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HAVE WE ABANDONED THE INNOCENT? SOCIETY'S DEBT TO THE WRONGLY CONVICTED

Meggan Smith*

I. Introduction

In July of 1996, Vincent Moto was released from a Pennsylvania prison after serving ten and one half years for rape and robbery.¹ After his release, Moto returned to his hometown of Philadelphia and moved in with his parents.² While he was in prison, his parents raised his three children, who were by that time eleven, fifteen, and sixteen years old.³ Moto's youngest daughter was born about a year after his release; he now has sole custody of her, and is raising her in his parents' house.⁴

Although Moto earned a degree in business management, he has struggled to find adequate employment because of his criminal record.⁵ Since the time of his release he has had various jobs as a skilled laborer and a salesman,⁶ but at times he supported himself and his family on welfare and food stamps.⁷ Seven years after his release, he was still seeing a therapist to deal with the frustration of not being able to support his children and parents on low-paying jobs or public assistance.⁸ Almost ten years after his release, he is unemployed, has no health insurance, and still lives in his parents' home.⁹

If Moto had been released on parole, he would have had access to job training and placement assistance, counseling services, housing assistance, and other social service programs provided by the state.¹⁰ Instead, he had to find his own job, obtain the services of a therapist, and live with his parents for years after his release.¹¹ So why did Moto not receive the assistance offered to parolees? Why was he left to fend for himself without any guidance from the state? The answer is quite simple – Moto was innocent.¹²

Moto spent ten and one half years in prison for a crime DNA later proved he did not commit.¹³ A decade after his release, he has received no apology from the state of Pennsylvania and no compensation for the time he served.¹⁴ Although he has continued his education, his search for a well-paying job is hampered because his wrongful conviction still appears on his record.¹⁵ Moto continues to deal with the psychological effects of being imprisoned. He fights the feelings of inadequacy from not being able to support his children and his parents, and the disillusionment caused by the system's failure to compensate him.¹⁶

Moto is not alone among exonerees.¹⁷ Rather, his story is representative of the experiences of men and women released from prison after proving their innocence.¹⁸ In a study of sixty exonerees by the Life After Exoneration Program, forty-eight percent were living with family members, forty-six percent were not financially independent, thirty percent had lost custody of their children because of their incarceration, twenty-eight percent suffered post-traumatic stress disorder (PTSD), and forty percent suffered from depression.¹⁹ Additionally, nearly half of exonerees earn less after their release than they did before their arrest.²⁰

With the increasing number of exonerations in recent years²¹ and the growing awareness of the problems exonerees

experience when they are released,²² states must confront the issue of how they will compensate these individuals. As the calls for a more re-integrative parole system become more frequent, it seems unconscionable that we currently do less for those whom we incarcerated wrongly than those we properly convicted and imprisoned.²³ In an effort to assist the debate over compensation for exonerees, I will examine the legal and social circumstances they face upon their release, compare these circumstances to those confronted by parolees, survey the various ways society and the legal system currently assist exonerees, and analyze how the current approaches fail to satisfy society's debt to the wrongly convicted. In order to compensate exonerees, states must pass comprehensive legislation providing monetary compensation and access to social services and must address the underlying causes of wrongful convictions. Until such reforms are made, society will continue to compound the grievous injuries it has already inflicted on exonerees.

II. Scope of the Problem of Wrongful Convictions

With the recent "innocence movement" it has become clear that our criminal justice system produces wrongful convictions.²⁴ There are now nearly 400 men and women in the United States who were released from prison because evidence strongly supported their innocence.²⁵ The number of exonerations per year has grown steadily since 2000, rising from an average of twelve per year through the early 1990s to an average of forty-three per year between 2000 and 2004.²⁶ Because the causes of wrongful convictions and proposed solutions have been thoroughly discussed elsewhere,²⁷ I will give only a brief overview of the issue.

While the possibility of convicting innocent people was recognized long ago, the advent of DNA testing revealed just how often that possibility becomes a reality.²⁸ As newspaper headlines about wrongful convictions became more and more common, similarities between the exonerees' cases became apparent.²⁹ Several factors emerged as the most likely to result in a wrongful conviction: mistaken eyewitness or victim testimony,³⁰ police or prosecutorial misconduct,³¹ mistaken or fabricated scientific evidence,³² jailhouse snitch testimony,³³ and ineffective and/or under-funded defense counsel.³⁴

During the early years of the innocence movement, the efforts to exonerate those wrongly convicted were centered in Northwestern's Center on Wrongful Convictions³⁵ and The Innocence Project at the Benjamin N. Cardozo School of Law.³⁶ Currently, there are more than thirty "innocence projects" operating in more than forty states.³⁷ Although many of these organizations, like The Innocence Project, concentrate solely on DNA exonerations, others work on all cases of possible wrongful conviction.³⁸

While the movement was in its early stages, few stopped to consider what would happen to exonerees *after* they were released. Activists were often overwhelmed by the battle to simply get the wrongly convicted exonerated and released

from prison; thus, it was only after the movement had succeeded in a number of cases that they recognized the need to address the exonerees' reentry into society.³⁹ As Peter Neufeld, co-founder of The Innocence Project, observed, "We were getting all these people out of prison, but we found most of them were having tremendous difficulty with life on the street."⁴⁰ It became apparent that exonerees were not prepared for the transition from prison into the public.⁴¹

III. What Confronts Exonerees upon Release?

Spotlight

In order to appreciate the circumstances that exonerees confront, it is useful to examine a few of their stories in depth. Michael Green was released on October 9, 2001, after serving thirteen years for a rape he did not commit.⁴² At the time of his arrest, he had just quit a job in maintenance at the Cleveland Clinic Center Hotel. He was a sixth-grade dropout with a history of drinking, stealing, and street fighting, but he had not previously been arrested. When he was convicted of raping a Cleveland Clinic cancer patient at the Hotel, he was shocked and angry.⁴³

With the guidance of Arthur Freeman, a fellow inmate, Green was able to overcome this anger and really turn his life around. He converted to Islam, learned to read, and earned his G.E.D. As Green improved himself in order to fight for his freedom, his mother repeatedly told her new husband, Robert Mandell, that her son was innocent. While he was initially skeptical, after regularly talking to Green on the phone, Mandell began to believe in his stepson's innocence. When Green told him about The Innocence Project, he decided to put his training as a paralegal to good use. Mandell took money from his retirement account to fund his efforts to free Green. After an often frustrating search, Mandell located the washcloth that would eventually exonerate Green. The rapist had used the washcloth to wipe himself off after the attack. The DNA in the semen on the washcloth was not Green's.⁴⁴

The day Green was released, he was greeted by anxious reporters outside the prison.⁴⁵ Green answered the reporters' numerous questions, and then went to his parents' house where his family greeted him to celebrate his homecoming. After the extended family members left, Mandell suggested he take a walk around the neighborhood, but Green could not bring himself to leave the yard. He did not have a single piece of identification and feared that cops would stop him on the street.⁴⁶

Because he felt overly-dependent on his parents, who had already done so much to help him, Green immediately began looking for employment. Although he was officially exonerated by Cuyahoga County Judge Anthony Calabrese, Jr. on October 18, 2001, employers were wary of hiring him. His sister arranged an interview at her place of employment, but they would not hire anyone who had served time in prison, regardless of their innocence.⁴⁷ Determined to begin paying his mother and stepfather back, Green settled for a job at McDonald's.⁴⁸

It was not until the following June that Green found a

job he really wanted. Rakin Abdul Aziz, a former fellow inmate, worked at a community reentry program for juvenile offenders. Because Green wanted to work with adolescents to try to put them on the right path, he accepted a maintenance position at the youth apartments of the reentry program. For the first time, Green had medical benefits, sick leave, and paid vacations.⁴⁹

Although Green eventually found satisfactory employment, his relationships with family members were still strained. Many family members thought he was arrogant now that he was educated.⁵⁰ His parents worried when he moved in with Patricia Everson, a childhood friend of his sister. They thought she was only after the possible settlement in Green's lawsuit against the city. Green did eventually settle his suit against the city of Cleveland and the state of Ohio. He received almost \$1 million from Ohio and \$1.6 million from Cleveland.⁵¹

William Gregory spent seven years in prison for rape and attempted rape before being released in 2000 when DNA testing exonerated him.⁵² Gregory's story reveals how important assistance other than monetary compensation can be to an exoneree's reentry into society.⁵³ Before his arrest, Gregory worked fulltime as an electronics salesman at Sears and was sixteen hours away from an associate's degree at a community college in Louisville, Kentucky. In 1993, he was convicted of the rape and attempted rape of two women who lived in his apartment complex. After reading an article about The Innocence Project, Gregory contacted them about testing hairs found in the stocking that the

rapist used as a mask. After DNA testing excluded Gregory as the source of the hairs, he was released on July 6, 2000.

While Gregory received no assistance from the government, he was overwhelmed by the response of the public. He had no family in Louisville, so initially his supporters arranged for him to stay in a halfway house for parolees run by a church organization. Just like the parolees, Gregory had to ask for permission whenever he left the halfway house and was patted down for weapons and given a breath test for alcohol whenever he returned.⁵⁴ However, after hearing his story in the media, the public quickly responded to his needs. A local real estate agent provided him with an apartment, rent-free, where he lived for over a year.⁵⁵ A woman who wished to remain anonymous furnished the apartment and provided Gregory with food and clothing.⁵⁶ A case manager with a local non-profit job-training agency signed him up for a cell phone on her own phone plan and offered to help him sort through the numerous job offers he received from employers who had heard his story.⁵⁷

Although the tremendous support Gregory received from the public gave him an emotional lift, it did not solve many of the practical obstacles he confronted upon his release. The numerous job offers he received were all entry-level sales positions that paid less than what he earned at Sears before his arrest. His initial efforts to find better employment were frustrated because his conviction still appeared on his record. By the time his record was expunged he had settled for returning to his position at Sears.

As an additional obstacle, Gregory owed over \$25,000

in child support from the time he spent in prison.⁵⁸ His son, who was eleven at the time of Gregory's exoneration, lived in Illinois with his mother. After his release, Gregory resumed his support payments but felt he should not be responsible for the support from the time he was in prison. More than a year later, the Family Court judge presiding over the child-support case agreed with him and dismissed the case. Although his son has moved back to Kentucky, Gregory rarely sees him. His son, who is now seventeen, has been in trouble with the police for drugs and resents Gregory for not being around when he grew up.

Now, almost six years after his release, Gregory still feels the effects of his imprisonment. His fiancée ended their relationship because she could no longer deal with the psychological after-effects Gregory experiences from being incarcerated. He completed his associate's degree, but still struggles to make ends meet. He has changed jobs frequently, looking for better pay, and at times worked two jobs. He is currently a manager at Best Buy, earning \$11 an hour. Gregory did receive good news recently when a federal appeals court reversed the dismissal of his lawsuit against the Louisville police department.⁵⁹ He now must prove his claim of false arrest and imprisonment to receive compensation from the government for his wrongful conviction.

Unlike Michael Green and William Gregory, Kevin Green received compensation through a special bill passed by the California legislature.⁶⁰ Kevin Green served sixteen years for the second-degree murder of his unborn daughter and the attempted murder of his wife. Before his arrest, Green was serving in the Marine Corps. During the time Green was in prison, his daughter from his previous marriage grew up without him, three of his grandparents died, and his family in Missouri spent tens of thousands of dollars on lawyers and visits to prison and took out a third mortgage on their house.⁶¹ Green was released on June 20, 1996 after the California Department of Justice matched DNA evidence from the scene of the attack on his wife to another man through a DNA database.⁶²

After his release, Green moved to Utah to be with the woman he married while he was in prison. He got a job calling bingo for \$6 an hour, six nights a week. After about a year, Green and his wife moved to Missouri to be closer to his family, but not long after, his wife left him and they divorced. Green got a job at WalMart. He started out making \$6.15 an hour, but quickly moved up to \$7.50 an hour.

Seven dollars and fifty cents an hour was not enough to solve Green's financial problems. While he was in prison, his second wife, the victim of the attack who had been left with serious injuries, obtained a default judgment against him for \$6 million. Even after Green's release, his second wife and her family pursued the judgment against him. His wife had mistakenly identified Green as her attacker and still refuses to believe that he is innocent. More than three years passed after Green's release before a judge vacated the judgment against him.

It was nearly two years after his release before his lawyer discovered a rarely-used California statute for compensating the wrongly convicted. The statute capped damages at \$10,000. Green received the maximum amount in November of 1998. In reviewing Green's case, however, the California legislature decided that \$10,000 was simply not enough to

compensate someone for sixteen years in prison. On October 5, 1999, California's governor signed a bill authorizing the state to pay Green \$620,000 in compensation. Green's attorney received approximately one third of the award. From the money remaining, Green voluntarily gave \$50,000 to his second wife to help cover her continuing expenses, repaid his parents some of the money they had spent for his legal defense, and invested more than \$200,000.⁶³ Unfortunately, Green simply did not know how to manage investments. Combining his lack of money-management skills with the downturn in the stock market in 2000-2001, Green ended up with around \$60,000 of his original investment.

Legal and Social Circumstances Confronted by Exonerees

As the above stories demonstrate, exonerees' struggles are not over once they are released from prison. Instead, they immediately confront obstacles, including financial difficulties, trouble finding adequate employment, the psychological effects of imprisonment, and changes in their family and community. However, these barriers are not unique to exonerees; parolees face many of the same difficulties when they are released. While the psychological effects on exonerees are somewhat different, parolees too face financial hardship, unemployment, the possibility of homelessness, and the need to adjust to changes in society.⁶⁴

Two factors distinguish exonerees from parolees. First, the government provides parolees with a parole officer and various services to smooth the transition from prison back into the community.⁶⁵ Exonerees are simply released back into the world with little, if any, guidance. They do not have access to the job training, job placement services, housing assistance, educational assistance, or mental health services that are often available to parolees.⁶⁶ Second, society rightly feels a stronger sense of moral obligation to exonerees than parolees. While the government may feel some sense of moral responsibility for the plight of parolees, that is not the usual justification for providing them with services. Rather, society is willing to provide such services because of a belief that public safety is enhanced by successfully reintegrating parolees into the community.⁶⁷

These two factors seem incompatible. It would be reasonable to expect that, because of society's heightened sense of moral responsibility toward exonerees, they would have access to the same assistance, if not more, than parolees receive. However, while both academics and officials within the criminal justice system have been calling for a more re-integrative, community-centered approach to parole,⁶⁸ the debate about what society owes exonerees has only just begun. To adequately understand that debate, it is necessary to more fully explore the obstacles exonerees confront upon release.

Exonerees' most immediate concern is having a roof over their head. One survey revealed that forty percent of exonerees lack adequate housing.⁶⁹ Most exonerees initially live with family members or friends,⁷⁰ but as Gregory's story shows, some depend on generous members of the community. Although the prospect of obtaining their own housing depends heavily on their ability to find adequate employment, exonerees face more than financial barriers to moving out on their own. They are not eligible for the housing assistance

provided to parolees and their conviction, if it has not been expunged or vacated, may bar them from public housing assistance.⁷¹ Additionally, landlords may be reluctant to rent to them because they have little or no credit history and a criminal record.⁷² Some exonerees suffer psychologically from their reliance on others for such basic needs. After surviving incarceration, exonerees do not want to be dependent on others.⁷³ One exoneree, Clyde Charles, after living with his sister for three years without finding employment, began living in his car to feel more independent.⁷⁴

In addition to adequate housing, exonerees need employment. In a survey, exonerees identified this as their most immediate concern.⁷⁵ As the director of the Life After Exoneration Program observed, "These are pretty macho guys. They don't want to go right into counseling. What they want is to go back to work."⁷⁶ Their need for employment is even more urgent because they and their family have usually exhausted their assets in the legal battle to prove their innocence.⁷⁷ Moto's parents, who paid his legal expenses with their retirement fund, had to return to work after his release in order to support themselves.⁷⁸ Such financial concerns are exacerbated by the fact that exonerees have a large gap in their credit history, if they had even built up any credit before their incarceration.⁷⁹

While many exonerees, like Gregory, are offered jobs from people who hear their story or are able to find employment through family connections, the jobs are usually low-paying, with little prospect for advancement.⁸⁰ Exonerees often take such jobs because they feel an obligation to repay those who helped them while they were in prison. As one exoneree explained, "I'm a burden on my family. I'll do anything that pays bills and puts food on the table."⁸¹

Exonerees confront several problems in their search for employment. First, many exonerees' convictions have not been expunged or vacated, so they still technically have a criminal record.⁸² In order to convince potential employers of their innocence, exonerees often carry various forms of documentation of their release. Gregory carried around legal paperwork that confirmed his exoneration,⁸³ Michael Green had a letter from the judge who officially exonerated him,⁸⁴ Anthony Robinson carried a faxed copy of his pardon,⁸⁵ and Eduardo Velazquez had a newspaper article from the day of his release.⁸⁶

Even with such documentation, some employers will not employ people who have served time in prison, regardless of their innocence.⁸⁷ There is a stigma attached to having served time in prison and many exonerees find that employers are wary of hiring them and coworkers are reluctant to work with them. Kirk Bloodsworth, who was wrongly convicted of raping and killing a young girl, was driven away from a job when coworkers began leaving clipped newspaper articles about the killing at his workstation.⁸⁸ Even exonerees, like Moto, who have furthered their education after their release have difficulty finding employment commensurate with that education.⁸⁹

Additionally, exonerees often have limited or obsolete job skills when they are released. They usually entered prison when they were young, before they had an opportunity to develop marketable skills.⁹⁰ Many had little education and, because of the elimination of many prison education programs,⁹¹ did not receive further education while incarcerated. As one exoneree said, "Coming out, it's like you're an 18 or 19 year old again."⁹² Even those who had decent employment before their conviction often find that their skills are no longer adequate for the job market they reenter. Many have never sent an email or even used a computer.⁹³ Gregory, who was an electronics salesman before his conviction, had to catch up on seven years of technological advancement when he returned to that position upon his release.⁹⁴

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are often overwhelmed by changes that most people take for granted. Most have never used a cell phone, a computer, or the Internet. Gregory remembers the confusion he felt the first time he tried to use a gas pump with a credit card machine and a self-checkout lane at the grocery store.⁹⁵ Ronnie Bullock comments, "Everything was a lot faster than it was when I went in. Pagers, cell phones, camcorders – even going to the grocery store was different."⁹⁶

In addition to the changes in the world, exonerees must adjust to changes in their family and friends. Many lost family members while they were incarcerated.⁹⁷ Calvin Washington did not even find out about his mother's death until he was released, after she had been deceased for two years.⁹⁸ Exonerees, like Gregory and Moto, often lost contact with their children while they were incarcerated and have difficulty establishing a parent-child relationship once they are released.⁹⁹ For exonerees who were convicted of murdering a family member or friend, the adjustment can be even more difficult. Beverly Monroe, who was convicted of murdering her boyfriend, says, "I lost the person that I loved . . . and I've never really had a chance to grieve, or even be sad."¹⁰⁰ Exonerees like Monroe never had the chance to mourn the loss of the murder victim at the time of the murder or during the struggle to exonerate themselves, so they have to confront that when they are released.¹⁰¹

The exonerees are not the only ones who struggle to adjust to changes.¹⁰² Exonerees' family and friends often have trouble accepting the changes in them. As psychologist John Wilson explained, "The person they knew who went to prison no longer exists. In a very real sense, that person has died psychologically."¹⁰³ Some of Michael Green's family members, expecting the thuggish, street-fighting Michael they once knew to come home, were surprised when he returned highly religious and well-educated.¹⁰⁴ Both the exoneree and the family must relearn how to interact with one another.

More fundamental than the changes in their community and family, exonerees must deal with the psychological problems that accompany imprisonment and wrongful conviction.

tion. Exonerees, like many former inmates, experience sleep disorders, paranoia, anxiety, depression, and PTSD.¹⁰⁵ They also suffer from institutionalization.¹⁰⁶ The years of strictly regimented and controlled behavior strip inmates of their agency. Dr. Terry Kupers, who has worked with exonerees and former inmates, says, “They are unable to think for themselves and interact spontaneously and naturally with the nonprison world.”¹⁰⁷ David Pope, an exoneree, observed, “All your food is cooked for you, all your laundry’s done; you’re being taken care of. Over a period of years, you just don’t realize it. All of a sudden when you get out you have to do all these things for yourself.”¹⁰⁸ The effects of institutionalization are often felt more strongly by exonerees than by parolees simply because exonerees are not provided with any tools to cope with the transition from strict regimentation to freedom.¹⁰⁹ Also, like most former inmates, exonerees experience relationship difficulties. As a result of the sexually violent atmosphere of prisons, former inmates often experience a decreased sex drive or sexual dysfunction after they are released.¹¹⁰ Compounding such problems, dating customs have often changed during their incarceration.¹¹¹

While the above emotional difficulties are experienced by former inmates as well, exonerees do experience unique psychological problems. As a result of their wrongful conviction, they often feel an intense paranoia that they could be wrongly accused again at any moment.¹¹² Many exonerees go out of their way to avoid certain people and situations. Larry Youngblood, convicted of child molestation, avoids situations where children may be around.¹¹³ Ken Wyniemko, convicted of rape, said, “If a woman walks up to me that I don’t know, I keep my distance, because in the back of my mind, I’m worried that she’s going to accuse me of molesting her.”¹¹⁴

Others take extreme measures to ensure that they can always account for their whereabouts. Anthony Robinson described his behavior: “I would chronicle where I went. I would write down what bus I got on, any distinguishing features about the driver, the time, where I got off, what was going on at that time – all kinds of little extraneous facts . . . For three or four years, I did that almost religiously.”¹¹⁵ David Quintt was so paranoid about being arrested again that when the police officer who had arrested him showed up at the Jiffy Lube where he worked, he fled and never returned.¹¹⁶

Once the difficulties exonerees face are more fully understood, society must answer the question of how it will respond to their predicament. At the present time, efforts to address exonerees’ problems are just beginning to emerge. A comprehensive solution that provides a holistic system to compensate them for the time spent in prison and to re-integrate them into society remains elusive. To develop such a system, current methods of compensation must be studied to ascertain where the existing solutions are lacking.

IV. How Does Society Currently Address the Needs of Exonerees

Why Should Exonerees be Compensated?

Before examining current compensation systems, we must first address the question of why society should provide monetary compensation to exonerees. There are several justi-

fications for providing compensation. First, and most obviously, society is morally responsible for wrongful convictions and should recognize that responsibility. As discussed below, claims that various government actors are *legally* at fault for a wrongful conviction are difficult to prove. However, the government is unquestionably morally culpable for what exonerees have endured. In addition, a compensation system would motivate the government to protect against wrongful convictions by shifting the costs of mistakes from the individual exonerees to the government.¹¹⁷ Compensation statutes also provide a form of social insurance to spread the costs associated with wrongful convictions.¹¹⁸

Opponents of compensation statutes claim that there is no reliable way of separating the truly innocent from those against whom the state simply no longer has enough admissible evidence to retry. Although this objection was a powerful one before the advent of DNA technology, it carries significantly less weight now. Exonerations through DNA evidence show more than possible or probable innocence; they show actual innocence. The actors within the system have been slow to acknowledge this difference. As Pete Adams, executive director of Louisiana District Attorneys’ Association, said, in opposing a compensation bill in Louisiana, “The danger in awarding state compensation for freed inmates is that there is no logical line to draw between factually innocent cases and the [legally innocent cases].”¹¹⁹ Prosecutors, witnesses, police officers, and victims often continue believing in exonerees’ guilt even when most outside observers agree that they are actually innocent.¹²⁰ In the case of Calvin Willis, the prosecutor and two eyewitnesses remain convinced Willis is guilty even though DNA exonerated him.¹²¹ Josiah Sutton’s application for statutory compensation was delayed when the Houston prosecutor refused to provide the statutorily required letter affirming Sutton’s innocence. The prosecutor explained his refusal by saying, “If I knew he was innocent, I would [write the letter]. But I don’t know that now . . . If you give me some good reason to believe [the victim] was mistaken, I will probably send the letter.”¹²²

Responding to such objections, one scholar has analogized statutory compensation for exonerees to crime victim compensation legislation, which now exists in every state.¹²³ Just as states have no legal obligation to compensate exonerees, they have no such obligation to compensate innocent victims of crime. Rather, states recognized that they have a moral obligation to those they failed to protect from criminals.¹²⁴ The state’s moral obligation to exonerees is even stronger because they were injured not by private criminal action, but by the operation of the criminal justice system, a central government function.

Not only is the state’s moral obligation to exonerees stronger than that to crime victims, implementing a wrongful conviction compensation system would be no more demanding than a victim compensation system. Just as states have developed procedures for screening out victims who somehow contributed to their victimization,¹²⁵ by, for example, participating in criminal activity, states are equally capable of screening exonerees’ claims to ensure that only the factually innocent are compensated. Many states have set up a separate administrative body to consider victim compensation claims, however because there are far fewer exonerees than innocent crime vic-

tims, wrongful conviction claims can easily be dealt with through the existing state judiciaries.¹²⁶ With the political will to do so, states are perfectly able to draft a wrongful conviction compensation statute that adequately compensates exonerees and protects against claims without merit.

Existing Systems for Monetary Compensation

Even including exonerees in states with compensation statutes, most exonerees receive no compensation. According to the highest estimate, thirty-seven percent of exonerees receive compensation from civil lawsuits, private legislation, or compensation statutes.¹²⁷ One survey found that only seventeen of 160 inmates freed based on DNA evidence between 1989 and 2005 received compensation.¹²⁸ For those exonerees who are compensated, the time and effort involved strongly depends on whether their state has a compensation statute.

Exonerees convicted in states that do not have a statute must resort to one of two options: a civil lawsuit or special legislation. When applied to the situation of wrongful convictions, both avenues are riddled with obstacles. The most difficult thing to overcome when pursuing a civil lawsuit, apart from the length and expense of civil litigation in general, is the fact that, with the majority of wrongful convictions, no one is legally “at fault.” When pursuing civil litigation, exonerees must resort to the inadequate avenues of a malicious prosecution, false imprisonment, or false arrest claims against the police department, individual police officers, state forensic analysts, and/or prosecutors involved with their conviction.¹²⁹

To prove malicious prosecution, claimants must show that the proceedings eventually terminated in their favor, that there was not probable cause for their arrest, and that they were prosecuted with actual malice.¹³⁰ False imprisonment involves the knowing and intentional confinement of a person against their will and without privilege.¹³¹ A claim for either malicious prosecution or false imprisonment, therefore, can be defeated by showing probable cause for the claimant’s arrest, a standard easily met even in wrongful conviction cases.¹³² Exonerees may also bring a claim of false arrest in violation of the Fourth and Fourteenth Amendments under 42 U.S.C. §1983, but this claim is also defeated by a showing of probable cause.¹³³

A few exonerees have brought malpractice claims against their defense attorneys, but because malpractice standards incorporate the Sixth Amendment standard for ineffectiveness,¹³⁴ such claims are equally difficult to sustain.¹³⁵ One such claim has met with limited success. John Dixon sued the New Jersey Office of the Public Defender, claiming their representation was ineffective because they ignored his repeated requests for DNA testing before advising him to plead guilty.¹³⁶ An Essex County judge denied the public defenders’ motion for summary judgment.

Even when an exoneree can prove the necessary elements of such claims, he will face additional obstacles. Witnesses, police officers, prosecutors, and judges, the most common defendants in such cases, are usually immune from liability.¹³⁷ Additionally, the statute of limitations for tort and civil rights claims applies and some courts hold that time begins running when the basis of the claim is discoverable, at the time of the conviction rather than the time of exoneration.¹³⁸

When exonerees cannot prove the necessary elements for a civil suit, they can lobby the legislature for a private compensation bill. For some exonerees, this option will not be possible because some states interpret their state constitutions as forbidding private legislation.¹³⁹ Even where private bills are constitutional, exonerees need political connections in order for this alternative to be viable.¹⁴⁰ This route is fraught with uncertainty and remains an arbitrary solution even when it is a possibility. The case of Freddie Pitts and Wilbert Lee provides a prime example of the problems inherent in the private bill process. Pitts and Lee, who served twelve years in prison for a double murder they did not commit, each received \$500,000 through a private bill passed by the Florida legislature. The Florida legislature approved their compensation in 1998, twenty-three years after Pitts and Lee had been pardoned by the governor.¹⁴¹ Newspaper accounts attributed the legislature’s passage of the bill to Republican Florida House members’ need to curry favor with African-American Democrats who supported compensation.¹⁴² As an additional pitfall, governors have occasionally vetoed private compensation bills out of concern for the effect on the state budget.¹⁴³

One problem common to both civil lawsuits and private bills is the disparate results they produce in the treatment of exonerees. Of all the deserving exonerees, these processes seem to randomly select a small number of them to receive significant compensation while the rest receive nothing. In explaining his efforts to push a compensation statute through the Ohio legislature, Ohio State University professor C. Ronald Huff said, “most people got nothing because they couldn’t get a special bill through. Then somebody would get a million dollars, which the state doesn’t like because they can’t budget for it.”¹⁴⁴

If exonerees are fortunate enough to live in a state with a wrongful conviction compensation statute, they can avoid the unpredictability of civil lawsuits and private legislation. Twenty states, Washington D.C., and the federal government currently have compensation statutes.¹⁴⁵ As recently as 2002 only fourteen states, D.C., and the federal government had such laws and they often provided woefully inadequate compensation.¹⁴⁶ Until 2004, 28 U.S.C. §2513, the federal compensation statute, capped compensation at \$5,000.¹⁴⁷ New Hampshire limits damages to \$20,000.¹⁴⁸ Similarly, Wisconsin limits compensation to \$5,000 per year served or a total of \$25,000.¹⁴⁹ While other states have similarly low caps on compensation, some, such as New York, West Virginia, Maryland, and D.C., have no statutory limit.¹⁵⁰ As a result of such disparities, the difference between an exoneree being eligible for almost no compensation rather than unlimited compensation depends solely on the accident of where he was convicted.

Even states that provide sufficient compensation often have overly stringent qualification requirements that prevent deserving applicants from receiving an award. Several states require exonerees to be pardoned on the grounds of innocence before they are eligible for compensation.¹⁵¹ Such a requirement transports the arbitrariness of the private bill process into the statutory system by conditioning compensation on the will of politicians. Drawing from the tort concept of comparative negligence, other states require that exonerees did not “contribute” to their wrongful convictions.¹⁵² Under this condition,

pleading guilty will disqualify an exoneree in Iowa, Ohio, Oklahoma, Texas, Virginia, and D.C.¹⁵³ A false confession prevents compensation in California, New Jersey, West Virginia, Wisconsin, and D.C.¹⁵⁴ As a result, one of the most common factors leading to wrongful convictions, a false confession, serves as a disqualification from compensation.

The most glaring oversight in nearly all compensation statutes is the lack of access to social services. Money alone cannot eliminate the troubles that exonerees experience. As John Wilson, a psychologist who works with exonerees, observed, “money is useful, it’s important, but it isn’t a solution to the problems. . . It validates their exoneration. . . The money helps replace what was lost – a career, a job, schooling, family relations . . . So while it’s helpful to guarantee a safety net, it really doesn’t solve any of the deeper psychological questions that they have to face every day of their lives.”¹⁵⁵

In order to fully compensate exonerees, statutes should provide access to services such as job training and placement, health care, education, and housing.¹⁵⁶ Many of these benefits can easily be provided through the same programs that serve parolees. The addition of the small number of exonerees in any given state would not place an excessive burden on providers of such services.¹⁵⁷ Additionally, social services enable exonerees to become productive members of society after their release, lessening the likelihood that states will end up supporting exonerees on public assistance.

Because of the difficulty of sustaining a civil lawsuit, the arbitrariness and unpredictability of private compensation bills, and the stringent eligibility requirements in many compensation statutes, most exonerees never receive any compensation for their ordeal and those who do often wait years before they collect any money and are not given access to necessary social services. In order to recognize society’s responsibility for their situation and to facilitate their transition back into the community, states need to pass comprehensive compensation legislation that ensures that deserving applicants are quickly, justly, and fully compensated.

Society’s Response to Exonerees’ Situation

While states have been slow to respond to the problems exonerees experience, social service organizations have emerged to assist exonerees. Immediately upon release, support from the public is usually what eases exonerees’ transition,¹⁵⁸ but once the headlines disappear, the help from the public trickles away as well. Organizations, usually established by lawyers and volunteers who assisted exonerees with their cases, seek to sustain public awareness of the difficulties exonerees must overcome.¹⁵⁹ The Truth in Justice Foundation provides assistance with housing, counseling, education, medical care, and legal services to exonerees when they are released.¹⁶⁰ The National Police Defense Foundation has set up a fund to pay the living expenses for Scott Hornoff, an ex-police officer who was wrongly convicted of murder.¹⁶¹

The most comprehensive and widespread of these organizations is the Life After Exoneration Program (LAEP),

jointly run by The Innocence Project and the DNA Identification Technology and Human Rights Center of Berkeley, California.¹⁶² LAEP works with medical, dental and mental health care providers, social service providers, employers, and pro bono legal service providers in exonerees’ communities to assist them in finding housing, employment, psychological help, emergency financial assistance, and any necessary legal assistance.¹⁶³ LAEP has worked with between seventy-five¹⁶⁴ and 100¹⁶⁵ exonerees and currently has a waitlist of those needing services.¹⁶⁶ LAEP relies primarily on individual donations used to pay for medical exams, counseling sessions, dental exams, clothing, computers, and small business grants or loans.¹⁶⁷ In addition to providing services to exonerees, LAEP lobbies for comprehensive legislative reform, calling for statutes including monetary compensation, access to social services, job training, and expungement of exonerees’ records.¹⁶⁸ LAEP recognizes that while its services ease exonerees’ transition, there is a pressing need for a coordinated

response from states, in both the provision of services and monetary compensation.¹⁶⁹

The most glaring oversight in nearly all compensation statutes is the lack of access to social services.

“[M]oney is useful, it’s important, but it isn’t a solution to the problems.”

V. How Should Society Address Needs of Exonerees?

Provide Adequate Compensation and Access to Social Services

In order to acknowledge society’s obligation to exonerees, states should pass comprehensive compensation legislation that provides adequate monetary compensation and access to social services. Even states that currently have compensation statutes need to reform their systems to remedy the problems identified above, by eliminating unjustifiably low limits on compensation, providing access to social services, and relaxing the stringent eligibility requirements to ensure that deserving applicants receive compensation. By examining two of the most recently enacted compensation statutes, those of Massachusetts and Louisiana, it becomes clear that there is movement in this direction, but there is progress yet to be made.

Recently, Louisiana responded to many of the concerns about previous compensation laws.¹⁷⁰ Under its statute, applicants are eligible for compensation if their conviction has been reversed or vacated and if factual innocence is proven by clear and convincing evidence. Monetary damages are limited to \$15,000 per year served or \$150,000 total. In addition to monetary compensation, exonerees can receive job training for one year, medical and counseling services for three years, and tuition and fees at a public university for five years. Although Louisiana’s cap on damages is inadequate to fully compensate exonerees, its provision of non-monetary services can serve as an example to states either revising their compensation statutes or developing one for the first time.

In passing its compensation statute¹⁷¹ Massachusetts recognized the need to relax eligibility requirements, to provide adequate compensation scales and caps, and to provide more than simple monetary relief. Applicants are eligible for compensation if they prove by clear and convincing evidence that

they received a full pardon based on innocence or that (a) their conviction was reversed or vacated, the indictment was dismissed, or a retrial resulted in an acquittal, (b) the result tended to establish the applicant's innocence, and (c) there are no pending charges stemming from the same set of facts underlying the original conviction.¹⁷² These eligibility requirements do not unjustifiably hinder meritorious claims, but, at the same time, ensure that claims are based on actual innocence. Because exonerees have already produced enough evidence of actual innocence to obtain their release, the burden of proving innocence by clear and convincing evidence is justified by the state's interest in not compensating guilty parties who had their convictions reversed based on reliable, but legally inadmissible evidence.

The Massachusetts statute limits monetary damages to \$500,000.¹⁷³ Damages are awarded based on the income the exoneree would have earned if he had not been incarcerated, the circumstances of the conviction, the length and condition of incarceration, and other factors necessary to provide fair and reasonable compensation.¹⁷⁴ In addition to monetary compensation, the court can order the provision of services to address physical and emotional injuries caused by incarceration and may award a fifty percent tuition reduction at state or community colleges.¹⁷⁵ The court may also expunge the applicant's record in a separate hearing.¹⁷⁶ In light of these additional benefits, the \$500,000 cap is a reasonable limit on monetary compensation.

One provision of Massachusetts' statute that is inconsistent with the need to ensure that deserving applicants are compensated is the ineligibility of applicants who plead guilty to the underlying crime.¹⁷⁷ The rationale for such a requirement is that the state is less culpable for wrongful incarceration that resulted from a guilty plea than from a conviction at trial. By pleading guilty, the defendant somehow deprived the state of the opportunity to correct its error. However, given that the vast majority of convictions result from guilty pleas, the number of exonerees in any one state will be small, and the statute requires proof by clear and convincing evidence of actual innocence, this rationale for excluding applicants who plead guilty does not justify the failure to compensate potentially deserving exonerees. This is especially so because the impact of such a provision will be felt disproportionately by poor, innocent defendants as public defenders and appointed counsel do not have the resources to take even a fraction of their cases to trial.

With the exception of this provision, Massachusetts' compensation statute effectively responds to the deficiencies of prior compensation systems.

Massachusetts and Louisiana's statutes address many of the shortcomings of other states' statutes, but there are still several provisions that should be included in order to fully compensate exonerees. First, statutes should differentiate between economic and non-economic damages. Economic damages include lost wages, the legal expenses of defending against the charges and fighting for release, and medical expenses. This category should not be subject to a cap; the burden of proving such damages provides a natural limit.¹⁷⁸

Non-economic damages, such as pain and suffering, should be subject to a range of caps depending on the severity of the crime and punishment involved.¹⁷⁹ For example, someone wrongly convicted of a Class A felony who served fifteen

years could be eligible for \$1 million, while someone convicted of a Class B felony who served seven years would be eligible for only \$500,000. States could connect limits on non-economic damages to the severity of the crime, the length of the sentence, the length of time actually served, or some combination of these factors.¹⁸⁰

Second, states should limit the scope of any "contributed to conviction" provision. Under many statutes, exonerees who "contributed to their conviction" are not eligible for compensation.¹⁸¹ As noted earlier, in some states, exonerees who plead guilty or who falsely confessed are ineligible under such provisions. The "contributed to conviction" exception should only extend to deliberate efforts to interfere with the truth-seeking function of the criminal justice system.¹⁸² Exonerees who purposefully hindered police investigation or committed perjury would be ineligible for compensation.¹⁸³ Otherwise, guilty pleas, false confessions, and expressions of remorse at parole hearings would not disqualify applicants if they can meet the requisite burden of proving actual innocence.

Statutes should also allow for awards of attorney's fees for successful applicants. As with any legal regime, applicants need the assistance of counsel to navigate through the system. Providing for an award of attorneys' fees ensures that exonerees have representation adequate to take full advantage of the system and that their monetary compensation is not depleted by legal fees.¹⁸⁴ Any award should be explicitly conditioned on the attorney's waiver of any claim to payment directly from the exoneree.

In providing non-monetary compensation, states should ensure that any time limits imposed still allow exonerees to reap the full benefit of the services. For example, Louisiana's limit on access to medical and counseling services to three years is probably insufficient to meet the needs of most exonerees. Judging by the experiences of exonerees, it will take several years before they fully adjust to life outside of prison, making counseling services especially important. If states impose time constraints on access to services, those limits need to be tailored to the actual needs of exonerees. Obviously, time limits will vary depending on the service. For example, one year is a reasonable limitation on access to job training services, but not medical care.

States will have to make several procedural decisions as well. The statutory scheme should provide a more streamlined process than ordinary civil litigation. Given the immediacy of exonerees' needs, compensation should be forthcoming as soon after an application is filed as practically possible. However, the need for swift compensation must be weighed against the state's interest in ensuring its ability to adequately screen claims. Procedures should be constructed with both of these considerations in mind. All states ought to provide for automatic expungement of an exoneree's record upon award of compensation. Other than this requirement, states would have latitude in establishing the procedures to be used for awarding compensation.

Exonerees should be able to pursue claims against individuals for intentional misconduct. Under almost all existing compensation statutes, an exoneree waives any claims against the state when he accepts an award under the statutory scheme.¹⁸⁵ Because the exoneree is obtaining the benefit of a

more efficient path to compensation, this is a reasonable demand. However, exonerees should not be required to waive any claims against individual government officials based on their intentional misconduct. Louisiana's statute makes this distinction, explicitly reserving claims arising from state actors' willful misconduct.¹⁸⁶

Lastly, rather than awarding a lump sum designated as compensation for future medical expenses, statutes should provide exonerees with the same health insurance provided to state employees. Providing insurance rather than adding medical expenses to the total compensation award has several advantages.¹⁸⁷ Most importantly, courts would not need to guess at exonerees' future medical expenses. Providing insurance will eliminate the risk that the court will over- or underestimate expenses, thereby over-compensating or under-compensating the exoneree. Also, the state can verify that the money is actually used for medical expenses, assuring that exonerees will not use the money for other purposes and therefore be unable to seek necessary medical care in the future.¹⁸⁸ This method also saves the time and expense of determining whether any particular ailment was caused by incarceration.¹⁸⁹ Any illness or injury within the state's insurance plan will be covered, regardless of whether it resulted from incarceration. States can also avoid placing arbitrary time limits on access to medical care, as the Louisiana statute has. Finally, adding the few exonerees in any one state to the state insurance plan adds little expense but provides an enormous benefit to the exonerees.¹⁹⁰ When compared to civil litigation, private legislation, or existing statutes, a compensation statute that incorporates all or most of the above recommendations will come much closer to quickly, fully, and justly compensating the wrongly convicted.

Beyond Compensation

In addition to disappointment with the lack of compensation and access to social services, exonerees often experience frustration due to the failure of officials to acknowledge the criminal justice system's mistakes.¹⁹¹ Many exonerees never receive even an informal apology from anyone from within the justice system.¹⁹² The feeling of betrayal that results is often exacerbated by the public's, prosecutors' or victims' continued skepticism about their innocence. In order to truly compensate exonerees, society must acknowledge and address the underlying causes of wrongful convictions.

Like many who have suffered seemingly meaningless suffering, exonerees feel a need to find some reason for their wrongful convictions.¹⁹³ They want to make sure something positive comes from their ordeal. Many give speeches and attend conferences in order to educate the public about the risks of wrongful convictions.¹⁹⁴ Rather than simply seeking a private compensation bill,¹⁹⁵ others lobby their state legislatures for comprehensive compensation legislation.¹⁹⁶ Still others try to convince police departments to reopen the investigations into the crimes for which they were wrongly convicted or to compare the DNA samples which proved their innocence to existing DNA databases. Nick Yarris, who spent twenty-three years on Pennsylvania's death row for murder and rape, protested in an unsuccessful effort to get police to compare the DNA sample that exonerated him to databases in order to find

the real murderer.¹⁹⁷

Michael Green's settlement with the city of Cleveland provides a noteworthy example of how exonerees are inspired by their wrongful conviction to affect change in the system. In a precedent-setting agreement with Cleveland, Green conditioned his settlement on the city's promise to reopen over a hundred cases on which the forensics analyst involved in Green's case worked.¹⁹⁸ In Green's case, the forensics analyst testified to findings that contradicted the findings in his lab notes, which were not provided to defense counsel. The city agreed to review all cases since 1987 in which the analyst testified, all cases where the analyst performed tests and the defendant then plead guilty, a random selection of the analyst's files, and a random selection of other analysts' cases. If any mistakes are found, the city will notify the relevant defendant and The Innocence Project. Green was willing to accept less money because Cleveland was willing to acknowledge the possibility that other mistakes had been made and to take the necessary steps to rectify those mistakes.

In order to make exonerees as whole as possible, society must do more than provide monetary compensation and access to services. The various actors within the criminal justice system must publicly acknowledge that mistakes were made. Moving away from civil litigation as a path to compensation will allow prosecutors and police to more easily admit to their errors. When confronted with a civil suit against the state, the city, or themselves individually, prosecutors and police are put on the defensive. Against the background of a non-fault based compensation system, they will be better able to cooperate with exonerees in efforts to find solutions to the underlying problems in the criminal justice system.

VI. Conclusion

As increasing numbers of people have been exonerated since the 1990s, it has become clear that simply releasing the wrongly convicted does not adequately remedy the injury inflicted on them. Much like parolees, exonerees confront overwhelming obstacles after their release. They struggle to find housing and adequate employment. They must adjust to the tremendous changes in their communities and their families and must cope with the psychological damage caused by incarceration.

However, exonerees are not provided with the services provided to parolees that assist them in their transition back into society. Unless they receive some sort of compensation, exonerees must fend for themselves. However, the paths to and adequacy of compensation depend greatly on where an exoneree was convicted. In the thirty states that do not currently have compensation statutes, exonerees must traverse the uncertain path of either civil litigation or private legislation. Even including the states with statutes, most exonerees never receive any compensation.

Most compensation statutes currently in effect have several problems. Damages scales are often inadequate to fully compensate exonerees. Stringent eligibility requirements often prevent deserving applicants from qualifying for compensation and very few statutes provide access to social services such as job training, health care, or housing assistance. States must design statutory schemes to address these problems, by limit-

ing only non-economic damages, developing eligibility standards that ensure deserving exonerees are compensated, and providing sufficiently long-term access to job training, education assistance, medical and counseling services, and housing assistance.

In addition to developing such comprehensive compensation legislation, states must address the underlying causes of wrongful convictions. Exonerees will not feel whole if they believe that the factors that led to their convictions have not been adequately remedied. As well as implementing reforms to reduce the risk of wrongful convictions,¹⁹⁹ states should reopen cases that resulted in wrongful convictions in an effort to identify the real criminal, regardless of whether an eventual prosecution would be possible.²⁰⁰ When the willful misconduct of a police officer, prosecutor, or forensics analyst led to a wrongful conviction, states should review other cases in which the relevant individual was involved.

Only when the criminal justice system adequately addresses the causes of wrongful convictions and provides exonerees with comprehensive compensation can society begin to pay its debt to the wrongly convicted. The fact that it is impossible to fully compensate an individual for the loss of years of his freedom does not absolve society of its duty to rectify the injustice inflicted on exonerees to the extent feasible. Currently, society is simply failing in that duty.

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¹ AFTER INNOCENCE (Showtime Independent Films 2005); Life After Exoneration Program: Rebuilding the Lives of the Wrongfully Convicted, *Exoneree Bio: Vincent Moto*, available at <http://www.exonerated.org/bios/moto.php> (last visited Apr. 21, 2006) [hereinafter *Exoneree Bio*].

² AFTER INNOCENCE, *supra* note 1; *Exoneree Bio*, *supra* note 1.

³ AFTER INNOCENCE, *supra* note 1; *Exoneree Bio*, *supra* note 1.

⁴ AFTER INNOCENCE, *supra* note 1; *Exoneree Bio*, *supra* note 1.

⁵ AFTER INNOCENCE, *supra* note 1; *see Exoneree Bio*, *supra* note 1 (indicating Moto has struggled to find employment “that utilizes his multifaceted skills”).

⁶ *See Exoneree Bio*, *supra* note 1 (noting that Moto has held several positions at Sears and National In-Store Services and worked in construction).

⁷ Sharon Cohen & Deborah Hastings, *For 110 Inmates Freed by DNA Tests, True Freedom Remains Elusive*, AP NEWS, May 28, 2002, available at <http://truthinjustice.org/truefreedom.htm>.

⁸ AFTER INNOCENCE, *supra* note 1.

⁹ AFTER INNOCENCE, *supra* note 1; *see Exoneree Bio*, *supra* note 1 (stating that Moto remains at his parents' home and, although he is currently unemployed, he is actively seeking work).

¹⁰ The services available to parolees and ex-inmates vary widely from state to state and there is no comprehensive account of such services, as many are administered by non-profit organi-

zations, not all of which are state-funded. *See* Shawn Armbrust, *When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted*, 41 AM. CRIM. L. REV. 157, 177 (Winter 2004).

¹¹ *See supra* text accompanying notes 5-9 (discussing Moto's struggles over the past ten years).

¹² *See infra* text accompanying note 13 (indicating that Moto was wrongly convicted of rape and served ten and a half years in prison until biological evidence led to his release).

¹³ AFTER INNOCENCE, *supra* note 1; *Exoneree Bio*, *supra* note 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ While those who have been wrongly convicted are referred to in various ways (e.g., the innocent, the exonerated, the wrongly convicted), I refer to them as exonerees.

¹⁸ *See infra* text accompanying notes 19-20 (listing various statistics regarding the post-release life of exonerees).

¹⁹ LIFE AFTER EXONERATION PROGRAM, AFTER INNOCENCE THERE IS THE LIFE AFTER EXONERATION PROGRAM 2 (Allied Printing 2005) [hereinafter LIFE].

²⁰ Howard S. Master, Note, *Revisiting the Takings-Based Argument for Compensating the Wrongfully Convicted*, 60 N.Y.U. ANN. SURV. AM. L. 97, 103 (2004).

²¹ *See infra* Part II (discussing the scope of the problem of wrongful convictions in the United States).

²² *See infra* Part III (commenting on the circumstances which exonerees face upon release from prison and society's increased awareness of such).

²³ *See* Jennifer Friedlin, *New Project Aims to Assist Exonerated Prisoners*, AP NEWS, May 8, 2003, available at <http://truthinjustice.org/LAEP.htm> (indicating that “exonerated prisoners are entitled to even fewer benefits than convicts upon their release”).

²⁴ *See infra* text accompanying notes 34-36 (discussing the emergence of various innocence projects across the United States).

²⁵ Life After Exoneration Program: Rebuilding the Lives of the Wrongfully Convicted, *About the Exonerated*, available at <http://www.exonerated.org/exonerated.php> (last visited Apr. 21, 2006).

²⁶ Stephanie Armour, *Wrongly Convicted Walk Away With Scars*, USA TODAY, Oct. 13, 2004, at 1A.

²⁷ *See, e.g.,* BARRY SCHECK, PETER NEUFELD & JIM DWYER, ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGLY CONVICTED, (Doubleday 2000) (examining common causes of wrongful convictions and offering advice for how errors can be minimized).

²⁸ *See* The Innocence Project, *Causes and Remedies of Wrongful Convictions*, available at <http://www.innocenceproject.org/causes> (last visited Apr. 29, 2006).

²⁹ *See* Alberto B. Lopez, *\$10 and a Denim Jacket? A Model Statute for Compensating the Wrongly Convicted*, 36 GA. L. REV. 665, 674 (2002) (noting several similarities between exoneree cases, including misidentification, police or prosecutorial misconduct, ineffective representation, and “dubious” scientific evidence).

³⁰ Of 110 DNA exonerations, two-thirds involved mistaken vic-

tim or eyewitness identifications. Cohen, *supra* note 7.

³¹ Police misconduct often involved using discredited identification practices or obtaining false confessions through questionable interrogation practices. Prosecutorial misconduct usually involved withholding exculpatory evidence. See Lopez, *supra* note 29, at 675-87. Of 110 exonerees released based on DNA evidence, nine of them, either mentally retarded or borderline mentally retarded, falsely confessed under pressure from police. Cohen, *supra* note 7.

³² Of 110 DNA exonerations, fourteen percent involved mistakes or misconduct on the part of forensics experts. Cohen, *supra* note 7.

³³ See The Innocence Project, *Causes and Remedies of Wrongful Convictions*, available at <http://www.innocenceproject.org/causes> (last visited Apr. 29, 2006) (noting that in 21 out of the first 130 DNA exoneree cases dealt with by the Innocence Project, informants/snitches were a factor leading to the wrongful conviction).

³⁴ See Lopez, *supra* note 29, at 688-90.

³⁵ Center on Wrongful Convictions, available at <http://www.law.northwestern.edu/wrongfulconvictions> (last visited Apr. 29, 2006).

³⁶ The Innocence Project, available at <http://www.innocenceproject.org> (last visited Apr. 29, 2006).

³⁷ See The Innocence Project, *Frequently Asked Questions*, available at <http://www.innocenceproject.org/about.faq.php> (last visited Apr. 29, 2006).

³⁸ *Id.*

³⁹ See generally Friedlin, *supra* note 23 (discussing the experience of the Innocence Project, whose exonerated clients had trouble rebounding).

⁴⁰ Friedlin, *supra* note 23.

⁴¹ See Friedlin, *supra* note 23 (indicating that part of the reason why exonerees are not prepared for life after release is because they "are entitled to even fewer benefits than convicts upon their release").

⁴² Michael Green's story is taken from a week-long series in *The Plain Dealer* examining his life during the first year after his release. Rodney Rhines, the real rapist, confessed after this series ran. See generally Connie Schultz, *Burden of Innocence*, *THE PLAIN DEALER*, Oct. 13-17, 2002, available at <http://www.cleveland.com/burden>. Details are cited to the specific article of the series in which they appear.

⁴³ See Connie Schultz, *Long Road to Justice*, *THE PLAIN DEALER*, Oct. 13, 2002, at A1 [hereinafter *Long Road*].

⁴⁴ See Connie Schultz, *Knowledge is Power*, *THE PLAIN DEALER*, Oct. 14, 2002, at C1.

⁴⁵ See *Long Road*, *supra* note 43.

⁴⁶ See Connie Schultz, *Freedom and Frustrations*, *THE PLAIN DEALER*, Oct. 15, 2002, at E1 [hereinafter *Freedom*].

⁴⁷ *Id.*

⁴⁸ See Connie Schultz, *Looking in the Mirror*, *THE PLAIN DEALER*, Oct. 16, 2002, at E1 [hereinafter *Looking*].

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See *Freedom*, *supra* note 46.

⁵² William Gregory's story is largely from a personal interview. Details from other sources are separately cited. Interview with William Gregory, Exoneree, in Louisville, KY (Jan. 9, 2006)

[hereinafter Gregory Interview].

⁵³ Since the initial writing of this article, William Gregory has settled lawsuits against the state of Kentucky and the city of Louisville. Gregory received \$700,000 from the state of Kentucky in November of 2006, and will receive \$3.9 million from the city of Louisville. Andrew Wolfson, *Wrongly Jailed Man to Get \$3.9 Million*, *COURIER-J.*, Feb. 9, 2007, at 01A. Details of his lawsuit can be found *infra* at n. 60.

⁵⁴ See Mark Schaver, *Man Freed by DNA Test is Full of Hope*, *COURIER J.*, July 7, 2000, at 01B.

⁵⁵ See Andrew Wolfson, *Free From Prison, Bound by Memories*, *COURIER J.*, July 1, 2001, at 01A.

⁵⁶ *Id.*

⁵⁷ See Harold J. Adams, *Freed Inmate Begins Rebuilding Life*, *COURIER-J.*, July 9, 2000, at 01B.

⁵⁸ William Gregory is not the only exoneree to face problems with child support after release from prison. Clarence Bradley, released in 1990 from Texas's death row, was charged \$50,000 in child support after his release. In addition, the Court garnished David Shepard's wages to pay support payments dating from the time he served in prison. Armbrust, *supra* note 10, at 173.

⁵⁹ Gregory's lawsuit accuses the Louisville police department of withholding evidence and using discredited identification procedures. In 2004, U.S. District Court Judge Thomas Russell dismissed the suit against the city but not the suit against several individual officers and a police forensics analyst. The Sixth Circuit Court of Appeals recently reinstated the claim against the city and rejected appeals by the individual officers and the police analyst. Andrew Wolfson, *Wrongly Imprisoned Man Can Sue City*, *COURIER-J.* April 12, 2006, at 1B.

⁶⁰ Kevin Green's story is taken mainly from *Bad Things Happen to Good People*, in *SURVIVING JUSTICE: AMERICA'S WRONGFULLY CONVICTED AND EXONERATED*, 395-432 (Lola Vollen & Dave Eggers eds., 2005) [hereinafter *SURVIVING*]. Any details from other sources are separately cited.

⁶¹ See Michael Higgins, *Tough Luck for the Innocent Man*, 85 *A.B.A.J.* 46 (1999).

⁶² Parker, known as the Bedroom Basher, was later convicted of the attack on Green's wife and five other murders. *Id.*

⁶³ Soon after, California passed a public bill to replace the previous compensation system which had capped at \$10,000. *SURVIVING*, *supra* note 60, at 426.

⁶⁴ See Anthony Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 *B.C. L. REV.* 255, 276-82 (2004) (discussing parolees and released inmates' struggle to find housing and employment).

⁶⁵ See Armour, *supra* note 26.

⁶⁶ See Cohen, *supra* note 7.

⁶⁷ See Joan Petersilia, *Parole and Prisoner Reentry in the United States*, 26 *CRIME & JUST.* 479, 482 (1999) (discussing public safety reasons for providing services to parolees).

⁶⁸ See, e.g., Laurie O. Robinson, Amy Solomon, & Jeremy Travis, *Prisoner Reentry: Issues for Practice and Policy*, 17 *CRIM. JUST.* 12 (Spring 2002) (calling for coordination between, on the one hand, the criminal justice and correctional systems and, on the other hand, health care providers, housing authorities, drug treatment centers, and government identification programs outside the system in order to facilitate the transition

from prison back into the community); Petersilia, *supra* note 67 (advocating a reinvention of the parole system; providing programs to reduce recidivism; operating successful job-training and substance abuse programs; incorporating advances in technology, risk prevention, rehabilitation, and more active forms of supervision that incorporate citizens and community members); Thompson, *supra* note 64 (suggesting a more client-centered approach by public defenders and clinical programs to address ex-offenders' needs holistically).

⁶⁹ See SURVIVING, *supra* note 60, at 264.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ See *id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 260.

⁷⁶ See Armour, *supra* note 26.

⁷⁷ See Friedlin, *supra* note 23.

⁷⁸ See AFTER INNOCENCE, *supra* note 1.

⁷⁹ See SURVIVING, *supra* note 60, at 264.

⁸⁰ See Cohen, *supra* note 7.

⁸¹ See AFTER INNOCENCE, *supra* note 1.

⁸² See Armour, *supra* note 26.

⁸³ Andrew Wolfson, *Kentucky, Indiana Not Among States Compensating Exonerated Inmates*, COURIER-J., July 1, 2001, at 01A [hereinafter *Kentucky, Indiana*].

⁸⁴ See *Freedom*, *supra* note 46.

⁸⁵ BITTERNESS OF FREEDOM (Frontline Co. Productions 2003) available at

<http://www.pbs.org/wgbh/pages/frontline/shows/burden/cameras/bitterness> [hereinafter BITTERNESS].

⁸⁶ See Cohen, *supra* note 7.

⁸⁷ See Armour, *supra* note 26.

⁸⁸ *Id.*

⁸⁹ See AFTER INNOCENCE, *supra* note 1.

⁹⁰ A study of 110 exonerates found the average age when they entered prison was to be twenty-eight. Cohen, *supra*, note 7.

⁹¹ SURVIVING, *supra* note 60, at 132.

⁹² See Armour, *supra* note 26.

⁹³ See *id.*

⁹⁴ See Gregory Interview, *supra* note 53.

⁹⁵ *Id.*

⁹⁶ See Cohen, *supra* note 7.

⁹⁷ See Friedlin, *supra* note 23.

⁹⁸ Taryn Simon, THE INNOCENTS (Umbridge Editions 2003).

⁹⁹ See SURVIVING, *supra* note 60, at 368-70.

¹⁰⁰ *Id.* at 247.

¹⁰¹ See *id.* at 400.

¹⁰² See INTERVIEW: JOHN WILSON, (Frontline Co. Productions 2003) available at

<http://www.pbs.org/wgbh/pages/frontline/shows/burden/interviews/wilson> [hereinafter INTERVIEW: JOHN WILSON].

¹⁰³ *Id.*

¹⁰⁴ *Looking*, *supra* note 48.

¹⁰⁵ Kim Carollo, *Finding Solace After Wrongful Conviction*, ABC NEWS, Dec. 9, 2004, <http://truthinjustice.org/finding-solace>.

¹⁰⁶ See SURVIVING, *supra* note 60, at 112.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 309.

¹⁰⁹ See INTERVIEW: JOHN WILSON, *supra* note 102.

¹¹⁰ See SURVIVING, *supra* note 60, at 42.

¹¹¹ *Id.*

¹¹² See INTERVIEW: JOHN WILSON, *supra* note 102.

¹¹³ See SIMON, *supra* note 98, at 82.

¹¹⁴ See SURVIVING, *supra* note 60, at 42.

¹¹⁵ See BITTERNESS, *supra* note 85.

¹¹⁶ See SURVIVING, *supra* note 60, at 112.

¹¹⁷ See Master, *supra* note 20, at 110-11.

¹¹⁸ *Id.* at 111-12.

¹¹⁹ See *Kentucky, Indiana*, *supra* note 83.

¹²⁰ See Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703, 716 (2004) [hereinafter *Justice Still Fails*].

¹²¹ See SURVIVING, *supra* note 60, at 147, 169-71.

¹²² Mike Ward, *Change Proposed in Innocence Fund Law*, AUSTIN AM. STATESMAN, Mar. 21, 2005, available at <http://truthinjustice.org/Texas-fund.htm>.

¹²³ Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. CHI. L. SCH. ROUNDTABLE 73, 97-101 (1999) [hereinafter *When Justice Fails*].

¹²⁴ *Id.* at 99. ("State legislatures carefully shied away from declaring that victims of crimes have a right to compensation, characterizing the obligation as a 'moral responsibility' to assist crime victims").

¹²⁵ *Id.* at 100.

¹²⁶ *Id.* at 109.

¹²⁷ See Lopez, *supra* note 29, at 673.

¹²⁸ See Cohen, *supra* note 7.

¹²⁹ See *When Justice Fails*, *supra* note 123, at 86-92 (discussing the inadequacies of civil rights and common law remedies).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See Lopez, *supra* note 29, at 698.

¹³⁵ *When Justice Fails*, *supra* note 123, at 90-91.

¹³⁶ Mary P. Gallagher, *First Exoneration, Next Compensation?*, N.J.L.J., Feb. 13, 2004, available at <http://truthinjustice.org/dixon.htm>.

¹³⁷ For a detailed explanation of immunity for witnesses, police officers, prosecutors, judges, and possibly defense attorneys appointed by the state, see *When Justice Fails*, *supra* note 123, at 87-92.

¹³⁸ *Id.* at 87.

¹³⁹ *Id.* at 94.

¹⁴⁰ *Id.* at 94-95.

¹⁴¹ See Higgins, *supra* note 61, at 50.

¹⁴² *Id.*

¹⁴³ See *When Justice Fails*, *supra* note 123, at 96.

¹⁴⁴ See Higgins, *supra* note 61.

¹⁴⁵ The following states currently have compensation statutes: Alabama, California, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Life After Exoneration Program: Rebuilding the Lives of the

Wrongfully Convicted, *Legal Issues*, available at <http://www.exonerated.org/legal.php> (last visited Apr. 21, 2006).

¹⁴⁶ See *When Justice Fails*, *supra* note 123, at 73; Lopez, *supra* note 29, at 701.

¹⁴⁷ The federal statute now limits compensation to \$100,000 for each year served by a prisoner sentenced to death or \$50,000 for each year served by other inmates. 28 U.S.C. § 2513 (2004).

¹⁴⁸ N.H. REV. STAT. ANN. §541-B:14 (2005).

¹⁴⁹ WIS. STAT. § 775.05 (2006).

¹⁵⁰ NY CLS CT C ACT § 8-b (2006); W. VA. CODE § 14-2-13a (2006); MD. STATE AND PROC. CODE ANN. § 10-501 (2006); D.C. CODE ANN. § 2-423 (2006).

¹⁵¹ See SURVIVING, *supra* note 60, at 472-73.

¹⁵² See *Justice Still Fails*, *supra* note 120, at 717.

¹⁵³ See SURVIVING, *supra* note 60, at 162.

¹⁵⁴ *Id.* Such requirements are also sometimes applied in civil suits. John Lee Duval's suit against New York, seeking compensation for twenty-six years in prison, was dismissed because he had admitted guilt in an unsuccessful attempt at getting paroled. *Id.*

¹⁵⁵ See INTERVIEW: JOHN WILSON, *supra* note 102.

¹⁵⁶ A recent private compensation bill passed in Florida provided a tuition credit for 120 hours at any state university. 2005 Fla. Laws ch. 354. The bill compensated Wilton Dedge, who served 22 years for sexual assault and burglary before he was released in 2004. The Innocence Project, *Wilton Dedge*, available at <http://www.innocenceproject.org/cases> (last visited Apr. 15, 2006).

¹⁵⁷ See Armbrust, *supra* note 10, at 177.

¹⁵⁸ See Gregory Interview, *supra* note 53.

¹⁵⁹ Life After Exoneration Program: Rebuilding the Lives of the Wrongfully Convicted, available at <http://www.exonerated.org/program.php> (follow "Our Program" hyperlink) (last visited Apr. 21, 2006) [hereinafter *Our Program*].

¹⁶⁰ See *id.*

¹⁶¹ Kelly Smith, *A Normal Life?*, WARWICK BEACON, June 5, 2003, available at <http://truthinjustice.org/normal-life.htm>.

¹⁶² See Friedlin, *supra* note 23.

¹⁶³ See *Our Program*, *supra* note 159.

¹⁶⁴ *Id.*

¹⁶⁵ See Carollo, *supra* note 105.

¹⁶⁶ See LIFE, *supra* note 19.

¹⁶⁷ *Id.*

¹⁶⁸ See *Our Program*, *supra* note 159.

¹⁶⁹ *Id.*

¹⁷⁰ Compare Wrongful Conviction and Imprisonment Act of 2005 § 15:572.8 (West 2005) and LA. REV. STAT. ANN. §15:572.8 (West 2006).

¹⁷¹ MASS. GEN. LAWS ANN. ch. 258D §§ 1-9 (2005).

¹⁷² *Id.* at §1.

¹⁷³ *Id.* at §5.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at §7.

¹⁷⁷ MASS. GEN. LAWS ANN. ch. 258D, §1 (West 2006).

¹⁷⁸ See Lopez, *supra* note 29, at 713.

¹⁷⁹ *Id.* at 716-18.

¹⁸⁰ *Id.* at 718.

¹⁸¹ See Bernhard, *supra* note 120, at 108.

¹⁸² See Bernhard, *supra* note 120, at 718-20.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 107-8.

¹⁸⁵ See, e.g., MASS. GEN. LAWS ANN. ch. 258D §4 (West 2006).

¹⁸⁶ LA. REV. STAT. ANN. §15:572.8(F) (2006).

¹⁸⁷ See Armbrust, *supra* note 10, at 181.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ See AFTER INNOCENCE, *supra* note 1.

¹⁹² See Smith, *supra* note 161.

¹⁹³ See AFTER INNOCENCE, *supra* note 1. Life After Exoneration (follow "The Exonerated" hyperlink) (scroll down to "Traumatized By Their Experience") (where exonerees expressed need to find purpose for their wrongful conviction).

¹⁹⁴ See Smith, *supra* note 161.

¹⁹⁵ See AFTER INNOCENCE, *supra* note 1.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Connie Schultz, *City to Pay \$1.6 Million for Man's Prison Time*, THE PLAIN DEALER, June 8, 2004, at A1.

¹⁹⁹ See SCHECK, *supra* note 27.

²⁰⁰ In many cases, even if police identify the true perpetrator, prosecutors will not be able to bring charges because the statute of limitations will have expired.

Facts on Post-Conviction DNA Exonerations*

- There have been 195 post-conviction DNA exonerations in the United States to date.
- The first DNA exoneration took place in 1989. Exonerations have been won in 31 states since then; in 2006, there were 18 exonerations.
- 14 DNA exonerees were at one time sentenced to death or served time on death row.
- The average length of time served by those exonerated by DNA testing is 12 years.
- The true suspects and/or perpetrators have been identified in more than a third of the DNA exoneration cases.
- Since 1989, there have been tens of thousands of cases where prime suspects were arrested or indicted – until DNA testing (prior to trial) proved that they were wrongly accused.
- In more than 25% of cases in a National Institute of Justice study, suspects were excluded once DNA testing was conducted during the criminal investigation (the study, conducted in 1995, included 10,060 cases where testing was performed by FBI labs).
- 21 states, the federal government and the District of Columbia have passed laws to compensate people who have been exonerated. Awards under these statutes vary greatly.

* <http://www.innocenceproject.org/Content/351.php#>