

PERCEPTIONS OF EXONEREES: A REVIEW OF THE
PSYCHOLOGICAL SCIENCE*Lakia Faison* and Laura Smalarz***

INTRODUCTION

A cornerstone of Western criminal justice is the notion that it is better to let ten guilty men go free than to imprison one innocent man.¹ To date, however, 2,647 wrongful convictions have been uncovered in the United States.² Although some people argue that the number of wrongful convictions is negligible compared to the hundreds of thousands of purportedly rightful convictions,³ it is generally accepted that estimates of wrongful conviction rates are conservative and identified cases of wrongful conviction represent the tip of the iceberg.⁴ These miscarriages of justice often have grave consequences for the lives of the wrongfully convicted, their families,

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¹ 4 WILLIAM BLACKSTONE, COMMENTARIES *358; see Moulin Xiong et al., *Citizen Attitudes Toward Errors in Criminal Justice: Implications of the Declining Acceptance of Blackstone's Ratio*, 48 INT'L J.L. CRIME & JUST. 14, 14–15 (2017).

² See NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx> [https://perma.cc/2CK9-TK3E].

³ See, e.g., *Kansas v. Marsh*, 548 U.S. 163, 188 (2006) (Scalia, J., concurring); Joshua Marquis, *The Innocent and the Shammed*, N.Y. TIMES (Jan. 26, 2006), <https://www.nytimes.com/2006/01/26/opinion/the-innocent-and-the-shammed.html> [https://perma.cc/2H7C-2PTV] (focusing on how society “condemns” innocent people to death, but this type of situation is not a common one in the American justice system).

⁴ Jon B. Gould & Richard A. Leo, *One Hundred Years Later: Wrongful Convictions After a Century of Research*, 100 J. CRIM. L. & CRIMINOLOGY 825, 827, 835–36 (2010); Samuel R. Gross et al., *Exonerations in the United States 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 525, 530 (2005).

and society at large.⁵ Of particular interest in the current Article are the post-release experiences of exonerated individuals. We will review psychological research on the reintegration challenges faced by exonerees with a particular emphasis on social perceptions of exonerated individuals. We will then identify promising methods of reducing the stigmatization of exonerees, discuss potential driving mechanisms of negative perceptions of exonerees, and consider issues that warrant further research.

The logistical challenges that exonerees face following their release from prison have been well documented.⁶ Paradoxically, exonerees are often provided less reintegration support than rightfully convicted offenders.⁷ For example, many exonerees are informed of their exoneration merely a few hours before their release and thus have little opportunity to make living arrangements and otherwise prepare for life outside of prison.⁸ Also unlike actual offenders, exonerees are not offered services to ease their reintegration into life outside of prison;⁹ they are not offered temporary housing, job placement assistance, health insurance, drug rehabilitation services, or mental health services.¹⁰ One exoneree reported that he coped with his abrupt and aidless exoneration by committing petty offenses like shoplifting in order to spend a night in jail, which was a reprieve from the unfamiliarity of non-prison life.¹¹ After being released from prison, many exonerees show signs of psychological trauma such as hyperarousal, intrusive thoughts, hopelessness, poor social adjustment, self-isolative tendencies, self-destructive coping mechanisms, and the development of mood or anxiety disorders.¹²

⁵ See, e.g., Kimberly A. Clow et al., *Life After Wrongful Conviction*, in CONVICTION OF THE INNOCENT: LESSONS FROM PSYCHOLOGICAL RESEARCH 327, 328, 330 (Brian L. Cutler ed., 2012); Saundra D. Westervelt & Kimberly J. Cook, *Coping with Innocence After Death Row*, CONTEXTS, Fall 2008, at 32, 36 [hereinafter Westervelt & Cook, *Coping with Innocence After Death Row*]; Sara Rimer, *Life After Death Row*, N.Y. TIMES (Dec. 10, 2000), <http://movies2.nytimes.com/library/magazine/home/20001210mag-deathrow.html> [https://perma.cc/VN74-YUY6].

⁶ See Clow et al., *supra* note 5, at 329, 335–36; Rimer, *supra* note 5.

⁷ See Jennifer L. Chunias & Yael D. Aufgang, *Beyond Monetary Compensation: The Need For Comprehensive Services For The Wrongfully Convicted*, 28 B.C. THIRD WORLD L.J. 105, 110–11 (2008); Clow et al., *supra* note 5, at 329.

⁸ See Chunias & Aufgang, *supra* note 7, at 115; Clow et al., *supra* note 5, at 329.

⁹ See Clow et al., *supra* note 5, at 329.

¹⁰ See *id.* at 330; Saundra D. Westervelt & Kimberly J. Cook, *Framing Innocents: The Wrongly Convicted as Victims of State Harm*, 53 CRIME L. SOC. CHANGE 259, 265 (2010) [hereinafter Westervelt & Cook, *Framing Innocents*].

¹¹ See Chunias & Aufgang, *supra* note 7, at 115.

¹² See Adrian Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, 46 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 165, 168–70 (2004) [hereinafter Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*]; Westervelt

Compounding these logistical challenges are the social consequences of wrongful conviction for exonerees. Researchers have used several different methodologies to investigate social perceptions of exonerees. Some studies have interviewed actual exonerees to gather qualitative data about their post-release experiences and social interactions.¹³ Others have interviewed members of the public regarding their perceptions of exonerees and wrongful conviction.¹⁴ Most recently, experimental paradigms have investigated causal relationships between characteristics of exonerees (e.g., the cause of the exoneree's conviction; the exoneree's race) and individuals' perceptions of exonerees.¹⁵ Here, we review findings from each of these lines of research and discuss their implications for exonerees' post-release experiences.

I. EXONEREES' SELF-REPORTS OF SOCIAL STIGMATIZATION

In some of the first in-depth interviews with exonerees, *The New York Times* questioned six United States death row exonerees about the psychological and social issues they faced post-release.¹⁶ Kirk Bloodsworth, who was wrongfully convicted of raping and murdering a nine-year-old girl, discussed the shadow that his wrongful conviction cast over every aspect of his life.¹⁷ He described the inescapability of his stigma:

& Cook, *Coping with Innocence After Death Row*, *supra* note 5, at 34; Westervelt & Cook, *Framing Innocents*, *supra* note 10, at 263.

¹³ See, e.g., Kathryn Campbell & Myriam Denov, *The Burden of Innocence: Coping with a Wrongful Imprisonment*, 46 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 139, 140–42 (2004); Adrian T. Grounds, *Understanding the Effects of Wrongful Imprisonment*, 32 CRIME & JUST. 1, 17–18 (2005) [hereinafter Grounds, *Understanding the Effects of Wrongful Imprisonment*].

¹⁴ See, e.g., Kimberly A. Clow et al., *Public Perception of Wrongful Conviction: Support for Compensation and Apologies*, 75 ALB. L. REV. 1415, 1423–24 (2012); Isabella M. Blandisi et al., *Public Perceptions of the Stigmatization of Wrongly Convicted Individuals: Findings from Semi-Structured Interviews*, 20 QUALITATIVE REP., 1881, 1886 (2015); Isabella M. Blandisi, *Societal Perceptions of Wrongful Convictions* 48 (July 2012) (unpublished M.A. thesis, University of Ontario Institute of Technology), https://ir.library.utoronto.ca/bitstream/10155/257/1/Blandisi_Isabella.pdf [<https://perma.cc/NL62-YWNJ>].

¹⁵ See Kimberley A. Clow & Amy-May Leach, *After Innocence: Perceptions of Individuals Who Have Been Wrongfully Convicted*, 20 LEGAL & CRIMINOLOGICAL PSYCHOL. 147, 151 (2015) [hereinafter Clow & Leach, *After Innocence*]; Kimberley A. Clow & Amy-May Leach, *Stigma and Wrongful Conviction: All Exonerees are not Perceived Equal*, 21 PSYCHOL. CRIME & L. 172, 175, 178–79 (2015) [hereinafter Clow & Leach, *Stigma and Wrongful Conviction*]; Simon Howard, *Exonerees in Black and White: The Influence of Race on Perceptions of Those who Falsely Confessed to a Crime*, 25 PSYCHOL. CRIME & L. 911, 914 (2019); Meaghan E. Savage et al., *After Exoneration: Attributions of Responsibility Impact Perceptions*, 33 CANADIAN J.L. & SOC'Y 85, 90–91 (2018).

¹⁶ See Rimer, *supra* note 5.

¹⁷ See *id.*

This thing completely destroys a person's life Every rock, every branch, every grain of your existence is picked up and thrown down into a heap. You have to rebuild, and some people don't make it.

. . . .
No matter what happens to you, you are constantly put under this eye of distrust that you never can shake. I walked into a supermarket in town, and a lady picked up her child. The little girl said, "That's the man who was on the TV, Mommy." She rushed over and grabbed her child and said, "Don't go near him." I just left my stuff and walked out. It never, ever ends. It never ends. It never ends. It never will be ended.¹⁸

Ronald Williamson, who was falsely convicted of rape and murder, said that he feared the public because of the negative beliefs they had about him and suggested that the type of crime of which he was convicted exacerbated the public's stigmatization of him.¹⁹ He said,

I just wanted out of Oklahoma. I was afraid of the people there. . . . As a man who's been charged with a sex slaying, I don't trust anybody. If something happens in my community, I'm getting hold of my lawyer. They'll lie and they'll make up stories about you.²⁰

Rolando Cruz, who was wrongfully convicted of the kidnapping, rape, and murder of a ten-year-old girl reported that people expected him to quickly recidivate.²¹ Cruz did have a prior conviction on his criminal record, but it was for one count of trespassing (a non-violent offense), suggesting that assumptions about Cruz's criminality may have stemmed primarily from the stigma of his wrongful conviction.²²

In 2004, Campbell and Denov conducted semi-structured interviews with five Canadian exonerees about their experiences while in prison, how they coped with their arrests and convictions, and the challenges they faced post-incarceration.²³ The researchers

¹⁸ *Id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See id.*

²² *See id.*

²³ *See* Campbell & Denov, *supra* note 13, at 141, 142–56 (“Five individuals were interviewed for this study; each had been wrongly convicted and imprisoned. In this sense, their experiences represent the worst-case scenarios of wrongful conviction.”).

focused primarily on the exonerees' perceptions of how the government handled their cases and noted three major themes.²⁴ First, the exonerees reported a heightened intolerance for injustice, with all of the exonerees reporting having strong emotional reactions to instances of governmental injustice.²⁵ Second, the exonerees reported a desire for compensation, which they viewed as a symbolic gesture of de-labeling, or the removal of perceived guilt.²⁶ They felt that the lack of compensation was indicative of the government's continued negative perceptions of them.²⁷ Mark, a participant who was wrongfully convicted of sexual assault, said, "[I]f the government, the department of justice, says again, we're not paying him because for us, he's still guilty. As long as . . . as long as they won't admit that they made a mistake . . . I won't have peace of mind."²⁸

Third, the exonerees reported a desire for formal apologies from government personnel responsible for their wrongful convictions.²⁹ The exonerees provided two main reasons for their desire for formal apologies: The exonerees wanted government personnel to atone for their wrongdoings, and they hoped the apologies would serve as a mechanism for informing criminal justice officials and the public that wrongful convictions can occur, thereby potentially preventing future wrongful convictions.³⁰

In 2004, Grounds conducted interviews with eighteen British men who were referred for psychiatric assessment shortly after being released from wrongful imprisonment.³¹ In addition to discussing the psychological struggles they faced while adjusting to life out of prison, some of the exonerees reported feeling stigmatized by the public.³² In particular, exonerees who were convicted of highly publicized crimes expressed a pervasive fear of being in public.³³ One exoneree reported that a stranger tried to burn his house down, and two other exonerees felt they needed to be escorted everywhere

²⁴ See *id.* at 154.

²⁵ See *id.* at 154–55.

²⁶ See *id.* at 155.

²⁷ See *id.*

²⁸ *Id.* at 156.

²⁹ See *id.*

³⁰ See *id.*

³¹ See Grounds, *Understanding the Effects of Wrongful Imprisonment*, *supra* note 13, at 2, 15–16.

³² See *id.* at 2, 33.

³³ See *id.* at 23, 33.

because they were afraid to be in public, even more than two years after their exonerations.³⁴

In 2008, Westervelt and Cook conducted interviews with eighteen United States-based death row exonerees.³⁵ Many of the exonerees reported feeling stigmatized by their family, neighbors, and former friends.³⁶ Kirk Bloodsworth said that people in his community viewed him—and other exonerees for that matter—as guilty criminals who “beat the system.”³⁷ Sabrina Butler, who was wrongfully convicted of murdering her nine-month-old child, reported similar sentiments; despite her exoneration, the people in her community treated her like a murderer.³⁸ Her neighbors gossiped to her children that she was a “baby killer.”³⁹ Her local church closed their doors on her. Local employers refused to hire her. People stared at her wherever she went.⁴⁰

These interviews indicate that at least some exonerees feel stigmatized by strangers, neighbors, and other people in their communities. Do members of the public report hold negative perceptions of exonerees? A number of studies have addressed that question.

II. THE PUBLIC’S SELF-REPORTED PERCEPTIONS OF EXONEREES

Researchers have used interview methods as well as surveys and polls to query the public about their perceptions of exonerees.⁴¹ Although most of the exonerees interviewed in the aforementioned studies reported feeling stigmatized by the public, the public paradoxically tends to report that they do not stigmatize exonerees.⁴²

Research on the public’s perceptions of exonerees began with Canada’s National Angus Reid Poll,⁴³ which asked members of the public how they felt about the government’s ability to deal with wrongful convictions and whether the government should

³⁴ See *id.* at 33.

³⁵ See Westervelt & Cook, *Coping with Innocence After Death Row*, *supra* note 5, at 34.

³⁶ See *id.* at 35.

³⁷ *Id.*

³⁸ See *id.*

³⁹ *Id.*

⁴⁰ See *id.*

⁴¹ See Angus Reid Grp., *Public Perspectives on Wrongful Convictions*, ANGUS REID REP., July–Aug. 1995, at 75; Clow et al., *supra* note 14, at 1423–24.

⁴² Cf. Westervelt & Cook, *Coping with Innocence After Death Row*, *supra* note 5, at 37.

⁴³ See Angus Reid Grp., *supra* note 41, at 75.

compensate exonerees.⁴⁴ More than half of the poll respondents reported that the Canadian government needed to put more effort into preventing wrongful convictions and almost all respondents agreed that the government should compensate exonerees.⁴⁵ Although this poll showed that the public viewed wrongful convictions as a problem and compensation as necessary,⁴⁶ the question used to query public perceptions focused on the government's role in preventing and compensating for wrongful conviction rather than on attitudes toward exonerees themselves.⁴⁷ Many other studies have used similar measures that ask respondents their opinions about the government's or the criminal justice system's management of wrongful convictions. Those studies tend to show that people believe that wrongful convictions occur with some regularity and that wrongful convictions decrease people's faith in the criminal justice system.⁴⁸

It was not until 2012 that researchers began asking members of the public directly about their feelings toward exonerees. Blandisi conducted semi-structured interviews with fifteen Canadian café patrons regarding their perceptions of exonerees. Most of the participants reported believing that exonerees are stigmatized by the public, but many did not personally endorse any stigmatizing views of exonerees. Clow, Blandisi, Ricciardelli, and Schuller reported further analyses of these individuals' views about providing compensation and apologies to exonerees.⁴⁹ Many respondents were generally sympathetic toward exonerees and supported compensating and apologizing to exonerees.⁵⁰ A number of the interviewees, however, reported being as concerned—or even more concerned—about guilty people evading conviction as they were about innocent people being wrongfully convicted.⁵¹ These findings suggest that people may be reluctant to report personally stigmatizing exonerees and that some people consider a failure to

⁴⁴ See *id.* at 75–76.

⁴⁵ See *id.* at 77.

⁴⁶ See *id.* at 76.

⁴⁷ See *id.* at 77.

⁴⁸ James G. Bell & Kimberley A. Clow, *Student Attitudes Toward the Post-Conviction Review Process in Canada*, 7 J. INST. JUST. & INT'L STUD. 90, 94 (2007); Rosemary Ricciardelli et al., *Student Attitudes Toward Wrongful Conviction*, 51 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 411, 413–14, 421 (2009); Marvin Zalman et al., *Citizens' Attitudes Toward Wrongful Convictions*, 37 CRIM. JUST. REV. 51, 52, 59–60 (2012).

⁴⁹ See Clow et al., *supra* note 14, at 1423–25.

⁵⁰ See *id.* at 1425–26.

⁵¹ See *id.* at 1426.

convict guilty people as equally or even more important than the wrongful conviction of innocent people.

Further building on this research, Blandisi, Clow, and Ricciardelli interviewed thirty Canadian undergraduate students about their perceptions of exonerees and wrongful convictions.⁵² All the participants reported believing that exonerees are stigmatized by the public, but only eight of the participants directly reported that they held negative views of exonerees.⁵³ In those reports, there were a few central motifs: a fear of incarcerated persons, a belief that exonerees cause their wrongful conviction, and doubt about exonerees' actual innocence.⁵⁴ Three of the participants explicitly stated that they did not hold any negative views of exonerees, but the researchers argued that the language used by these participants revealed their stigmatizing beliefs.⁵⁵ For example, when answering a question about his comfort level around an exoneree, one participant said, "I would feel comfortable around those individuals [exonerees]. I mean, being wrongfully convicted doesn't make you a bad person."⁵⁶ Blandisi and colleagues suggested that the phrase "those individuals" indicates the out-grouping of exonerees by the participant, and that the act of out-grouping is indicative of latent prejudicial views.⁵⁷ Participants who did not report their own stigmas against exonerees tended to avoid talking about themselves and instead discussed how other people stigmatize exonerees.⁵⁸

To summarize, studies that have asked members of the public to self-report their attitudes towards exonerees show that the public acknowledges the stigmatization of exonerees by society as a whole, but most members of the public deny personally stigmatizing exonerees while sometimes simultaneously expressing stigmatizing views of exonerees. This discrepancy between people's reports of the attitudes of society at large and their own self-reported attitudes may be a reflection of people's deliberate attempts to appear egalitarian and unbiased. It is one thing to recognize that one's social group holds negative views of stigmatized individuals and another to admit to personally endorsing those negative views.⁵⁹ Social scientists have

⁵² See Blandisi et al., *supra* note 14, at 1886.

⁵³ See *id.* at 1881, 1889.

⁵⁴ See *id.* at 1889.

⁵⁵ See *id.* at 1889–90.

⁵⁶ *Id.* at 1890.

⁵⁷ *Id.*

⁵⁸ See *id.* at 1891.

⁵⁹ See Teun A. van Dijk, *Discourse and the Denial of Racism*, DISCOURSE & SOC'Y 89, 115–16 (1992); *supra* text accompanying notes 51–53.

long recognized that self-reported attitudes are susceptible to distortion arising from motivational biases such as socially-desirable responding, self-presentation, and self-deception.⁶⁰ As we will describe in the next section, most experiments on perceptions of exonerees also rely on participants' self-reports of their perceptions of exonerees. In recent years, however, researchers have begun to examine people's actual *behavior* toward exonerees using creative experimental paradigms, which may be less susceptible to people's strategic efforts to respond in a socially-desirable way.⁶¹

III. EXPERIMENTAL RESEARCH ON PERCEPTIONS OF EXONEREES

Experimental research on perceptions of exonerees varies considerably in terms of the outcomes of interest and methods of examining exoneree stigmatization. Some experiments have assessed participants' reactions to an exoneree presented in a mock newspaper article;⁶² others used vignettes;⁶³ and some involved actual or anticipated interactions with an ostensible exoneree.⁶⁴ Outcomes of interest range from ratings of an exoneree's character

⁶⁰ See Delroy L. Paulhus & Simine Vazire, *The Self-Report Method*, in HANDBOOK OF RESEARCH METHODS IN PERSONALITY PSYCHOLOGY 224, 228–29 (Richard W. Robins et al. eds., 2007). See generally Stuart W. Cook & Claire Sellitz, *A Multiple-Indicator Approach to Attitude Measurement*, 62 PSYCHOL. BULL. 36, 36–55 (1964).

⁶¹ See Kimberley A. Clow, *Does the “Wrongful” Part of Wrongful Conviction Make a Difference in the Job Market?*, in AFTER PRISON: NAVIGATING EMPLOYMENT AND REINTEGRATION 243, 245, 247 (Rose Ricciardelli & Adrienne M.F. Peters eds., 2017); Jeff Kukucka et al., *Do Exonerees Face Housing Discrimination? An Email-Based Field Experiment* (Mar. 7, 2020) (unpublished manuscript) (on file with authors); Laura Smalarz et al., *The Stigma of Wrongful Conviction: Behavioral Expressions of Prejudice Toward White and Black Exonerees* 2, 8–9 (unpublished manuscript) (on file with authors).

⁶² See Clow & Leach, *Stigma and Wrongful Conviction*, *supra* note 15, at 175; Howard, *supra* note 15, at 911; Kyle C. Scherr et al., *Reluctant to Embrace Innocence: An Experimental Test of Persevering Culpability Judgments on People's Willingness to Support Reintegration Services for Exonerees*, 14 J. EXPERIMENTAL CRIMINOLOGY 529, 532 (2018); Adina M. Thompson et al., *After Exoneration: An Investigation of Stigma and Wrongfully Convicted Persons*, 75 ALB. L. REV. 1373, 1384 (2011).

⁶³ See Kerry M. Karaffa et al., *Compensating the Innocent: Perceptions of Exonerees' Deservingness to Receive Financial Compensation for Wrongful Convictions*, 28 CRIM. JUST. POL'Y REV. 710, 716 (2017); Savage et al., *supra* note 15, at 90.

⁶⁴ See Clow, *supra* note 61, at 247; Jeff Kukucka et al., *Do Exonerees Face Employment Discrimination Similar To Actual Offenders?*, 25 LEGAL & CRIMINOLOGICAL PSYCHOL. 17, 19 (2020); Smalarz et al., *supra* note 61, at 7.

traits,⁶⁵ to self-reported willingness to interact with the exoneree,⁶⁶ to support for compensation and reintegration services for an exoneree,⁶⁷ to actual behavior towards a presumed exoneree.⁶⁸

What unifies the body of experimental research on perceptions of exonerees is its methodology of *manipulating* the characteristics of exonerees and/or aspects of their cases. For example, an experiment might manipulate the race of an exoneree by showing some participants a photo of a White exoneree and others a photo of a Black exoneree.⁶⁹ Or an experiment might manipulate the cause of an exoneree's wrongful conviction by varying details presented in a mock newspaper article or a case vignette.⁷⁰ Variable manipulations such as these allow researchers to observe the impact of specific factors (e.g., race, cause of conviction) on people's perceptions of exonerees while controlling for the influence of other variables that might confound the effects of interest in real cases.⁷¹ For example, a researcher might be interested in perceptions of exonerees who falsely confessed compared to those of exonerees who were mistakenly identified by an eyewitness.⁷² In real cases, the cause of an exoneree's conviction is often confounded with other factors.⁷³ For example, false confessions are more likely to occur in homicide cases, whereas eyewitness misidentifications are more likely to occur in sexual assault cases.⁷⁴ These real-world confounds make drawing causal conclusions about the effect of particular factors difficult outside of a controlled experimental setting. An experimental methodology allows for the isolation of individual factors so that their

⁶⁵ See, e.g., Clow & Leach, *After Innocence*, *supra* note 15, at 153, 157; Clow & Leach, *Stigma and Wrongful Conviction*, *supra* note 15, at 172, 175, 178–79; Kyle C. Scherr et al., *Perpetually Stigmatized: False Confessions Prompt Underlying Mechanisms That Motivate Negative Perceptions Of Exonerees*, 24 PSYCHOL. PUB. POL'Y & L. 341, 343–46 (2018); Scherr et al., *supra* note 62, at 531; Thompson et al., *supra* note 62, at 1386, 1388, 1395–96.

⁶⁶ See Clow & Leach, *After Innocence*, *supra* note 15, at 153, 157; Thompson et al., *supra* note 62, at 1392.

⁶⁷ See, e.g., Karaffa et al., *supra* note 63, at 711; Scherr et al., *supra* note 65, at 341, 344–45; Scherr et al., *supra* note 62, at 532.

⁶⁸ See Clow, *supra* note 61, at 247; Kukucka et al., *supra* note 64, at 17, 19; Smalarz et al., *supra* note 61, at 7.

⁶⁹ See Howard, *supra* note 15, at 916.

⁷⁰ See Savage et al., *supra* note 15, at 90; Scherr et al., *supra* note 65, at 344.

⁷¹ See Howard, *supra* note 15, at 916; Karaffa et al., *supra* note 63, at 718 (discussing the effect of race on perception of exonerees); see also Savage et al., *supra* note 15, at 90 (discussing the effect of cause of conviction on perception of exonerees); Scherr et al., *supra* note 65, at 344.

⁷² See Savage et al., *supra* note 15, at 90; Scherr et al., *supra* note 65, at 344.

⁷³ See *The Causes of Wrongful Conviction*, INNOCENCE PROJECT, <https://www.innocenceproject.org/causes-wrongful-conviction/> [https://perma.cc/62UH-5VDQ].

⁷⁴ See *Exonerations by Contributing Factor*, NAT'L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> [https://perma.cc/XZ4V-8JX5].

effects on people's perceptions and judgments can be more accurately assessed.

A second major advantage of experiments is that they enable researchers to assess how participants might actually react to an exoneree under one condition versus another. Consider the public survey methodologies described in the previous section.⁷⁵ With those survey measures, researchers are limited to asking people how they might respond, for example, to an exoneree who falsely confessed or to an exoneree who was mistakenly identified by an eyewitness. People's self-reports regarding their responses in such hypothetical scenarios are often inaccurate⁷⁶ and are limited by fact that people lack insight into the causes of their own behaviors.⁷⁷ Experiments that actually expose people to different exoneree characteristics circumvent these limitations.

In an early experimental investigation of exoneree stigmatization, Thompson and colleagues gave undergraduate students a newspaper article about either a paroled offender, an exoneree, or a person without a prior conviction.⁷⁸ After reading the article, the students responded to a survey about their feelings toward and perceptions of the individual in the article.⁷⁹ The results indicated that the exoneree was viewed as less good-natured, warm, intelligent, and confident than the person without a prior conviction but as more good-natured, warm, intelligent, confident, tolerant, honest, and deserving of monetary assistance than the paroled offender.⁸⁰ These results suggest that exonerees are viewed more positively than actual offenders but less positively than non-convicted persons. In a study that further confirmed this general pattern, Clow and Leach asked eighty-six Canadian undergraduates about several matters regarding either a wrongfully convicted person, a justly convicted person, or people in general.⁸¹ The results suggested that the students did not make a distinction between wrongfully convicted people and justly convicted people in terms of their evaluations of warmth, friendliness, respectability, aggression, and trustworthi-

⁷⁵ See *supra* Part II.

⁷⁶ See Steven J. Sherman, *On the Self-Erasing Nature of Errors of Prediction*, 39 J. PERSONALITY & SOC. PSYCHOL. 211, 217 (1980); Stephen G. West & T. Jan Brown, *Physical Attractiveness, the Severity of the Emergency and Helping: A Field Experiment and Interpersonal Simulation*, 11 J. EXPERIMENTAL SOC. PSYCHOL. 531, 537 (1975).

⁷⁷ See Richard E. Nisbett & Timothy DeCamp Wilson, *Telling More Than We Can Know: Verbal Reports on Mental Processes*, 84 PSYCHOL. REV. 231, 233 (1977).

⁷⁸ See Thompson et al., *supra* note 62, at 1384–85, 1393.

⁷⁹ See *id.* at 1385.

⁸⁰ See *id.* at 1397–98.

⁸¹ See Clow & Leach, *After Innocence*, *supra* note 15, at 152.

ness, among other characteristics.⁸² The wrongfully and justly convicted people were rated similarly on those characteristics and wrongfully-convicted people were evaluated more negatively than people in general on warmth, friendliness, and respectability.⁸³ The students did differentiate between wrongfully-convicted people and the justly-convicted offenders in terms of sincerity and proclivity for violence, however, with wrongfully-convicted people being perceived as more sincere and less violent than justly-convicted offenders.⁸⁴ The findings from Clow and Leach's study, as well as Thompson and colleagues' studies, were some of the earliest pieces of empirical evidence that the public may indeed stigmatize exonerees.

In a recent experiment that moved beyond studying undergraduate students' perceptions of exonerees, Kukucka, Applegarth, and Mello investigated the potential discrimination exonerees face when seeking employment.⁸⁵ Kukucka and colleagues asked eighty-two hiring professionals with first-hand experience recruiting employees, conducting interviews, and extending employment offers to rate either an exoneree, an offender, or a person without a conviction on the basis of a job application.⁸⁶ The applications were identical other than the applicant's offender status.⁸⁷ The results indicated that the hiring professionals viewed the exoneree as less articulate, intelligent, competent, and trustworthy than the applicant who had never been convicted.⁸⁸ The hiring professionals also tended to offer slightly lower starting wages to the exoneree than to the applicants without a prior conviction.⁸⁹ In all, Kukucka and colleagues' findings showed that exonerees face employment discrimination on par with that faced by actual offenders.⁹⁰

Other researchers have begun to examine behavioral manifestations of the stigmatization of exonerees. Clow sent one thousand job inquiry emails to contact persons listed in Canadian job postings.⁹¹ The email either made no mention of a prior criminal record, revealed that the applicant had been convicted of manslaughter, or revealed that the applicant had been convicted of

⁸² See *id.* at 155.

⁸³ See *id.*

⁸⁴ See *id.*

⁸⁵ See Kukucka et al., *supra* note 64, at 19.

⁸⁶ See *id.* at 20.

⁸⁷ See *id.*

⁸⁸ See *id.* at 23.

⁸⁹ See *id.* at 25.

⁹⁰ See *id.*

⁹¹ See Clow, *supra* note 61, at 247.

manslaughter and exonerated by DNA evidence.⁹² Employers were less likely to respond to the inquiry when the email referenced a criminal record, regardless of whether the email indicated that the applicant had been exonerated.⁹³ A secondary control condition that stated that the applicant had been out of the workforce for four years (the same amount of time the applicant in the conviction conditions had been in prison) indicated that this decreased response rate to the applicants with a criminal conviction was not simply due to their having been out of the workforce for four years. The inquiry that mentioned having been out of the workforce for four years still received more replies than did the emails that referenced a criminal record.⁹⁴ These findings indicate that the stigmatization of exonerees goes beyond perceptions or evaluations in the minds of individuals to affect actual behavior towards exonerees in ways that threaten exonerees' abilities to successfully reintegrate into society.

In a similar experiment, Kukucka, Horodyski, Peat, Deegan, and Clow tested the extent to which exonerees face housing discrimination by contacting more than 1,200 apartment listings across the contiguous United States.⁹⁵ "The e-mails were ostensibly sent by a man named Michael Williams," who stated that he had spent nine years in prison for a crime that he either committed or of which he had been wrongfully convicted (the manner of describing the prior wrongful conviction was also varied but did not affect outcomes).⁹⁶ In a control condition, Michael made no mention of a prior conviction. Consistent with Clow's findings in the employment context, the reply rate to housing inquiries was higher when the email did not mention a criminal conviction than when it mentioned a criminal conviction.⁹⁷ This was true regardless of whether Michael had been exonerated, indicating that exonerees face discrimination similar to that faced by actual offenders.⁹⁸ These important findings from real-world contexts corroborate exonerees' anecdotal reports of the challenges they face after they are released.

Experimental research on perceptions of exonerees suggests that individuals do stigmatize exonerees. Given that this phenomenon has now been documented across a range of settings and outcomes, researchers have begun to turn their attention to the possibility that

⁹² See *id.* at 248–49.

⁹³ See *id.* at 251.

⁹⁴ See *id.*

⁹⁵ See Kukucka et al., *supra* note 61.

⁹⁶ *Id.*

⁹⁷ See *id.*; see also Clow, *supra* note 61, at 251.

⁹⁸ See Kukucka et al., *supra* note 61.

contextual factors influence the degree to which exonerees are stigmatized. The two contextual factors that have received the most attention to date are the cause of the exoneree's wrongful conviction and the exoneree's race.

A. *Cause of Wrongful Conviction*

According to the National Registry of Exonerations, the leading causes of wrongful conviction (in order from most to least prevalent) are perjury or false accusations, official misconduct, mistaken eyewitness identification, false or misleading forensic evidence, and false confessions.⁹⁹ Several studies have examined how the stigmatization of exonerees differs by cause of conviction.¹⁰⁰ Most of these studies have focused on the stigmatization of exonerees who falsely confessed relative to exonerees convicted by other means such as mistaken eyewitness identification or official misconduct.¹⁰¹ Interest in perceptions of false confessors has been driven by psychological theory regarding attributions of responsibility and blameworthiness.¹⁰² Research in the basic psychology literature indicates that stigmatized individuals who are perceived to be responsible for their stigmas are viewed more negatively and are less likely to receive assistance than those who are thought to be innocent victims of their stigma.¹⁰³

In the first study to investigate exoneree stigmatization as a function of cause of conviction, Clow and Leach asked 125 Canadian undergraduate students to read a newspaper article about a person who had never been convicted or an exoneree who was convicted based on a false confession, a mistaken eyewitness identification, or

⁹⁹ See *Exonerations by Contributing Factor*, *supra* note 74.

¹⁰⁰ See Clow & Leach, *Stigma and Wrongful Conviction*, *supra* note 15, at 172, 175, 178–79; Jeff Kukucka & Andrew J. Evelo, *Stigma Against False Confessors Impacts Post-Exoneration Financial Compensation*, 37 BEHAV. SCI. & L. 372, 374 (2019); Savage et al., *supra* note 15, at 89; Scherr et al., *supra* note 62, at 530; Lesley Zannella & Tara Burke, *The Relationship between Negative Perceptions of Exonerees and Reintegration Recommendations* 14–16 (Mar. 7, 2020) (unpublished manuscript) (on file with authors).

¹⁰¹ See Savage et al., *supra* note 15, at 89–90; Kukucka & Evelo, *supra* note 100, at 374; Thompson et al., *supra* note 62, at 1380.

¹⁰² See Thompson et al., *supra* note 62, at 1377, 1380.

¹⁰³ See Udo Rudolph et al., *A Meta-Analytic Review of Help Giving and Aggression From an Attributional Perspective: Contributions to a General Theory of Motivation*, 18 COGNITION & EMOTION 815, 815 (2004); Bernard Weiner, *On Sin Versus Sickness: A Theory of Perceived Responsibility and Social Motivation*, 48 AMER. PSYCHOLOGIST 957, 964 (1993) [hereinafter Weiner, *On Sin Versus Sickness*]; Bernard Weiner et al., *An Attributional Analysis of Reactions to Stigmas*, 55 J. PERSONALITY & SOC. PSYCHOL. 738, 738 (1988) [hereinafter Weiner, *An Attributional Analysis of Reactions to Stigmas*].

the testimony of a jailhouse informant.¹⁰⁴ Participants then evaluated the exoneree on a range of characteristics (e.g., innocence, warmth, competence), and rated their emotional responses (e.g., anger, pity) to the exoneree as well as their willingness to support government assistance for the exoneree.¹⁰⁵ As the researchers hypothesized, the exoneree who falsely confessed was perceived more negatively (i.e., less warm and competent) than the other exonerees.¹⁰⁶ Moreover, only the exoneree who falsely confessed was perceived to be guilty by any of the participants (though only three of the participants considered an exoneree to be guilty).¹⁰⁷ There was only weak evidence suggesting that participants were less likely to support government assistance to the exoneree who falsely confessed than to the other exonerees, and the exonerees did not elicit different amounts of pity from participants.¹⁰⁸ Thus, Clow and Leach's findings provided tentative support for the prediction that exonerees who falsely confess are judged more harshly than exonerees convicted by other means.

Scherr, Normile, and Putney conducted a study to further investigate perceptions of exonerees who falsely confessed and elucidate the mechanisms that might underlie negative perceptions of false confessors.¹⁰⁹ In their study, 253 participants read a news story about an exoneree who either falsely confessed or was misidentified by an eyewitness and evaluated the exoneree along a number of dimensions.¹¹⁰ The results indicated that a false confession prompted a series of negative inferences that ultimately led participants to doubt the exoneree's innocence.¹¹¹ This tendency to doubt the exoneree's actual innocence, in turn, predicted decreases in participants' willingness to support reintegration services for the exoneree such as psychological counseling, career counseling, and job training.¹¹² These effects occurred despite the fact that the news story clearly indicated that the exoneree had been exonerated by DNA evidence, indicating the persistent negative effects of a false confession on people's evaluations of exonerees and their (un)willingness to support exonerees' social reintegration.¹¹³

¹⁰⁴ See Clow & Leach, *Stigma and Wrongful Conviction*, *supra* note 15, at 175.

¹⁰⁵ See *id.* at 176–77.

¹⁰⁶ See *id.* at 180.

¹⁰⁷ See *id.* at 181.

¹⁰⁸ See *id.* at 182.

¹⁰⁹ See Scherr et al., *supra* note 65, at 342–43.

¹¹⁰ See *id.* at 343.

¹¹¹ See *id.* at 348.

¹¹² See *id.*

¹¹³ See *id.* at 344, 348–49.

Given that most false confessions are the product of police coercion,¹¹⁴ judgments of exonerees who falsely confessed might be less harsh if people were aware of the coercive psychological influences that led to the false confession. Savage and colleagues conducted an experiment to investigate whether informing people of the biased police procedures that were used to extract a confession mitigates the tendency to judge false confessors more harshly than exonerees convicted by other means.¹¹⁵ Canadian undergraduate students read a vignette about a fictional DNA exoneree who was wrongfully convicted based on a false confession or an eyewitness misidentification.¹¹⁶ The researchers manipulated whether these pieces of evidence were obtained using biased or best practice procedures. In the biased procedures conditions, the suspect's picture stood out from the other lineup members (eyewitness condition) and the suspect was interrogated at length and deceived about the existence of incriminating evidence (confession condition).¹¹⁷ In the best practice procedures conditions, the suspect's picture did not stand out from the other lineup members (eyewitness condition) and the suspect was interrogated for a reasonable amount of time (confession condition).¹¹⁸ The results indicated that participants were sensitive to the information about police's use of biased interrogation procedures: They reported greater perceptions of police responsibility for the wrongful conviction and greater anger at police when the police used biased procedures to obtain a confession than when they used best practice interrogation procedures.¹¹⁹ This effect was not observed in the eyewitness conditions,¹²⁰ suggesting that the use of biased eyewitness identification procedures was less concerning to participants. Yet despite participants' greater attributions of responsibility to the police and anger towards the police when biased interrogation procedures were used, participants were still angrier at the exoneree, reported less favorable attitudes towards the exoneree, and perceived the exoneree as more responsible for his wrongful conviction when he falsely confessed

¹¹⁴ See Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY & L. 332, 332 (2009). See generally Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 3–31 (2010) (discussing the psychological processes that make police-induced confessions more likely).

¹¹⁵ See Savage et al., *supra* note 15, at 90.

¹¹⁶ See *id.* at 90–91.

¹¹⁷ See *id.* at 92.

¹¹⁸ See *id.*

¹¹⁹ See *id.* at 94–95.

¹²⁰ See *id.* at 95.

than when he was misidentified by an eyewitness.¹²¹ These results suggest that even if people fault the police for their use of coercive interrogation tactics to elicit a confession, they may not correspondingly adjust their perceptions of an exoneree who falsely confessed in response to those coercive tactics.

In an extension of this research, Kukucka and Evelo tested whether a false confession impedes an exoneree's ability to win financial restitution in post-conviction civil lawsuits.¹²² Like Savage and colleagues, Kukucka and Evelo examined whether police misconduct leads mock jurors to attribute less responsibility to the exoneree for his wrongful conviction, in turn making them more likely to award damages to the exoneree.¹²³ The researchers tasked 129 participants with acting as mock jurors in a case in which an exoneree had been convicted on the basis of either a false confession or a false eyewitness identification and official misconduct was either present or absent in the case.¹²⁴ The presence of police misconduct led participants to judge the false confessor as less responsible for his wrongful conviction relative to when there was no police misconduct, suggesting that participants understood the coercive nature of the interrogation.¹²⁵ Participants also awarded more compensatory and punitive damage awards to the false confessor when misconduct was present as opposed to absent.¹²⁶ Even so, participants still judged the false confessor as more responsible for his wrongful conviction than the exoneree who was misidentified by an eyewitness,¹²⁷ suggesting that it may be difficult to completely eliminate the tendency for people to judge false confessors as responsible for their wrongful convictions.

These studies suggest that false confessors are stigmatized more harshly than exonerees convicted by other means but also suggest that drawing attention to the coercive circumstances surrounding an exoneree's false confession may help to mitigate these biases in some ways. These conclusions are consistent with broader social psychological research showing that people who are perceived as responsible for their stigma engender less sympathy and are less

¹²¹ See *id.* at 96–97.

¹²² See Kukucka & Evelo, *supra* note 100, at 374–75.

¹²³ See *id.* at 375.

¹²⁴ See *id.* at 375–76.

¹²⁵ See *id.* at 380.

¹²⁶ See *id.* at 380–81.

¹²⁷ See *id.* at 380.

likely to receive assistance than are people who are not perceived as responsible for their stigma.¹²⁸

If false confessors are penalized socially because they are perceived to have contributed to their own wrongful conviction, are exonerees who pled guilty judged similarly? In a recent investigation of this question, Zannella and Burke gave undergraduate students a summary report about a person who had been wrongfully convicted and later exonerated.¹²⁹ The researchers varied the cause of the wrongful conviction stated in the report: Participants read that the wrongful conviction was due to a false confession, a false guilty plea, or an eyewitness misidentification.¹³⁰ Contrary to their prediction, the results indicated that the exoneree who falsely pled guilty was viewed as less responsible for their wrongful conviction and less able to have prevented the wrongful conviction compared to the exoneree who falsely confessed.¹³¹ Given that both confessions and guilty pleas involve taking responsibility for a criminal act,¹³² it is somewhat surprising that offering a false guilty plea did not produce the same attributions of responsibility as offering a false confession. Additional research is needed to further examine this issue.

B. Exoneree Race

Of the 2,535 exonerees identified by the National Registry of Exonerations, 49% are Black, 37% are White, and 12% are Hispanic, while these groups represent 13%, 77%, and 18% of the U.S. population, respectively.¹³³ Thus, African Americans are disproportionately represented among exonerees. Accordingly, research examining the effects of exoneree race on perceptions of and responses to exonerees has tended to focus on comparing perceptions of Black and White

¹²⁸ See, e.g., Rudolph et al., *supra* note 103, at 842–43 (synthesizing investigations that found lack of effort, as a cause of failure, elicits less sympathy than lack of ability); Weiner, *supra* note 103, at 959, 961 (discussing how failure due to lack of effort leads to anger and punishment, while failure due to lack ability leads to sympathy and no punishment); Weiner et al., *supra* note 103, at 745 (finding that onset-uncontrollable stigmas are linked with reactions of pity, liking, no anger, and help-giving, while controllable stigmas are associated with no pity, anger, and judgment not to help).

¹²⁹ See Zannella & Burke, *supra* note 100.

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² See Allison D. Redlich et al., *The Influence of Confessions on Guilty Pleas and Plea Discounts*, 24 PSYCHOL. PUB. POL'Y & L. 147, 147 (2018).

¹³³ See *Exonerations in the United States Map*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> [<https://perma.cc/S5JR-WRUM>]; *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/L7YL-4PFR>].

exonerees. This work has yielded mixed results, with one study suggesting that Black exonerees are stigmatized more harshly than White exonerees,¹³⁴ another finding the opposite,¹³⁵ and yet a third study indicating that perceptions of White and Black exonerees may differ depending on whether they were convicted of a stereotype-consistent or a stereotype-inconsistent crime.¹³⁶

Howard gave participants a fictional newspaper article about a Black or White individual who was wrongfully convicted on the basis of a false confession and exonerated by DNA evidence after spending ten years in prison.¹³⁷ Although the Black and White exonerees were perceived to be similarly competent and warm,¹³⁸ the Black exoneree was rated as more aggressive, less deserving of reintegration assistance, and more likely to commit a crime post-exoneration than was the White exoneree.¹³⁹ The White exoneree was also perceived to be more mentally ill than the Black exoneree,¹⁴⁰ a finding that the author interpreted as potentially reflecting a broader tendency for people to attribute criminal acts committed by White perpetrators to mental illness while attributing criminal acts committed by non-White perpetrators to their inherent criminality.¹⁴¹

In an experiment designed to assess actual behavior toward White and Black exonerees, Smalarz, Madon, and Clow invited student-participants to the lab to participate in what was ostensibly a community integration program being conducted in collaboration with the city.¹⁴² Participants were led to believe that they would be meeting with a partner who was a new member of the community and were informed that the partner was either a businessman who had transferred to the area for work or an exoneree who had recently been released from prison after being proven innocent.¹⁴³ Participants were additionally led to believe that their partner was either White or Black.¹⁴⁴ Following a staged phone call, the experimenter announced that she had to leave the lab to attend to an

¹³⁴ See Howard, *supra* note 15, at 922.

¹³⁵ See Laura Smalarz et al., Testing the Steven Avery Effect: Are Exonerees at an Increased Risk of Being Convicted of a New Offense? 10, 12 (Mar. 7, 2020) (unpublished manuscript) (on file with authors).

¹³⁶ See Scherr et al., *supra* note 62, at 534–35.

¹³⁷ Howard, *supra* note 15, at 915–16.

¹³⁸ See *id.* at 917.

¹³⁹ See *id.* at 918.

¹⁴⁰ See *id.* at 919.

¹⁴¹ See *id.* at 921; see also Jonathan M. Metzler & Kenneth T. MacLeish, *Mental Illness, Mass Shootings, and the Politics of American Firearms*, 105 AM. J. PUB. HEALTH 240, 244 (2015).

¹⁴² See Smalarz et al., *supra* note 135, at 5, 7.

¹⁴³ See *id.* at 7–8.

¹⁴⁴ See *id.* at 8.

issue in a nearby lab and left the participant alone in a hallway to wait for their partner to arrive, communicating that the participant should feel free to leave if they got the feeling that their partner was not going to show up.¹⁴⁵ The primary measure of interest was how long participants waited for their partner.¹⁴⁶ Consistent with the notion that exonerees are stigmatized, participants waited longer for the partner to arrive when he was a businessman than when he was an exoneree.¹⁴⁷ Unexpectedly, however, this pattern was observed only when the partner was White.¹⁴⁸ When the partner was Black, participants waited longer for the exoneree than for the businessman.¹⁴⁹ The authors speculated that participants who expected to meet with a Black exoneree may have adjusted their behavior in an effort to appear racially unprejudiced, concerns about which might have been particularly salient when the Black partner was an exoneree as opposed to a businessman.¹⁵⁰

Scherr, Normile and Sarmiento investigated the potential role of criminal stereotypicality on evaluations of exonerees.¹⁵¹ The researchers hypothesized that people would doubt an exoneree's innocence to a greater extent when the exoneree had been convicted of a racially-stereotypical crime than when the exoneree had been convicted of a crime that was not racially stereotypical.¹⁵² Participants in their study read a news story about a White or a Black exoneree who was convicted of either embezzlement (stereotypical for the White exoneree) or assault (stereotypical for the Black exoneree).¹⁵³ As predicted, participants expressed greater doubt about the exoneree's innocence in the embezzlement case when the exoneree was White as opposed to Black.¹⁵⁴ Somewhat surprisingly, however, participants' perceptions of doubt about the exoneree's innocence in the assault case did not differ depending on the exoneree's race.¹⁵⁵ One interpretation of this finding is that participants modified their responses to the Black exoneree in an effort to appear unprejudiced.¹⁵⁶ This explanation is consistent with

¹⁴⁵ *See id.* at 8–9.

¹⁴⁶ *See id.* at 9.

¹⁴⁷ *See id.* at 10, 12.

¹⁴⁸ *See id.* at 12, 14.

¹⁴⁹ *See id.* at 14.

¹⁵⁰ *See id.* at 12, 14.

¹⁵¹ Scherr et al., *supra* note 62, at 530.

¹⁵² *See id.* at 531.

¹⁵³ *See id.* at 532.

¹⁵⁴ *See id.* at 535.

¹⁵⁵ *See id.*

¹⁵⁶ *See id.*

Smalarz and colleagues' speculations regarding participants' tendency to behave more favorably towards a Black exoneree than towards a White exoneree.¹⁵⁷ Future studies should aim to further elucidate the psychological processes underlying differences in people's attitudes and behavior towards White and Black exonerees.

To summarize, the existing research on perceptions of White and Black exonerees paints a decidedly mixed picture. Two studies show a reduction or even reversal in bias against Black exonerees relative to White exonerees¹⁵⁸ whereas another has found evidence of greater bias against a Black exoneree than against a White exoneree.¹⁵⁹ Yet another study found no effect of an exoneree's race on judgments about the extent to which the exoneree was deserving of compensation.¹⁶⁰ However, Karaffa and colleagues' manipulation of race was somewhat weak, being presented only in written form rather than using a photograph as has been done in other research.¹⁶¹ Because Karaffa and colleagues did not include a manipulation check¹⁶² in their study, it is difficult to determine whether the race manipulation did not affect participants' responses because they truly perceived the Black and White exonerees to be similarly deserving of compensation or because they failed to notice the exonerees' race. In general, it will be important for future research to ensure effective manipulations of exoneree race and to potentially identify methods of circumventing participants' self-presentation strategies, which may moderate racial biases in an experimental setting to a greater extent than in real-world interactions. Until then, researchers should be cautious in drawing firm conclusions about the differences in stigmatization of Black and White exonerees.

IV. IMPROVING PERCEPTIONS OF EXONEREES

The existing evidence regarding people's perceptions of and behavior toward exonerees indicates that exonerees are stigmatized.¹⁶³ That stigma can negatively impact employability,

¹⁵⁷ See *id.*; Smalarz et al., *supra* note 135, at 12, 14.

¹⁵⁸ See Scherr et al., *supra* note 62, at 535; Smalarz et al., *supra* note 135, at 10.

¹⁵⁹ Howard, *supra* note 15, at 922.

¹⁶⁰ See Karaffa et al., *supra* note 63, at 725.

¹⁶¹ See Howard, *supra* note 15, at 914, 916; Karaffa et al., *supra* note 63, at 716–18; Scherr et al., *supra* note 62, at 529.

¹⁶² See generally David J. Hauser et al., *Are Manipulation Checks Necessary?*, 9 FRONTIERS PSYCHOL. 998 (2018) (describing the purpose of manipulation checks in research); see Karaffa et al., *supra* note 63, at 716–20.

¹⁶³ See Blandisi et al., *supra* note 14, at 1883; Clow & Leach, *After Innocence*, *supra* note 15, at 159.

housing opportunities, and exonerees' social relationships.¹⁶⁴ Fortunately, ongoing research has begun to reveal various mechanisms for reducing the stigmatization of exonerees.¹⁶⁵ These mechanisms include educating the public about exonerees and wrongful conviction, providing financial compensation to exonerees, expunging exonerees' criminal records, and issuing public apologies to exonerees.¹⁶⁶ These redresses could improve exonerees' experiences post-release both by facilitating their societal reintegration and by improving public perceptions of exonerees.

A. Education

Many people appear to have limited or inaccurate knowledge about wrongful convictions and exonerees, and people sometimes conflate exonerees with judicially released guilty.¹⁶⁷ Fortunately, studies suggest that educating people about wrongful convictions and exonerees may improve their perceptions of exonerees.¹⁶⁸

Bell and colleagues investigated the impact of criminal justice education on awareness of wrongful convictions and their causes.¹⁶⁹ They surveyed 297 Canadian students who were either familiar with the criminal justice system (i.e., criminal justice majors) or were not particularly familiar with the criminal justice system (i.e., non-criminal justice majors).¹⁷⁰ Consistent with the researchers' predictions, students majoring in criminal justice were more aware of a number of issues related to wrongful conviction than were non-criminal justice majors.¹⁷¹ For example, criminal justice majors reported greater awareness of the fallibility of criminal evidence (i.e., eyewitness evidence, confessions, and DNA evidence) than did non-criminal justice majors.¹⁷² Furthermore, criminal justice students'

¹⁶⁴ See Blandisi et al., *supra* note 14, at 1883–84; Clow & Leach, *After Innocence*, *supra* note 15, at 157; Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, *supra* note 12, at 176; Kukucka et al., *supra* note 61; Kukucka et al., *supra* note 64, at 17, 23–25; Westervelt & Cook, *Coping with Innocence After Death Row*, *supra* note 5, at 36.

¹⁶⁵ See Westervelt & Cook, *Coping with Innocence After Death Row*, *supra* note 5, at 35.

¹⁶⁶ See *id.* at 35–36.

¹⁶⁷ See Blandisi et al., *supra* note 14, at 1894; Clow et al., *supra* note 14, at 1416; Blandisi, *supra* note 14, at iii.

¹⁶⁸ See Bell & Clow, *supra* note 48, at 99; James G. Bell et al., *Causes of Wrongful Conviction: Looking at Student Knowledge*, 19 J. CRIM. JUST. EDUC. 75, 94 (2008); Rosemary Ricciardelli & Kimberley A. Clow, *The Impact of an Exoneree's Guest Lecture on Students' Attitudes Toward Wrongly Convicted Persons*, 23 J. CRIM. JUST. EDUC. 127, 127 (2012); Ricciardelli et al., *supra* note 48, at 422.

¹⁶⁹ See Bell et al., *supra* note 168, at 75.

¹⁷⁰ See *id.* at 79.

¹⁷¹ See *id.* at 91.

¹⁷² See *id.*

awareness of the fallibility of criminal evidence increased as the students became more advanced in their studies, with third-year criminal justice students reporting greater awareness of issues of evidence fallibility than first-year criminal justice students.¹⁷³ There was some evidence to suggest that criminal justice students were also more attuned to the role of racial bias in wrongful convictions than were non-criminal justice majors, especially when the criminal-justice students were more advanced in their studies.¹⁷⁴ At the same time, criminal justice majors and non-criminal justice majors did not tend to differ in their awareness of the extent to which police, prosecutors, and defense attorneys can contribute to wrongful convictions.¹⁷⁵ Thus, a criminal justice education may be insufficient for informing people about all possible contributors to wrongful conviction. With some caveats, these findings suggest that education may prove useful as a method of informing people about some aspects of wrongful conviction.¹⁷⁶ However, Bell and colleagues' study did not directly assess the impacts of education on perceptions of exonerees, nor did it experimentally manipulate education exposure, thereby precluding strong causal conclusions about whether disseminating information about wrongful convictions improves the public's perceptions of exonerees.

Ricciardelli and Clow addressed both of these limitations by conducting an experiment in which they surveyed 354 Canadian undergraduate students about their attitudes and feelings toward exonerees and their support for the role of the government to address miscarriages of justice.¹⁷⁷ Critical for drawing causal conclusions about the effects of education, participants in this experiment were exposed to one of two conditions: a guest lecture about wrongful convictions or a guest lecture about Aboriginal issues, which served as the baseline or control condition.¹⁷⁸ Participants reported their attitudes and feelings toward exonerees both before and after the guest lecture.¹⁷⁹ The results provided support for the proposition that education about wrongful conviction improves perceptions of exonerees: Students who saw a lecture on wrongful convictions exhibited more positive attitudes and sympathy toward exonerees and showed more support for governmental efforts to compensate

¹⁷³ *See id.* at 83.

¹⁷⁴ *See id.* at 91.

¹⁷⁵ *See id.* at 92.

¹⁷⁶ *See also* Ricciardelli et al., *supra* note 48, at 418–19, 421–22.

¹⁷⁷ *See* Ricciardelli & Clow, *supra* note 168, at 132, 134.

¹⁷⁸ *See id.* at 127.

¹⁷⁹ *See id.*

exonerees and apologize for wrongful convictions after the lecture than before the lecture. Students who saw a guest lecture about Aboriginal issues, however, showed no post-lecture change in their attitudes towards these issues.¹⁸⁰

To our knowledge, no other studies have examined the impact of educating people about exonerees on their perceptions of exonerees themselves. However, the extant research suggests that educating people about exonerees and wrongful convictions could lessen their stigmatization of exonerees and shift blame from wrongful convictions away from exonerees and onto the criminal justice system.¹⁸¹

B. *Compensation, Apologies, and Expungement*

1. Compensation

Exonerees face many challenges upon release from incarceration, many of which cannot be resolved with money alone.¹⁸² However, some challenges, like obtaining basic necessities, can be eased with adequate compensation. Unfortunately, fewer than half of all exonerees receive compensation for their wrongful convictions.¹⁸³ When compensation is provided to exonerees, it averages around \$23,000 to \$27,000 per year in prison, with some exonerees receiving as little as \$1,000 per year in prison.¹⁸⁴ For many exonerees, therefore, government-provided compensation is insufficient to pay for basic necessities such as housing, food, transportation, and any rehabilitation or mental health services they may need.¹⁸⁵ Legal scholars, psychological researchers, exonerees, and the public have argued that the government should financially compensate exonerees to ease their transition to non-prison life, atone for the robbery of their freedom, help exonerees gain closure on their traumatic experiences, and incentivize the government to prevent future

¹⁸⁰ See *id.* at 138.

¹⁸¹ See Bell & Clow, *supra* note 48, at 97–98; Bell et al., *supra* note 168, at 75, 91; Ricciardelli et al., *supra* note 48, at 421.

¹⁸² See Cathleen Burnett, *Restorative Justice and Wrongful Capital Convictions*, 21 J. CONTEMP. CRIM. JUST. 272, 286 (2005).

¹⁸³ See Jeffrey S. Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 MO. L. REV. 369, 395 (2017).

¹⁸⁴ See *id.* at 393, 402 nn.180 & 181; Jeffrey S. Gutman & Lingxiao Sun, *Why is Mississippi the Best State in Which to be Exonerated? An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongfully Convicted*, 11 NE. U. L. REV. 694, 746, 784 (2019).

¹⁸⁵ See Gutman, *supra* note 183, at 427, 429.

wrongful convictions.¹⁸⁶ People cite several factors that they believe should be considered when determining how much an exoneree should be compensated (listed in order of from most to least frequently mentioned): length of incarceration, missed wages, familial and reputation damage, the severity of the crime of which they were convicted, the exoneree's age, presence of dependents, mental and physical health issues, and presence of retirement or pension plans.¹⁸⁷

Unfortunately, state governments have not uniformly heeded calls for the compensation of exonerees. The standards of compensation vary widely from state to state, with most states offering no automatic compensation of exonerees and other states limiting exonerees' eligibility for compensation.¹⁸⁸ For example, some states prohibit compensation to exonerees who falsely confessed or pled guilty and exonerees with unrelated felony convictions.¹⁸⁹ These are hurdles that not all exonerees can clear.

One study recently examined how issuing compensation and an apology to an exoneree affects how the exoneree is perceived by others. Smalarz, Melishkevich, Muñoz, and Shelton first examined "whether a prior wrongful conviction increases one's risk of being convicted of a new offense."¹⁹⁰ In the study, "[p]articipants read a vignette about a crime and trial in which the defendant had no prior criminal record, was previously convicted of a similar offense, or was previously wrongfully convicted of a similar offense and exonerated through DNA testing."¹⁹¹ The research showed that "[p]erceptions of guilt [for the second crime] were higher for the exoneree than for the defendant without a prior criminal record."¹⁹² In a follow-up experiment, the researchers tested whether issuing compensation and an apology to the exoneree for the wrongful conviction mitigated this bias.¹⁹³ The results indicated that an exoneree who had been offered restitution was viewed less negatively and in turn was

¹⁸⁶ See Campbell & Denov, *supra* note 13, at 139, 159; Chunias & Aufgang, *supra* note 7, at 105, 128; Clow et al., *supra* note 14, at 1417–18, 1431; Adam I. Kaplan, *The Case for Comparative Fault in Compensating the Wrongfully Convicted*, 56 UCLA L. REV. 227, 240–41 (2008); Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes*, 44 IND. L. REV. 503, 509 (2011); Murat C. Mungan & Jonathan Klick, *Reducing False Guilty Pleas and Wrongful Convictions Through Exoneree Compensation*, 59 J.L. & ECON. 173, 184–85 (2016).

¹⁸⁷ See Clow et al., *supra* note 14, at 1431, 1432.

¹⁸⁸ See Kaplan, *supra* note 186, at 250–51.

¹⁸⁹ *Id.* at 251 n.157.

¹⁹⁰ See Smalarz et al., *supra* note 135, at 1.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

perceived as less likely to be guilty of the new offense compared to an exoneree who had not received restitution.¹⁹⁴ These findings suggest that there are specific steps that the government can take to improve public perceptions of exonerees and protect them from subsequent legal bias.¹⁹⁵ However, because this research did not disentangle the effects of compensation and an apology, the findings do not address whether one of these forms of restitution may be sufficient on its own. Therefore, further research is needed before drawing conclusions about the effects of compensation on perceptions of exonerees.

2. Apologies

Issuing apologies to exonerees may help to destigmatize exonerees by publicly removing the labels of “offender” and “guilty.”¹⁹⁶ Larry Fuller, who was wrongfully convicted of sexual assault, remarked that when the prosecutor in his case apologized to him, he felt as if “the stigma [was] gone.”¹⁹⁷ Members of the public also tend to endorse the issuance of apologies to exonerees¹⁹⁸ and preliminary evidence suggests that apologizing to exonerees might improve public perceptions of exonerees. Ivany conducted a study in which 283 Canadian undergraduate students read an article about a fictional exoneree who was convicted of murdering a child.¹⁹⁹ Ivany manipulated whether the exoneree had received restitution for his wrongful conviction in the form of an apology from the Attorney General, financial compensation, or both.²⁰⁰ Participants who read an article about an exoneree who received an apology were more sympathetic toward the exoneree, reported more positive attitudes toward the exoneree, and were more willing to support assistance for the exoneree than participants who read an article about an exoneree who did not receive an apology.²⁰¹ By contrast, participants who read

¹⁹⁴ *Id.*

¹⁹⁵ *See id.*

¹⁹⁶ *See* Frederick Lawrence, *Declaring Innocence: Use of Declaratory Judgments to Vindicate the Wrongly Convicted*, 18 B.U. PUB. INT. L.J. 391, 397 (2009); Abigail Penzell, *Apology in the Context of Wrongful Conviction: Why the System Should Say It's Sorry*, 9 CARDOZO J. CONFLICT RESOL. 145, 146, 147 (2007); Westervelt & Cook, *Coping with Innocence After Death Row*, *supra* note 5, at 35.

¹⁹⁷ Penzell, *supra* note 196, at 146.

¹⁹⁸ Clow et al., *supra* note 14, at 1433–34.

¹⁹⁹ Alyx A. Ivany, *Examining the Effects of Apology and Compensation on Participants' Perceptions of Exonerees* 11 (Aug. 2014) (unpublished M.A. thesis, University of Ontario Institute of Technology), https://ir.library.utoronto.ca/xmlui/bitstream/handle/10155/489/Ivany_Alyx.pdf [https://perma.cc/AL6S-VAXH].

²⁰⁰ *Id.* at 12.

²⁰¹ *Id.* at 16.

an article about an exoneree who received compensation were less willing to support assistance for the exoneree than participants who read an article about an exoneree who did not receive compensation. This finding suggests that compensation could have negative effects on people's willingness to provide support to exonerees, perhaps because people perceive that compensation provides sufficient restitution for a wrongful conviction. Ivany's second study focused more specifically on the effects of apologies on perceptions of exonerees and examined the potential role of cause of conviction (eyewitness misidentification vs. false confession). However, the results failed to replicate the findings from the first study except for in the case of an exoneree who falsely confessed.²⁰² Specifically, the typical bias against false confessors was observed only in the absence of an apology; when the false confessor received an apology, he was perceived no differently than an exoneree convicted based on a mistaken eyewitness identification.²⁰³ Taken together, these findings provide tentative evidence that offering public apologies to exonerees may reduce the extent to which they are stigmatized by the public.

3. Expungement

Expungement (or expunction) refers to when a criminal conviction is voided or concealed from a criminal record.²⁰⁴ Automatic expungement could help exonerees, especially those without prior convictions, to overcome criminal record-related post-conviction obstacles.²⁰⁵ Unfortunately, about one-third of all exonerees have not had their records expunged.²⁰⁶ Studies have shown that people with criminal records have more difficulty obtaining employment, housing, and social acceptance than those without criminal records.²⁰⁷ Recent research suggests that prospective employers are more critical of an applicant's job application upon learning of the

²⁰² See *id.* at 29, 30, 32.

²⁰³ *Id.* at 30.

²⁰⁴ Amy Sholsberg et al., *Expungement and Post-Exoneration Offending*, 104 J. CRIM. L. & CRIMINOLOGY 353, 355–56 (2014).

²⁰⁵ *Id.* at 375, 377.

²⁰⁶ See *id.* at 354, 371.

²⁰⁷ See Ericka B. Adams et al., *Erasing the Mark of a Criminal Past: Ex-offenders' Expectations and Experiences with Record Clearance*, 19 PUNISHMENT & SOC'Y 23, 37, 47 (2017); Blandisi et al., *supra* note 14, at 1896; Brett Garland et al., *Prisoner Reentry in a Small Metropolitan Community: Obstacles and Policy Recommendations*, 22 CRIM. JUST. POL'Y REV. 90, 95–99; Peter Leasure & Tara Martin, *Criminal Records and Housing: An Experimental Study*, 13 J. EXPERIMENTAL CRIMINOLOGY 527, 534 (2017); Daniel S. Murphy et al., *The Electronic "Scarlet Letter": Criminal Backgrounding and a Perpetual Spoiled Identity*, 50 J. OFFENDER REHABILITATION 101, 103, 105, 107 (2011).

applicant's prior conviction, even when it is clearly indicated that the conviction was vacated.²⁰⁸ The simplest way to avoid this problem would be to automatically expunge exonerees' criminal records. It remains to be seen whether expunging an exoneree's record has positive effects on perceptions of the exoneree if people do learn about the prior wrongful conviction. In other words, does the act of expunging an exoneree's record serve to legitimize the exoneree's claim of innocence and thereby moderate negative perceptions of the exoneree? Only additional research can provide an answer to that question.

V. LIMITATIONS OF THE EXISTING RESEARCH AND DIRECTIONS FOR FUTURE RESEARCH

A. *Methodological Shortcomings*

There are two primary methodological limitations that have characterized the majority of the research on perceptions of exonerees. One methodological shortcoming is researchers' reliance on self-report measures of exoneree stigmatization. Self-report measures are highly sensitive to changes in context, question format, and wording²⁰⁹ and are susceptible to distortion arising from motivational biases such as socially-desirable responding.²¹⁰ Moreover, self-reported attitudes do not always translate into behaviors.²¹¹ Nevertheless, their ease of use often makes self-report measures researchers' first choice for qualitative and experimental research. A few noteworthy exceptions to this trend exist,²¹² only a few of which have been published.²¹³ In the future, researchers should aim to document other possible behavioral manifestations of the stigmatization of exonerees.

A second limitation of the existing body of research on perceptions of exonerees involves sample representativeness. The majority of the research discussed in this review relied on student samples, which

²⁰⁸ See Kukucka et al., *supra* note 64, at 25.

²⁰⁹ Norbert Schwarz, *Self-Reports: How the Questions Shape the Answers*, 54 AM. PSYCHOLOGIST 93, 93 (1999).

²¹⁰ See Cook & Seltiz, *supra* note 60, at 41.

²¹¹ See Icek Ajzen & Martin Fishbein, *The Influence of Attitudes on Behavior*, in THE HANDBOOK OF ATTITUDES 173, 174 (Dolores Albarracín et al. eds., 2005).

²¹² See Clow, *supra* note 61, at 247; Kukucka et al., *supra* note 61; Kukucka et al., *supra* note 64, at 20–21; Smalarz et al., *supra* note 61, at 4–5.

²¹³ See Clow, *supra* note 61, at 243–57; Kukucka et al., *supra* note 61; Kukucka et al., *supra* note 64, 19–20.

are in many ways unrepresentative of the general population.²¹⁴ Increasing sample representativeness is especially important for research questions that involve a specific population of interest.²¹⁵ For example, questions about how hiring professionals would evaluate an exoneree who is applying for a job might be inadequately tested using an undergraduate student sample with no experience in management or hiring settings. After all, trained hiring professionals might have unique expertise that affects the way they interpret an exoneree's employment application. Kukucka, Applegarth, and Mello found a clever solution to this generalizability problem in their study of the influence of exoneree status on employer decision-making.²¹⁶ They surveyed students in graduate programs and professional organizations in human resources to obtain a sample of professionals with hiring experience.²¹⁷ We hope that researchers in this domain will continue to seek out samples that enhance the generalizability of conclusions about perceptions of and behavior toward exonerees.

B. Gaps in the Literature

The literature on perceptions of exonerees has grown rapidly in recent years. Using various different research methodologies and different outcome measures, studies have demonstrated that exonerees are stigmatized.²¹⁸ False confessors appear to be at the greatest risk of stigmatization, and there are differences in the stigmatization of White and Black exonerees, though the effects of exoneree race on stigmatization are not yet well understood.²¹⁹ Numerous potential moderators of exoneree stigmatization have been identified, including education, compensation, apologies, and criminal record expungement.²²⁰ But some of the research reviewed here is as of yet unpublished, and significant gaps still exist. Here

²¹⁴ See David O. Sears, *College Sophomores in the Laboratory: Influences of a Narrow Data Base on Social Psychology's View of Human Nature*, 51 J. PERSONALITY & SOC. PSYCHOL. 515, 516, 520 (1986).

²¹⁵ See *id.* at 527.

²¹⁶ See Kukucka et al., *supra* note 64, at 20.

²¹⁷ See *id.*

²¹⁸ See *id.* at 18.

²¹⁹ See Clow & Leach, *Stigma and Wrongful Conviction*, *supra* note 15, at 180; Howard, *supra* note 15, at 912.

²²⁰ See generally Adina M. Thompson, *The Aftermath: Two Comparisons of the Social Consequences of DNA and Non-DNA Exoneration* (2014) (unpublished Ph.D dissertation, University of Florida), https://ufdcimages.uflib.ufl.edu/UF/E0/04/64/56/00001/THOMPSON_A.pdf [<https://perma.cc/ZL3Q-5JBA>].

we consider a number of topics in the empirical literature on perceptions of exonerees that are ripe for future research.

1. Mechanism of Exoneration

There is reason to believe that the reason for a person's exoneration can influence the public's confidence in an exoneree's innocence.²²¹ For example, people who are exonerated because of DNA evidence may be viewed more favorably than people who are exonerated via other mechanisms such as witness recantation or the discovery of alibi evidence. A potentially even stronger mechanism of exoneration may be when the exonerating evidence not only excludes the exoneree, but also incriminates a different individual, as has occurred in 162 of the 367 DNA exonerations tracked by the Innocence Project to date.²²² To our knowledge, only two studies have tested whether the mechanism of exoneration influences perceptions of exonerees.²²³ Thompson tasked 142 community members in Florida with reading an article about an actual offender, a DNA exoneree, a non-DNA exoneree, or a person who had never been convicted.²²⁴ Contrary to her prediction, participants evaluated the actual offender most negatively and perceived him as most criminally culpable but did not appear to differentiate between the DNA exoneree and the non-DNA exoneree on these measures, suggesting that the mechanism of exoneration may not affect people's perceptions of exonerees. However, Thompson also asked participants to report their confidence in an exoneree's innocence when the exoneree has been exonerated with or without DNA evidence, and participants reported greater confidence in a DNA exoneree's innocence than in a non-DNA exoneree's innocence. Hence, participants' self-reports of their perceptions of DNA exonerees and non-DNA exonerees did not align with her experimental findings. In a follow-up experiment, participants read about a DNA exoneree or a non-DNA exoneree who had been procedurally exonerated by means of acquittal, pardon, or dismissal. Neither the presence of DNA evidence nor the procedural method of exoneration impacted participants' attitudes toward the exoneree, character evaluations of the exoneree, perceptions of the exonerees'

²²¹ See *id.* at 27.

²²² See *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> [<https://perma.cc/S4VU-ZV8K>].

²²³ See Thompson, *supra* note 220, at 50.

²²⁴ See *id.* at 53–55.

guilt, their desired social distance from the exoneree, or their willingness to support government assistance for the exoneree. Overall, therefore, Thompson's findings suggest that the presence of DNA as a mechanism of exoneration may not be a particularly influential factor on the perceptions of exonerees. However, the incongruence between participants' responses to the direct question about perceptions of innocence and the experimentally-obtained findings suggest a potentially more complex picture. Future research should investigate this discrepancy, explore how other potential mechanisms of exoneration may affect perceptions of exonerees, and examine the extent to which people's confidence in an exoneree's innocence influences their willingness to interact with or provide support to exonerees.

2. Gender

Differences in the stigmatization of male and female exonerees has received little empirical attention, likely because the overwhelming majority of exonerees are male.²²⁵ The number of female exonerees tends to be low because females are less likely to commit crimes than men²²⁶ and when they do commit crimes, the crimes rarely leave behind DNA evidence that could be used later to test a claim of innocence.²²⁷ Yet there is reason to believe that the gender of an exoneree may impact the extent to which they are stigmatized. Around half of known female exonerees were wrongfully convicted of crimes against children, many of which were in sex hysteria cases involving alleged sexual abuse. On the other hand, male exonerees tended to be wrongfully convicted of murder, sexual assault against adults, and other violent crimes.²²⁸ Theorists have argued, and studies have shown, that rapists and pedophiles are seen as more morally abhorrent, or morally outrageous, than murderers, robbers, and other violent criminals.²²⁹ Accordingly, one might predict that

²²⁵ See NAT'L REGISTRY EXONERATIONS, *supra* note 2.

²²⁶ E.g., Darrell Steffensmeier & Emilie Allan, *Gender and Crime: Toward a Gendered Theory of Female Offending*, 22 ANN. REV. SOC. 459, 460, 463 (1996).

²²⁷ See *id.* at 462; see also SAMUEL R. GROSS & MICHAEL SHAFFER, NAT'L REGISTRY OF EXONERATIONS, EXONERATIONS IN THE UNITED STATES, 1989–2012, at 30 (2012).

²²⁸ See GROSS & SHAFFER, *supra* note 227, at 29.

²²⁹ See, e.g., Christina Mancini & Justin T. Pickett, *The Good, the Bad, and the Incomprehensible: Typifications of Victims and Offenders as Antecedents of Beliefs About Sex Crime*, 31 J. INTERPERSONAL VIOLENCE 257, 259 (2016); Justin T. Pickett et al., *Vulnerable Victims, Monstrous Offenders, and Unmanageable Risk: Explaining Public Opinion on the Social Control of Sex Crime*, 51 CRIMINOLOGY 729, 730 (2013); Dale Spencer, *Sex Offender as Homo Sacer*, 11 PUNISHMENT & SOC'Y 219, 225 (2009); Edwin H. Sutherland, *The Sexual Psychopath Laws*, 40 J. CRIM. L. & CRIMINOLOGY 543, 547 (1950).

members of the public feel more moral outrage toward female exonerees than toward male exonerees. On the other hand, women are typically viewed as being less aggressive, violent, and dangerous and more nurturing than men.²³⁰ Considering these gender stereotypes, female exonerees may be perceived more positively than male exonerees. We are aware of only one unpublished study that examined whether the public's perceptions of exonerees vary as a function of the exoneree's gender.²³¹ Ivany found that an exoneree who was convicted of the murder of a child was considered to be more responsible for their wrongful conviction when the exoneree was male rather than female, though there were no gender effects on participants' anger or sympathy toward the exoneree or their reported willingness to assist the exoneree.²³² This research, and current theory, suggests that gender differences in how exonerees are stigmatized may exist. Given that no published studies have examined gender differences in exoneree stigmatization, this a wide-open area for further investigation.

3. National and Cultural Differences in Perceptions of Exonerees

Approximately half of the studies reviewed in detail in this Article were conducted in Canada and half were conducted in the United States.²³³ In some ways, it is a strength that the research in this field has been conducted across different national contexts. However, there is reason to believe that criminal justice issues may be perceived differently in the United States than in Canada and European countries.²³⁴ For example, Lipset argued that there are differences in Canadian and American views of, and attitudes toward, criminal justice matters that stem from major ideological

²³⁰ See JOHN E. WILLIAMS & DEBORAH L. BEST, MEASURING SEX STEREOTYPES: A THIRTY-NATION STUDY 22 (1982); Nancy Eisenberg & Randy Lennon, *Sex Differences in Empathy and Related Capacities*, 94 PSYCHOL. BULL. 100, 100 (1983); Jacquelyn W. White & Robin M. Kowalski, *Deconstructing the Myth of the Nonaggressive Woman: A Feminist Analysis*, 18 PSYCHOL. WOMEN Q. 487, 488–89 (1994).

²³¹ See Ivany, *supra* note 199, at ii.

²³² See *id.* at 17.

²³³ See, e.g., Kukucka & Evelo, *supra* note 100, at 375; Savage et al., *supra* note 15, at 91; Weiner et al., *supra* note 103, at 738; Ivany, *supra* note 199, at 11.

²³⁴ See, e.g., SEYMOUR MARTIN LIPSET, CONTINENTAL DIVIDE: THE VALUES AND INSTITUTIONS OF THE UNITED STATES AND CANADA 92–93 (1990); Nick Baxter-Moore et al., *Explaining Canada-US Differences in Attitudes Toward the Role of Government: A Test of S.M. Lipset's 'Continental Divide'*, 56 COMMONWEALTH & COMP. POL. 472, 488 (2018); Matthew B. Kugler et al., *Differences in Punitiveness Across Three Cultures: A Test of American Exceptionalism in Justice Attitudes*, 103 J. CRIM. L. & CRIMINOLOGY 1071, 1099 (2013).

differences in the country's founding principles.²³⁵ According to Lipset, Canada was founded on collectivist principles and the United States was founded on individualist principles and thus, Canadians are less likely to commit crimes and are more reverent of their criminal justice system than Americans.²³⁶ Lipset's theory has some empirical support.²³⁷ However, no study has directly compared perceptions of exonerees by country or cultural context; future studies should aim to do so. Likewise, it will be important to expand international investigations of exonerees beyond North America. Amnesty International's 2018 report on death sentences and executions identified exonerations of prisoners who were sentenced to death in Egypt, Malawi, and Kuwait, demonstrating that exoneration is a worldwide phenomenon.²³⁸

4. Plea Bargains

The vast majority of criminal cases are resolved through plea bargains rather than through criminal trials,²³⁹ and at least fifteen percent of all exonerees falsely accepted a plea deal.²⁴⁰ Accordingly, it will be important to advance understanding of how false guilty pleas impact the optics and prospects of exonerees. Existing theories of stigma suggest that exonerees who pled guilty would be perceived especially negatively because accepting a plea deal typically involves accepting responsibility for a crime, and those deemed responsible for their stigma are stigmatized more harshly than those who are not deemed responsible.²⁴¹ Indeed, studies comparing perceptions of exonerees who falsely confessed to exonerees who were misidentified or convicted by other means tend to find that exonerees who falsely confessed are perceived to be the least innocent and the most

²³⁵ See LIPSET, *supra* note 234, at 93.

²³⁶ See *id.* at 93, 94.

²³⁷ See Baxter-Moore et al., *supra* note 234, at 488.

²³⁸ See AMNESTY INT'L, DEATH SENTENCES AND EXECUTIONS 11 (2018).

²³⁹ See Allison D. Redlich et al., *Understanding Guilty Pleas Through the Lens of Social Science*, 23 PSYCHOL. PUB. POL. & L. 458, 458 (2017).

²⁴⁰ See NAT'L REGISTRY OF EXONERATIONS, INNOCENTS WHO PLEAD GUILTY 1 (2015). <http://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf> [<https://perma.cc/5PA8-Q292>].

²⁴¹ See Allison D. Redlich, *False Confessions, False Guilty Pleas: Similarities and Differences*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS 49, 50 (G. Daniel Lassiter & Christian A. Meissner eds., 2010); Rudolph et al., *supra* note 103, at 815; Weiner, *supra* note 103, at 957; Weiner et al., *supra* note 103, at 738.

responsible for their wrongful convictions.²⁴² As a result, exonerees who falsely confess tend to be perceived more negatively than other exonerees.²⁴³ However, the only study that has compared perceptions of exonerees who either falsely confessed, falsely pled guilty, or were misidentified by an eyewitness found that the exoneree who falsely pled guilty was considered to be less responsible for their wrongful conviction than the exoneree who falsely confessed.²⁴⁴ Future research should continue to investigate the influence of false plea bargain acceptance on people's perceptions of and behavior toward exonerees.

5. Theoretical Mechanisms of Exoneree Stigmatization

Scant research has investigated theoretical underpinnings of the stigmatization of exonerees. Now that the phenomenon of exoneree stigmatization has been established across a variety of contexts, it will be important to elucidate the psychological processes underlying the phenomenon. Doing so may facilitate the development of new methods for reducing the stigmatization of exonerees.

One proposed theoretical explanation for exoneree stigmatization is the stigma-by-association theory. Also referred to as “magical contagion,” stigma-by-association refers to the notion that stigma can spread from person to person, like an illness.²⁴⁵ For example, merely being seen near a stigmatized individual (e.g., an overweight woman) can cause a male job applicant to be seen as less hireable.²⁴⁶ Studies suggest that the stigma-by-association phenomenon is driven by both instinctual and deliberate reactions toward stigmatized individuals and lead to the avoidance of those individuals.²⁴⁷ In the context of exonerees, it is possible that the stigma of wrongful conviction is driven at least in part by the fact that exonerees typically spend time in prison.²⁴⁸ Despite their innocence, exonerees are exposed to other stigmatized individuals—actual offenders—and thus may be

²⁴² See Kukucka & Evelo, *supra* note 100, at 372; Savage et al., *supra* note 15, 97; Scherr et al., *supra* note 65, at 341.

²⁴³ See, e.g., Clow & Leach, *Stigma and Wrongful Conviction*, *supra* note 15, at 172.

²⁴⁴ See Zannella & Burke, *supra* note 100.

²⁴⁵ See IRVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 30 (1963); Carol J. Nemeroff, *Magical Thinking About Illness Virulence: Conceptions of Germs from “Safe” Versus “Dangerous” Others*, 14 *HEALTH PSYCHOL.* 147, 147 (1995).

²⁴⁶ See Michelle R. Hebl & Laura M. Mannix, *The Weight of Obesity in Evaluating Others: A Mere Proximity Effect*, 29 *PERSONALITY & SOC. PSYCHOL. BULL.* 28, 28 (2003).

²⁴⁷ See John B. Pryor et al., *The Infection of Bad Company: Stigma by Association*, 102 *J. PERSONALITY & SOC. PSYCHOL.* 224, 224–25 (2012).

²⁴⁸ See Blandisi et al., *supra* note 14, at 1889.

perceived as having been contaminated by their interactions with these individuals and by their prison experience more generally.²⁴⁹ Somewhat relatedly, people might perceive that exonerees learned criminal behavior during their time in prison, an idea that has been referred to as the “prisonization hypothesis.” These sentiments were evident in a comment made by one of the interviewees in Blandisi and colleagues’ focus group with Canadian community members:

I wouldn’t really be comfortable [socializing with an exoneree] because of what happened and what he’s been through in jail. The people he met. And sometimes, [from being in] jail, people—even if you were a good person, the situation [incarceration] you are put in—often changes your behaviour and the way you think.²⁵⁰

Indeed, the prison experience has been shown to negatively affect exonerees.²⁵¹ Clinical assessments of exonerees indicate that exonerees undergo personality change as a consequence of their imprisonment, developing a hostile or mistrustful attitude towards the world and a tendency to withdraw socially, among other negative psychological effects.²⁵² Research could test more directly the theory of stigma-by-association and the prisonization hypothesis by manipulating the amount of time an exoneree spent in prison or other characteristics of an exoneree’s incarceration experience. An exoneree who spends no or little time in prison or has limited interactions with incarcerated offenders should not be as susceptible to magical contagion or the prisonization process; hence, to the extent that an exoneree’s stigma persists under these circumstances, it would suggest that processes other than magical contagion and perceived prisonization may be responsible for the stigmatization of exonerees.

Some researchers have posited that correspondence bias, otherwise known as the fundamental attribution error, is the driving force behind the stigmatization of exonerees.²⁵³ Correspondence bias refers to the tendency for people to rely disproportionately on

²⁴⁹ Kimberley A. Clow et al., *Stigma-by-Association: Prejudicial Effects of the Prison Experience for Offenders and Exonerees*, in *THE PSYCHOLOGY OF PREJUDICE* 127, 130 (Dale W. Russell & Cristel Antonia Russell eds., 2012).

²⁵⁰ Blandisi et al., *supra* note 14, at 1889.

²⁵¹ See Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, *supra* note 12, at 168.

²⁵² *Id.*

²⁵³ *E.g.*, Thompson et al., *supra* note 62, at 1377.

dispositional factors rather than situational factors when making inferences about a person's character.²⁵⁴ As pertaining to exonerees, people may commit the correspondence bias by attributing an exoneree's conviction to characteristics inherent to the exoneree rather than to a flaw in the criminal justice system.²⁵⁵ This process may be especially applicable in cases in which an exoneree engages in a behavior that results in the wrongful conviction such as confessing or pleading guilty.²⁵⁶ However, the correspondence bias does not fully explain why a perceiver who knows that an exoneree is factually innocent still stigmatizes the exoneree. Put differently, once a wrongfully convicted person is definitively exonerated and the public is alerted to their innocence, the public should no longer attribute guilt or fault to the exoneree. Research on a phenomenon called belief perseverance indicates that people's beliefs often persevere, even when the original basis for that belief has been discredited.²⁵⁷ It is possible that when people learn that a person is convicted of a crime, they attribute that conviction to aspects of the convict's character (i.e., their inherent criminality), as expected by theories of correspondence bias.²⁵⁸ When people learn that the conviction was wrong, and the person is innocent, they may fail to fully correct their negative inferences about the exoneree's character.²⁵⁹

A third potential theoretical explanation for the stigmatization of exonerees is the idea that people may doubt exonerees' actual innocence. A number of studies have shown that people's perceptions of an exoneree's actual innocence can vary as a function of a range of factors such as the cause of conviction²⁶⁰ and the stereotypicality of the exoneree.²⁶¹ Moreover, studies have shown that some people confuse exonerees with judicially-released persons.²⁶² A potential consequence of this misunderstanding may be to produce residual suspicion that exonerees are actually guilty, which in turn could

²⁵⁴ Daniel T. Gilbert & Patrick S. Malone, *The Correspondence Bias*, 117 PSYCHOL. BULL. 21, 21 (1995).

²⁵⁵ Thompson et al., *supra* note 62, at 1377.

²⁵⁶ *Id.* at 1379–80.

²⁵⁷ Craig A. Anderson, *Abstract and Concrete Data in the Perseverance of Social Theories: When Weak Data Lead to Unshakeable Beliefs*, 19 J. EXPERIMENTAL SOC. PSYCHOL. 93, 94 (1983); Dennis L. Jennings et al., *Persistence of Impressions of Personal Persuasiveness: Perseverance of Erroneous Self-Assessments Outside the Debriefing Paradigm*, 7 PERSONALITY & SOC. PSYCHOL. BULL. 257, 257 (1981).

²⁵⁸ See Blandisi et al., *supra* note 14, at 1895.

²⁵⁹ See *id.*; Anderson, *supra* note 257, at 93–94.

²⁶⁰ Thompson et al., *supra* note 62, at 1377–78; Zannella & Burke, *supra* note 100.

²⁶¹ Scherr et al., *supra* note 62, at 534–35.

²⁶² Blandisi et al., *supra* note 14, at 1894; Blandisi, *supra* note 14, at 93–94.

increase negative views of exonerees and a desire to maintain social distance from exonerees. It would be interesting to explore whether this process is moderated by the mechanism of exoneration. If stronger proof of innocence leads to decreases in the stigmatization of exonerees, it would suggest that negative views of exonerees may be driven in part by an uncertainty about the exoneree's innocence.

Several researchers have considered people's belief in a just world to be a potential cause of exoneree stigmatization.²⁶³ It has been theorized that people are motivated to believe that the world is a fundamentally fair and just place. Lerner asserted that people make these assumptions because to assume otherwise—that the world is chaotic, uncontrollable, and unjust—can lead to discomfort, emotional exhaustion, and social strain. According to this theory, people engage in psychological strategies to reduce the discomfort associated with violations of their just-world beliefs.²⁶⁴ In particular, research has shown that people sometimes blame or derogate victims of injustice in an attempt to restore their just-world beliefs.²⁶⁵ Furthermore, the stronger an individual's endorsement of just-world beliefs, the more likely they are to view victims as deserving of their victimization.²⁶⁶ Given that exonerees are arguably victims of state harm,²⁶⁷ belief-in-a-just-world theory seems especially fitting to explain the stigmatization of exonerees. In particular, people may stigmatize exonerees because accepting that an innocent person can be wrongfully convicted through no fault of their own violates just-world beliefs and causes emotional discomfort. To resolve this emotional discomfort, people might perceive exonerees negatively and consider them to be responsible for their convictions, thereby reducing perceptions of a justice violation. However, in the only study to date to test the role of just-world beliefs in the stigmatization of exonerees, Smalarz and colleagues did not find any evidence in support of this theoretical process.²⁶⁸ Future research should

²⁶³ Kimberley A. Clow & Rose Ricciardelli, *Wrongly Convicted and Wrongly Incarcerated: Exoneree Experiences and Public Perceptions*, in EXPERIENCING IMPRISONMENT: RESEARCH ON THE EXPERIENCE OF LIVING AND WORKING IN CARCERAL INSTITUTIONS 264, 272 (Carla Reeves ed., 2016); Kukucka & Evelo, *supra* note 100, at 374.

²⁶⁴ MELVIN J. LERNER, *THE BELIEF IN A JUST WORLD* 9, 14 (1980).

²⁶⁵ See Adrian Furnham, *Belief in a Just World: Research Progress over the Past Decade*, 34 PERSONALITY & INDIVIDUAL DIFFERENCES 795, 803 (2003).

²⁶⁶ Isabel Correia et al., *The Effects of Belief in a Just World and Victim's Innocence on Secondary Victimization, Judgements of Justice and Deservingness*, 14 SOC. JUST. RES. 327, 336–37 (2001).

²⁶⁷ Westervelt & Cook, *supra* note 10, at 261–64.

²⁶⁸ Smalarz et al., *supra* note 135.

continue to investigate belief-in-a-just-world as a potential mechanism underlying the stigmatization of exonerees.

It is clear that no theory offers a complete or empirically-supported explanation of the phenomenon of exoneree stigmatization. We hope that future research in this area will include direct tests of the processes underlying the stigmatization of exonerees in an effort to develop a coherent and parsimonious account of this important social issue.

CONCLUSION

Thanks to the advent of forensic DNA evidence testing and the increasing number of conviction-integrity units and exoneration-focused organizations,²⁶⁹ the last three decades have seen considerable growth in the number of exonerated individuals, which now surpasses 2,500.²⁷⁰ As the exoneree population continues to grow, so too should our knowledge about how exonerees are treated, why they are treated that way, and how social perceptions of exonerees might be improved. The extant body of research shows that exonerees are stigmatized and that a variety of factors influence the extent to which they are stigmatized. That stigma impedes exonerees' ability to obtain necessary services like psychological counseling, housing, and employment. The enduring psychological distress of being incarcerated, and the added weight of being stigmatized post-release, makes it difficult for many exonerees to form social relationships and re-establish their lives outside of prison. Fortunately, there are ways to alleviate some of these problems for exonerees. Educating the public on wrongful convictions, issuing public apologies to exonerees, providing adequate compensation to exonerees, and expunging the criminal records of exonerees may help to decrease stigmatization or, at the very least, mitigate its impact on exoneree's lives.

²⁶⁹ *E.g.*, NAT'L REGISTRY EXONERATIONS, *supra* note 2; EXONERATION INITIATIVE, <http://exonerationinitiative.org> [<https://perma.cc/5WEJ-27AU>].

²⁷⁰ NAT'L REGISTRY EXONERATIONS, *supra* note 2.