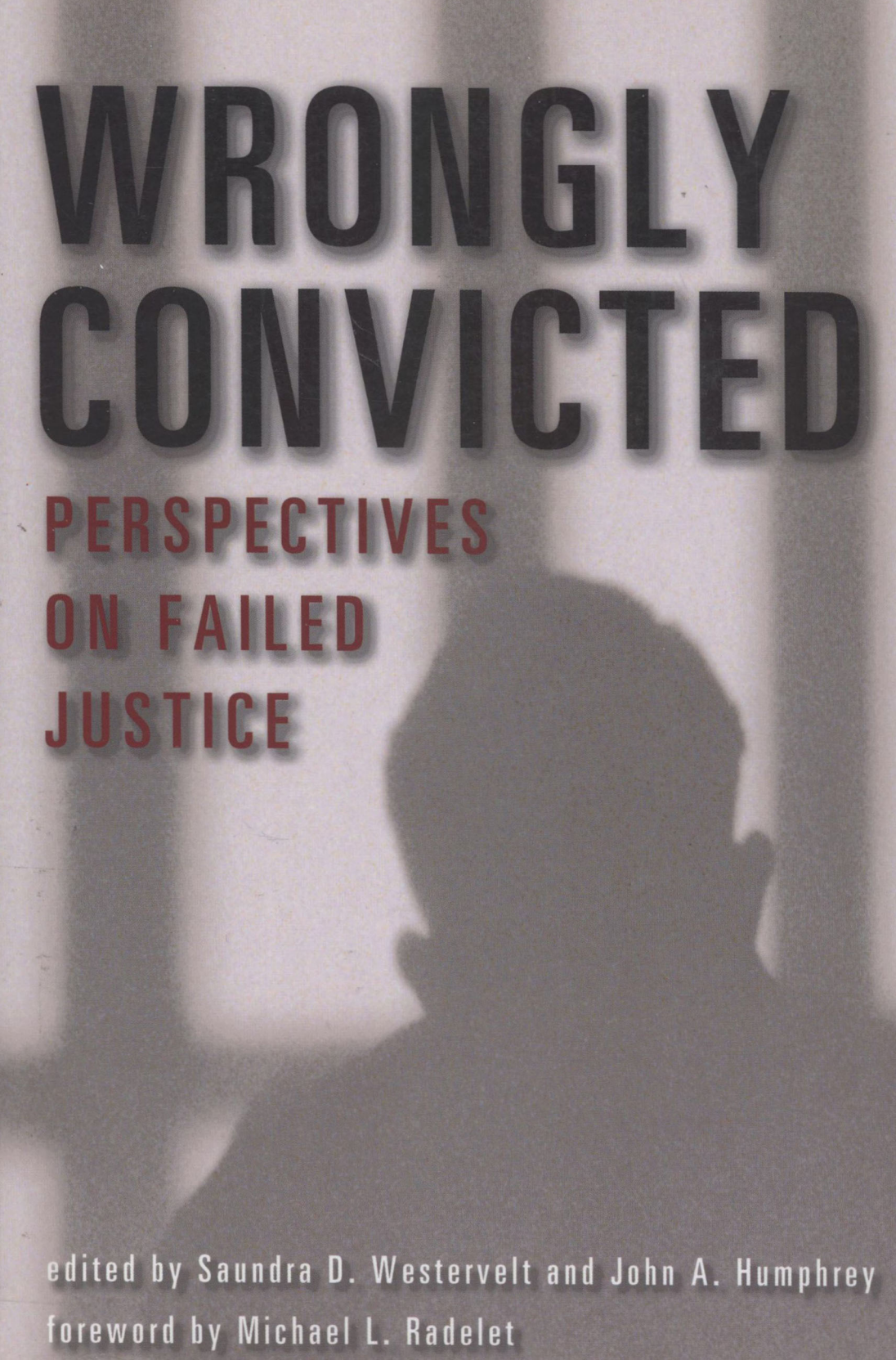
WRONGLY CONVICTED

PERSPECTIVES ON FAILED JUSTICE



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foreword by Michael L. Radelet

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Perspectives on Failed Justice

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Wrongly Convicted

To the wrongly convicted, known and unknown, and the advocates and researchers who fight for the exoneration of the innocent and for safeguards against continued injustice

MICHAEL L. RADELET

Foreword

Why are so many people making so much of a fuss about the possibility that innocent people are being convicted of crimes? After all, everyone probably agrees that most of those convicted and sentenced are guilty, and an occasional mistake is the price we must pay to ensure that as many criminals as possible are arrested, prosecuted, and convicted. And as the defenders of our current justice system so frequently claim, even if the defendant is innocent of this particular crime, she or he probably committed lots of other crimes for which no conviction was obtained.

Nevertheless, one can imagine other ways to respond to the question. For example, what if someone discovered a mechanical flaw in the space shuttle just minutes before the flaw would have caused a deadly explosion? In such a case, we would expect the people involved to learn from the mistake. Authorities would act quickly to study the problem, conducting endless reviews of procedures and interviews of personnel to learn how the flaw was made and how it was overlooked. Responsible parties might be sacked, and those in charge would develop procedures intended to prevent the same error from occurring again.

In contrast, consider what happened when Joseph Green ("Shabaka") Brown was released from custody in 1987, after serving fourteen years in prison for a crime he did not commit—and coming within fifteen hours of execution. As he recalled in early 2000, the releasing

guard's exact words were "Hurry up and get the hell out of here." Brown's first act as a free man was to panhandle a quarter so he could call his attorney and ask for a ride because he feared that his jailers were setting him up to be shot as an escapee. No hearings were ever held to pinpoint the blame for his erroneous conviction. No heads rolled, no apologies were delivered, and no compensation was given. In essence, the only lesson that certain people learned was to take better precautions to avoid getting caught using questionable methods to secure convictions.

Learn from our mistakes? Students of the criminal justice system who read this unique book will discover many hazards to avoid, and they will learn about many errors that inevitably lead to the conviction of the innocent. In these pages, we see example after example of what goes wrong in American criminal investigations and prosecutions. Arguably, the biggest mistake of all is the one that our political and judicial authorities continually make: they deny the possibility of error and completely ignore it when it occurs. They show no interest in learning from their mistakes. In jurisdictions that still retain capital punishment, political leaders refuse to minimize the harm that results from erroneous convictions by replacing the death penalty with sentences of long imprisonment. In the face of such resistance, the researchers and legal practitioners featured in this book struggle to reveal flaws in the justice system in the hope that we can learn from these mistakes and provide remedies to reduce wrongful convictions in the future.

A miscarriage of justice is especially problematic in capital cases, where a wrongful conviction can result in the death of an innocent defendant. To be sure, no state has ever admitted that an innocent person has been executed in the twentieth century. Nevertheless, that claim is no reason for confidence. More than seven dozen prisoners were released from American death rows in the last three decades of the twentieth century because of doubts about guilt. Case studies of these blunders show only too clearly that luck was the main ingredient in these exonerations—a situation that gives us little faith that these cases were the only ones in which innocent people were sent to death rows.

But there is another, and more important, reason to examine erroneous convictions in capital cases: they provide us with a window through which we can view the shortcomings and limits of the criminal justice system. If our system cannot convict the correct perpetrator, we have no guarantee that the many other decisions of criminal

justice officials who use the death penalty are made with the precision needed for life-and-death decisions.

Each year, some 20,000 homicides are reported to U.S. police, and roughly 250 perpetrators are sentenced to death. In effect, to decide who should be executed, one needs to arrange those 20,000 murderers into a hierarchy of culpability and sentence only the top 2 or 3 percent to death. Deciding who should die requires drawing lines on all sorts of continua. How much premeditation does the defendant have? How much criminal intent? How much is the defendant influenced by other participants? How old is the defendant? How crazy or mentally retarded is she or he? How dangerous will the defendant be if not sentenced to death? Has the race, ethnicity, gender, or sexual orientation of the defendant or victim affected our decisions? Are our decisions a function of the quality of the crime or the quality of the defense attorney or prosecutor? How much of the defendant's criminality is the result of bad parenting or the failure of a community to ask "what does he deserve" only after the abused child grows up and the capital offense is committed?

In reality (assuming one can agree on what makes a person more or less culpable), many of the 250 defendants at the top of the culpability hierarchy are not sentenced to death, and many of the bottom 19,750 are. If we fail to make the most important judgment correctly and convict an innocent person, how much confidence can we have that those found guilty of a capital homicide (as opposed to other degrees of homicide) and sentenced to death are in fact the worst of the bunch? This is why the issue of erroneous convictions is so important and why the friends of the executioner are so eager to deny that innocent people have been put to death. Convicting the innocent shows the fallibility of every other decision made by politicians and criminal justice personnel. It shows they make godlike decisions without godlike skills.

This book will make many readers feel acutely uncomfortable—a contribution that should give us some hope.

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We are pleased to thank the people whose thoughtful suggestions, time, and hard work helped bring this manuscript to completion. First, we thank our colleagues at The University of North Carolina at Greensboro for supporting our efforts. In particular, Julie Capone, whose contributions far exceed a departmental secretary's, provided invaluable assistance in editing and preparing the manuscript. In addition, from the outset, graduate assistants Beth Hughes and Cindy Dollar enthusiastically helped develop the project. Finally, Allison Amick provided an excellent index. We also thank our editor at Rutgers University Press, David Myers, who responded to our endless questions with openness and good humor. The original anonymous manuscript reviewers provided several helpful suggestions at the outset of the project, all of which helped focus the book and added to clarity.

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Although we owe all the contributors a tremendous debt, we extend particular thanks to Richard Leo and Michael Radelet. Early in the development of the project, Richard was a constant source of ideas

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Finally, we thank our families for their patience, support, and willingness to share us for a brief time with these individuals whose impact on the process of justice affects us all.

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Wrongly Convicted

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JOHN A. HUMPHREY
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Introduction

Arguably, the American system of criminal justice is armed with more safeguards against wrongful conviction than those of any other nation in the world. The Bill of Rights of the U.S. Constitution provides nineteen separate individual rights for the alleged criminal offender. Among these constitutional safeguards are the right to be free of unreasonable searches of person and place of residence; the right to the presumption of innocence; the right to effective legal representation; the right to a speedy trial with a jury present; and the right to be adjudicated without regard to race, gender, and religious preference. In sum, we are afforded the right to due process at each stage of the criminal justice process.

Despite these safeguards, however, national attention has recently focused on the repeated discovery of the factual innocence of convicted persons (Connors et al. 1996). Documented cases of wrongful convictions continue to accumulate. For example, Radelet et al. (1992) report on four hundred cases of wrong-person convictions involving Americans found guilty of crimes, many punishable by death. Twenty-three of these convicted persons were executed, while others spent several years in prison. More recently, a significant National Institute of Justice study (Connors et al. 1996) documented twenty-eight cases of individuals who since 1979 had been convicted of either murder or sexual assault, only to be exonerated by DNA evidence. Since the publication of this study, another thirty-six individuals have benefited from

DNA exonerations (Scheck et al. 2000). Some of these cases also appear on the Death Penalty Information Center's list of death row prisoners who have been fully exonerated and released (Dieter 1997). Furthermore, a recent FBI investigation finds that in approximately 25 percent of sexual assault cases under FBI review, DNA evidence excludes the primary suspect, hinting that without this new sophisticated technique many of these suspects would be formally adjudicated and quite possibly convicted (Connors et al. 1996).

In fact, the wrongful conviction issue has become the centerpoint of the current debate over the death penalty. For example, since the 1977 reinstatement of the death penalty in Illinois, thirteen inmates have been exonerated and released from death row, one more than the number of inmates actually executed during that time. Uncertainty over the actual guilt of persons condemned to death led the state's governor George Ryan to issue a moratorium on executions in January 2000. After announcing the moratorium, he called for the establishment of a special panel to study the processes involved in the imposition of capital punishment in Illinois. "Until I can be sure that everyone sentenced to death in Illinois is truly guilty," Governor Ryan observed, "no one will meet that fate" (Associated Press 2000).

Other states have also considered implementing a moratorium on executions in light of increasing concern over the accuracy and fairness of death penalty convictions and sentencing. The state legislatures of New Hampshire and Nebraska have voted for a moratorium, only to have their votes overridden by governors' vetoes. In March 2000, Indiana governor Frank O'Bannon called for a review of the capital punishment system in his state, although he did not impose a moratorium. Several local governments also have voted to suspend the death penalty, including Buffalo, New York; Atlanta, Georgia; Baltimore, Maryland; Chapel Hill, North Carolina; and San Francisco, California (Death Penalty Information Center 2000).

By March 2000, eighty-seven death row inmates in the United States had been exonerated, including the thirteen in Illinois, a situation prompting the establishment of the National Committee to Prevent Wrongful Executions. Headed by former Florida Supreme Court chief justice Gerald Kogan, the committee includes former FBI director William Sessions; former White House counsel Charles Ruff; former president of the International Chiefs of Police Charles Gruber; Laurie Robinson, a former assistant attorney general; and Mario Cuomo, former governor of New York. Judge Kogan considers the group's diversity a

strength, describing its composition as "Republicans and Democrats, conservatives and liberals, pro- and anti-death penalty. What we share is a common abhorrence that innocent people are at risk of execution because of failures in the legal system" (Davies 2000).

Conviction of the innocent has also become a media focus, as evinced by the spotlight directed at the exoneration of Rubin "Hurricane" Carter, who was incarcerated for nineteen years for a 1966 triple murder that he did not commit. In 1976, the New Jersey Supreme Court ruled unanimously that the prosecution at the first trial withheld evidence favorable to the defense. Nevertheless, Carter was again convicted that year, when the prosecution was permitted to allege that the murders were racially motivated. In 1985, after nineteen years in prison, he was released. In his ruling, Judge H. Lee Sarokin of the Federal District Court in Newark, New Jersey, commented: "It would be naive not to recognize that some prejudice, bias and fear lurks in all of us. But to permit a conviction to be urged based upon such factors or to permit a conviction to stand having utilized such factors diminishes our fundamental constitutional rights" (*Carter v. Rafferty* 1985: 560). Three years later, the U.S. Supreme Court affirmed Judge Sarokin's ruling (*Rafferty v. Carter* 1988), and prosecutors decided not to seek a third trial. Today, Rubin Carter lives in Canada, where he has been active on behalf of the wrongly convicted through the Association in Defense of the Wrongly Convicted (AIDWYC), an organization he helped establish. In 1999, his life and his fight against the American criminal justice system were dramatized in the motion picture *The Hurricane*.

The case of Kerry Cook also has received considerable attention. Cook was released in 1999 after having been incarcerated for nearly twenty years in Texas's death house for sexual molestation and murder. He was tried three times. His original 1977 conviction was reversed in 1991, when the Court of Criminal Appeals, the court of last resort in Texas, ruled that a psychologist who interviewed him did not adequately inform Cook that his intent was to determine Cook's future dangerousness.

Two more trials ensued. In 1992, the jury could not reach a verdict, and the trial ended. In the 1994 trial, however, Cook was again convicted of sexual molestation and murder and sentenced to death. Two years later, the Court of Criminal Appeals ruled that the 1994 conviction was legally flawed and set aside the verdict. The court held that the prosecutor's office "allowed itself to gain a conviction based

on fraud and ignored its own duty to seek the truth" (see McCloskey 1999). In addition, the court found that "the illicit manipulation of evidence on the part of the State permeated the entire investigation of the murder" (see McCloskey 1999).

In February 1999, Kerry Cook, freed on bond, was awaiting his fourth trial; but rather than face it, he chose to plead "no contest" to charges against him in exchange for his immediate unconditional release. (A no-contest plea is treated generally like a guilty plea within the criminal justice system, although it falls short of an actual admission of guilt.) Two months later, testing on newly submitted DNA evidence was completed, definitively excluding Cook as the offender. At present, he holds the dubious distinction of being the innocent person who has served the longest time on death row—almost twenty years—before being released.

The media report on these individual cases and others like them, and public and criminal justice officials note them. Rarely, however, are such cases understood as part of a larger pattern of failures and flaws within our criminal justice system. Many Americans and system officials view these cases as tragic but atypical, certainly not events that should prompt a reconsideration of the adjudicatory process as it is played out across the country. The criminal justice system—the adversarial method of arriving at the "truth" with regard to the accused's criminal liability—is judged to be fundamentally sound, and justice is administered as usual. After all, we in the United States have numerous constitutional safeguards in place that are intended to protect the criminally accused. We pride ourselves on the due process guarantees that are supposed to ensure the conviction of the guilty, and only the guilty, beyond a reasonable doubt. These safeguards are supposed to protect the innocent from the unintentional mistakes and intentional abuses of police, prosecutors, and judges. From this point of view, cases of wrongful conviction may be viewed as anomalies—people who slipped through the cracks of the criminal justice system.

Such confidence in our criminal justice system assumes that constitutional protections are always paramount and safeguards always implemented. This may not, however, be the case. Over the past several decades, U.S. officials have embarked on a "war on crime," resulting in increases in arrests, convictions, and the use of severe penalties (Chen 2000). During this time, "justice" has become synonymous with "crime control." The pressure to arrest and convict created by this "war on crime" ideology increases the possibility that an in-