Introduction

In May of 1872, William Marion and his friend John Cameron traveled to Kansas from Nebraska with plans to work on the railroad for four or five weeks. Several days later, Marion returned to Nebraska alone but with Cameron’s horses and harnesses. Marion claimed he’d purchased them from Cameron.1

A decomposed body found in the desert with a bullet in the skull that could have come from Marion’s gun led to murder charges. He was convicted, sentenced to death, and executed by hanging. Four years after the execution, Cameron reappeared alive and well. He told authorities he sold his horses and harnesses to Marion and fled to Mexico to avoid a shotgun wedding. One hundred years later, the Governor of Nebraska pardoned Marion.2

Wrongful convictions are nothing new. And yet, when I began my criminal defense career thirty-two years ago, I often had conversations with people who were deeply cynical about the idea that innocent people are convicted in our criminal legal system.

In the 1990s, DNA technology changed the discussion. People began to be released from prison based on definitive scientific proof of innocence—nearly as definitive as John Cameron showing up alive after William Marion’s execution.
Since the 1990s, thousands of innocent people have been freed from prison. And yet, those freed people, those exonerees, are simply the tip of the iceberg. They are the lucky ones.

It’s hard to tell someone who is innocent and has spent years in prison they are lucky, but they are. They are lucky the evidence from their trial wasn’t thrown in the trash. They are lucky they didn’t get killed in prison. They are lucky they found a competent lawyer to listen to their pleas of innocence. They are lucky the lawyer spent time and resources on their case. They are lucky their case was assigned to a judge who would grant a hearing. And ultimately, they are lucky they were able to jump over the many barriers in our legal system to gain their freedom. The unlucky ones, regardless of innocence, die in prison.

Despite the thousands of documented cases of innocence, there’s still a cynicism surrounding the notion that innocent people are wrongfully convicted. Although the claim that innocent people never go to prison has softened, many still believe such instances are exceedingly rare or it only happens to people “who must have done something wrong.” This dismissive attitude results in the conclusion that “it happens to some people, but it won’t happen to me.”

That’s the reason I wrote this book. The criminal legal system is imperfect. No matter what country, state, city, or town you live in, you can be wrongfully convicted. This imperfect system acts on your behalf. It protects your family, your home, and your life. This imperfect system also can take away everything you have ever loved and cared for.

I’m confident once you read the stories of injustice that fill this book, you will see the possibility that you or a loved one could be the victim of a wrongful conviction. Each chapter will take you through causes of wrongful convictions that are typically beyond the control of those who suffer the fate of landing in prison as an innocent person. Maybe it’s getting the wrong lawyer, living in a neighborhood that is over- or under-policed, finding a dead body, or a host of failings by government entities and pseudosciences. Even though the statistical chances of this happening to you change based on factors such as race, gender, age, socioeconomic standing, education, and who you associate with, anyone, including you, can be wrongfully convicted.
I personally litigated many of the cases discussed in this book, but all the successes I’ve had over the past two decades were the result of teamwork by the lawyers, law students, volunteers, and administrative staff of the California Innocence Project (CIP), an organization I’m honored to direct.

When I cofounded CIP in 1999, I was a thirty-four-year-old lawyer with aggressively thick brown hair and an attitude to match. Both have softened over the years. My hair has greyed, and I’ve learned more persuasive and less in-your-face approaches to freeing innocent people from prison. My cofounder, Jan Stiglitz, was a perfect partner. His hair had already greyed, and his relentless reasonableness rubbed off on me. At the law school, Jan was Professor Kingsfield from the movie *Paper Chase*. He was well known for making students cry in his Civil Procedure class, but he had a huge heart which was always on display when he was around his wife and two daughters. When I pitched him the idea of CIP, he immediately said he wanted in. After years as an appellate lawyer, he’d only been able to reduce outrageous prison sentences. He wanted to free innocent people.

Kim Hernandez was the third member of our team. We hired her as a part-time administrative assistant, but she soon became so much more. She was a mother of five who had no experience in criminal law, but a lot of experience in business and organizing children. Those skills came in handy as we created an organization with the capacity to screen, investigate, and litigate innocence claims based on the thousands of letters we received while also training and managing a group of inexperienced law students.

After we raised some money from grants and the generosity of guitarist Joe Walsh and the rock band The Eagles, we added two lawyers to the staff. I convinced Jeff Chinn, my best friend from law school, to leave his cushy job in career services at American University in Washington, DC, and join us. He was, and is, incredibly patient. If he could sit at a desk and listen to music while he dug through the piles of innocence claims we received, he was happy.

The second lawyer we hired was Alex Simpson. Alex distinguished himself as the best of our first clinical students, and he is one of the smartest, funniest, most sarcastic people I’ve ever met. Alex shared an office with our first investigator, Craig Woolard. Craig had been a law student but realized
his skills, interest, and personality were much more suited to tracking down witnesses, stakeouts, and finding the truth on the streets. Jan, Kim, Jeff, Craig, and a few other great lawyers and staff we’ve had over the years have moved on to other work, but they’ve all been part of the story of CIP and our successes. Alex and I are the two who have remained.

I’m proud of all the work done by the students, lawyers, and administrative staff who have made CIP part of their education and career over the past two decades. I’m particularly proud of the work of our current team of outstanding lawyers who have been with the project for many years. They comprise the greatest group of advocates and friends I could hope for. Alex Simpson, Alissa Bjerkhoel, Raquel Cohen, Mike Semanchik, and Audrey McGinn are people I’d trust with my life, something our clients do every day.

As I’ve said, every success we’ve had in our office has been a team effort involving many people and, if I fail to mention all their names in conjunction with a particular case I’m discussing in this book, let it be known that we all work on every case (see fig. 1).

Beyond the exonerations we’ve obtained, I’m also proud of the policy changes we’ve been a part of. Jasmin Harris, a former pancake restaurant owner/manager for many years, came into our office after the breakfast rush was over. She volunteered all day reviewing cases and helping out any way she could. She spent so many unpaid hours at CIP and did such great work; I was thrilled when we were able to hire her to lead both our policy efforts and our development team. As a result, CIP has been part of changing criminal legal policy in California, including laws related to new evidence standards to reopen old cases, preservation of evidence after trial, post-conviction DNA testing, police identification procedures, and compensation for innocent people who have lost years of their lives in prison.

Although this book is dedicated to the causes and devastating effects of wrongful convictions, I don’t want to leave you with the impression that wrongful convictions are the only problem with the criminal legal system. There’s a great deal wrong with our system beyond convicting the innocent. Our unending devotion to antiquated notions of punishment in the hands of bureaucratic government agencies, combined with overwhelming political influences, has left us with a system that is often both impractical and cruel. In the United States, decades of tough-on-crime policies
have created the largest prison system in the world, disproportionately filled with people of color, that incarcerates a higher percentage of our population than any other country.

We must not only address the issues in this book that lead innocent people to prison, but also holistically examine the criminal legal system and ask hard questions. What behaviors should be criminalized to truly serve society? What processes and resources are needed to serve justice? What sentences and remedies are reasonable responses to criminal behavior? What type of correctional system will return a person back to society who is less likely to commit more crimes? It is only by answering these questions that we can create a system that is just.