

# Wrongfully Convicted and in Lock-Up: Understanding Innocence and the Development of Legal Consciousness behind Prison Walls

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*Scholars studying wrongful convictions have long examined their causes and the ways in which to prevent them and are increasingly interested in exonerees' post-prison reentry processes. However, research on the experience of incarceration as a result of wrongful conviction is scarce. This article draws on in-depth interviews with eleven exonerees across three states (Illinois, Texas, and New York) to theorize how multiple facets of innocence (personal, relational, and institutional) shape the ways in which former prisoners have navigated their wrongful incarceration: learning to prove their innocence. For many wrongfully convicted inmates, acquiring legal knowledge and mobilizing post-conviction law—specifically, actual innocence jurisprudence—plays a central role in their daily lives given the onerous legal work it takes to prove their factual innocence. I advance what Kathryn M. Young has termed second-order legal consciousness, which prioritizes the social processes that create legal consciousness, as a framework to illuminate how wrongfully convicted inmates constructed legality when pursuing legal exoneration in prison. This article offers new insights into the relational nature of law to show how marginalized groups like prisoners mobilize law when pursuing their rights and allows us to theorize innocence in contexts where the state and society writ large have ascribed a person's legal guilt.*

[T]he old cliché theory is that everybody [that's] in prison deserves to be in prison. And so, there's no, what they call, "empathy." There's no empathy, there's no compassion. And I mean, there shouldn't be because prison is designed for people that commit crimes and break the law.

— James Gibson, exonerated in 2019

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## INTRODUCTION

The inmate experience has long been a topic of interest for scholars examining how extreme conditions, particular to punishment, affect social life.<sup>1</sup> This body of research largely assumes inmates' guilt and criminality, analyzing how the prison environment and social system affect "rightfully" convicted inmates' behaviors and sense of self.<sup>2</sup> Since the advent of mass incarceration in the mid-1970s, the United States has locked up more people per capita for longer periods of time, on average, than any other nation and currently warehouses about two million people behind bars in its criminal legal system (Travis, Western, and Redburn 2014; Sawyer and Wagner 2022). And while US incarceration rates are slowly decreasing, the country's evolving criminal legal terrain necessitates examining all facets of its punishment landscape (Frost and Clear 2016). Importantly, the punitive essence of the punishment apparatus is not only reserved for people who have committed or taken part in their alleged crimes, but it also includes innocent people who can face years, and sometimes decades, of imprisonment after a wrongful conviction.<sup>3</sup>

In the context of the Innocence Movement,<sup>4</sup> which scholars have referred to as the "civil rights movement of the twenty-first century," wrongful conviction typically refers to situations where a factually innocent<sup>5</sup> person is convicted for a crime they did not commit (Medwed 2008, 1550; Findley 2011). With the movement's emergence and resulting innocence consciousness,<sup>6</sup> scholars, activists, and policy makers have increasingly acknowledged that wrongful convictions happen at the hands of the justice system and its actors, and that policy change is crucial to preventing them (Medwed 2008;

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1. For a review of the foundational literature on the inmate social system, see Kreager and Kruttschnitt 2018.

2. Malcolm Feeley and Jonathan Simon (1992, 456) have identified a "new penology"—a shift in discourse, objective, and technique in penal practice that conceptualizes the penal institution as a management system that "[takes] deviance as a given, [mutes] aspirations for individual reformation, and [seeks] to classify, sort, and manage dangerous groups efficiently"—which advances prior formulations of prisons as primarily rehabilitative or individualized punishment institutions. Moreover, abolitionist texts actively challenge assumptions that prisons and prisoners are largely deviant by recognizing a government-induced prison industrial complex that has encouraged, maintained, and reproduced a US racial and ethnic caste system wherein incarceration is a common life event for poor communities of color, resulting in their mass incarceration. For different perspectives about the prison industrial complex's roles and effects, see Davis 2003; Wilson Gilmore 2007; Alexander 2010.

3. Not all wrongful convictions result in incarceration within correctional facilities. While known US exonerates have lost an average of nearly nine years behind bars, and most have been locked up for some time, some wrongfully convicted and exonerated individuals were sentenced to community supervision, including probation (NRE 2022).

4. The Innocence Movement consists of "a conglomeration of advocacy organizations, lawyers and legal activists, exonerates and their families, journalists, students, and legal practitioners who believe that wrongful convictions are common and deserve attention on a large scale" (Norris 2017, 6). In response, these actors advocate for criminal legal policy reform and recognition of wrongful convictions and exonerations as human rights issues. For a detailed history of the Innocence Movement, see Norris 2017.

5. I adopt Keith Findley's (2011, 1162) view on the notion of innocence, wherein innocence means actual or factual innocence "in the sense that the defendant committed no crime" based on "the legal standards that define guilt and, absent proof of guilt, presume innocence."

6. Marvin Zalman (2010, 1468) coined the term "Innocence consciousness," which refers to "the idea that innocent people are convicted in sufficiently large numbers as a result of systemic justice system problems to require efforts to exonerate them, and to advance structural reforms to reduce such errors in the first place."

Zalman 2010, 1468). Exonerations—when wrongfully convicted people are “officially cleared based on new evidence of innocence”—have consequently garnered increased attention in academic, policy, and public domains across the country and around the world (NRE 2021a). This growing recognition of the causes and consequences of wrongful conviction and wrongful incarceration has resulted in over one hundred known exonerations in the United States per year for nearly a decade since 2012.

Those facing wrongful incarceration often spend years, and sometimes decades, pursuing exoneration, a fundamentally legal process that furnishes wrongfully convicted people with a legal innocent status, from behind prison walls. While the initial trial stages present significant challenges to proving defendants are “not guilty” before wrongful conviction, the post-conviction process makes proving factual innocence and achieving exoneration nearly impossible (Sperling 2014). And since the burden of proving factual innocence lies on the defendant in the post-conviction stage, wrongfully convicted inmates are forced to navigate the legal system to pursue exoneration largely on their own. Importantly, wrongful conviction scholars have recognized inmates’ preoccupation with legally overturning their convictions (Campbell and Denov 2004; Grounds 2004, 2005; Konvisser 2012; Westervelt and Cook 2012), and the consequences of maintaining innocence in prison (Campbell and Denov 2004). However, we still know little about how wrongfully convicted inmates experience innocence and how they acquire the legal expertise needed to achieve exoneration on grounds of innocence.

This article bridges the study of wrongful convictions in law and the social sciences with socio-legal scholarship to develop a new conceptual framework of innocence that I call “experiential innocence.” I apply experiential innocence to the context of wrongful incarceration to theorize how wrongfully convicted inmates experience innocence personally, relationally, and across different criminal legal institutions. Moreover, I use a legal consciousness framework, conceptually focused on Kathryn M. Young’s (2014) second-order legal consciousness, to reveal the social processes and mechanisms that inform inmates’ understanding of innocence as a legal status through their exoneration pursuits.

I draw on interviews with exonerees who have reflected on their wrongful imprisonment to illustrate the relational nature of law through their personal and varied experiences pursuing exoneration while incarcerated. In doing so, I demonstrate how individual, interpersonal, and institutional processes work to crystallize and co-construct the legality of innocence for inmates as they learn to understand and mobilize post-conviction law. Threaded within my analyses is the processual nature of innocence as inmates come to gradually recognize innocence as an intrinsically social status to an official legal status. Ultimately, I posit that innocence shapes wrongfully convicted inmates’ experiences of incarceration such that it becomes the organizing principle that defines their imprisonment and determines how they navigate post-conviction law to legally prove their innocence.

Experiential innocence advances the legal consciousness literature by empirically examining how wrongfully convicted inmates respond to the “burden-shifting” effect wherein “the burden definitively shifts to the convicted defendant to prove the wrongfulness of [their] conviction” (Raymond 2001, 456). While the burden to demonstrate errors shifts to defendants in all post-conviction cases, concentrating on how inmates

come to understand and deploy post-conviction remedies around factual innocence offers insights into how marginalized groups like prisoners mobilize law when pursuing their rights in criminal legal institutions—contexts where they are largely stripped of all rights (Young 2009; Calavita and Jenness 2015).

This process begins introspectively when inmates experience personal innocence as they struggle with cognitive dissonance regarding their innocent social statuses and their places in prison, which are institutions meant to punish lawbreakers. Thus, a consequence of experiential innocence is inmates' feelings of what I call "situational disbelonging" and deep internalized fears of the legal system's power to implicate unfounded guilt that affect exonerees today. As they interact with their peers and prison personnel, wrongfully convicted inmates experience relational innocence—namely, social exchanges in which they realize others' perceptions of innocence as largely valueless and strategic. Finally, wrongfully convicted prisoners experience institutional innocence when navigating the legal bureaucracy to legally overturn their convictions on innocence grounds. Institutional innocence comprises their post-conviction litigation pursuits, which most saliently require them to develop a second-order legal consciousness informed by strategies that I categorize as independent, social, and judicial, involving social processes wherein they acquire the technical expertise to achieve legal exoneration. Independent strategies include inmates' lone research, paperwork, and discoveries; social strategies involve networking and building a legal community among their peers and attorneys; and judicial strategies entail learning from their wins and losses in court. These sets of strategies serve as underlying mechanisms that enable wrongfully convicted prisoners to navigate the nearly impenetrable post-conviction procedures required to legally prove their innocence. Furthermore, analyzing these complex social processes allows us to theorize innocence in contexts where the state and society writ large have ascribed a person's legal guilt.

## WRONGFUL CONVICTION AND WRONGFUL INCARCERATION

As I write, there have been over thirty-two hundred known individual exonerations based on innocence since 1989, which amount to more than 28,150 years lost via incarceration in the US criminal legal system, according to the National Registry of Exonerations (NRE).<sup>7</sup> To further illuminate the scope of the problem, the number of identified exonerations before the introduction of DNA as a tool to overturn wrongful convictions in 1989 amounts to over 440. Legal and interdisciplinary scholarship has frequently concentrated on the causes of wrongful convictions and how to prevent them (Garrett 2020). Moreover, criminologists and sociologists are increasingly acknowledging the challenges and barriers that the wrongfully convicted and later exonerated face

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7. The National Registry of Exonerations (NRE) "provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. The registry also maintains a more limited database of known exonerations prior to 1989" and a groups registry that "focuses on groups of defendants tied together by a common pattern of systematic official misconduct in the investigation and prosecution of these cases that undermined confidence in the defendants' convictions" (NRE 2021b, 2021c). I write during November 2022; however, the registry's exoneration count constantly rises.

throughout their prisoner reentry processes, when exonerees most commonly seek post-conviction compensation among other social and material resources (Westervelt and Cook 2010, 2012; Wildeman, Costelloe, and Schehr 2011; Shlosberg et al. 2020; Nowotny et al. 2021). However, studies on the prison experience for wrongfully convicted inmates are scarce and primarily limited to international contexts.

Scholars have long described wrongful conviction and incarceration rates as “unknowable,” though Samuel Gross and colleagues (2014) conservatively estimate that at least 4.1 percent of death row inmates in the United States have experienced false convictions based on innocence. Utilizing numerous methodologies in efforts to uncover the “dark figure of innocence” and extending them to non-capital cases, scholars have debated and estimated that US wrongful convictions occur at a rate of between 0.5 and 10 percent (Bedau and Radelet 1987, 83; Loeffler, Hyatt, and Ridgeway 2019).<sup>8</sup> Most recent and pertinent to wrongful incarceration for non-capital cases, Charles Loeffler, Jordan Hyatt, and Greg Ridgeway (2019) have estimated that wrongful convictions based on factual innocence occur in about 6 percent of criminal convictions that lead to imprisonment when measuring self-reported wrongful convictions among state prisoners. While these scholars note several limitations to drawing conclusions about these unknowable figures, the potential for thousands of factually innocent people to face incarceration in the United States warrants deeper insights into the wrongful incarceration experience.

Imprisonment after wrongful conviction has deleterious mental and physical health outcomes. These include post-traumatic stress disorder, anxiety, depression, bodily injuries, and increased social isolation that researchers regard as particularly heightened from the traumatic and prolonged wrongful conviction process (Campbell and Denov 2004; Grounds 2004, 2005; Konvisser 2012; Westervelt and Cook 2012). While wrongfully convicted prisoners experience the same general institutional control and prison conditions as their fellow inmates who took part in, or committed, crimes, scholars recognize that the effects of incarceration on the wrongfully convicted “[appear] to go beyond that experienced by other long-term prisoners” (Campbell and Denov 2004, 145).

Wrongfully convicted inmates’ imprisonment is compounded by the criminal legal system’s errors, and the ways in which they navigate their incarceration is largely based on their innocence. Kathryn Campbell and Myriam Denov (2004, 145) have found that wrongfully convicted prisoners in Canada use strategies like violence, cooperation and belonging, withdrawal, preoccupation with exoneration, and rejecting the “criminal” label as “resourceful and creative ways to ensure their welfare in the hostile prison environment.” Moreover, they posit that inmates have used these strategies to adapt to prison and cope with their wrongful incarceration, arguing that the wrongfully incarcerated suffer two “burdens of innocence” or consequences for maintaining their innocence in prison. First, prison administration perceives them as having a higher risk of recidivism, and, second, inmates develop a sense of futility about their prison release date (152). As the only sociological and empirical study focused solely on wrongful

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8. For a systematic review of studies estimating the frequency of wrongful convictions, see Loeffler, Hyatt, and Ridgeway 2019, 261–66. For additional estimates and insights about the difficulties of making and relying on these estimates, see Acker 2017, 9–14.

incarceration and innocence, the authors provide a crucial starting point to understand how the wrongfully incarcerated experience prison life and contend with maintaining innocence behind bars.

Despite these insights, research on wrongful incarceration is generally limited in scope and has neglected the multifaceted nature of innocence as well as how numerous legal processes affect wrongfully convicted inmates' incarceration experiences. Furthermore, empirical research on wrongful incarceration utilizing former inmates' firsthand accounts is lacking. And while the innocence paradigm<sup>9</sup> continually shapes the Innocence Movement, "absent from the paradigm, from a criminal justice perspective, are analyses and policy initiatives addressed to the plight of innocents while in prison" (Zalman 2010). Considering these gaps in the literature, this article advances this research to uncover how innocence shapes the experience of incarceration for wrongfully convicted prisoners.

## EXONERATION ON GROUNDS OF INNOCENCE

At trial, the state must prove guilt beyond a reasonable doubt to reach a verdict of "guilty" or "not guilty," where the defendant bears no burden of proof and a legal determination of innocence is not an option (Gross et al. 2014). Once convicted, individuals can raise legal claims to challenge their convictions at three review stages: direct appeal, state post-conviction review or "state *habeas*," and federal *habeas corpus* (Garrett 2011, 194–96). Broadly, inmates have some legal right to deploy post-conviction remedies or "state *habeas*" in every state, and these include avenues to legally claim actual innocence (Sperling 2014, 146).<sup>10</sup>

Courts are increasingly recognizing actual innocence claims via post-conviction DNA testing statutes and laws that allow defendants to bring actual innocence as a freestanding ground for relief from conviction based on non-DNA evidence<sup>11</sup>

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9. The innocence paradigm is the "organizing heuristic for the Innocence Movement" and comprises a list of wrongful conviction causes and policies to assist exonerees (Zalman 2010, 1469). For an interdisciplinary and public policy perspective on wrongful convictions and the Innocence Movement's goals, see Zalman 2010.

10. In Illinois, Texas, and New York, Illinois's Post-Conviction Hearing Act, 725 ILCS 5/122-1 (petition in the trial court); Texas's Code of Criminal Procedure, Art. 11.07 (procedure after conviction without the death penalty); and New York's Criminal Procedure Law, NY CLS CPL § 440.10 (motion to vacate judgment), establish legal rights to post-conviction procedures and remedies respectively.

11. Non-DNA cases are cases in which biological evidence is not available or suitable for DNA testing (Medwed 2005). While DNA is generally considered the "gold standard" for forensic evidence, "the vast majority of prisoners lack relevant DNA evidence from the crime scene," and legal practitioners have estimated that about 80 percent of felony cases do not involve suitable DNA evidence (Garrett 2008, 1649, citing the statement of Barry Scheck, co-director of the Innocence Project. Senate Committee on the Judiciary, *Protecting the Innocent: Proposals to Reform the Death Penalty: Panel II, Testimony of Mr. Barry Scheck*, 107th Cong. 221 (2002), [https://www.judiciary.senate.gov/imo/media/doc/scheck\\_testimony\\_06\\_18\\_02.pdf](https://www.judiciary.senate.gov/imo/media/doc/scheck_testimony_06_18_02.pdf): "The vast majority (probably 80%) of felony cases do not involve biological evidence that can be subjected to DNA testing"). This estimate reflects exonerations today, in which over 82 percent of all US exonerees were exonerated based on non-DNA evidence—like eyewitness testimony and recantations—proving their factual innocence. Non-DNA exonerations in Illinois (over 87 percent), Texas (over 83 percent), and New York (over 84 percent) are representative of this pattern.



(Risinger and Risinger 2014, 125; Miller 2020, 677).<sup>12</sup> Some of these statutes also aim to lessen the standard of proof to mitigate barriers like statutes of limitations, known as sunset provisions, that further bar defendants from challenging their convictions when filing innocence claims based on new evidence (Humphrey and Clarke 2017, 164). Codifying innocence in these ways, wherein innocence is formalized into law and institutionalized as part of the legal system—as in actual innocence jurisprudence—in state statutes and case law sounds like a step in the right direction to remedy erroneous convictions. However, existing innocence standards of review and burdens of proof required to order a new trial are numerous and context dependent per the United States’s varying jurisdictions (Findley 2011; Miller 2020, 677). And, despite these advances, the criminal legal system in most jurisdictions does not permit or demand any legal conclusions of innocence, and courts almost never rule on the question of actual innocence even in new trial motions based on compelling innocence claims (Findley 2011, 1189–90; Risinger and Risinger 2014, 126). This is especially the case for defendants with non-DNA cases, wherein evidence of innocence is more difficult to prove since legal system actors often perceive DNA evidence as clearer and more convincing than recantations and claims of faulty forensics, among others (Medwed 2005; Findley 2011, 1161; Caine 2013, 260–61).

Given the “burden-shifting” effect that defendants in all post-conviction cases face, courtroom actors and the public may expect wrongfully convicted defendants to present evidence that proves their factual innocence before and after conviction (Raymond 2001, 456). Thus, when wrongfully convicted prisoners face the complex legal bureaucracy involved in pursuing official exoneration, the tasks required to prove their factual innocence and overturn their convictions trickle down to them even when they have or recruit legal counsel. Inmates claiming innocence “find a shockingly confusing web of procedures that make exoneration based on innocence a near impossible feat” since they infrequently have access to clear and convincing evidence of their innocence and confront non-uniform legal procedures that prevent them from asserting their innocence (Sperling 2014, 139–40). Wrongfully convicted inmates are consequently “thrust into the role of the state” and forced to take on the role and responsibilities of the innocence lawyer (Raymond 2001; Risinger and Risinger 2014; Sperling 2014, 156).<sup>13</sup> So, despite perpetual moves toward innocentist ideals,<sup>14</sup> the US criminal

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12. While the US Supreme Court has ruled on influential actual innocence cases, for example, *Schlup v. Delo*, 513 U.S. 298 (1995), and *Herrera v. Collins*, 506 U.S. 390 (1993), among others, it has not established a constitutional right to claim actual innocence in post-conviction proceedings (Garrett 2011). Consequently, wrongfully convicted prisoners largely refer to case law on actual innocence pertinent to their statutory jurisdictions. Three trial courts in New York and the High Courts of Texas and Illinois recognize freestanding actual innocence claims via *People v. Bermudez*, 906 N.Y.S.2d 774 (Sup. Ct. NY Cty. 2009); *Ex Parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996); and *People v. Washington*, 171 Ill.2d 475, 665 N.E.2d 1330, 216 Ill. Dec. 773 (1996) respectively (Risinger and Risinger 2014, 125). For more on how the US Supreme Court has treated actual innocence cases, see Garrett 2011, 222–24.

13. “The innocence lawyer is committed to finding those who are factually innocent of the crime for which they have been convicted, and to obtaining their freedom” (Risinger and Risinger 2014, 125). Generally, they only pursue and proceed to critically investigate all available information for cases wherein “factual innocence is clear or highly likely” which “inherently involves signaling of a well-warranted belief in actual innocence, or at least the gross unsafety of the verdict in regard to actual guilt” (125).

14. Medwed (2008, 1549) coined the term “Innocentrism,” describing the transformation in US criminal law “due to the increasing centrality of issues related to actual innocence in courtrooms, classrooms, and

legal system poses complications and barriers for the wrongfully convicted and their legal counsel. I argue that, in these ways, innocence poses challenges that define and shape inmates' wrongful incarceration experiences and dictate the social processes and mechanisms that lead them to develop a second-order legal consciousness when pursuing exoneration. Moreover, how inmates experience innocence informs how they perceive themselves and their imprisonment.

## LEGAL CONSCIOUSNESS AND THE MOBILIZATION OF LAW IN PRISON

Legal consciousness refers to how individuals experience, understand, construct, and mobilize law (Merry 1990; Ewick and Silbey 1998; Engel and Munger 2003; Chua and Engel 2019). It involves how individuals develop their worldviews, perceptions, and decisions—which are interconnected and emerge in distinct ways from social interactions—in relation to law (Chua and Engel 2019, 2–3). Scholars have applied legal consciousness as a theoretical framework in numerous contexts examining the welfare state; street harassment; disability rights; immigration law; lesbian, gay, bisexual, and transgender rights; and prisoners' rights, among others, which largely involve marginalized groups (Sarat 1990; Nielsen 2000; Engel and Munger 2003; Abrego 2008, 2019; Calavita and Jenness 2015; Hull 2016). In the case of prisoners, research drawing on legal consciousness has examined how and why incarcerated individuals and prison staff in California utilize the inmate grievance process and sheds light on disputes that mark everyday life in prison's intensely hierarchical and hostile environment (Calavita and Jenness 2015). The authors uncover how “the logics of rights and confinement are entangled in the inmate grievance system and in the legal consciousness of grievance participants,” maintaining and reproducing an oppressive punishment system seemingly committed to prisoners' rights yet prioritizing and exercising bureaucratic power via constant grievance denials (22). Less clear from this literature is how inmates understand and deploy other available avenues of post-conviction law, like actual innocence jurisprudence.

Scholars are also increasingly recognizing the multifaceted and relational nature of legal consciousness, acknowledging that interactions with other people, groups, and institutions influence individuals' thoughts and actions in contexts where law may play a role in people's everyday lives (Young 2014; Chua and Engel 2019). Specifically, second-order legal consciousness considers how “a person's beliefs about, and attitudes toward, a particular law or set of laws is influenced not only by his own experience, but by his own understanding of others' experiences with, and beliefs about, the law” (Young 2014, 500). Prioritizing the ongoing, interactive set of “social processes that create legal consciousness,” it reveals how numerous groups' and individuals' attitudes shape individual- to group-level legal consciousness and how they inform each other and offers insights into the “processes that engender complicated relationships to law and legal structure” (501–4; see also Young and Chimowitz 2022). Recent

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newsrooms” that mainly derived from the advent of DNA and DNA technology used to exonerate innocent inmates. Zalman's (2010) “innocence consciousness” expands on the positive nature of this transformation and how these ideals can facilitate criminal legal reform more broadly.



scholarship has examined how legal authorities develop second-order legal consciousness in the context of welfare fraud enforcement (Headworth 2020) and parole board decision making (Young and Chimowitz 2022). This study shifts the lens back to analyze the social processes and mechanisms that engender second-order legal consciousness for targets of enforcement—in this case, wrongfully convicted prisoners (Young 2014).

As the extant literature suggests, wrongfully convicted prisoners face post-conviction law in their everyday lives via their preoccupation with exoneration and the onerous processes required to achieve it. Given the criminal legal system's hierarchical, networked, and transactional structure at numerous contact points (that is, the adversarial and inmate social systems, among others) and the importance of differential institutional contexts, I argue that second-order legal consciousness is a pertinent theoretical tool to analyze inmates' experiential innocence at individual, interpersonal, and institutional levels. To do so, this article advances insights on the relational and "mutually constitutive relationship" between "law in action" and "law on the books" as inmates develop legality around innocence when navigating post-conviction remedies toward exoneration (Silbey 2005, 359; Young 2014). While my research prioritizes how participants' identities and second-order legal consciousness shape one another,<sup>15</sup> I also acknowledge the criminal legal system's hegemony and how it informs participants' legal consciousness when navigating the criminal legal process (Chua and Engel 2019).

## DATA AND METHODS

All eleven participants were wrongfully convicted and incarcerated in Illinois (six), Texas (four), and New York (one)—the states with the highest number of exonerations in the United States, respectively<sup>16</sup>—for non-capital and non-DNA cases. While they served extensive amounts of prison time, ranging from thirteen to over twenty-nine years, participants faced even longer prison sentences, from fifteen years to life without parole. Since the exoneree community is relatively small and hard to reach, I recruited participants using snowball sampling among innocence organizations, advocates, and exoneree networks. I used the NRE to determine participant eligibility, which streamlined accessibility and allowed me to confirm participants' identities and

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15. As in David Engel and Frank Munger's (2003, 13) approach, I treat legal consciousness as "a process through which the self continually evolves and redefines the relevance or irrelevance of law," viewing "identity as central to the role of rights in everyday life." This perspective offers deeper insights into how wrongfully convicted inmates construct legality and develop legal consciousness around innocence, which they largely experience as a social status.

16. While I recruited a purposive sample based on participants' exoneration statuses in the states with the largest exoneree populations, Illinois, Texas, and New York are among the handful of US states that recognize a freestanding claim of actual innocence, which generally requires clear and convincing evidence to meet its burden of proof (Risinger and Risinger 2014, 125; Leonetti 2021). Although not all participants explicitly mentioned pursuing exoneration based on a freestanding actual innocence claim, this avenue toward exoneration as an option may provide deeper insights into how prisoners in these jurisdictions understand and utilize factual innocence.

case details while recruiting and for secondary data collection.<sup>17</sup> Demographically, my final participant sample comprised three women (Hispanic) and eight men (two Hispanic, three Black, three White).<sup>18</sup>

To grasp a richer understanding of the wrongful conviction experience, I conducted thirteen in-depth semi-structured interviews.<sup>19</sup> Each interview ranged from sixty to 120 minutes through video and voice call. Virtual and phone interviews allowed the participants and me to coordinate convenient interview times and eliminated travel requirements, especially amid the COVID-19 pandemic. Moreover, I viewed data construction as a collaborative effort between the researcher and the researched. When I began my exploratory project, I was interested in learning how exonerees experienced the wrongful conviction process from before their case involvement through reentry. Over time, I adjusted my interview questions to participants' recurring topics and ideas, which led me to focus my second cycle of interviews on their incarceration experiences. Interviewees primarily concentrated on their incarceration within maximum-security state prisons.

I assumed multiple rounds of *in vivo* and concept coding for all interview transcripts using MAXQDA data analysis software (Saldaña 2016). Starting with these coding methods, I could further understand participants' perspectives as well as interpret and develop meanings and processes that define participants' wrongful incarceration experiences. I then used focused and thematic coding to generate ideas within dominant categories that stemmed from recurring themes in the data, including "being in prison despite innocence," "everybody says they're innocent," and "proving factual innocence," among others. In doing so, I constructed concepts and processes from participants' experiences to best illustrate how the criminal legal system, through the incidences of wrongful conviction and incarceration, alters the inmate experience and the meaning of innocence.

I emphasized ideas that illuminate similar experiences across participant narratives to illustrate points of commonality. However, I placed importance on experiential differences to facilitate a deeper and holistic understanding of how participants' individual circumstances elicited ranging perspectives on what it means to be factually innocent while incarcerated. In my analyses, I develop concepts absent from preceding analyses and advance observations and phenomena present in earlier studies, highlighting those that were most important to participants' incarceration experiences. As a Hispanic woman, I established commonalities with participants of color and familiarity when discussing geographic spaces like Illinois where I study and my home state of Texas. These

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17. Limiting my participant pool to exonerees in the NRE is useful for these analyses since the legal system officially recognizes their exonerations, wherein their initial and subsequent innocence claims are based on official case outcomes involving factual innocence (Findley 2011, 1185).

18. All participants agreed to my use of their actual names for this project. For example, when I asked Jacques Rivera if he minded me using his actual name for this research, he responded with an enthusiastic: "Yeah! I want everybody to know!" All quoted italics represent participants' auditory emphases.

19. The original research design for my second interview cycle entailed two in-depth interviews per participant, where the first focused on exonerees' wrongful incarceration experiences and the second on their prisoner reentry processes. Thus, I interviewed two participants twice while pursuing this research protocol and modified the study thereafter to request one in-depth interview solely about exonerees' wrongful incarceration experiences.

characteristics created grounds for heightened solidarity and rapport throughout the research process.

## EXPERIENCING INNOCENCE PERSONALLY

On his way to prison, James K. was in disbelief and felt numb thinking about his fate behind bars, maintaining hope that the legal system would reveal the wrongfulness of the trial court's "guilty" verdict. Participants suggested that this is a collective experience that soon-to-be inmates face on the heels of their wrongful convictions. As James K. explained, "I couldn't believe it was happening. I couldn't believe that I was gonna have to spend more years of my life fighting to *prove* myself innocent. . . . And just thinking that there was gonna be some magic legal trick or somethin' that was gonna happen to undo all of this, but—it didn't happen." Like most wrongfully convicted individuals, James K. was inexperienced with the law and legal system before going to prison, but he knew that they held the key to his eventual release. All participants initially hoped for "some magic legal trick" to overturn their convictions.

Moreover, being in a place like prison is a distinct experience for wrongfully convicted inmates. The sole idea of going to prison and serving time for crimes they did not commit illuminated differences in how they perceived their place in prison among existing inmates given their factual innocence. Jason elaborated:

You go to prison, which was a terrifying concept for someone who's innocent. All you can think on the bus ride is—especially for someone like me who has a murder charge, I'm goin' to maximum security—"Here I am, going to a place full of *real* murderers and rapists, I mean hardcore criminals. What's gonna happen to me? Am I gonna be killed? Am I gonna be raped? Am I gonna have to kill somebody to *survive*? What has my life become?" . . . It's also intimidating because you're *not* like a lotta those people in there. . . . some people just make bad choices; doesn't mean they're bad people. But you're forced to change your mentality to adapt to a world that you wouldn't ordinarily be a part of.

Consistent with several scholars' findings (Campbell and Denov 2004; Westervelt and Cook 2012) and across participants' narratives, Jason distanced himself from the socially embedded notions about prisoners' assumed deviance and criminality while emphasizing their contradictions against his factual innocence. While any inmate's first time in prison may be scary and disconcerting, Jason noted how going to prison meant navigating an environment where he, in all ways, did not belong. He had frustration in his voice, directed at the tensions he felt in grappling with his factual innocence, his state-imposed "guilty" status, and anticipating the "hardcore criminals" with whom he would forcibly coexist in prison.

Consequently, wrongfully convicted inmates' unwarranted initiation into the criminal legal system despite their factual innocence causes spatial, temporal, and

contextual disorientation that generates what I call “situational disbelonging.”<sup>20</sup> Situational disbelonging encompasses the notion of not belonging in the entirety of a situation due to status tensions and incongruities. It dictates how the wrongfully convicted manage their factually innocent statuses and social identities as well as navigate their wrongful conviction processes given the legal system’s power and authority to legally ascribe their unfounded “guilty” and “criminal” statuses. While situational disbelonging begins at the point of suspicion for the wrongfully convicted, it is oftentimes most pronounced in prison where years to decades behind bars and losses in the courtrooms reify the finality of their convictions before they can legally prove their factual innocence and achieve exoneration, if doing so is even possible. At the individual level, wrongfully convicted inmates personally identify as innocent early in their incarceration since innocence is not only factual but also fundamental to their social selves.

Like Jason, participants explained that just being in prison as someone who did not commit the crimes for which they were convicted violated the very nature of prison’s punitive punishment function. Eric further explained how he internalized being in prison despite his factual innocence. In addition to the cognitive dissonance that results from his situational disbelonging, Eric expressed that being in prison did not have the same effects on all inmates and that wrongfully convicted prisoners experience a fundamentally different challenge in understanding their incarceration:

People that were wrongfully convicted, it’s kinda hard to take a responsibility or hard to take somethin’ away from somethin’ that [you’ve] never done. . . . for it to have the same value . . . if you did a crime, yeah, it’s easy for you to take responsibility for it. You’re like, “Okay, yeah. I did that.” You’re takin’ somethin’ away from the experience. You’re takin’, “Okay, well, maybe I shouldn’t [have] did that. This is my punishment for doin’,” whatever. What if [you’ve] done nothin’? . . . you don’t take the same thing away from it. You don’t learn. It doesn’t have the same impact on changing you as it would somebody who does somethin’. . . . “Why are you in prison? Why are you here?” That would be the question. . . . What *do you* change if [you’ve] done nothin’? [Crying] . . . I walk around today *deathly* afraid of what may happen because I know you don’t have to do *anything* to end up gone, you know?

Eric reasoned that wrongfully convicted prisoners intrinsically struggle to comprehend what they must learn from their incarceration experiences since they have no reason to bear culpability for their alleged crimes or criminal activity. From his perspective, punishment via incarceration cannot function as a lesson on deterrence to crime or rehabilitation because wrongfully convicted inmates are factually innocent, which renders their punishment baseless. Furthermore, wrongful convictions and subsequent

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20. Sandra Westervelt and Kimberly Cook (2012, 107–28) indicate that wrongfully convicted death row inmates experience similar feelings of not belonging in prison and develop coping strategies to adapt while managing the trauma and fear they face due to their circumstances. They also note that many death row exonerees “feel a sense of disorientation and displacement” through their prisoner reentry processes after experiencing the traumas of wrongful conviction and incarceration (169). I advance these empirical observations by offering a more granular perspective on the disorientation and displacement the wrongful conviction process causes by theorizing these experiences in the context of wrongful incarceration in non-capital cases.

imprisonment hinge solely on legal actors' authority to ascribe defendants' and prisoners' guilt. For Eric, baseless prison time simply reinforced the system's defects and left him questioning what being in prison would do for him if it was unable to fulfill one of its main purposes: to punish. Moreover, the experience of being in prison despite his factual innocence fostered trauma and deep fears of the legal system's power to implicate unfounded guilt and reify its finality toward criminal convictions that persist for Eric and fellow exonerees today. As participants highlighted, wrongfully convicted prisoners face a distinct incarceration experience since their factual innocence shapes how they understand their imprisonment and, in turn, internalize their innocence as a social status and fundamental piece of their identities.

## EXPERIENCING INNOCENCE RELATIONALLY

Acknowledging the centrality of the legal system for facilitating their erroneous convictions and eventual release, wrongfully convicted inmates understand that the social construction and meaning of innocence are complicated, especially in prison. Aside from their trial court experiences and personal assessments of being in prison, the social meaning of innocence among fellow inmates and prison personnel further informed how participants understood their imprisonment and constructed legality surrounding their factual innocence. Though some of the participants encountered inmates who admitted guilt and even took pride in doing so, some perceived that most inmates claimed innocence whether or not they were wrongfully convicted. James K. explained this phenomenon in jest, "well, everybody's innocent in prison. [Laughs] I mean, I think in the entire twenty-five years I was locked up, I think I ran into maybe a handful of people that said, 'Yeah, I did it.' ... [because] everybody wants to get *out*. Nobody wants to do time. Nobody wants to stay in prison. Nobody's about to *admit* that they're *not* innocent." From James K.'s experience, the concept of innocence appeared largely superficial behind bars since he perceived that most prisoners claimed innocence. Others, like James G., also discerned that prison personnel took part in amplifying this idea:

The police, the warden, the shift commander [would say], "Yeah, he's [a] convicted felon there, he's guilty, everybody [says] they are innocent." ... I used to tell people, "I didn't do this shit, man. I shouldn't be here." And they would look at me like, "Yeah, right. Everybody says that." ... Even the police and inmates, they would make *fun* of me. They walked past my cell [saying], "You still here? You ain't gone home yet?"

As James G. and James K. illustrate, indifference and hostility toward innocence claims were, at times, part and parcel of their social interactions in prison. These interactions elicit another layer of futility for the wrongfully incarcerated and may contribute to their beliefs that some of their peers' and prison personnel's social conceptions of innocence are largely strategic or meaningless since every inmate carries a "guilty" legal status.<sup>21</sup> In

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21. Recent findings on how prison experiences inform prisoner reentry outcomes among the wrongfully convicted suggest that exonerees widely perceive that everybody claims innocence among their interpersonal interactions in prison (Nowotny et al. 2021, 7–8).

an environment where everyone is deemed guilty and treated as such, wrongfully convicted inmates tend to experience much of their incarceration as lone wolves. According to Eric, “nobody’s innocent until the court [says] you’re innocent. . . . people will know [you’re] innocent, but it doesn’t mean anything. . . . People said you’re guilty, so whether you’re innocent or not, as long as you’re there servin’ a sentence for it, you are what they say you are.” Eric acknowledged that prisoners’ legal “guilty” statuses hinge on legal actors’ decisions in court, and, whether a defendant is factually innocent or not, their “guilty” status puts them on a level playing field with their fellow inmates who each hold the same status. Being factually innocent in prison had little to no effect on how prison personnel or other inmates treated participants, and claiming factual innocence was no different.<sup>22</sup> In these ways, fellow inmates’ and prison personnel’s beliefs about what innocence meant and what it meant to claim it in prison further informed how participants defined innocence.

According to participants, inmates were further divided on the meaning of innocence. For participants, innocence meant that the defendants were not involved in the crimes for which they were convicted. Brian elaborated:

Innocence is, you have nothing to do with it. Period. Not if they got you for delivery of a controlled substance, but actually you weren’t delivering it, you just have possession of it—you’re not innocent. If they got you for aggravated robbery, but it was just plain robbery, you’re not innocent. Innocent is you weren’t there, you don’t know what the hell they’re talkin’ about, you have nothin’ to do with nothin’. . . . Innocent is: . . . I was over here, 10 miles away. I had no idea they were gonna do a robbery, or whatever. If I’m in the car and you’re inside doin’ a robbery, I’m not innocent. Maybe I didn’t shoot the guy, but I’m not innocent. . . . Some people got screwed over in their trial, but they weren’t innocent. Maybe they got too much time or something like that. You know, there’s a difference between innocent and injustice.

Innocence, in this sense, most closely aligns with courts’ post-conviction innocence standards—the defendant’s burden of proof required to prove their factual innocence to successfully overturn their convictions and achieve exoneration based on innocence. While these standards vary depending on the court and its jurisdiction, they generally require the defendant to present newly discovered evidence of innocence to legitimize their innocence claims. Based on Brian’s experience, some prisoners had broader interpretations of innocence that informed how Brian and other participants defined innocence—for example, evincing innocence as procedural or evidentiary errors to the court’s verdicts as well as unfair sentencing and criminal charges based on technical legal details irrelevant to factual innocence. While these criminal legal system errors comprise human rights violations and grievances that are significant and legitimate, Brian understood that injustices like these are distinct from wrongfully convicted

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22. Divergent from most participants’ accounts, one exoneree perceived that disclosing his innocence worked in his favor among some prison guards, who seemed more comfortable being around him, more open to talking with him, and gave him “a little more leeway to do things” at their discretion, such as allowing him more yard and gym time since they did not deem him “a troublemaker.”



inmates' innocence claims in prison and the courtroom (Findley 2011). His definition first and foremost regards innocence as an identity or social status in contrast to his fellow inmates' perceptions of innocence, which, for many, might offer potential affordances like a sentence reduction or eventual release on constitutional grounds alone. However, the ways in which participants perceived and experienced innocence personally and relationally exemplifies the increasing legality that factual innocence represents for wrongfully convicted inmates the more time they spent behind bars.

## EXPERIENCING INNOCENCE INSTITUTIONALLY

Participants' personal experiences and social interactions with inmates and personnel established a baseline understanding of innocence as meaningless and valueless in prison. However, they also informed how participants would engage with the institutional facets of innocence throughout their incarceration. Charles aptly explained:

To me, [innocence] meant a lot. . . . it kinda kept me *focused*. . . . the *main thing* for my *whole* incarceration was the innocence of it. Because had I not been innocent, . . . maybe I woulda given up fightin' or tryna come home or maybe I woulda did somethin' stupid, or *anything*, and been gone for the rest of my life. I guess by me being innocent, it keeps you focused, keeps your eye on the prize—it makes you keep your mind goin', like, "Nah, I'm *not* gonna be here for the rest of my life. I didn't do this. I'm not fixin' to let these people keep me here. . . . I gotta get out. I gotta find a way, I gotta do this. I *gotta* get somebody to help me." . . . It was like the whole thing that kinda guided me through my whole incarceration.

As Charles illuminated, factual innocence was the organizing principle surrounding how he understood, experienced, and navigated his wrongful incarceration. It further centralized his aims toward exoneration and legally proving his factual innocence. In essence, while experiencing innocence at individual and interpersonal levels strengthened their perceptions of innocence as a social status, these experiences also informed their motivations to pursue an innocent legal status.

Laboring to learn the legal ropes is common among inmates, wrongfully convicted or not. The criminal legal system is stocked with legal hurdles that make it difficult to challenge and especially reverse a criminal conviction for a closed case. The state constructs these challenges through statutes of limitations, information withholding, and legalese among others that exclude most individuals who face criminal legal system contact—overwhelmingly, people of color—from accessing or understanding the law. James G. expressed how he perceived these barriers and how they apply to post-conviction law:

In the judicial system, once you're convicted of a crime, whether you're innocent or not, you have a time limit to file certain things inside a courtroom. And the system is designed to keep this paperwork and its information *away* from you. And then on the other hand, the majority of people that come *into* the system, they're not knowledgeable about how to obtain certain

paperwork, or neither do they have any help or access to go into the law and get into the books or whatever and file certain [things]—they leave it upon lawyers or a public defender to file these things. . . . it's all designed to keep you and trap you there and to keep information from you. There's hundreds of people that's falsely imprisoned, but they don't have the knowledge or the research to bring the issue to fruition.

Here, James G. describes his mistrust in the legal system and its structure, noting its hegemony over justice-impacted people. Though participants forcibly utilized the system's legal remedies to pursue and achieve exoneration, they shared this mistrust across the board given their prior experiences with institutional actors that led to their erroneous convictions.

In line with the extant literature on wrongful incarceration (Campbell and Denov 2004; Grounds 2004, 2005), participants spent most of their prison time—ranging from years to decades—fighting their cases. Aside from survival, learning how to legally prove their innocence was their ultimate mission through imprisonment. Zeroing in on how he tackled his wrongful conviction case, James G. noted: “It’s very hard for people like myself that’s in prison, wrongfully convicted . . . false imprisonment, in which you’re trying to prove your case. . . . My time [consisted] of applyin’ myself to find out: How did they put me in prison? Why am I in prison? How can I prove my innocence to get out of prison? What do I need to obtain to prove this? I had been in courts for like, twenty-five years. Every year I was in court. I was in the Appellate Court, the Supreme Court, the US Supreme Court, the civil courts.” And uncovering the answers to these questions required time, effort, and strategy to overcome the challenges of conquering the wrongful conviction case in every courtroom they faced during and after incarceration. While accounting for their personal and relational experiences with innocence, participants were also forced to acquire and develop legal consciousness through their institutional experiences with innocence, which involved the criminal legal bureaucracy required to pursue and achieve official exoneration.

First, developing legality around their innocence meant understanding the anatomy of the wrongful conviction case, which comprises elements and processes that may fundamentally differ from other criminal cases wherein defendants committed or took part in their alleged crimes. As Fernando specified, “if you’re faced with the scope of wrongful convictions, then you’re usually faced with things that are usually *not* against the normal criminal defendant who is guilty. Meaning, there’s hiding of evidence, there’s tampering of witnesses from police and prosecutors, *all* type of things—junk science, anything that leads to the factors that we know cause wrongful convictions.”

Moreover, participants described approaching their imprisonment and wrongful conviction cases “like a war” or fight where they sought to personally better themselves and, most importantly, acquire and sharpen their legal expertise. Unraveling the distinct trajectory that wrongfully convicted prisoners take in attempts to overturn their convictions, Fernando continued:

If you’re *on* your job as a criminal defendant, you’re gonna start learning the law if you can and you’re gonna start tryna get involved in the case. . . . This is what begins to be the different steps. And throughout these steps, you can

file various state appeals and then you could file various federal court appeals and at which point if you exhaust 'em, then the only remedy might be then to go back to state court with that *marksmanship* that's gonna have to be so accurate that you're gonna finally prevail. And that's what I did after eleven appeals.

This “marksmanship” that Fernando mentions alludes to the accurate and precise evidence that wrongfully convicted inmates must furnish in court to meet the exceptionally high standards of proof that their jurisdictions require to successfully prove their factual innocence. Ultimately, developing legal consciousness through their pursuits to prove their innocence in the courts entailed relational processes of learning and engaging with the law in independent, social, and judicial domains.

### Independent: Lone Discoveries, Research, and Paperwork

Since the “burden-shifting” effect demands that wrongfully convicted prisoners furnish and present evidence that proves their innocence in the post-conviction stage, these tasks often begin as lone wolf ventures, wherein inmates must pursue extensive research and paperwork on their own (Raymond 2001, 456). Part of participants' routines, when possible, involved going to the prison's law library to work on their own wrongful conviction cases. While imparting the legal knowledge he learned over time with fellow inmates who asked for help and vice versa, Brian began his legal work largely by himself. He explained: “In the law library when I'm workin' on my own stuff, I don't have time to do [other inmates'] stuff. But I would direct them to good cases if I knew any. . . . a lot of it is just getting started. And I had to learn it all myself and I started going [to the law library] myself.”

Brian mentioned compiling bags of legal work as he challenged his case throughout his incarceration. Independent research entailed learning not only about legal terms and filing deadlines but also about how to file post-conviction motions and paperwork. Additionally, it involved learning how to gather solid and sufficient evidence to satisfy the exceedingly high burden of proof that courts require to overturn a conviction based on grounds of innocence. James G. detailed how he spent his time in the law library, largely working on his case alone:

I didn't have *time* to walk around the yard and talk about other people's problems and business. . . . I didn't do that. Because I wasn't *supposed* to be there. I didn't get comfortable. I didn't go to sleep for twenty-five years. . . . I went to the law library to research my case. So I didn't have time to talk. I didn't go over there to play games. . . . I went over there to file my motions 'cause I filed a lotta my own motions . . . I was tryna figure out constitutionally, “How can I present my case and my evidence to the court?” . . . My time was important to me. . . . That was [what] my time [was] spent on.

James G., like other participants, perceived his behaviors as different than most of his fellow inmates who spent much of their time socializing or doing recreational activities.

He, on the other hand, worked top prison jobs and felt compelled to learn the ins and outs of the post-conviction process to legally prove his innocence. He later elaborated: “When I wasn’t *working*, I applied myself to investigatin’ and filin’ for my paperwork because it took me like, over twenty years to get my police records and my common law records and my police reports, my evidence, my exhibits, my photographs, my medical stuff. . . . How can I prove my innocence to get out of prison, what do I need to obtain to prove this? . . . A lotta my time was consumed [in] filing paperwork . . . and workin’ to stay outta trouble.”

As James G. suggested, obtaining new evidence of innocence is a crucial part of the post-conviction process when pursuing legal exoneration based on innocence grounds. For some participants, part of uncovering any details that could help them prove their innocence came with following current events and other wrongful conviction cases. These discoveries occurred independently and interpersonally, though Jason’s experience illustrates that they involved an introspective process, which offered deeper insights that he considered when working on his case:

When I got locked up, of course, I started payin’ more attention to things. I saw that Governor Ryan put a moratorium on the death penalty because of Anthony Porter’s case and I started following the Juan Rivera case, and learned about the Rolando Cruz case, and I just started followin’ all these different little things—Little stories and tidbits that I could pick up; I mean, stretching all around. I followed the West Memphis Three, Amanda Knox, all these different cases—Kirk Bloodsworth . . . from other states and different areas. Because they were all examples of what was happenin’ to me. So, in a way, it let me know that one: I wasn’t alone in this, that this wasn’t just somethin’ that only happened to me—this happens to a lotta people. And that there was *hope*, but at the same time, I didn’t know the full extent of that world. . . . I didn’t realize how big of a community it *really, really* was. Because you can only get so much information in prison.

Building awareness about relevant laws and innocence cases like his not only gave Jason insights into the details and patterns of wrongful convictions but also made him realize that wrongful convictions were more widespread than he originally thought while experiencing it firsthand. Moreover, attention to these incidents and bureaucratic responses to them while pursuing his own exoneration in Illinois further revealed the legal injustices that were occurring locally and nationally and illuminated the legality of innocence amid the limited access that inmates have to valuable resources.

## **Social: Networking and Building a Legal Community**

### ***Writing Letters Seeking Assistance***

Understanding and mobilizing the post-conviction process was a fundamentally social endeavor wherein wrongfully convicted inmates often sought and considered others’ legal advice, skillsets, and resources when developing the next steps to proving

their innocence. Early on and throughout their incarceration, participants requested assistance by writing letters to innocence organizations, independent law firms, the media, and government actors, among others, who could potentially help them overturn their convictions. Fernando shared his initial experience reaching out for help, which began when he was in jail: “I hit the ground runnin’ with the letter writing campaign from Rikers Island and every prison thereafter. So that helped me because that was a positive distraction—it was a networking technique because we didn’t have computers to help us. We had limited phone use and sometimes we had limited foot soldiers to help us.” Lacking resources and sufficient connections to people who could help him fight his case on the outside, Fernando sought opportunities to communicate with others about his wrongful conviction through written correspondence. Writing letters also allowed him to divert his attention toward solutions, like securing help, instead of his immediate circumstances behind bars. For many, writing letters seeking legal assistance or any kind of help they could get with their case took years to decades. As Elizabeth expressed,

I’d been reaching out to people, nobody would answer me back, nobody would help me. I even wrote to the Innocence Project, and they had told me, “Unless you have evidence, sorry, we can’t help you.” And things like that, so I mean it was crazy. It was like, shut down after shut down. . . . But I wouldn’t give up. Even after ten, eleven years, I was still writing people. I may not have [written] like I did at the beginning, like, eighty, ninety letters. But I was still writing over years.

Like Elizabeth, other participants faced a years- to decades-long waiting game and even continual rejection from different people, organizations, and institutions that could not assist them when they sought help with their cases. This may be due to limited resources as well as lawyers’ or innocence organizations’ case intake requirements—for example, those who can only direct time and resources to cases with DNA evidence, as in Elizabeth’s experience, among others. Seeking help by writing letters to the media and powerful institutional actors like public servants also served as strategies for garnering attention about the injustices of their wrongful convictions. James G. wrote seven hundred letters to different lawyers and ten thousand separate letters claiming and maintaining his innocence while incarcerated:

I wrote every newspaper outlet in America. I wrote every local channel in America. I wrote every cable channel in America. I wrote every magazine publisher in America. . . . I always was hollerin’ and felt, “I don’t belong here. I’m not gonna stay here. Y’all got to let me up outta here.” And I wrote, and I wrote, and I wrote, and I hollered, and I hollered, and I hollered. . . . I wrote every judge, every State’s Attorney, every Attorney General, I even wrote the President of the United States—*two* Presidents. . . . [Starting over every day] got harder and harder and harder because I didn’t have no help. And then—I’m a strong believer in faith. And I start prayin’, and God spoke to me . . . people start listenin’. . . . Like the Attorney General, he was the State’s Senator and all them state legislators and General Assemblies and

representatives down in Springfield, they started listenin' to me. . . . I was able to get my paperwork in order and proof.

James G.'s case was one among a series of cases that gained significant public attention for involving official misconduct in Illinois. In addition to relying on his faith, James G. aimed to draw continual attention to widespread corruption by connecting with news media and government actors through his letters. This led him to access records and documents that would aid in his exoneration. Writing letters seeking help with their wrongful convictions was often pivotal to broadening wrongfully convicted inmates' social networks, attaining legal and investigative help, and securing the additional resources that they needed to legally prove their innocence.

### ***Building a Legal Community: Peer-to-Peer Networks and Attorney Partnerships***

Numerous participants credited inmate networks with facilitating their engagement in legal conversations as they exchanged legal knowledge and advice that guided how they approached their cases. These social circles comprised friends, mentors, and jailhouse lawyers who had significant legal experience as well as peers who were learning the legal ropes and even pursuing exoneration based on innocence just like them. Early in his incarceration, Eric found opportunities to practice working on and discussing wrongful conviction cases, including his own, with fellow inmates:

I would ask questions like, in general about things: "What happens if your attorney did this or that?" Fortunately, I was in there when a buncha guys came off death row and I knew somebody that had served a buncha time on death row that was close to me, and I put in a good word. . . . I just asked a few of them that were legal guys that I had heard about and that's what really got me workin' on my case, a lot of it. . . . That was my solace in there. . . . you have to somewhat ask a general question to get an answer or to go in the right direction.

In addition to practicing and sharing strategies to navigate the legal system with and among his peers, Eric also took a paralegal course wherein he acquired technical legal expertise in a more formal group setting while incarcerated. He described how he continued working on his case over time, engaging his peers' knowledge and skills as well as utilizing their feedback as a sounding board to determine his strategies and next steps toward proving his innocence in court:

You definitely could take constructive criticism to see what they say if you want to. Like, if you're doin' a brief or somethin'—I work with attorneys [now] every day, they send it to another attorney for another attorney to proofread it and get it done. And I didn't know that's what I was doin' then, but it was the same concept. . . . Two of my friends or whatever . . . one of 'em is here now. He was also in the law library. Actually, a couple of 'em, we



would bounce back and forth like, theories and arguments and things of that nature. . . . That was some of the greatest support that I needed. I needed people to be devil's advocate, I needed people to challenge the way I thought . . . not somebody that's tellin' me, "Yeah, I know [you're] innocent, but go on and get to that cell and lock that door behind you." That's not the type of support I wanted or needed. . . . The other support [is] people that had books or people that had knowledge—if they could impart that knowledge on me, then that was the type of support that I really was seekin' and was after. So, if somebody said, "Yeah, that's a good argument, but you should probably go read this book over here. Have you seen this new case? Have you read this?" or "Have you done this?" Those are the things that, to me, were worth their weight in gold. . . . At one point in time, it became great to where everybody that had somethin' come through would have me read it or look at it. . . . If it was a new case . . . we shared those things later on. So, eventually, it didn't become so hard . . . you knew who was who and what was what.

Being part of a peer-to-peer legal community and developing his own over time helped inform Eric's knowledge about post-conviction law and led him to crucial resources to approach his wrongful conviction case like actual innocence jurisprudence, books, and legal advice. While difficult to make these social connections at first, building trust with peers over time helped Eric realize a prison saying that he shared: "Water finds its level," which describes how like-minded individuals tend to socially connect. In his experience, he sought and congregated with people who were focused on their legal cases just like him. More important to him than others believing in his innocence was attaining and sharing the resources he could use to help him better understand, navigate, and mobilize the law to legally prove his innocence in court. Like Eric, many wrongfully convicted inmates learning the law helped peers with their legal cases and, at times, became known jailhouse lawyers (Konvisser 2012).

While some wrongfully convicted inmates try to connect and build relationships with innocence lawyers and, occasionally, private attorneys who could help exonerate them, not all can recruit legal counsel. However, if prisoners do obtain these resources, attorneys become a direct lifeline and, oftentimes, part of their central support networks when pursuing legal exoneration. Brian briefly mentioned how he involved his lawyers in his research process, and how doing so gradually helped him file a successful writ that led to his release:

Working in the law library, people would come up [and ask], "Can you help me with my case, can you help me with my case?" And I said, "You can't afford me." You know, doin' a good job on a case takes a lotta work. I did a lotta research, and I would mail the research to my attorneys. And on my third writ, I filed it pro se—the writ that was successful, I did that by myself.

While doing extensive amounts of independent research, Brian exchanged ideas and notes with his attorneys when pursuing his post-conviction remedies to achieve exoneration. He acknowledged his privilege in being able to hire high-profile attorneys and

utilized their legal expertise when pursuing his first and second writs of *habeas corpus*. His successful third writ suggests that initially collaborating with his attorneys helped equip him with the skills and strategies he needed to file his third writ on his own. Even though they secured legal counsel, participants were compelled to get involved and demonstrate persistent interest in their cases by working alongside their lawyers. Charles elaborated:

I just knew the system [isn't] good. It's tricky. It could be the smallest thing that gets you back in court for them to actually re-open your case and see all the wrong that was done. And I never knew that. . . . you think, "Okay, I got this lawyer, so I'm just gonna sit back and let him do what he's supposed to do." No. You got to help! You can't just sit here and let him do all the work. You got to try to put the pieces together, you got to find somethin', you got to look at your case, you got to study through it, and you got to point out stuff for him 'cause he might miss something that you see. 'Cause don't nobody know your case better than you. And ain't nobody gonna fight for your life no harder than you're gonna fight for yourself. So, you have to get involved. . . . I was young, I didn't know nothin' about the law. . . . And to see that when you actually do get out, or [you're] around these lawyers and see that, "Oh, he ain't doin' this by himself. It's a whole team!" . . . it's like, "Wow, I didn't know!"

Against his initial inexperience in law, creating a partnership with his legal counsel in these ways helped Charles further understand the legal system's complexities. Moreover, this teamwork served as a legal strategy—providing his attorneys with supplementary perspectives could be a key to uncovering the details needed to successfully prove his innocence in court. Networking among and between various social circles helped wrongfully convicted inmates develop the knowledge and strategies they needed to mobilize constitutional and post-conviction law. Establishing, building, and nurturing social connections with their peers and attorneys throughout their incarceration helped them acquire the skills and resources they needed to navigate the legal system. Thus, creating their own legal communities wherein participants cultivated trust to share their beliefs about and experiences regarding post-conviction law intrinsically informed wrongfully convicted prisoners' legal consciousness and crystallized the legality of innocence as they pursued exoneration.

### Judicial: Wins and Losses in the Courtrooms

Having little to no prior experience navigating the legal bureaucracies they faced after their wrongful convictions, participants forcibly learned and drew from their court experiences to determine their next legal steps. Experiential learning through successes and failures in the courtroom gave them firsthand legal knowledge that informed how they could maneuver the criminal legal institution and understand what it would take to legally prove their innocence. Given the stringent laws and requirements comprising post-conviction procedures, wrongfully convicted inmates face frequent losses and limited legal avenues to pursuing exoneration and winning their freedom. While

maintaining hope for successful outcomes, Jason outlined the frustration, hopelessness, and liminality that he felt when facing legal obstacles and losses despite his factual innocence:

You have that hope in your head that, “Well, we’ll win on appeal. I just had a crappy attorney.” And then after a couple of appeals go through, you start to think, “Fuck! This is *never* gonna fuckin’ happen.” ... If you lose the hope, then I think you resign yourself to forever be in [prison]. ... But thankfully, we got out the right way, I fought. ... There [were] times when you had hope that things were gonna work out, but then you get smacked by a bunch of losses and you start to think, “This is never gonna fucking end. Nothing is ever gonna be good enough.” I could find a videotape of the actual people killing this person, and the prosecutor would say, “Oh, well you were on the other side of the camera.” You know, there would always be *some*thin’. ... And I would say, close to the end, even though we still had hope, there was parts of me that felt *very* scared that I was gonna have to find another way to get outta there because you’re runnin’ out of road in the legal world. You only have so many options.

As Jason illustrated above, numerous losses in the courtroom led to intermittent feelings of fear, discouragement, and futility after challenging his wrongful conviction case, wherein courtroom actors’ attitudes, discretion, and decisions further informed how he approached his subsequent chances to prove his innocence. Despite violating his rights to a presumption of innocence at the trial stage, the criminal legal system furnished the only avenues that Jason and wrongfully convicted inmates like him had to legitimize his factual innocence and achieve an innocent legal status. These avenues are scarce and “running out of road in the legal world” felt inevitable when trying to overturn a wrongful conviction case, which often entails a seemingly endless appeals process in the US courts.

Similarly, Jacques detailed some of the legal obstacles he faced trying to prove his factual innocence when navigating the post-conviction process. Being wrongfully convicted of first-degree murder in Illinois with no physical evidence proved to be a barrier to obtaining the legal help and resources he needed earlier on in his incarceration and over time. After exhausting his state-level remedies, he only had one legal avenue left to prove his innocence:

Years went on, writing people ... they said the difficult part is locating this eyewitness. “We have to locate this eyewitness and if there’s nothing for us to go on, we can’t take your case.” So once again, keep getting shot down, shot down, but I kept tryin’ and tryin’. Until finally, I filed my federal Habeas Corpus in the federal courts, which is an appeal process and according to the state of Illinois, that’s your last appeal. ... I mean, you could go to the US District Court and US Supreme Court ... if you get denied in a Federal Court, and they think it’s a matter that the US Supreme Court has to deal with. ... I filed [a writ of certiorari], and they denied it ‘cause the Federal Court said, “They’re not gonna bother the US Supreme Court with this—it’s another petty case.” So, as far as the state of Illinois was

concerned, I was gonna serve forty-two and a half years on this wrongful conviction. Once that transpired . . . I was like, “Man, I know I’m wrongfully convicted. What am I gonna do? I have no more appeals!” Other than filing another post-conviction on newly discovered evidence, but . . . I don’t have an investigator. . . . The only one who was there was my mom and my sister, and they didn’t know how to go about obtaining new evidence. So, I was basically screwed.

Jacques’s struggle to find resources and depleted remedies after years of attempting to prove his factual innocence are common occurrences in wrongful conviction cases. Without physical evidence, challenging convictions on innocence grounds is exceedingly difficult, and law firms, organizations, and institutions sometimes have little to no resources to invest in long processes of obtaining non-DNA evidence like eyewitness testimonies. However, years of writing letters to Northwestern University’s Center on Wrongful Convictions (CWC) and widespread investigations into a series of wrongful conviction cases involving official misconduct in Illinois helped prompt the CWC to revisit Jacques’s case file. These events led to obtaining the newly discovered evidence that Jacques and his legal team needed to utilize his only available legal avenue—the one on which his exoneration hinged: filing a post-conviction petition claiming actual innocence based on this new evidence.

As in Jacques’s and Jason’s cases, participants’ numerous experiences in the courtroom crystallized their legal consciousness since each instance directed how they approached their cases and the subsequent post-conviction avenues remaining to legally prove their innocence. Ultimately, court actors’ attitudes and beliefs about participants’ innocence informed their discretion to grant or deny the post-conviction motions and appeals on which wrongfully convicted prisoners’ fates rest. These interactions heightened inmates’ shared sense of hopelessness, cynicism, and mistrust in the legal system one loss after the other. However, each loss and success forced participants to understand what it takes to challenge their wrongful conviction cases and, in turn, how to mobilize post-conviction law based on factual innocence to achieve exoneration.

Despite severe mistrust in the legal system, participants’ factual innocence served as the organizing principle of their incarceration, dictating how they spent their time behind bars—learning how to legally prove their innocence—and providing them with motivation to continue doing so. Furthermore, participants forcibly utilized the legal system that ascribed their legal guilt in contexts wherein numerous legal actors, inmates, and prison personnel continually reinforced it. Highlighting and recognizing the legal system’s dual power, James G. expressed:

I can’t even begin to explain to you how somebody can . . . kick [your] door in, snatch [your] ass up, and take you and put you in jail for nothin’. How [do] you think you would feel about that? . . . You can holler, and you can scream, and you could shout and nobody’s gonna listen. But the only thing about it is—that we are, young lady, in one of the greatest countries in the world. A land of law and policy, democracy, freedom. Equal protection of law and due process. That’s the *only* thing that saved me. That’s the *only* thing that saved me.

As participants illustrated, understanding how to mobilize the legal system that exonerated them comprised experiencing innocence in personal, relational, and—most saliently—institutional ways. These experiences reflect the relational nature of their wrongful incarceration processes and why wrongfully convicted inmates perceived their incarceration as distinct from their fellow inmates who were convicted for crimes they took part in or committed. Deep in thought, Brian reflected on these differences and encapsulated wrongfully convicted prisoners' innocence experiences:

[Sighs] I think from the innocent inmate, you'd like to think everything's different. But the guards don't know, and other inmates don't know that you're innocent or guilty—they don't know, they don't care. But from the innocent inmate's aspect—*everything's* different and you can let that tear you up inside . . . a lotta people—they're innocent, but they can't prove it. . . . And those are the ones I feel sorry for. . . . [Sighs] sometimes it's tough and you end up an innocent person dying in prison, and no one ever knows you were innocent. . . . I don't think there was a morning where I didn't wake up and look at the bars . . . and I would think to myself, "What the fuck am I doing here?"—And you know where you are, but you try to block that out and lead as normal of a life as you can and look towards the future. . . . Not everybody has a positive support system or good grounds on [their] case. But I was lucky to have those things and you just go forward and keep struggling. Sometimes it's a daily struggle just to maintain.

As Brian conveyed, the wrongfully convicted inmate faces a prison where factual innocence shapes their personal, relational, and institutional experiences such that innocence is the catalyst that can dictate if and how they look toward the future. Legally proving their factual innocence to achieve exoneration and an innocent legal status is the cornerstone of their wrongful incarceration experiences, and, ultimately, it takes a village to do so.

## DISCUSSION

While wrongful conviction scholars have examined the effects of wrongful incarceration, prior research only scratches the surface in noting how innocence plays a role in inmates' daily lives. Diverging from former lines of inquiry, this study reveals the complexities of innocence and the social processes and mechanisms that inform and develop inmates' legal consciousness when pursuing exoneration. Learning how to legally prove their innocence was more than a way to cope with their wrongful incarceration; it was their ultimate mission through their imprisonment. Proving their innocence involved numerous social processes in which exonerees' experiential innocence—their personal, relational, and institutional innocence experiences—guided the strategies they deployed to navigate the legal system and acquire the expertise they needed to mobilize their post-conviction remedies in prison. In concert with their initial criminal legal experiences, social exchanges during their incarceration, in which numerous courtroom actors, peers, and prison personnel co-constructed their legal schemata, exemplify second-order legal consciousness in action. Acquiring legal knowledge and

skills to achieve exoneration comprised an iterative process whereby wrongfully convicted prisoners continually referenced others' legal understandings, decisions, behaviors, expertise, and beliefs in addition to their introspective processes of understanding innocence as a social status. These included courtroom actors' beliefs and discretionary decisions about their innocence; their peers' legal skills, advice, and how they understood innocence; and how legal institutions broadly defined and interpreted their actual innocence in court. Experiential innocence determined participants' next steps and strategies to legally prove their innocence. It ultimately illustrates inmates' gradual understanding of innocence as a primarily social status to an increasingly legal status and, in turn, how innocence becomes the organizing principle of their incarceration experiences as they developed the legal consciousness they needed to achieve exoneration.

Second-order legal consciousness foregrounds the relational nature of legal consciousness and demonstrates "how a person's orientation toward law in a given situation is the fruit of a complex and dynamic set of processes involving numerous components—his experiences, attitudes, understanding of his identities, and his beliefs about social norms" (Young 2014, 500). Examining how wrongfully convicted prisoners develop second-order legal consciousness offers deeper insights into how individuals, groups, and institutions influence prisoners' everyday understandings of law and legal bureaucracies. Accordingly, it illuminates the formal and informal avenues through which prisoners pursue legal action as resistance to, and within, a legally and socially guilt-inscribing institution while utilizing the law's power to regain their rights. Participants' exoneration pursuits also illustrate which actors shape individual knowledge and experiences related to law and, consequently, shed light on the social processes that not only reinforce legal hegemony but also engender legal empowerment when challenging the law and existing legal structures. More broadly, applying second-order legal consciousness to the wrongful incarceration context allows for a deeper understanding of how legally disempowered individuals and groups identify, assess, and employ their legal rights through introspective and relational exchanges. It further reveals the intricate relational processes and mechanisms through which individuals construct meaning and determine action around institutions and bureaucracies structured and governed by law.

Understanding innocence's complexities and effects has numerous implications. These comprise a call to systematically examine diverse inmate experiences from a critical lens, which would allow scholars and legal practitioners to develop deeper insights into the social and structural forces that dictate how prisoners understand and experience incarceration. Studying how innocence informs criminal legal processes, institutions, and experiences contributes to our knowledge about how law and punishment continually (re)construct identity and legality among individuals and groups implicated into the system. Furthermore, these accounts challenge the legitimacy of the punishment apparatus and social conceptions of prison and prisoners as fundamentally deviant. Given the culture of confusion that the legal system breeds for everyday people, it is crucial to understand how individual experiences and social interactions concerned with law continually influence one another to govern legal understandings and actions in response to courtroom actors and laws themselves. Everyday people, including marginalized groups like incarcerated and formerly incarcerated people, constantly engage with, mobilize, and create law. Thus, examining these socio-legal processes illuminates



the importance of inmates' access to justice and offers insights into the actors, mechanisms, and institutions that shape the social world.

Given numerous jurisdictions' codification of factual innocence, future research could consider how innocence shapes wrongfully convicted inmates' experiences at different stages in their incarceration processes. Factors like age, race, gender, and class, among others, may further affect how legal actors accord baseline levels of innocence and suspicion to suspects and defendants in criminal cases and may reveal more about innocence in the context of wrongful convictions. Additionally, mobilizing and creating law concerning factual innocence develops and advances innocence consciousness, which is part and parcel to the Innocence Movement. Therefore, second-order legal consciousness may prove fruitful for research on how the wrongfully convicted and exonerated understand, pursue, and realize collective action to strengthen the movement. While outside the scope of this article, it is significant to note that proving factual innocence for the wrongfully convicted is a process that can persist after inmates are released from prison and exonerated if they can achieve these feats. Some states require that the wrongfully convicted and exonerated prove their innocence again in court after their prison release to meet eligibility for state compensation based on statutory wrongful conviction compensation legislation. Thus, examining how innocence affects exonerates' reentry processes for those who successfully prove their factual innocence can further illuminate its complexities since many of the carceral system's—including legal institutions'—direct and collateral consequences seep into life after incarceration.

From forcibly being in prison for crimes they did not commit to initiating the fight to prove their factual innocence, wrongfully convicted inmates are tasked with understanding innocence and its social and legal intricacies behind bars. For the wrongfully incarcerated, prison ultimately transforms into a site wherein attaining legal knowledge to prove their factual innocence is the name of the game. In doing so, they not only consider their prior experiences with the law but also others' ideas and experiences around innocence jurisprudence when navigating the criminal legal system. This study shows how innocence is a catalyst, altering inmates' perceptions of themselves, their incarceration, and criminal legal institutions. It highlights the constitutive and relational nature of actual innocence jurisprudence as well as constitutional and human rights given their central roles in wrongfully convicted inmates' everyday lives.

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