt or innocence through largely unchecked, administrative, pretrial investigative power. The later phases in the criminal process rely heavily on these pretrial decisions. Making such early initial determinations allows the crime control model to process a large number of cases efficiently while also repressing crime. Given this administrative fact-finding, Packer (1964) argues that the crime control model will ultimately result in the accused pleading guilty or eventually being exonerated. This outcome-oriented model emphasizes effectiveness, efficiency, and finality, while aiming to protect the general public from crime.

The due process model also values suppressing crime and fact-finding, but places more of an emphasis on preventing and correcting errors so as to protect the accused's rights. Errors could arise at all stages in the process and include acts such as witnesses providing inaccurate information, authorities coercing confessions from suspects, altering or suppressing evidence, or applying the law with errors. In order to minimize the impact of such occurrences on a defendant's case outcome, formal adjudicative fact-finding processes are used to more reliably

determine the guilt or innocence of a defendant. Compared to the crime control model, less of an emphasis is placed on efficiency (e.g., high clearance or conviction rate). Instead, fair and just processes and protection of individual rights are of more central importance. Packer (1964) notes that the sanctions and stigma brought on by the criminal process are "the heaviest deprivation that the government can inflict on an individual" (p. 16), which highlights the importance of procedural controls and safeguards. The fundamental assumption underlying the due process model is that a fair and just process is more likely to lead to a fair and just outcome. A balance must be struck where a defendant's constitutional rights are protected throughout the criminal process but the proper sanctions for a crime are also given. This process-oriented model thus places a greater emphasis on due process and multiple layers of procedural safeguards to ensure a fair and just outcome. Presumption of innocence and defendants' rights are at the core of this model of justice.

To achieve these ends of the due process model, the U.S. Constitution established numerous procedural safeguards. For example, the Fourth Amendment stipulates the criminally accused's right against unreasonable searches and seizures by the police, while the Fifth Amendment affords one the right not to self-incriminate, right to a jury trial, and right against double-jeopardy. The Sixth Amendment entitles a defendant the right to a speedy and public trial with a jury, legal counsel, and knowledge of the charges being brought. The Fourteenth Amendment also provides all citizens equal protections under the law.

Over the last few decades, the U.S. Supreme court has expanded and specified some of these safeguards to provide more meaningful and practical protections of the rights of the accused. For instance, regarding police interrogation, in *Lynumn v. Illinois* (1963), the Court ruled that police shall not obtain a confession through coercion (e.g., in this case, the police

claimed they would take away the defendant's child if she did not cooperate with them). *Miranda v. Arizona* (1966) established that detained criminal suspects must be informed by the police of their right to legal counsel and right not to self-incriminate. Confession evidence obtained without a Miranda warning was deemed illegal as well and could be excluded from evidence (see also *Mapp v. Ohio*, 1961). Other cases such as *Arizona v. Fulminante* (1991) and *Colorado v. Connelly* (1986) also established rules on involuntary confessions. On the right to legal representation, *Brewer v. Williams* (1977) stipulated that police officers cannot question suspects without their counsel present, unless the accused waives their right to counsel. *Gideon v. Wainwright* (1963) extended the right to legal counsel to indigent defendants who, when facing a felony charge, must have counsel provided by the government.

Rules have also been established against inducement by authorities, with *Sorrell v. United States* (1932) allowing for an 'entrapment defense' in a case if the defendant was intentionally lured into committing a criminal act by authorities. Relating to official's use of evidence, in *Brady v. Maryland* (1963), the High Court ruled that withholding evidence in a criminal case (e.g., such as police or prosecutors hiding/destroying evidence) violated a defendant's 14th Amendment right to due process. In a similar vein, in *Mooney v. Holohan* (1935), the Supreme Court ruled that prosecutors knowingly presenting perjured testimony also infringed on due process rights, while *Napue v. Illinois* (1959) held that cases with false or misleading testimony warrant a retrial. Rules regarding juror tampering have also been established, with *Remmer v. United States* (1954) holding that if allegations of juror tampering by authorities arise in a case, the accused party must disprove the allegations or demonstrate that such behavior would not have impacted the jury's decision.

Besides these specified and expanded procedural rights aimed at curbing official abuse of power and protecting the rights of the criminally accused, the criminal process has built-in safeguards to allow error-corrections. These safeguards include direct appeals, habeas corpus procedures, and executive clemency. Additionally, there is a diffusion of power where state authority of police and prosecutors is checked by members of the court, defense, and jurors.

It is important to note that the orientation of a society in respect to these models may ebb and flow over time. With the decentralized nature of the American criminal justice system, Packer (1964) notes that one jurisdiction may take more of a crime control approach, while another jurisdiction may embrace more of a due process approach. Despite the due process model being largely the hallmark of the criminal justice system in the United States, different aspects of both the due process and crime control models can be seen across the country. For example, during the civil rights movement of the 1960s and 1970s, the Supreme Court made various interpretations of constitutional rights to further protect defendants. These interpretations, like Miranda Rights, tended to align more so with the due process model (Sanchez, 2020). In contrast, during a shift to greater punitiveness in the 1980s and 1990s, policies such as California's Three Strike Sentencing Laws were more oriented with the crime control model (Hayes & Lynn, 2020; Jones & Newburn, 2002; Sanchez, 2020). Additionally, relatively speaking, the due process model typically dominates the law enforcement style in smaller, rural areas where citizens tend to have closer relationships with officials, whereas in larger, urban areas the crime control model tends to prevail (Weisheit et al., 1995).

Overall, the larger socio-cultural shifts (e.g., civil rights movement, punitiveness) and varying demographic challenges may interact with agency goals, cultures, and thus further

impact the behavior of officials. The following section reviews the specific institutional goals, subcultures, and official misconduct by the police, prosecutors, and judiciary.

Official Misconduct: Types, Extent, and Explanations

Official misconduct, in this study, refers to unethical or illegal behavior by police, prosecutors, and judges in capital cases. Official misconduct encompasses a wide array of behaviors and has been documented in both non-death penalty and death penalty cases. In the following sections, an overview of police, prosecutorial, and judicial misconduct will be provided in addition to a variety of possible explanations for such actions.

Police Misconduct

Police misconduct can be defined as any inappropriate behavior on the part of any law enforcement officer that is either illegal or immoral (Champion, 2001). For example, destroying evidence relating to a case is illegal (e.g., violates 14th amendment due process rights), while being misleading about the facts of a case during interrogation could be considered unethical but might not be deemed illegal. Examples of misconduct include verbal abuse (e.g., inappropriate comments/remarks) (Bishopp et al., 2016), intentionally trying to influence the outcome of a case (Skogan & Meares, 2004), framing, torturing, or coercing confessions from those in custody (Bishopp et al., 2016; Butler, 2014; Findley, 2008; Hamilton & Foote, 2018; Ritchie & Mogul, 2008; Son & Rome, 2004), engaging in bribery (Donner et al., 2016; Kane, 2002), and committing perjury during testimony (Covey, 2013). A multitude of explanations have been proposed to explain such police misconduct, including the rational choice perspective and discretion, police subcultures and corruption, the police as a public institution and the crime-fighter image, and police competence.

Types and Extent of Police Misconduct.

According to a recent report from the National Registry of Exonerations on official misconduct, of 2,400 exonerated criminal cases, 35% involved some kind of police misconduct (Gross et al., 2020). Among these incidences of misconduct, 80% were related to witness tampering. Such actions often involved threatening witnesses, procurement of false testimony, and inducement of suspect identification. More specifically, an officer tainting a witness identification (e.g., telling a witness which suspect to pinpoint) occurred in about 6% of exonerated cases.

Police concealing or tampering with evidence or information was also prevalent, constituting 33% of the 2,400 cases analyzed (Gross et al., 2020). Evidence fabrication occurred in about 10% of exonerated cases, with officers falsifying forensic reports, manipulating evidence, and potentially destroying evidence. In about 4% of cases, police planted evidence pertaining to the case and then claimed to have discovered it naturally. Police perjury also played a role in 13% of the cases. Additional studies have noted police perjury as a contributing factor for false convictions as well (Covey, 2013; DPIC, 2019; Gross & O'Brien, 2008). These actions occurred most often in cases involving murder, which is the crime comprising the majority of death penalty cases (DPIC, 2020). Harmon (2001) further argues that misconduct (e.g., tampering with evidence, improper investigative strategies) often occurs in capital cases that are eventually overturned or exonerated.

Concerns regarding false confessions have grown in recent years, especially with forensic testing leading to exonerations in instances where the suspect confessed (Findley, 2008). Gross et al., (2020) found that a false confession contributed to a wrongful conviction in 12% of 2,400 cases, with a majority of such confessions resulting from misconduct. In about 2% of these cases,

police falsified entire confessions, pushed defendants who were either illiterate or spoke a different language to sign a document which was later revealed to be a confession, or claimed an oral but unrecorded confession was made, meaning evidence of the confession could not be used in court (Gross et al., 2020). Covey (2013) also deemed false confessions to be a major factor related to wrongful convictions. Confessions may be coerced by physical (e.g., inflicting pain, beatings, suffocation, injury) and/or psychological torture (e.g., mental stress, threats, humiliation, sleep deprivation) (Definition of Torture, 2004). Psychological torture techniques are often used by police due to little visible evidence of mistreatment (e.g., cuts, bruises, wounds) while still creating a sense of hopelessness, fear, and anxiety (Butler, 2014). False confessions tend to be more prevalent in homicide cases and among juveniles and individuals with mental illness (Innocence Project, 2013; Kassin, 2014; Leo, 2009; National Registry of Exonerations, 2015). While there is no exact known rate for false confessions, the Innocence Project (2011) estimates that false confessions may have contributed to 25% of cases exonerated by DNA. This estimate does not even account for cases exonerated by other means or cases that have not yet been exonerated. While coercive interrogation techniques may work to obtain a truthful confession in some instances, such methods present the risk of having an innocent suspect falsely confess and result in a wrongful conviction.

Additionally, acts of misconduct have the potential to disproportionately impact minority groups (Tieger, 1971). Gross et al., (2020) explains that Black defendants were more likely to encounter official misconduct during case processing than Whites (57% versus 52% respectively). When considering death penalty cases specifically, these racial differences were further exacerbated (87% versus 68%). Given the racial composition of the death row, where

there is a fairly even distribution between White (42.1%) and Black (41.6%) inmates, these trends are striking (DPIC, 2020).

Explanations for Police Misconduct.

Several plausible explanations have been explored to address police misconduct. Below is a review of four main explanations: rational choice and discretion, the police subculture, police as a public institution coupled with the crime fighter image, and police competence and training.

Rational choice perspective follows the utilitarian and deterrence model (Beccaria, 1764; Cornish & Clarke, 1986). This framework assumes that rational individuals make decisions based on a cost-benefit analysis. For example, if the detection rate is low, punishment is light, and the reward is high, police officers are more likely to engage in misconduct. This cost-benefit calculation is often complex, involving various officer motivations, individual situational contexts, and institutional objectives. Such considerations likely impact how police officers utilize discretion. Police exercise discretion in all sectors of their responsibilities including service, order maintenance, and law enforcement (Reiss, 1984, Skogan & Meares, 2004). Most pertinent to the current study is police discretionary power in making arrests and gathering evidence. In the reality, how police react to any given situation (e.g., arrest, investigate, do nothing) is often based on alternative courses of action and may often involve an informal or unorthodox response (Reiss, 1984). The course of action may be determined by a variety of factors: organizational goals (e.g., high clearance rate for violent crimes), managerial priorities (e.g., resources, training, and promotion focusing on detecting and combating violent crimes), the specific situational context, and individual officers' values and life experiences (e.g., holding beliefs such as the ends justify the means, and differential treatment based on race or criminal

history is acceptable). If unethical or illegal conduct promotes institutional goals, fits managerial style and the situation, and aligns with an officer's beliefs, an officer may be more likely to exercise discretion to engage in misconduct as the reward is likely to be high while the punishment is minimal.

These perspectives may be further intensified by the police subculture. Due to the unpredictable and potentially dangerous nature of policing, officers tend to form strong bonds with their colleagues (Goldsmith, 1990; Herbert, 1998). This environment reinforces beliefs that officers will provide support against threats and even "maintain secrecy during internal investigations", where "loyalty and solidarity" are exchanged for "considerable individual autonomy" when carrying out their duties (Goldsmith, 1990, pp. 93-94). As police bond with one another and cultivate the 'us' subculture, they may develop distrust or even suspicious attitudes towards the public (the public then becomes a separate 'them' group). When these ideas are coupled with frequent interactions with the public that could be uncertain or unsafe, officers may further fall into the 'us versus them' mentality, which may provide justification for prejudicial and unfair treatment of individuals (Herbert, 1998, Tieger, 1971). Secrecy, also often referred to as the code of silence (Klockars et al., 2000), could be considered a by-product of police subculture (Goldsmith, 1990). Secrecy also tends to breed corruption, particularly given that the police profession involves high discretion and low visibility decision making (Skogan and Meares, 2004).

As a public institution, the police are politically responsible for public safety. Policing has experienced a "strategic shift" (Reiss, 1984, p. 83) away from providing service and maintaining order to enforcing the law in recent decades. As a result, police academy training today emphasizes a knowledge of criminal law, apprehensions, and investigations more so than

daily order-maintenance and routine interactions with the public. Solving crime thus became a political mandate dictating resource allocation, training and promotion priorities. When holding the view of police as 'crime fighters', police may view due process regulations as a hindrance to effective law enforcement. According to Goldsmith (1990), officers tend to reinforce the belief that using illegal methods to solve a crime is acceptable behavior. In some instances, officers even believe doing so is "necessary to maintain order" and that "due process must occasionally be sacrificed if those who break the law are to be apprehended" (p. 94). With this crime-fighter image, police are under tremendous pressure to solve crimes, particularly violent crimes such as murder. Nationwide, the clearance rate for homicides is just upwards of sixty percent (Davis et al., 2014; Davis et al., 2015; Keel et al., 2009; McClellan, 2008). While pressure to solve homicides may increase clearance rates, it can also lead to misconduct or errors. Officers "may be tempted to cut corners, to jump to conclusions, and … manufacture evidence to clinch the case" (Gross, 1996, p. 478). The risk of these actions increases even more when a crime is particularly heinous or garners large amounts of attention in the news media as multiple parties (e.g., victim's loved ones, policy agency administrators, the public generally) may demand something be done about the crime.

It is also important to note that police misconduct does not constitute only intentional acts. Questionable actions by officers could also be the result of incompetence or ignorance instead of intentional malice. For example, a substantial proportion of police shootings are the product of a lack of training or experience which culminate in an officer making a split-second decision (Fyfe, 1989). If the situation was better planned for, if training was improved, or if the officer thought more clearly through their course of action, the shooting likely could have been prevented in the first place. To better ensure these actions are mitigated in the future, police

training should thus focus more on enhancing officers' skills and discretionary decision-making abilities. In addition, accountability is crucial as without consequences, police misconduct is unlikely to be deterred. Only approximately 20% of officers who engaged in misconduct from a sample of 2,400 exonerated cases (about 35% of which involved police misconduct) faced some disciplinary actions (e.g., consequences from the police agency, convicted of a criminal offense) (Gross et al., 2020). This number likely does not even account for the majority of police misconduct unknown to the agency or the public.

Prosecutorial Misconduct

Besides being generally defined as unethical or illegal behaviors, prosecutorial misconduct was specifically considered within the context of inducing a decision "not based on a rational assessment of evidence" (Alschuler, 1972, p. 643) and actions which "undermined the fairness of the proceeding or confidence in the jury's verdict" (Henning, 1999 p. 722). For instance, a jury deciding on a case where a prosecutor intentionally concealed exculpatory evidence would constitute both an irrational assessment of evidence and an unfair trial. Actions of misconduct include erroneously admitting or excluding evidence in a case, improper cross-examinations, arguments, or closing statements, withholding or manipulating evidence, and jury tampering (Alschuler, 1972; Brewer, 2001; Kirchmeier et al., 2009; Merrit, 2009; Minsker, 2009; Plantania & Moran, 1999; White, 2002, Yaroshefsky, 2004). Explanations as to why prosecutors may engage in misconduct are often similar to police, namely discretion, public and professional pressure to close cases and earn convictions, and a lack of accountability.

Types and Extent of Prosecutorial Misconduct.

Prosecutorial misconduct has been well documented in contributing to wrongful convictions and represents one of the primary reasons for breakdowns in the adversarial system (Brewer, 2001; Kirchmeier et al., 2009; Yaroshefsky, 2004). For example, in Texas, prosecutorial misconduct was estimated to be present in 60% of cases in the appeals court (Alschuler, 1972). Among 2,400 exonerated cases, about 30% involved prosecutorial misconduct (Gross et al., 2020). Such misconduct most often took place in homicide cases (72%). Prosecutorial misconduct was also found to be the second most common type of error in capital cases following inadequate defense (Yaroshefsky, 2004). Despite its prevalence, few studies have examined prosecutorial misconduct in death penalty cases specifically.

The most common type of prosecutorial misconduct by far is hiding evidence (Gross et al., 2020; Kirchmeier et al., 2009; Merrit, 2009; Minsker, 2009; Yaroshefsky, 2004). There has been a long history of prosecutors hiding evidence and engaging in due process violations (Merrit, 2009). Federal courts at various levels process hundreds, if not thousands, of cases involving Brady violations annually (Kirchmeier et al., 2009; Merrit, 2009). In some cases, murder convictions were thrown out entirely due to hidden or falsified evidence (Merrit, 2009). Based on information from the Innocence Project, prosecutorial misconduct such as suppressing or destroying evidence played a role in about half of exonerated cases (Yaroshefsky, 2004). In a sample of 2,400 exonerations, concealing exculpatory evidence was the leading type of official misconduct, comprising 44% of cases, with prosecutors being responsible for 73% of such actions. Evidence manipulation has contributed to death sentences as well (Minsker, 2009). To sway the case outcome, prosecutors also introduce inadmissible evidence during legal proceedings (Alschuler, 1972).

Prosecutors also engage in misconduct within the courtroom. Accounting for 14% of 2,400 exonerated cases, prosecutorial trial misconduct typically encompasses perjury (8%), lying (4%), and improper questioning during cross-examinations (1%) (Gross et al., 2020). Prosecutors also engaged in witness tampering, procuring false testimony, and threatening a party in the case to participate in a favorable manner. Improper opening statements, arguments, and/or closing statements were also commonly identified (Alschuler, 1972; Brewer, 2001; Gross et al., 2020; Kirchmeier et al., 2009; Minsker, 2009; Platania & Moran, 1999; White, 2002). Improper closing arguments by prosecutors have been found to significantly increase the likelihood of a death sentence being recommended in a case (Platania & Moran, 1999). In a similar vein, jury tampering makes a death sentence more likely, particularly involving attempts to mislead or inflame the jury by prosecutors (Alschuler, 1972; Minsker, 2009). Misleading arguments about the potential punishment (e.g., death, life in prison, a specific release date), inappropriate justifications for a punishment (e.g., justifying a punishment with religion or the safety of society instead of the facts of the case), speculation about the defendant, accusatory statements regarding the defendant's guilt or truthfulness, and derogatory comments in general (e.g., comments pertaining to race, religion, nationalism) could bias a jury's decision-making (Alschuler, 1972; Brewer, 2001; Gross et al., 2020; Minsker, 2009; White, 2002). In addition, prosecutorial misconduct has tainted the jury selection process, such as excluding jurors based on race (Kirchmeier et al., 2009).

Explanations for Prosecutorial Misconduct.

Given the pervasiveness of prosecutorial misconduct, possible explanations for such behavior have been proposed. The following section provides an overview of the primary

explanations of rational choice and external pressure, discretion in legal procedures, and professional accountability.

In a similar vein to police, rational choice and political pressure could both play a role in a prosecutor's decision to engage in misconduct. When external pressure to close a case is high, and higher conviction rates are more likely to enhance a prosecutor's professional reputation, monetary rewards, and promotional opportunities, misconduct may be more likely (Alschuler, 1975, Minsker, 2009). If an unethical or illegal method is the only way to achieve the desired results, and the risks associated with such misconduct are low, then prosecutors are more likely to engage in the behavior. This may be especially true for high profile cases when public pressure to convict is high.

Prosecutors also have unchecked discretion in deciding who to bring charges against and at what level of severity (Albonetti, 1987; Merrit, 2009; White, 2002). Prosecutors tend to favor pursuing cases with more certainty (e.g., murder cases with more witnesses, evidence) (Albonetti, 1987), so if a case is weak, a prosecutor may be motivated to engage in misconduct to ensure a conviction. Additionally, prosecutors are less willing to assist with exoneration proceedings of cases with allegations of official misconduct (Bowman & Gould, 2020; Webster, 2019). As such, prosecutorial discretion may impact not only the initial charging and sentencing procedure, but the process leading to an exoneration as well.

Contrary to police misconduct being primarily the product of a lack of training or experience (Fyfe, 1989), prosecutorial misconduct is often either negligent or intentional (Yaroshefsky, 2004). Despite this, prosecutors are rarely held accountable (Brewer, 2001, Yaroshefsky, 2004). From a sample of several thousand exonerated cases, of which nearly half involved prosecutorial misconduct, only about 4% of those prosecutors received some kind of

discipline (e.g., organizational consequences from the district attorney's office, being disbarred, or convicted) (Gross et al., 2020). This lack of consequences and accountability calls into question not only the power of prosecutors, but also the capacity of the justice system to detect and respond to such misconduct.

Judicial Misconduct

Judicial misconduct is defined as "conduct prejudicial to the effective and expeditious administration of the business of the courts" (Judicial Conduct and Disability Act of 1980, 28 U.S.C §§ 351-364). Essentially any action that may impede the fair and proper processing of a criminal case could be considered judicial misconduct. Acts of misconduct by the judiciary typically involve inappropriate comments or behaviors in the courtroom, personal bias in decision-making, bribery, and suppressing or manipulating evidence (Brauer & Loh, 2001; Buckley, 1969; Edwards, 1989; King, 1978a). Compared to investigations on police and prosecutorial misconduct, a paucity of research exists regarding judicial misconduct. Accordingly, there are limited theoretical explanations for such actions, which typically relate to an over-burdened and under-resourced criminal justice system (Alschuler, 1972).

Types and Extent of Judicial Misconduct.

Judicial misconduct has long existed historically and has become more prevalent over time, as documented by the American Bar Association (Brauer & Loh, 2001; Edwards, 1989; Weingarten, 1987). Despite this, the specific extent and nature of judicial misconduct remain largely unknown due to the scarce research on the issue.

While few statistics exist in describing the extent and types of judicial misconduct, existing studies do suggest that judicial misconduct involves providing incorrect instructions to

other members of the court (e.g., the defense, witnesses, jury), making inappropriate statements in the courtroom, outwardly demonstrating bias towards either the prosecution or the defense, and exploiting defendants with poor legal counsel (Alschuler, 1972; King, 1978a; Klein, 2006). Other misconduct includes intentionally trying to influence a jury or the overall outcome of a case, lacking knowledge of specific rules or procedures, obtaining information extra-legally or incorrectly, and showing inappropriate emotions or reactions during a trial (Buckley, 1969). Worse yet, judicial misconduct such as committing forgery/fraud (e.g., misusing court funds, falsifying evidence), bribery, violating rules regarding conflicts of interest, threatening defendants, and committing perjury may constitute a crime, depending on the nature and severity of the offense (Brauer & Loh, 2001; Edwards, 1989; King, 1978a). It is worth noting, however, that minor forms of judicial misconduct tended to exert greater influence on case outcomes than severe misconduct, simply because of their sheer volume (King, 1978a).

Explanations for Judicial Misconduct.

Below is a summary of the key theoretical explanations for judicial misconduct. These explanations mainly center around an overburdened criminal justice system, discretion and the rational choice perspective, and few consequences for malfeasance.

A large caseload and strained time and resources are the main explanations for judicial misconduct (Alschuler, 1972). Similar to the public and professional pressure faced by police and prosecutors, judges may feel external pressure to quickly process cases through the criminal justice system. The notion of 'assembly line justice' (Klein, 2006) could strain court's resources and manpower, making it difficult for judges to more carefully and faithfully carry out the law. This could also potentially undermine defendant's due process rights.

Just as police and prosecutors have wide discretionary power and have the ability to engage in rational choice, judges maintain largely unquestioned power in the courtroom (Buckley, 1969). Even with structured sentencing guidelines (Wilkins et al., 1978), judges still have the ability to decide the final outcome of a case. This is especially relevant in death penalty cases where after a jury votes to impose life in prison, a judge could override that decision and issue a death sentence instead (DPIC, 2016; EJI, 2011). If a sentencing decision was made out of prejudice (e.g., showing a pattern of overriding a jury verdict and replacing life with a death sentence only for minority defendants) or political expediency, the judge could be on the verge of committing judicial misconduct. If the potential benefits (e.g., an increased chance of being re-elected or re-appointed, personal benefit) outweigh the risks, judicial misconduct could occur.

Furthermore, the inherent organization and operation of the criminal justice system could play a role in facilitating judicial misconduct. First, accusations of judicial misconduct are rarely investigated (Klein, 2006). This is partly because the court tended to view these complaints as defendants' disdain about the outcome of their case as many claims could not be substantiated (Weingarten, 1978). It may thus be more difficult for defendants to prove judicial misconduct occurred. Second, judges are protected by judicial immunity in many instances, making it difficult to hold the judiciary accountable (King, 1978a). For example, impeachment of state and federal judges often only occurs for major crimes such as bribery. A total of 15 federal judges have been impeached for malfeasance in the history of the United States (Edwards, 1989; United States Courts, n.d.). As such, the filter meant to catch judicial misconduct may be minimal or even miss instances of misconduct altogether. Of police, prosecutors, and judges, judicial officials also tend to face the fewest consequences for alleged actions of misconduct (Alschuler, 1972).

In sum, official misconduct involving police, prosecutors, and judges has been documented in criminal cases and connected to wrongful convictions, both in terms of contributing to initial wrongful convictions as well as forming a potential barrier for exonerations. Actions of misconduct often involved witness and evidence tampering, coercing confessions, and actively attempting to influence a jury or case outcome. Explanations for misconduct centered around rational choice coupled with discretion, public and professional pressure, and/or an overburdened criminal justice system. Despite the prevalence of official misconduct, police, prosecutors, and judges often faced few, if any, consequences.

Error Correction in Death Penalty Cases

The emphasis on due process and protection of defendant's rights in criminal justice is a central consideration when evaluating the death penalty and exonerations in America. As concern over potential miscarriages of justice increased, a need to better understand wrongful convictions and exonerations grew as well. Research has widely documented the factors contributing to both wrongful convictions as well as exonerations in capital cases. As such, the sections below provide an overview of the death penalty in America, wrongful convictions, and the error correction mechanisms that act as a catalyst for exoneration.

The Death Penalty in America

Death penalty laws have evolved throughout the recent history in the United States. The Supreme Court ruled in *Furman v. Georgia* (1972) that the random imposition of the death penalty was a cruel and unusual punishment, and was neither rational nor objective, thus making it unconstitutional. In *Gregg v. Georgia* (1976), the Court found that Georgia's death penalty system satisfied the constitutionality test, as it had a two-tied system involving a guilt and

sentencing phase, and required aggravating circumstances for all death sentences. Concurrently, *Woodson v. North Carolina* (1976) found mandatory death sentences violated the eight and fourteenth amendments. Later, *Ford v. Wainwright* (1986) and *Atkins v. Virginia* (2002) ruled that executing those considered insane or mentally ill was unconstitutional, while *Roper v. Simmons* (2005) prohibited minors under the age of eighteen to be executed.

Public opinion regarding the death penalty has shifted over time. A Gallup Poll found that 66% of respondents were in favor of the death penalty in 1976, compared to 80% in 1994, 65% in 2009, and 56% in 2019. Retribution has been the primary justification for the death penalty in the United States (Bohm, 1992; Finckenauer, 1988; Finkelstein, 2002; Oldenquist, 2004). Offender blameworthiness, revenge, and proportionality have been cited as the main reasons for supporting the death penalty in murder cases. Deterrence has also been deemed as an important function of the death penalty so long as it is swift, certain, and severe (Paternoster & Bachman, 2000). Yet the actual deterrent effect of the death penalty is debated, with some studies finding its deterrent effect on violent crimes (Dezhbakhsh & Rubin, 2000; Ehrlich, 1975; Shepherd, 2005), while other studies have shown the brutalization effect (e.g., more murders occurred after an execution) (Bailey, 1998; Bowers & Pierce, 1980; Cohen-Cole et al., 2006; King, 1978b). Nevertheless, the true impact of the death penalty on crime may be likely unknown given the rarity of executions (Donohue & Wolfers, 2006).

Despite the majority of the public lending support for the death penalty, both death sentences and executions have generally decreased over time. For example, over the 25-year period from 1994 to 2019, the annual number of death sentences imposed decreased from over 300 in 1994 to 34 in 2019 (DPIC, 2019). In addition, when the moratorium on the death penalty

was lifted in 1977, 35 states reinstated the death penalty. By the end of 2019, only 28 states as well as the federal government retained use of the death penalty (DPIC, 2020).

By the end of 2019, there were over 2,600 prisoners on death row (DPIC, 2019; DPIC 2021). These inmates were predominantly male (98%). White and Black defendants accounted for 41% and 42% of the death row population respectively, while Hispanics accounted for 14%. More broadly, the total prison population in the United States is 57.6% White, 38.5% Black, and 3.9% other race/ethnicities (Federal Bureau of Prisons, 2021), while the overall U.S. population is 76.3% White, 13.4% Black and 10.2% other race/ethnicities (U.S. Census Bureau, 2019).

Over 1,500 individuals have been executed since the 1970s, reaching a high of 98 executions in 1999. However, the number of executions has generally decreased, with 46 executions in 2010 and 22 executions in 2019. The majority of executed defendants were White (56%), while 34% were Black and 8% were Hispanic. The victims in these death penalty cases were overwhelmingly White (75%). Southern states (e.g., Texas, Florida) tended to carry out the majority of executions, while Northern states (e.g., New Hampshire, New Jersey) have not executed a single defendant since 2010. All of the individuals currently on death row were convicted for murder, even though a variety of capital crimes remain on the lawbook (e.g., treason, aggravated kidnapping, drug trafficking, aircraft hijacking, placing a bomb in a bus terminal, espionage, and aggravated assault) (DPIC, n.d.).

Exoneration and Error Correction Mechanisms

Exoneration is defined as when a defendant is factually innocent, or factually guilty but not legally liable for the criminal action due to a constitutional rights violation or other errors (The National Registry of Exonerations, n.d.). An exoneration may be the result of a judicial acquittal, prosecutorial dismissal, or executive clemency (e.g., through a gubernational or

presidential pardon). While this definition means that the defendant is exonerated from being criminally liable for the crime and is not legally guilty, the defendant, however, may or may not be factually guilty (see also Gross & O'Brien, 2008).

A capital case moves through the criminal justice system in several steps. The capital case first begins with the pretrial investigation phase (e.g., police gather information and evidence, arrest a suspect, prosecutor brings charges, preliminary hearing occurs, indictment), then the guilt phase trial (e.g., jury selection, prosecution and defense present arguments, jury verdict), and followed by the penalty phase trial (e.g., jury gives sentencing recommendations which are typically life in prison or death, and then the judge hands down a sentence) (MSU & DPIC, 2000). After the initial death sentence by the original trial court, the defendant can file direct appeals to the state appellate court or Supreme Court; and/or simultaneously file habeas corpus petitions at state or federal levels to seek a retrial, reduced sentence, or an acquittal (ACLU, 2021; FindLaw, 2019; Mince-Didier, 2021). For example, federal trials would then be addressed by a federal appeals court. Additionally, a defendant can seek clemency from a state governor or the U.S. President to defer execution, reduce the sentence, or grant a pardon. If all of these efforts fail, an execution would be carried out. In sum, this is a two-tiered trial system, along with a multi-layered appeals system, which are designed to detect and correct errors in criminal cases.

Studies have examined the extent and characteristics of exonerated criminal cases. While the true rate of wrongful convictions remains unknown (Gross et al., 2014; Huff et al., 1986; Huff, 2003), rate estimations range between 0.5% and 20% (Ramsey & Frank, 2007). The National Registry of Exonerations (2021) reported over 2,750 exonerations occurred since 1989, with about half the exonerees being Black (50%), over one third being white (36%), and less

than one fifth (14%) being Hispanic or another race/ethnicity. These patterns were largely

consistent with data from recent years (Gross et al., 2017; O'Brien et al., 2019). Another study

identified about 8% of exonerations (out of about 1,400 exonerees) involved women (Jackson &

Gross, 2014), which is noteworthy given that women constituted only 1.1% of executions (DPIC,

2021). Additionally, exoneration processes could take up to an average of 20 years (Gross &

O'Brien, 2008). Cases involving longer pre-trial investigation, with official misconduct, and

non-White defendants tended to take a longer time to exonerate (Gross et al., 2017; Parker et al.,

2003; Rafail & Mahoney, 2019).

For death penalty cases specifically, of a sample of 350 capital cases from 1900 to 1985,

approximately 40% of defendants were wrongfully convicted (Bedau & Radelet, 1987; Gross,

1998). Based on data from 1973 to 1995, studies found over two-third (68%) of cases involved

errors, with 7% of defendants being found as innocent (Liebman et al., 2000). Another study

estimated 1.5% of the 7,543 capital defendants were exonerated from 1973 to 2004 (Gross &

O'Brien, 2008). Since 1973, 185 exonerations have been reported, averaging about 3.9 capital

exonerations annually (DPIC, 2021). In addition, at least 23 individuals were believed to be

wrongfully executed in the United States, with the factors that contributed to the wrongful

executions being similar to those that result in wrongful convictions (e.g., witness error, official

misconduct, false confessions, ineffective counsel) (Huff, 2002). Overall, capital cases tended to

generate both higher error and error detection rates (Gross & O'Brien, 2008).

Past studies have also examined various factors contributing to an exoneration. First,

errors may be discovered and corrected through normal criminal justice processes. Governmental

institutions and legal professionals play an important role in error corrections. For example, in a

sample of 260 wrongful convictions, a sizeable number of cases resulted in exoneration due to

defense lawyers (24%), the police (13%), prosecution (9%), and judges (13%) (Gould & Leo, 2015). Furthermore, while both state and federal courts handle capital cases, procedures at the state level account for the majority of exonerations. For example, 90% of 2,370 erroneous death sentences from 1973 to 1995 were either overturned or reversed by state judges (Liebman et al., 2000). Nevertheless, police and prosecutors were also found to hinder the exoneration process in 13% of cases (Gould & Leo, 2015), when cases were uncertain, severe, or involved allegations of professional misconduct (Bowman & Gould, 2020; Webster, 2019).

Second, the emergence of new evidence, typically through forensic science, has been pinpointed as a means for correcting error and leading to exoneration. DNA testing is a key component in facilitating an exoneration (Ramsey & Frank, 2007), which contributed to the majority (79%) of 260 wrongfully convicted cases examined in Gould and Leo (2015), as well as 13% of exonerations between 1973 and 2004 in Gross et al. (2014). DNA testing was also found to increase the chance of exoneration in murder cases (Olney & Bonn, 2015) and a quicker exoneration process (Rafail & Mahoney, 2019). The actual offender being discovered or coming forward represented another major factor leading to successful exonerations (Gould & Leo, 2015). Despite the importance of forensic evidence, however, many jurisdictions lacked resources to analyze the evidence collected, resulting in delays in the error detection and correction process.

Third, organizations and individuals outside of the criminal justice system have also been credited as contributing to exonerations. Sometimes criminal justice agencies lack the incentive, resources, or manpower to carry out an exoneration (Bedau & Radelet, 1987). Non-governmental organizations (NGOs) such as the Innocence Project can fill the gap by providing resources and expertise (e.g., pro-bono defense counsel, DNA testing) (Rafail & Mahoney, 2019). More

specifically, innocence organizations such as the Innocence Project and Centurion Ministries helped identify and correct 34% of wrongful convictions (Gould & Leo, 2015). Such NGO involvement has increased the likelihood of exoneration and a quicker process. These are currently over 53 innocence organizations in the United States, which have assisted with over 500 exonerations since the late 1990s (O'Brien et al., 2019; Thompson et al., 2011). The criminal defendant themselves also plays an essential role in the exoneration process, as Gould and Leo (2015) found that 30% of capital exonerations involved defendants' efforts such as filing court appeals, seeking reinvestigation of their case, advocating for their own innocence, and trying to obtain assistance from innocence organizations. Yet defendants rarely sought exoneration alone; other external individuals such as the defendant's family and friends, professors, journalists, and citizens have been credited with assisting defendants and facilitating case exonerations (Bedau & Radelet, 1987; Gould & Leo, 2015). However, NGOs and other entities also face problems such as being underfunded, understaffed, and lacking cooperation from criminal justice officials (Krieger, 2011). As such, whether and to what extent a defendant receives assistance from an NGO, a university, or the media may largely depend on case quality, public interest, and other forces outside the control of criminal justice professionals.

Overall, due process and protecting rights of defendants are the hallmark of the criminal justice system in the United States. While errors are inevitable in any criminal process, more errors, particularly those involving official misconduct, are likely to occur when an outcome-oriented system precedes a process-oriented one, especially when coupled with a political mandate of crime-fighting and institutional rewards for high clearance and conviction rates. It has been widely documented that police, prosecutorial, and judicial misconduct contribute to wrongful convictions in criminal cases generally and capital cases specifically. Few studies,

nevertheless, have detailed the specific types and extent of official misconduct in death penalty cases. Furthermore, there is a scarcity of research examining the possible connection between official misconduct and error correction mechanisms. As such, using all exonerated death penalty cases from 1973 to 2019, the current study will fill the void by exploring the relationship between official misconduct and the length and types of exoneration.

Chapter 3: The Current Study

Using a sample of 167 exonerated death penalty cases, the current study seeks to investigate how official misconduct contributes to wrongful convictions and the error correction mechanisms that result in an eventual exoneration in such cases. In particular, the current study employs manifest and latent content analysis methods to present quantitative analysis and qualitative case narratives on specific types of misconduct engage in by police, prosecutors, and judges. Investigating the factors that contribute to wrongful convictions and exonerations may be beneficial for both improving the functioning of the criminal justice system as well as for better protecting defendants due process rights. Accordingly, this study attempts to address the following interrelated questions:

1. What extent of exonerated death penalty cases involved official misconduct?
2. What specific types of police, prosecutorial, and judicial misconduct were involved?
3. Which individuals, agencies, or events served as a catalyst for exoneration?
4. Was the exoneration by mechanisms internal or external to the criminal justice system?
5. Does official misconduct impact the catalyst and length of exoneration?

Data Sources and Sample

The data for the present study involves all of the 167 exonerated death penalty cases from 1973 to 2019. These cases were drawn from the Death Penalty Information Center's (2020) *Description of Innocence Cases* list, which is updated on a continual basis to catalogue exonerated death penalty cases in the United States. Each entry on the list includes the name of the defendant, the state where the conviction occurred, the year of initial conviction, the year of

exoneration, links to key court rulings or news reports, and a brief summary of the case. This

information was used to guide further Internet searches for additional data on each case.

Researchers reviewed all the documents linked to each case, and used keywords such as

the name of the defendant and 'exonerated death penalty case' to search Google for additional

documents related to these cases. The majority of the documents generated from the searches are

from websites presented in Table 3.1.

Table 3.1 Summary of Data Sources

Website	Summary
ABA https://www.americanbar.org/	Provides various resources for advancing the legal professional and delivering justice.
AP News https://apnews.com/	News organization which covers a variety of stories, including those related to criminal justice and capital cases.
BBC Two NewsNight https://www.bbc.co.uk/programmes/b006mk25	A news network which covers current events, including those related to criminal justice and capital punishment.
Casetext https://casetext.com/	Compiles various law documents, such as statutes, rulings, briefs, and case summaries.
Chron https://www.chron.com/	A news agency providing information on a variety of events that occur in Texas.
Columbus Alive https://www.columbusalive.com/	A news agency providing information on a variety of events that occur in Ohio.
Commission on Capital Cases http://www.floridacapitalcases.state.fl.us/	Provides court actions and case summaries for capital cases in Florida.
Convicting the Innocent https://convictingtheinnocent.com/	Catalogues information on exonerations involving DNA evidence and testing.
CourtListener https://www.courtlistener.com/	Compiles a variety of cases, legal opinions, and documents from state and federal courts.
Death Penalty Information Center https://deathpenaltyinfo.org/	Non-profit organization that compiles a variety of information relating to capital punishment.
Equal Justice Initiative https://eji.org/	Non-profit organization that provides legal representation to defendants, case summaries, and information relating to the miscarriages of justice.
FindLaw https://lp.findlaw.com/	Compiles information on various cases, court proceedings, opinion summaries, and other legal documents.
Forejustice http://forejustice.org/search_idb.htm	Catalogs information on innocent defendants using court reports, books, and news articles.
GovInfo https://www.govinfo.gov/	Database containing various government and legal documents provided by the U.S. Government Publishing Office.
HuffPost https://www.huffpost.com/	A news agency covering a variety of topics, including matters related to politics and the criminal justice system.
Innocence Project https://innocenceproject.org/	Provides information on wrongfully convicted defendants who were eventually exonerated.
Justia https://law.justia.com/	Provides court decisions and various legal documents at the state and federal levels.
Leagle https://www.leagle.com/	Provides decisions and opinions from state, federal, supreme, trial, appellate, and other courts.
Murderpedia https://murderpedia.org/	Compiles information on murder cases, including data on defendants, court proceedings, and exonerations.
Northwestern Center on Wrongful Convictions https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/	Provides legal services to wrongfully convicted defendants as well as documentation of such cases.
Occasionaljustice http://occasionaljustice.com/Larry.html	Provides a summary of a specific exonerated defendant, Larry Hicks.
Prison Legal News https://www.prisonlegalnews.org	Created by the *Human Rights Defense Center* to document criminal justice issues, court rulings, and legal cases primarily involving prisoners' rights.
Shujaa Graham http://shujaa.org/biography.html	A biographical website from a specific defendant, *Shujaa Ernest Graham*, documenting his own experience as an exonerated capital defendant.
The National Registry of Exonerations https://www.law.umich.edu/special/exoneration/Pages/about.aspx	A collaboration between various universities focusing on compiling information on every exonerated defendant in the United States.
The Oklahoman https://oklahoman.com/	A news agency providing information on a variety of events that occur in Oklahoma.
Victims of the State http://vots.altervista.org/	Case summaries of wrongful convictions and other incidents of errors in the criminal justice system.
vLex Case Law https://case-law.vlex.com/	Compiles various court decisions and case documents.
Wikipedia https://en.wikipedia.org	Provides summaries of various exonerated capital cases. Primarily used to find additional sources.
Witness to Innocence https://www.witnesstoinnocence.org	Documents information from exonerated capital defendants themselves in an effort for criminal justice reform and death penalty abolition.

Based on Table 3.1, the sources used in this study constitute a wide range of information and perspectives relating to criminal justice issues. Prior research (Bevan et al., 2013; Budak et al., 2016; Pannucci & Wilkins, 2010; Terris et al., 2007) suggests that all data sources, primary or secondary, are subject to prejudice and bias, which can impact the results, conclusions, and implications of a study.

Pertinent to the current study, there are two potential sources of bias. The first involves political biases by governmental agencies or non-governmental agencies (NGOs). It is well known that decision making in police departments and district attorney's offices can be driven by political agenda and agency priorities (Budak et al., 2016; Hammersley & Gomm, 1997; Honeycutt & Jussim, 2020). NGOs and organizations on our list such as *The Death Penalty Information Center*, *Witness to Innocence*, and the *Innocence Project* all tended to advocate for abolishment of capital punishment and criminal justice reform. These sources, among others, may compile information overtly in line with its agency agenda, thus might not be entirely objective.

The second involves media bias. Ad Fontes Media's (n.d.) Media Bias Chart scores the political bias (e.g., extreme left, hyper-partisan left, skews left, neutral or balanced bias, skews rights, hyper-partisan right, extreme right), reliability (e.g., most reliable for news, reliable for news but high in analysis/opinion content, some reliability issues and/or extremism, serious reliability issues and/or extremism), and overall reliability (e.g., a score of 0.00 to 64.00, with higher values being more reliable) of various news sources. News media sources on our list have varying degrees of reliability and bias. For example, the *Associated Press* (AP) had the highest reliability score (52.4) and was deemed to have neutral or balanced bias slightly left-leaning. Comparatively, *Chron* and *BBC* scored slightly lower on reliability (48.37 and 46.80

respectively), whereas *HuffPost* scored lowest for reliability (38.69) and was ranked as reliable

for news but high in analysis and opinion content. Additionally, media sources would

occasionally offer conflicting information, such as reporting two different dates for a defendant's

conviction. In order to address these challenges, more sources would then be sought out until the

data could be confirmed.

In an attempt to address the bias and reliability issues, as a general rule and when

applicable, we primarily relied on the official sources such as court rulings at various levels as

well as the plaintiff's and defendant's motions to identify key facts involved in the case. These

documents are typically available from university websites or websites with legal documents

such as *FindLaw* and *Casetext*. These sources were then supplemented by reports of interviews

and quotes from courtroom players such as the defendant, legal counsel, prosecutors, police

officers, judges, or jurors. Legal analysis by experts and scholars were also used to corroborate

and construct the 'truth' about a case. In reconstructing a case, news sources with high reliability

are given greater weight than those with low reliability to reduce errors or biases.

Content Analysis and Coding Methodology

Content analysis was the primary method utilized for coding the various documents

associated with the 167 exonerated death penalty cases. Content analysis refers to systematically

labeling, analyzing, and making inferences from documents and communication artifacts in

various forms including text, pictures, audio, or videos to extract patterns or make inferences

(Kleinheksel et al., 2020; Mayring, 2000; Schutt, 2019). An advantage of content analysis is its

non-invasiveness, especially compared to other social science methodologies such as surveys and

interviews. Surveys and interviews may be limited by a variety of factors such as availability of

participants, individual's willingness to cooperate, memory of specific events, and the reliability

and truthfulness of answers provided. Comparatively, content analysis does not face these same limitations and allowed for data to be collected from secondary, publicly available sources with limited time and resources.

There are two major types of content analysis: manifest and latent content analyses. Manifest analysis is defined as describing what is present (e.g., age, gender, number of victims) without the need to discern or identify underlying meaning. This coding method primarily deals with data that are easily observable and can be counted with little training required of the coders. This surface-level analysis assumes there is objective truth in the data that can be revealed without interpretation or qualification (Bengtsson, 2016; Cash & Snider, 2014; Erlingsson & Brysiewicz, 2017; Kleinheksel et al., 2020). In contrast, latent analysis requires researchers to identify and interpret meaning in the text (e.g., whether or not a confession was coerced), thus requiring researchers to be more skillful and better trained (Bengtsson, 2016; Cash & Snider, 2014; Erlingsson & Brysiewicz, 2017; Kleinheksel et al., 2020).

Both manifest and latent analyses were employed in the current study. Qualitative content analysis was the main methodology used since categories were created inductively, instead of deductively (Morgan, 1993). That is, guided by existing literature on police, prosecutorial, and judicial misconduct, we first coded several cases to identify units of meaning (Erlingsson & Brysiewicz, 2017; Kleinheksel et al., 2020). In this case, key phrases and incidents involving professional misconduct (e.g., inducing witnesses, exchanging favors for testimony from informants, threatening witnesses, hiding evidence, altering evidence, presenting false evidence), were used. This was then followed by grouping the units into categories based on similarity (e.g., the above phrases can be grouped into two categories: witness coercion and evidence tampering).

Finally, these categories were further grouped into broader themes (e.g., both witness coercion and evidence tampering were grouped under the theme labeled as police misconduct).

To ensure coding reliability, the two main coders coded the pilot cases independently first and then held meetings to compare notes and discuss any discrepancies (Schutt, 2019). While notes were checked and compared multiple times to ensure accuracy based on available documents that were retrieved online, some codes are necessarily subjective as latent content analysis does require individual decision-making and discretion. A codebook was subsequently prepared to serve as a roadmap for further coding. The codebook was left open-ended in anticipation of expansion of the codebook categories during the actual coding process. For example, we initially had one variable tapping informants (e.g., use of informant). As we coded more cases, a variety of scenarios involving informants emerged (e.g., use of informants; favors exchanged with informants for testimony; officer hid, lied about, or denied a favor agreement in court but favor was given; informant recanted testimony). Unsure about its extent or significance to the overall objective of this study, we decided to expand the measures of this variable by coding these variations. Such fine-tunings enhanced both the inter and intra-coding reliability, as the same case was often revisited once the codebook was revised.

Codes, Variables, and Measures

Following previous sentencing literature and employing manifest and latent analyses for the purposes of the current study, three sets of data were targeted: (1) official misconduct, (2) exonerations, and (3) characteristics of the offender and the offense.

Official misconduct, in this study, refers to any inappropriate behavior on the part of any law enforcement officer, including the police, prosecutor, and judge, that is either immoral or illegal or both (Champion, 2001). While intent is an important factor in determining official

misconduct and/or its severity, in this study, official misconduct is coded primarily based on legal documents (e.g., defense lawyers' motions, court documents) and legal officers' judgement, not on intent. There are three types of official misconduct: police, prosecutorial, and judicial misconduct.

Police misconduct is measured with four variables: (1) witness coercion and/or tampering, (2) defendant coercion, (3) evidence tampering, and (4) other professional misconduct. Witness coercion and/or tampering includes coercing, inducing, or threatening witnesses, threatening others involved in the case, and exchanging and hiding favor agreements with informants. Defendant coercion consists of coercing confessions, torture, and using corrupt polygraph examiners. Evidence tampering includes behaviors like hiding, altering, destroying, evidence as well as presenting false evidence in court. Other professional misconduct encompasses actions such as giving perjured testimony, implicating a defendant without evidence, intentionally pursuing the wrong suspect in a case, conflicts of interest, engaging in inappropriate remarks or behaviors on duty, ignoring possibly beneficial information, using an unfair lineup to identify suspects, and jury tampering.

Prosecutorial misconduct is measured by three variables: (1) witness coercion and/or tampering, (2) evidence tampering, and (3) other professional misconduct. Witness coercion and/or tampering includes actions such as inducing and threatening witnesses, eliciting false testimony, and exchanging and hiding favor agreements with informants. Evidence tampering incorporates hiding, alerting, and destroying evidence as well as inappropriately using and presenting false evidence in court. Other professional misconduct encompasses a range of behaviors such as bribery, intentionally pursuing the wrong suspect, conflicts of interest,

inappropriate remarks or behaviors in the courtroom, dereliction, trying mentally incompetent defendants, improperly questioning witnesses, and jury tampering.

Judicial misconduct is measured by two variables: (1) violating court procedural rules and (2) other professional misconduct. Violating court procedural rules includes suppressing witness testimony and evidence, improper admission of evidence, hiding evidence, jury tampering, violating a defendant's right to cross-examination, not polling the jury on whether the death penalty should be used, and flawed jury instruction. Other professional misconduct consists of accepting bribes, inappropriate remarks or behavior in the courtroom, denying officials funds for resources, conflicts of interest, coercing or inducing defendants, and coercing official authorities like the police or prosecutors.

All of the above variables were coded as a dummy variable, with the presence of these factors in a case coded as a '1'. There was often overlap in which officials were involved in a case, so whichever parties were mentioned in the sources were included when coding. For example, if prosecutors knowingly presented false evidence that was gathered illegally by the police, then both police and prosecutor misconduct were coded. Additionally, to facilitate bivariate analyses between the different variables, three composite variables were formed by summing all measures for each of the three types of officials. The possible range for the police misconduct variable is 0 to 4, the prosecutorial misconduct variable is 0 to 3, and the judicial misconduct variable is 0 to 2.

All of the 167 death penalty cases received exonerations either through a judicial decision for acquittal, an executive pardon, or a decision by the prosecuting agency to drop charges against a defendant. Defendants were typically released from prison after the decision was made unless they were serving a different sentence. Exoneration variables were coded to measure the

extent to which the criminal justice system detects and corrects errors in the sample of capital cases. Seven factors were identified as the primary catalyst that led to an exoneration in such cases. These include: 1) media attention, 2) non-government organization (NGO) involvement (e.g., *Innocence Project, Equal Justice Initiative*), 3) government organization involvement (e.g., state Conviction Integrity Unit or Innocence Inquiry Commission), 4) new evidence emerged (e.g., real offender confessed, new case files revealed), 5) new legal representation, 6) state appeals, and 7) federal procedures involved. Oftentimes, exonerations were a result of a combination of factors, such as obtaining a new defense team, DNA testing, media attention, or a federal habeas corpus. To simplify the analysis, the most salient factor, or the one that is unique and necessary for the exoneration, was identified and used in this analysis. Each of these categories/variables were derived following the inductive, qualitative content analysis process described in the above section.

Additionally, to address the question of whether these exonerations were by internal criminal justice system mechanisms (e.g., the due process model successfully worked through mechanisms already in place), or primarily through external factors (e.g., the due process model failed to work, but a factor outside the system contributed to error correction), an ordinal variable was created. This variable was created in the later stages of latent analysis and involved 3 different combinations of the previously mentioned exoneration variables. First, a '1' represents external mechanisms and merges the media attention, non-government organization involvement, and new evidence emerged variables. Next, a '2' signifies mixed error correction by the system's mechanisms as well as outside unexpected events, and combines the variables for government organization involvement and new legal defense team. Finally, a '3' denotes an

exoneration by internal criminal justice system mechanisms and incorporates both the state appeals and federal proceedings variables.

Lastly, the third set of data centers around information on characteristics of both the offender themselves, the offense in question, and the case processing. The demographic variables measure offender age (e.g., age at time of crime commission), sex (e.g., male, female), race/ethnicity (e.g., White, Black, Hispanic, Asian, Other), and existence of a prior record (e.g., whether or not offender had an existing deviant or criminal record during commission of the main crime charged). A number of variables were also coded to capture case characteristics and include the following: existence of a co-offender (e.g., whether the offender committed the crime alone or with others), offender-victim relationship (e.g., whether the offender was a stranger, acquaintance, or family member), the main crime charged (e.g., murder, rape, burglary, conspiracy to commit murder), the method of carrying out the crime (e.g., shooting, stabbing, strangulation), location (e.g., whether the crime occurred in private/semi-private locations like the victim's home or public locations like a grocery store), time of crime commission (e.g., during the daytime or nighttime), and the number of deaths (e.g., the amount of victims died). Variables regarding the processing of the case involve jurisdictional state (e.g., the state in the U.S. where the case took place), exoneration method (e.g., whether the defendant was exonerated through a judicial acquittal, dismissal, or executive pardon), conviction date (e.g., the year the defendant was convicted for the crime), exoneration date (e.g., the year the defendant was exonerated), and the time to exoneration (e.g., the length of time in years from the initial conviction to the exoneration). Identification of dummy variables was coded as '0' and '1' (e.g., prior record), while nominal (e.g., method of crime commission) or ordinal (e.g., offender-victim

relationship) variables were '1', '2', and '3'. Numerical variables were coded as the given value, such as the age of the offender.

Data Analysis

While our data were primarily generated through qualitative content analyses, the coded data enabled quantitative statistical analyses using the program SPSS. Univariate analyses described the extent that certain types of police, prosecutor, and judicial misconduct occur. The frequency of use for various error correction mechanisms was also captured through univariate analyses. Further, bivariate analyses such as correlations, chi-square tests, and analysis of variance (ANOVA) were run to determine if, and to what extent, a relationship exists between specific forms of official misconduct and the different types of error correction mechanisms. As a supplement to this qualitative data, narrative descriptions of specific cases were also presented. Excerpts from certain cases were selected and described in order to present a more complete picture of official misconduct and error correction mechanisms in exonerated death penalty cases.

Chapter 4: Results

Using a sample of 167 exonerated death penalty cases, the current study seeks to examine police, prosecutorial, and judicial misconduct as well as various error correction mechanisms. The program SPSS was utilized to conduct univariate and bivariate statistical analyses. More specifically, frequency distributions and crosstabulation analyses were conducted to address the five primary research questions focusing on official misconduct, exonerations, and error correction mechanisms. Additionally, case narratives from specific exonerated death penalty cases were presented to provide contexts for the research results.

Offender and Offense Characteristics

In order to adequately frame discussions of official misconduct, exonerations, and error correction mechanisms, descriptions of the offender and criminal case are necessary. Table A.1 presents frequency distributions of major offender and offense variables for the sample of exonerated death penalty inmates. The exonerated death penalty offenders were mainly male (98.2%), approximately half were Black (51.5%), and the average age at the time of crime commission was about 29 years old. Among the 122 (out of 167) offenders whose prior record was known, over half of them had a prior deviant or criminal record (69.7%). About half of the offenses involved at least two offenders (55.6%) and occurred between strangers (58.2%).

Regarding offense characteristics, murder accounted for the supermajority of the cases in our sample (97%). Other crimes included rape, burglary, and conspiracy to commit murder. Among the murder cases, the most common method of crime commission was shooting (48.8%), followed by stabbing/strangulation (32.7%) and other methods (18.5%). When data was available, crimes appeared to mostly occur during nighttime (65.8%) and in private/semi-private

locations (62.1%) such as inside the victim's home or apartment. A majority of cases involved a single death (68.7%), while others involved multiple (31.3%).

The greatest amount of cases took place in Florida (17.9), followed by Illinois (12.5%), Texas (7.2%), Louisiana (6.6%), North Carolina (6.0%), and Oklahoma (6.0%). Frequencies for the remaining jurisdictions can be found in Table A.1, as each state was responsible for nine cases or less. Charges being dropped or dismissed by the prosecuting body accounted for the majority of the exonerations (59.3%), followed by exoneration decisions by the judiciary (36.5%), and pardons by the executive body (4.2%). Conviction dates ranged from 1963 to 2014, with the greatest amount of cases (43.1%) falling between 1980 and 1989. In comparison, exoneration dates spanned from 1973 to 2019, with 2000 to 2009 being the time period that resulted in the most capital exonerations (33.5%). The average length of time to exoneration was twelve years, however this ranged from one to forty-three years depending on the specific case.

Official Misconduct

To address the first research question regarding what extent of exonerated death penalty cases involved official misconduct, univariate analyses were conducted. Of the 167 cases in the sample, the supermajority of the cases (82.6%) contained some type of official misconduct.

The presence of misconduct by each police, prosecutors, and judges along with various specific types of misconduct are presented in Tables 4.1, 4.2, and 4.3. These statistics helped answer the second research question regarding the extent and types of official misconduct.

Table 4.1 shows police misconduct was present in 60.5% of the cases. There were four main categories, including witness coercion/tampering, defendant coercion, evidence tampering, and other professional misconduct. Witness coercion/tampering was the most common form of police misconduct (37.1%), which usually included behaviors such as coercing and inducing

witnesses, as well as exchanging then hiding favor agreements with informants. The second most common police misconduct was evidence tampering (31.1%) that involved officers hiding, altering, destroying, and falsifying evidence. Other professional police misconduct took place in 38 cases (22.8%) and spanned a wide range of behavior such as giving perjured testimony, intentionally pursuing the wrong suspect, implicating a suspect without evidence, and ignoring information in a case. While defendant coercion was least frequent (18%), torture and coerced confessions could have serious implications.

Table 4.1 Frequency Distributions of Police Misconduct (N = 167)

Variable	Frequency	Percent
Police misconduct	167	100.0
1 Yes	101	60.5
2 No	66	39.5
Witness coercion/tampering	62	37.1
Coerced witness	45	
Induced/threatened witness	38	
Exchanged & hid favor agreements with informants	33	
Threatened others	3	
Defendant coercion	30	18.0
Coerced confession	23	
Tortured defendant	13	
Corrupted polygraph examiner	7	
Evidence tampering	52	31.1
Hid evidence	34	
Presented false evidence	25	
Altered/destroyed evidence	24	
Other professional misconduct	38	22.8
Gave perjured testimony	11	
Intentionally pursued wrong suspect	9	
Implicated defendant without evidence	7	
Ignored information	7	
Used unfair lineup	4	
Conflict of interest	3	
Inappropriate remarks/courtroom behavior	3	
All other police misconduct	6	
Severity of police misconduct	167	100.0
0 no misconduct in case (lease severe)	66	39.5
1 category of misconduct in case	42	25.1
2 categories of misconduct in case	38	22.8
3 and 4 categories of misconduct in case (most severe)	21	12.6

In order to examine the severity of police misconduct in a particular case, a composite

variable was formed by summing all the measures for police misconduct. The possible range of

misconduct is zero (least severe) to three (most severe). While 39.5% of the cases had no police

misconduct whatsoever, just over a quarter of the sample (25.1%) involved one main category of

misconduct. The remaining 59 cases (35.4%) had two or more categories of police misconduct present.

Table 4.2 Frequency Distributions of Prosecutor Misconduct (N = 167)

Variable	Frequency	Percent
Prosecutorial misconduct	167	100.0
1 Yes	109	65.3
2 No	58	34.7
Witness coercion/tampering	47	28.1
Exchanged & hid favor agreements with informants	30	
Induced/threatened witness	29	
Elicited false testimony	8	
Evidence tampering	86	51.5
Hid evidence	70	
Presented false evidence	19	
Altered/destroyed evidence	16	
Inappropriately used evidence	8	
Other professional misconduct	40	24.0
Inappropriate remarks/courtroom behavior	15	
Tampered with jury	13	
Conflict of interest	6	
Intentionally pursued wrong suspect	6	
All other prosecutorial misconduct	9	
Severity of prosecutorial misconduct	167	100.0
0 no misconduct in case (least severe)	58	34.7
1 category of misconduct in case	58	34.7
2 categories of misconduct in case	38	22.8
3 categories of misconduct in case (most severe)	13	7.8

Table 4.2 demonstrates the frequency distributions of prosecutorial misconduct. Prosecutorial misconduct was present in 109 cases (65.3%) with the categories of witness coercion/tampering, evidence tampering, and other professional misconduct. The most common category of prosecutorial misconduct was evidence tampering (51.5%), which usually involved

prosecutors hiding evidence from other parties in the case, but also included altering, destroying,

falsifying, or inappropriately using evidence as well. Witness coercion/tampering occurred

second most often (28.1%), where prosecutors engaged in behaviors like exchanging then hiding

deals with informants, inducing and threatening witnesses, and eliciting false testimony. Other

professional misconduct occurred relatively less frequently (24.0%), and involved prosecutors

using inappropriate language or behaviors in the courtroom, tampering with the jury, engaging in

conflicts of interest, and intentionally pursuing the wrong suspect.

Severity of prosecutorial misconduct was also assessed using a composite variable with a

range of zero (least severe) to three (most severe). Prosecutorial was the most prevalent

misconduct compared to its police and judiciary counterparts. While approximately one third of

the cases involved no prosecutorial misconduct (34.7%), the same number of cases involved one

category of prosecutorial misconduct (34.7%). The more serious prosecutorial misconduct

existed in 30.6% of the cases, with 22.8% of cases having two categories of prosecutorial

misconduct and 7.8% of cases having all three categories.

Table 4.3 Frequency Distributions of Judicial Misconduct (N = 167)

Variable	Frequency	Percent
Presence	167	100.0
1 Yes	29	17.4
2 No	138	82.6
Violated court procedural rules	23	13.8
Violated right to cross-examination	7	
Flawed jury instruction	7	
Improperly admitted evidence	6	
Suppressed witness testimony/evidence	6	
All other judicial procedural violations	6	
Other professional misconduct	14	8.4
Inappropriate remarks/courtroom behavior	6	
Accepted bribe	3	
Denied funds for resources	3	
All other judicial misconduct	4	
Severity of judicial misconduct	167	100.0
0 no misconduct in case (least severe)	138	82.6
1 category of misconduct in case	21	12.6
2 categories of misconduct in case (most severe)	8	4.8

The frequency distributions of judicial misconduct are displayed in Table 4.3. Judicial misconduct was present in 17.4% of cases, making it the least prevalent among the three types of official misconduct. The two main categories of judicial misconduct involved violating court procedural rules and other professional misconduct. Violating court procedural rules was the more frequent category (13.8%), involving misconduct such as a judge violating the defendant's right to cross-examination, flawed jury instruction, and improper admission or suppression of witness testimony or evidence. Other professional judicial misconduct occurred in just 14 cases (8.4%), where judges engaged in behaviors such as making inappropriate remarks or behaviors in the courtroom, accepting bribes, and denying funds for resources in a case.

A composite variable was created in order to assess the severity of judicial misconduct in a particular case. The range of judicial misconduct severity is zero (least severe) to two (most

severe). The majority of cases in the sample involved no judicial misconduct (82.6%). However, 21 cases (12.6%) involved one category of judicial misconduct whereas 8 cases (4.8%) involved two categories.

Exoneration

To address the third research question of which individuals, agencies, or events served as a catalyst for exoneration, seven main factors were identified as the primary catalyst for an exoneration (see Table 4.4). These seven factors included new evidence emerged (16.7%), media attention (14.4%), non-governmental organization (NGO) involvement (e.g., the Innocence Project and Equal Justice Initiative) (7.8%), new legal representation (8.4%), government organizational involvement (e.g., state Conviction Integrity Units or Innocence Inquiry Commissions) (3.0%), state appeals (37.7%), and federal procedures involved (e.g., filing a petition for habeas corpus) (12.0%).

Table 4.4 Catalyst for Exoneration (N = 167)

Category	Code	Variable	Frequency	Percent
External	1	New evidence emerged	28	16.7
		Media attention	24	14.4
		Non-governmental organization (NGO) involved	13	7.8
		Total	65	38.9
Mixed Factors	2	New legal representation	14	8.4
		Governmental organization involved	5	3.0
		Total	19	11.4
Internal	3	State appeals	63	37.7
		Federal procedures involved	20	12.0
		Total	83	49.7

An ordinal variable combining these seven mechanisms was then created in order to address the fourth research question of whether an exoneration was by mechanisms internal or external to the criminal justice system. The seven catalysts for exoneration were grouped into the three categories shown in Table 4.4. An exoneration representing internal criminal justice mechanisms was the most common as nearly half the cases (49.7%) were exonerated as a result of factors already in place in the criminal justice system (e.g., state appeals and federal procedures). An exoneration involving mechanisms external to the justice system was the second most common playing a role in 38.9% of cases. Here outside factors such as media attention, non-governmental organization involvement, and new evidence emerging were the primary factors that contributed to an exoneration. Finally, mixed factors, meaning error correction as a result of both safeguards in the criminal justice system and random outside forces (e.g., governmental organization involvement and new legal defense teams), accounted for 11.4% of the cases.

Official Misconduct and Exoneration

Given that official misconduct was rather prevalent in these exonerated death penalty cases, it is highly probable that the criminal justice system's ability or effectiveness in addressing defendants' claims of innocence or abuse by criminal justice officials may be hindered. Based on existing literature (Bowman & Gould, 2020; Krieger, 2011; Webster, 2019), police and prosecutors are reluctant in their involvement in exonerations, and worse yet, they may even hinder the exoneration process when official misconduct is identified in the original proceeding. It is thus expected that exonerations are likely to take longer and involve external mechanisms, rather than be a shorter amount of time and through internal processes. To address the fifth

research question regarding the possible impact of official misconduct on the catalyst and length of exoneration, several crosstabulation analyses were performed. The crosstabulations were run between police, prosecutorial, and judicial misconduct severity and the catalyst and the length of exonerations.

Of the three types of misconduct, only police misconduct was found to have a significant correlation with the catalyst and the length of exonerations ($r = -.282*$ and $r = .28**$ respectively; see Tables 4.5 and 4.6). Our findings suggest that the more severe the police misconduct, the more likely the cases were exonerated using external mechanisms, rather than by internal justice system factors; moreover, the exoneration process tended to last a significantly longer time than in cases without police misconduct.

Neither the severity of prosecutorial nor judicial misconduct, however, were significantly correlated with exoneration. With prosecutorial misconduct, cases were more likely to result in an exoneration through external factors, not internal, though this correlation was not significant. Cases involving prosecutorial misconduct also tended to take a longer time to exonerate, though this correlation was nonsignificant. Comparatively, cases with judicial misconduct were more likely to result in exoneration through internal factors, though the correlation was very weak and insignificant. Cases with judicial misconduct took longer to exonerate as well, despite a lack of significance. The complete results for both prosecutorial and judicial misconduct can be found in Tables A.2, A.3., A. 4., and A.5.

Table 4.5 Police Misconduct Severity and Catalyst for Exoneration (N = 167)

		Exoneration by Internal or External Mechanisms			
		External	Mixed Factors	Internal	Total
	0 No Misconduct	18	7	41	66
	1 Category of Misconduct	14	4	24	42
Police Misconduct Severity	2 Categories of Misconduct	21	4	13	38
	3 & 4 Categories of Misconduct	12	4	5	21
	Total	65	19	83	167

Note. $x^2 = 15.492$; *df* = 6; *p* = .017 (*p* < .05); *r* = -.282

Table 4.6 Police Misconduct Severity and Length of Exoneration (N = 167)

		Length of Time to Exoneration (years)				
		1 – 9	10 – 19	20 – 29	30 +	Total
	0 No Misconduct	41	19	4	2	66
	1 Category of Misconduct	16	22	4	0	42
Police Misconduct Severity	2 Categories of Misconduct	12	13	6	7	38
	3 & 4 Categories of Misconduct	8	8	2	3	21
	Total	77	62	16	12	167

Note. $x^2 = 25.384$; *df* = 9; *p* = .003 (*p* < .01); *r* = .280

Case Narratives

To provide context for our quantitative analyses, below are case narratives of specific exonerated death penalty cases that highlighted various types of official misconduct and conditions under which exonerations occurred.

Regarding police misconduct, the most common type involved witness coercion and tampering. In the Adams case (case 37), for example, a witness was initially unable to identify Adams in a police lineup; the police told the witness to pick Adams and in exchange, dropped the robbery charges against the witness's daughter. In the Manning case (case 154), one of the witnesses alleged that the police threatened to take her child away if she did not implicate Manning. Evidence tampering and defendant coercion were also commonly engaged in by the police. In the Ferber case (case 25), for instance, police tampered with an identification sketch of the suspect (e.g., using Ferber's mug shot to aid the sketch) in order to corroborate charges against Ferber. Officers also withheld evidence that the key witness failed a polygraph test. Additionally, an officer refused to provide evidence to the court regarding an informant, claiming that documents were stolen from their office. In the Patterson case (case 101), Patterson confessed to the crime but only after being chained to the wall of a police interrogation room and tortured into signing a confession. Patterson used a paperclip to scratch a message into a bench, writing that the police threatened him with violence and suffocated him with plastic until he agreed to confess. These detectives also had a reputation for torturing African American suspects. The Hobley case (case 102) demonstrated a combination of police misconduct. In court, police claimed Hobley willingly came to the police station and confessed (yet could not produce the confession record), contrary to Hobley's statement that the officers restrained him, beat him, and suffocated him until he passed out. Additionally, officers tried to pressure a

witness into implicating Hobley even after the witness could not identify Hobley from a lineup. The police also intentionally hid and destroyed evidence unfavorable to the state's case, failed to pursue leads of another suspect likely having committed the crime, and intentionally planted evidence to match Hobley's false confession.

In a similar vein, prosecutorial misconduct is numerous. The most frequent action involved hiding evidence. For instance, in the Lee case (case 156), prosecutors concealed evidence that connected other suspects to the crime and misplaced or destroyed fingerprints and hairs from the crime scene that did not match Lee. Prosecutors failed to disclose a written note implicating that the Lee case was fabricated, and presented false evidence in court (e.g., use of certain guns in the crime). Similar actions were also found in the Brandley case (case 40), where prosecutors suppressed exculpatory evidence and hid or destroyed evidence (e.g., pubic hair and spermatozoid from the victim) that may have cleared Handley. Additionally, police and prosecutorial misconduct often overlap. An example of this can be found in the Benavides case (case 163), where both police and prosecutors worked together to manipulate evidence and coerce witnesses. One witness was told that unless she provided a testimony against Benavides, she would never be allowed to go home, while another witness was told she would lose custody of her children if she did not testify. Evidence of the victim's initial x-rays was suppressed and medical experts who made false claims and intentionally misinterpreted evidence were also utilized.

Despite being less prevalent than police and prosecutorial misconduct, actions of judicial misconduct also occurred. The most common misconduct involved violating court procedural rules. For example, in the Spicer case (case 6), the Supreme Court overturned the initial ruling, citing the lower court's judge violating Spicer's right to cross-examination. The judge prohibited

56

the defense from cross-examining a jailhouse snitch. Similarly, in the Prion case (case 106), the judge committed what the High Court regarded as an error by hearing two separate cases simultaneously and not allowing the defense to include evidence of the other suspect. In addition to violating court procedural rules, a variety of other types of judicial misconduct occurred throughout the cases. For instance, in the Richardson case (case 39), the judge withheld evidence and outwardly stated multiple times throughout the jury trial that Richardson was guilty and that murder charges would be brought against him. With the Jones case (case 79), the judge refused to grant permission for Jones to obtain DNA testing, despite DNA being the reason for Jones's guilty charge. The judge ridiculed the defense lawyer's request for the DNA test and told them to talk to the press instead. Lastly, in the Fields case (case 130), the judge accepted a ten-thousand dollar bribe to frame Fields from a lawyer who was representing another suspect related to the crime. Upon the FBI's investigation, the judge turned themselves in, which prompted a retrial.

Moreover, the context and conditions involved in exonerations varied greatly. The three case narratives below provided glimpses of the catalysts, events, or actors for exonerations. Given that criminal defense plays an essential role in the criminal process, especially in death penalty cases, a competent defense team was even more crucial to secure an exoneration. For example, the Willis case (case 118) involved a fire that killed two people. The original defense lawyer was very passive and did not object to the prosecutor calling Willis a satanic demon and a murderer. The defense also failed to call witnesses to the stand who could have testified in favor of Willis. A new defense team, comprised of attorneys from the Latham & Watkins firm, took over the Willis case pro bono. They discovered that another individual actually confessed to committing the crime. A new arson expert was also brought onto the case, who stated that there

was no proof that Willis started the fire intentionally. Combined, these factors led to the district attorney dismissing the charges against Willis.

In multiple cases, mechanisms like media attention and non-governmental organization involvement played a substantial role in exoneration. For instance, in the Steidl case (case 114), Steidl was convicted of murdering a couple based on witness identification. The witness later admitted that she falsely testified and recanted her statement, however she later rescinded her recantation and asserted that her original statement was true. The witness later interviewed for the television program *48 Hours*. Consequently, journalism students at Northwestern University became interested in the case and began interviewing other witnesses, who were not interviewed by the police. With new evidence emerging, the case was reinvestigated by the authorities, which ultimately led to a dismissal of the charges against Steidl by the prosecution.

Furthermore, the Aguirre-Jarquin case (case 164) serves as an example of a non-governmental organization (NGO) playing a substantial role in an exoneration. Aguirre-Jarquin was convicted of stabbing two people to death with a knife that was supposedly from the restaurant where he worked. A jury voted in favor of the death penalty for Aguirre-Jarquin based on various pieces of forensic evidence (e.g., blood spatter on clothing, fingerprint and blood on the knife). The defense eventually reached out to the Innocence Project to request help with DNA testing of over 80 pieces of evidence. The Innocence Project agreed and conducted the testing, which revealed that Aguirre-Jarquin did not match the DNA. Aguirre-Jarquin was eventually awarded a new trial based on the newly tested evidence, resulting in the prosecution deciding to drop the charges against Aguirre-Jarquin entirely.

In sum, chapter 4 described the results of the univariate and bivariate analyses of the key variables regarding official misconduct, and catalysts and the length for exonerations. In

addition, the case narratives provided highlight the main characteristics and types of official

misconduct and the contexts regarding these exonerated cases. In the final chapter,

interpretations of the key research results along with theoretical and policy implications will be

discussed.

Chapter 5: Conclusion

Prior research has demonstrated that official misconduct contributes to wrongful convictions in criminal cases. However, a paucity of research exists examining the role of official misconduct in wrongfully convicted death penalty cases specifically. In order to address this gap in the literature, the current study is guided by Packer's (1964) crime control and due process models and employs content analysis to a sample of 167 exonerated death penalty cases in the United States to explore the types and extent police, prosecutorial, and judicial misconduct involved in capital cases. Given that a sample of exonerated cases is used, the study also examines the error correction mechanisms which work to turn a wrongful conviction into an exoneration. More specifically, various catalysts for exoneration are evaluated to determine if an exoneration was carried out through internal due process mechanisms already in place in the criminal justice system or through various mechanisms that are external to the system. Analyses were then conducted to further explore the relationship between official misconduct and exonerations. The major findings of the study, along with implications for public policy and future research, are discussed in the subsequent sections.

Discussion

Data was collected on both offender and offense characteristics in order to provide context to these exonerated death penalty cases in the sample. Offenders tended to be under thirty years old, male, and non-White, while the crimes charged were overwhelmingly murder. While the racial compositions of death row appeared somewhat even (e.g., 41% White vs. 42% Black), just over half the exonerees in this sample were Black (51.5%). Compared to 37.7% White exonerees, it may appear that Black individuals are exonerated at a disproportionately

higher rate. However, this phenomenon could be indicative of a higher underlying error rate in the cases of Black defendants, where problems such as official misconduct are involved and investigated more frequently. For instance, prior research has found that official misconduct is more prevalent in the cases of Black individuals, especially those on death row (Gross et al., 2020).

For the exonerated defendants within the current study, an exoneration tended to take an average of 12 years to occur, with a range of 1 to 43 years depending on the specific case. This is important to note because once an individual becomes involved with the justice system, a substantial portion of their life could be spent dealing with the system (e.g., trying to get their case heard, reviewed, and ultimately changed). While the justice system may be able to correct the errors, the time that an individual loses dealing with a wrongful conviction cannot be replaced. Even further, as the sample is comprised of death penalty cases, if the defendants were to be executed, such a punishment is irreversible. Not only are there high stakes for defendants, but wrongful convictions could have consequences for public safety and perceptions of the justice system as a whole.

As for official misconduct, police, prosecutorial, and judicial misconduct played a role in over three quarters of the cases in the sample. This suggests that official misconduct, in varying degrees and severities, often plays a role in wrongfully convicted death penalty cases. Our analysis also found that prosecutorial misconduct was the most prevalent type of official misconduct (65.3%), followed by police (60.5%) and judicial (17.4%) misconduct.

Among the three types of official misconduct, police misconduct was the only type significantly correlated with the catalyst for exoneration and length of time to exoneration. That is, in cases where police misconduct was more severe, the case was more likely to result in an

exoneration due to inadvertent, external reasons (e.g., media attention, NGO involvement, new evidence emerged), which were not inherently built into the system. In other words, it was more due to luck that the defendant's case received unusual media attention, attracted a particular interest from a non-profit organization who voluntarily helped with the DNA testing, or another individual later confessed to the crime. Conversely, when there is not police misconduct or misconduct is minor, the exoneration was more likely to be by an internal criminal justice process (e.g., state appeals, federal procedures). These findings could be the result of official misconduct making a case more complicated as well as the fact that officials themselves are often reluctant to assist with an exoneration when there are allegations of misconduct (Bowman & Gould, 2020; Webster, 2019). As such, defendants may feel the need to seek assistance from parties outside of the justice system for help with their case.

In addition, our analyses revealed that police misconduct directly impacted the time length to exoneration. The exoneration tended to take a shorter amount of time to occur when there was no or minor police misconduct involved. Time between conviction and exoneration increases significantly when police misconduct becomes more severe. These results align with prior research demonstrating that cases involving official misconduct tended to take a longer time to lead to exoneration (Gross et al., 2019; Rafail & Mahoney, 2019). This could be because cases involving accusations of official misconduct tend to involve more in-depth investigative processes (Gross & O'Brien, 2008). These findings suggest that police misconduct has a profound impact on the case outcome, by being both an obstacle to a normal exoneration process as well as delaying the exoneration.

Theoretical and Policy Implications

The major theoretical implications of the current study surround the benefits and drawbacks of the due process and crime control models. The results of the study demonstrate the seemingly inherent conflict between these models. The due process model focuses on protecting due process rights by ensuring defendants receive a fair and impartial trial. This is at odds with the crime control model, which largely prioritizes controlling crime and quickly processing and closing criminal cases. The competing institutional goals may thus create a grave challenge for the police as to how to balance the need to solve crime and protect public safety while protecting individual rights and preventing governmental abuse. Informed with the findings regarding police misconduct and exoneration, there seems to be a great need to reexamine procedural safeguards that are supposedly put in place to prevent, detect, and correct errors in case processing. While constitutional rights have been enhanced throughout the past decades (e.g., the exclusionary rule, right to legal counsel, right to appeal, and so on), mechanisms still appear lacking. Approximately half of the cases were exonerated due to external mechanisms such as media exposure, NGO involvement, new defense teams, or accidental discovery of the 'truth', suggesting that it is imperative to reexamine institutional priorities and enhance rules and laws to improve case processing.

Literature suggests that a variety of motivations and factors contribute to official misconduct. Take police misconduct as an example. Political (e.g., clearance rate), professional (e.g., crime fighting and being a detective carries a prestigious status), and public pressure (e.g., punitive and tough on crime), both on an institutional level as well as an individual level, may lead to misconduct. When combined with discretion and lack of transparency on the street and in the interrogation room (e.g., no recording), overzealous officials may be motivated to overstep

the ethical (e.g., the Manning case) or legal (e.g., the Ferber case) boundaries to achieve their goals. Worse yet, some police officers may let their personal biases (e.g., biases towards minority groups or people with criminal records, in the Patterson and Benavides cases) interfere with professional judgement. While at times the line between ethical or unethical, legal or illegal, misconduct may be blurred, particularly in the absence of a clear motive, the findings of this study show the need to raise awareness, enhance training, and improve internal reviews of official misconduct, so as to curb future wrongful convictions attributable to official misconduct. These policy recommendations are certainly applicable to the prosecutorial and judiciary bodies as well.

Regarding exonerations, the current study demonstrates that they are the product of both factors internal and external to the criminal justice system. Existing criminal justice system mechanisms accounted for nearly half of the exonerations in the sample, indicative of its ability of self-correction (e.g., through appeals or habeas corpus). However, this also implies that the current system is far beyond being foolproof. It is in fact quite astonishing that if not for external forces (e.g., media attention, NGO involvement), almost half of the offenders in the sample would have remained on death row or been executed. This in turn raises questions with the practices of the criminal justice system. If the death penalty is the most serious punishment a defendant can receive, one would expect that wrongful convictions, especially involving official misconduct, should happen infrequently or not at all. And, when official misconduct did happen, the correction mechanisms should be embedded in the system and be able to quickly detect and correct the error. When the stakes are so high, the system must be equipped at all stages to ensure minimal wrongful convictions and maximum error corrections, if defendants' rights are the cornerstone of the due process model.

Readers should be cautioned, however, with the data and methodological limitations of the current study. For instance, our sample size is small (e.g., only 167 cases) and only involves exonerated death penalty cases. Findings are thus unable to be generalized to non-capital cases. Additionally, since each case in the study was exonerated, there is no comparison group available to draw further conclusions. Future research should expand the dataset by including non-death penalty cases and unexonerated cases so as to facilitate analyses on the role of official misconduct in contributing to wrongful convictions as well as the similarities and differences between capital and non-capital cases.

Furthermore, while content analysis has strengths such as non-invasiveness, use of fewer resources, and the ability to use publicly available secondary data, utilizing other methodologies could help improve validity of the research findings and generate more in-depth understanding of the issues. Besides relying on existing documents and through content analyses, future studies could obtain data from interviews and surveys with key players in the courtroom (e.g., defendants, police officers, prosecutors, judges). Courtroom observations could also be used to gain a better understanding of the interplay of the competing goals of these various players and how official misconduct impacts exonerations in capital and non-capital cases. More importantly, through data triangulation, future research could hopefully help expand knowledge in the field of criminal justice and shape public policy in a way that better protects defendant's rights, reduces wrongful convictions, and better uses criminal justice system resources.

Table A.1 Frequency Distributions of Major Offender and Offense Variables (N = 167)

Variable	Frequency	Percent
Offender age (*n* = 162)	Mean: 28.5	Range: 15 – 54
Sex		
Male	164	98.2
Female	3	1.8
Race/ethnicity		
White	63	37.7
Black	86	51.5
Other	18	10.8
Prior record (*n* = 122)		
No prior record	37	30.3
Deviant/criminal	85	69.7
Co-offender (*n* = 153)		
No	68	44.4
Yes	85	55.6
Offender-victim relationship (*n* = 153)		
Stranger	89	58.2
Acquaintances/family	64	41.8
Main crime charged		
Murder	162	97.0
Non-murder (rape, burglary, conspiracy)	5	3.0
Method of crime (*n* = 162)		
Shooting	79	48.8
Stabbing/strangulation	53	32.7
Other methods	30	18.5
Location of crime (*n* = 145)		
Private/Semi-private	90	62.1
Public	55	37.9
Time of crime (*n* = 111)		
Nighttime	73	65.8
Daytime	38	34.2
# of deaths (*n* = 166)		
One death	114	68.7
Multiple deaths	52	31.3

Jurisdictional state		
Florida	30	17.9
Illinois	21	12.5
Texas	12	7.2
Louisiana	11	6.6
North Carolina	10	6.0
Oklahoma	10	6.0
Arizona	9	5.4
Ohio	9	5.4
Pennsylvania	7	4.2
Alabama	6	3.6
Georgia	6	3.6
California	5	3.0
Mississippi	4	2.4
Missouri	4	2.4
New Mexico	4	2.4
Massachusetts	3	1.8
Tennessee	3	1.8
Indiana	2	1.2
South Carolina	2	1.2
Arkansas	1	0.6
Delaware	1	0.6
Idaho	1	0.6
Kentucky	1	0.6
Maryland	1	0.6
Nebraska	1	0.6
Nevada	1	0.6
Virginia	1	0.6
Washington	1	0.6
Exoneration method		
Charges dropped	99	59.3
Judicial exoneration	61	36.5
Governor pardon	7	4.2
Conviction date		
1963 – 1969	4	2.4
1970 – 1979	36	21.6
1980 – 1989	72	43.1
1990 – 1999	42	25.1
2000 – 2009	8	4.8
2010 – 2014	5	3.0
Exoneration date		
1973 – 1979	14	8.4
1980 – 1989	25	15.0
1990 – 1999	43	25.7
2000 – 2009	56	33.5
2010 – 2019	29	17.4
Time to exoneration (years)	Mean: 12	Range: 1 - 43

Table A.2 Prosecutorial Misconduct Severity and Catalyst for Exoneration (N = 167)

		Exoneration by Internal or External Mechanisms			
		External	Mixed Factors	Internal	Total
Prosecutorial Misconduct Severity	0 No Misconduct	19	5	34	58
	1 Category of Misconduct	21	8	29	58
	2 Categories of Misconduct	19	5	14	38
	3 Categories of Misconduct	6	1	6	13
	Total	65	19	83	167

Note. $x^2 = 5.221$; *df* = 6; *p* = .516 (*p* < .05); *r* = -.141

Table A.3 Prosecutorial Misconduct Severity and Length of Exoneration (N = 167)

		Length of Time to Exoneration (years)				
		1 – 9	10 – 19	20 – 29	30 +	Total
Prosecutorial Misconduct Severity	0 No Misconduct	33	19	3	3	58
	1 Category of Misconduct	29	17	7	5	58
	2 Categories of Misconduct	9	20	5	4	38
	3 Categories of Misconduct	6	6	1	0	13
	Total	77	62	16	12	167

Note. $x^2 = 13.922$; *df* = 9; *p* = .125 (*p* < .05); *r* = .138

Table A.4 Judicial Misconduct Severity and Catalyst for Exoneration (N = 167)

		Exoneration by Internal or External Mechanisms			
		External	Mixed Factors	Internal	Total
Judicial Misconduct Severity	0 No Misconduct	56	16	66	138
	1 Category of Misconduct	4	2	15	21
	2 Categories of Misconduct	5	1	2	8
	Total	65	19	83	167

Note. $x^2 = 6.524$; *df* = 4; *p* = .163 (*p* < .05); *r* = .013

Table A.5 Judicial Misconduct Severity and Length of Exoneration (N = 167)

		Length of Time to Exoneration (years)				
		1 – 9	10 – 19	20 – 29	30 +	Total
Judicial Misconduct Severity	0 No Misconduct	61	56	12	9	138
	1 Category of Misconduct	11	6	2	2	21
	2 Categories of Misconduct	5	0	2	1	8
	Total	77	62	16	12	167

Note. $x^2 = 7.238$; *df* = 6; *p* = .299 (*p* < .05); *r* = .016

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