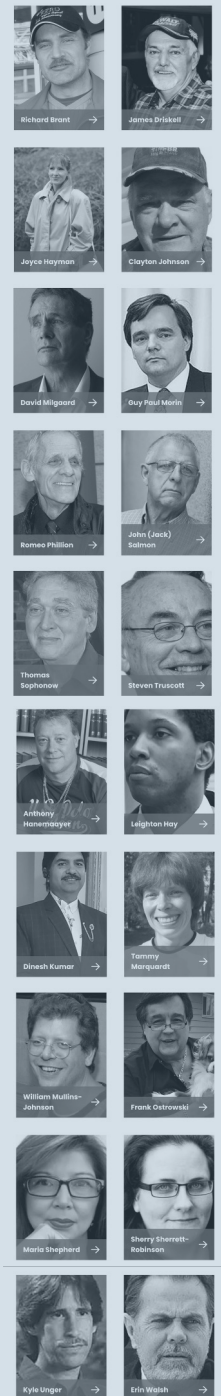


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Correcting wrongful convictions:
**Examining the evidence behind
exonerations in Canada**

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Today's presentation

1 CONTEXT

- Overview of what we know about wrongful convictions & research on exonerations

2 DEEP DIVE

- Findings from an analysis of the exculpatory evidence among Canadian exonerations

3 TAKEAWAYS

- Insights and implications from the data

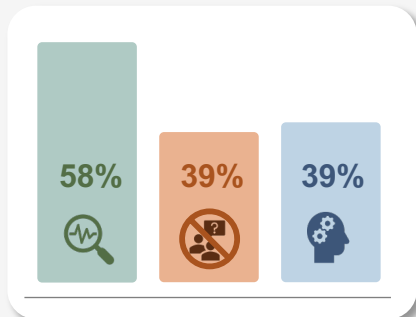
Examining the evidence behind exonerations

Why this research?

- In the field of wrongful convictions, research on **reasons for exoneration** is extremely limited
- The vast majority of known wrongful convictions in Canada were corrected using “**fresh evidence**”
- We examined **characteristics of the fresh evidence among Canadian exonerations** to strengthen our understanding of how to **prevent and remedy wrongful convictions**



59 Canadian exonerations involving fresh evidence



- In **78%** of all cases, the wrongful conviction was entirely **avoidable**
- ~ **30%** of all exculpatory evidence came directly from **witnesses**
- **>50%** of reinvestigations were initiated as a result of **post-conviction review efforts**

Insights

- Findings inform **investigation & trial practice and post-conviction review investigations**



- **Access to case files** may help to more efficiently reveal fresh evidence that assists in correcting miscarriages of justice

1

Wrongful convictions, fresh evidence, & the pathway to exoneration

What we know about wrongful convictions & exonerations

Working Definitions:



- **WRONGFUL CONVICTION:** When an individual is convicted of a crime they did not commit
 - This is a broad definition that captures cases that were resolved as a result of the appeals process
- **EXONERATION:** When evidence conclusively excludes the individual as the perpetrator
 - Does not include a Charter violation or a legal defence
 - New evidence establishes the convicted person's innocence
 - If that evidence was previously known, the conviction would not have occurred

Factors that contribute to wrongful conviction are **different than** reasons for exoneration

FOR EXAMPLE



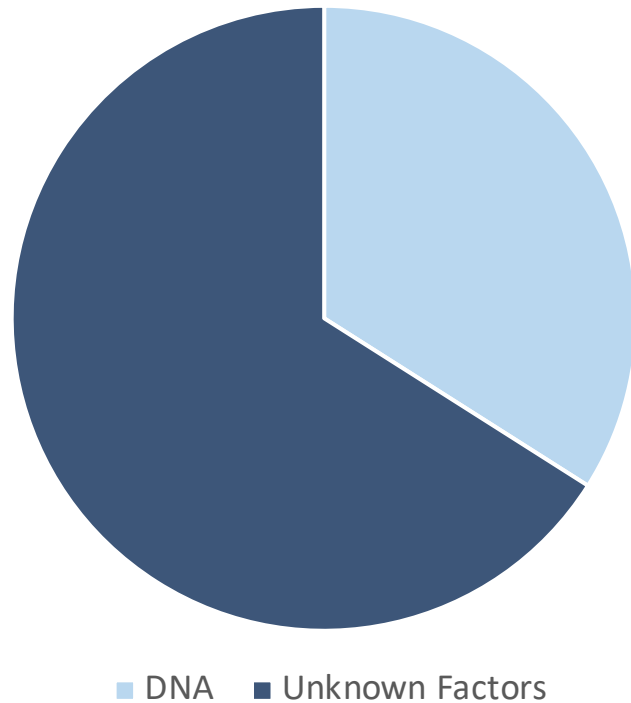
- An individual may have been convicted on the basis of ***erroneous eyewitness evidence***
- However, the basis for the exoneration could be due to the ***true perpetrator coming forward, independent of the faulty eyewitness***

Predictors of Wrongful Conviction

- False confessions
- Unreliable eyewitness evidence
- Tunnel vision
- Jailhouse informants
- Witness perjury
- Flawed forensic science
- Prosecutorial and police misconduct
- Inadequate disclosure

Factors that contribute to exonerations are largely unknown in the literature

Exonerations Examined in Olney & Bonn (2015)



- Research has focused primarily on understanding the role of **DNA** in exonerations
- In a study that examined the prevalence of new DNA evidence in a sample of US exonerations, DNA was a crucial factor for **34%** of the cases
- What this tells us, is that the remaining **66% of cases can be contributed to other exonerating factors** (currently unknown in the literature)

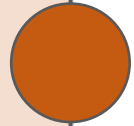
“Fresh evidence” & the pathway to exoneration



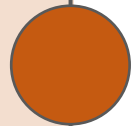
New Evidence



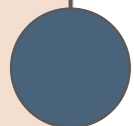
New (Changed) Evidence



Evidence in File / Not Disclosed



Evidence in File / Disclosed But Not Used



Changed Interpretation of Evidence

“New Matters of Significance”

“New” information:

- Any evidence **not previously examined**

“Significant” information:

1. Any evidence **reasonably capable of belief**
2. That is **relevant** to the issue of guilt
3. That could have **affected the outcome** had it been known

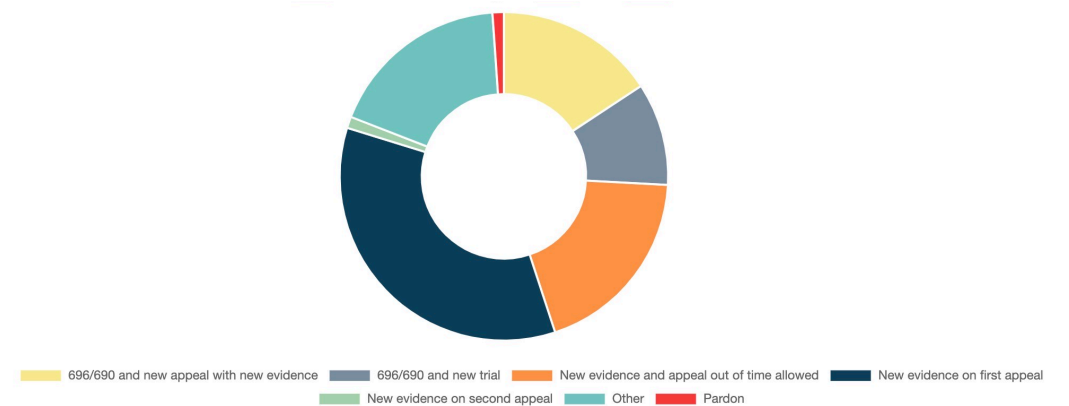
Fresh evidence must reliably undermine the evidence that led to the individual’s conviction

“Fresh evidence” & the pathway to exoneration

Exoneration on the basis of Fresh Evidence

- Fresh evidence was involved in overturning **79% of wrongful convictions in Canada** (*Canadian Registry of Wrongful Convictions*)
- Whether pursuing an **appeal** or submitting an application for **ministerial review**, providing fresh evidence is often essential to successfully correcting a wrongful conviction in Canada

Legal mechanism by which the wrongful conviction was overturned



Source: *Canadian Registry of Wrongful Convictions*

The current research

The Gap

- Most research in the wrongful convictions space comes from **US cases**
- Within the available literature, the research focuses on **factors that contribute to the wrongful conviction itself**
- The **factors related to exoneration are largely unknown**



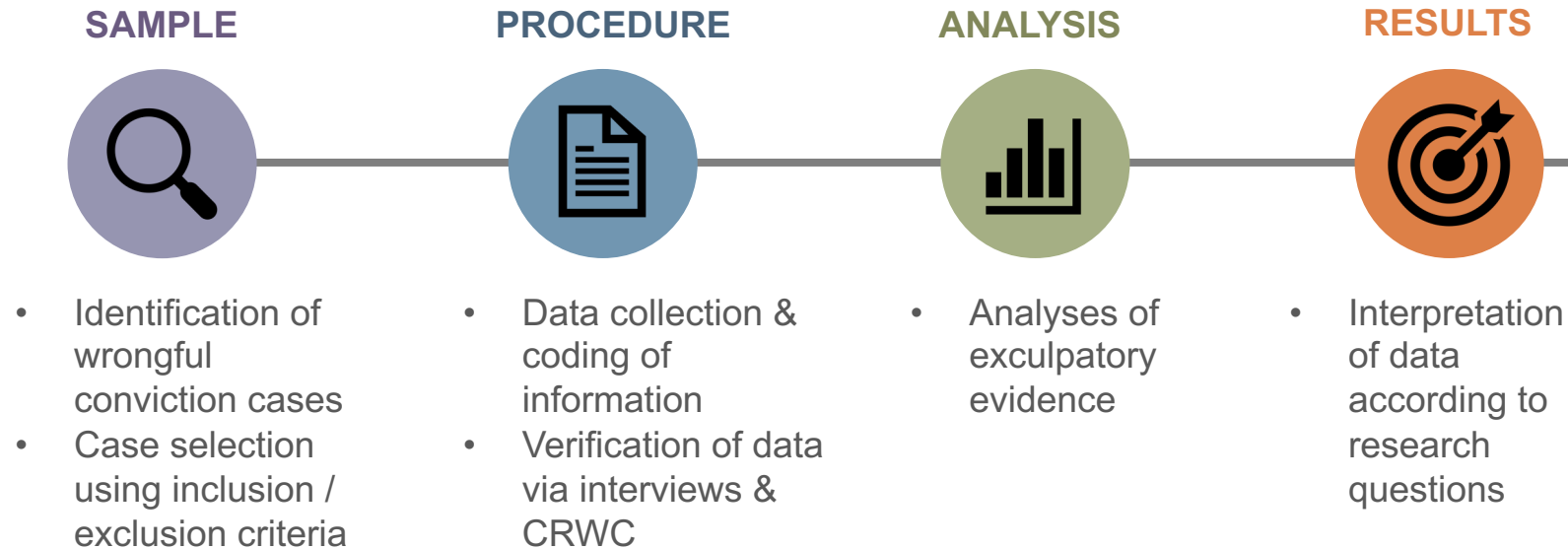
The Research

- To provide insight into **how wrongful conviction cases might be prevented, identified, and corrected**, we conducted an in-depth analysis of the factors and **characteristics of fresh evidence in exoneration cases in Canada**
- *We wanted to know:* What is the **nature of the fresh evidence**, where is it **located**, and **how is it found?**

2

Research method & procedure

Study overview



Research Questions

- What was the **availability** of the exculpatory evidence
- What were the typical **features** of the evidence
- Who was the **catalyst** that initiated the reinvestigation
- What were the characteristics of the evidence among cases that involved **non-disclosure** or where **the evidence was not considered before the Court**

Case identification & data collection

70 Unique Cases Identified

1

UBC Innocence Project

- 50 case summaries of Canada's wrongly convicted

2

Innocence Canada

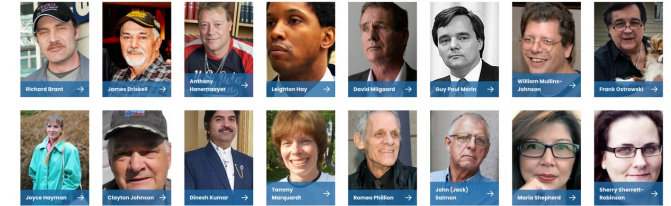
- innocencecanada.com/exonerations/
- 29 cases

3

Campbell (2018)

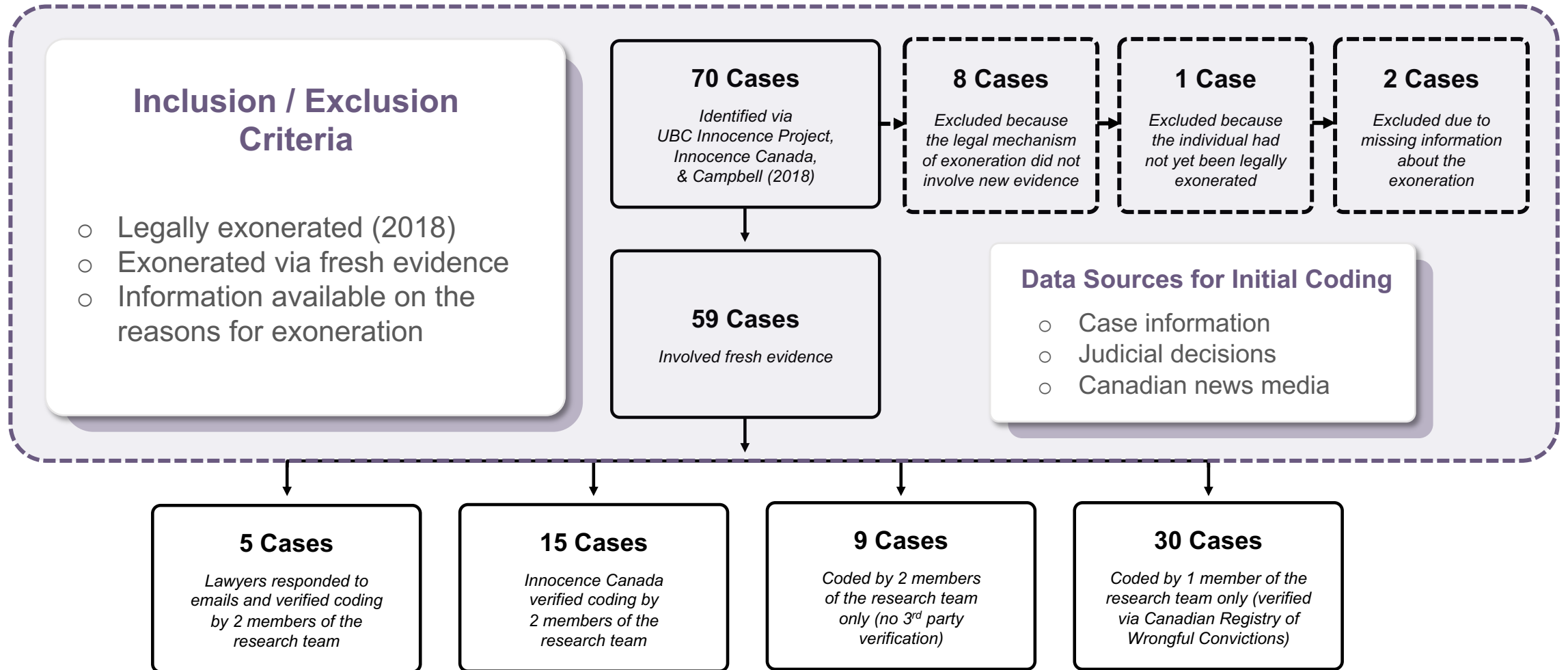
- *Miscarriages of Justice in Canada: Causes, Responses, Remedies*
- 70 known and 13 suspected cases

Data Collection Sources



- Case information from UBC Innocence Project, Innocence Canada website, Campbell (2018)
- Judicial decisions
- Canadian news media
- Qualitative interview data from exonerees' legal counsel
- Case information from the Canadian Registry of Wrongful Convictions

Case selection & flow



1

What was the availability of the exculpatory evidence?

Fresh Evidence Availability Status



Discovered After Conviction

Evidence that was **unknown and unavailable at the time of conviction**, meaning it came to light only after the conviction occurred.

e.g., a confession from the true perpetrator; recanted witness statement



Known But Not Considered

Evidence that **existed and was available at the time of conviction**, however it either was not shared with the defence (**not disclosed**), or it was disclosed but **not considered by the court**.

e.g., police reports / notes, witness statements, and physical evidence that was concealed or not used by defence



New Interpretation

Evidence that was **known but not fully understood at the time of conviction**. The factual evidence itself did not change between original trial and exoneration; rather, the opinions about the evidence changed, perhaps due to a change or improvement in technology or knowledge.

e.g., DNA evidence that was available at the original trial, but could not be analyzed due to the limits of the technology at the time, or where scientific understanding of cause of death changed over time

2

What were the features of the exculpatory evidence?

Evidence Type

1. Alternative suspects

- Guilt attributed to another person (e.g., confession made by true perpetrator, new arrest, charge, or conviction of the crime originally attributed to the wrongly convicted individual)

2. DNA

- Forensic science evidence specifically involving DNA

3. Documentation

- Records / evidence that had been preserved (e.g., notes, reports, wiretaps)

4. Forensic science experts

- Forensic science other than DNA requiring expert opinion in order to interpret the evidence (e.g., pathology, handwriting, blood spatter)

5. Incentives or intimidation

- Any form of bribery in which a witness was compensated, or promised compensation, in exchange for testimony (e.g., sentence leniency, monetary gains). It also included threats made to witnesses.

6. Legal procedures

- Changes in laws related to legal processes and procedures

7. Misconduct

- Any misconduct related to the investigation, overzealous prosecution, or ineffective assistance of counsel

8. New witness statements

- Post-conviction evidence directly from a witness (e.g., new or changed witness testimony, recantations)

3

Who was responsible for initiating the reinvestigation based on this evidence?

The catalyst who brought attention to the evidence that ultimately led to exoneration

1. Exoneree / counsel

- Post-conviction advocacy efforts on behalf of the wrongly convicted led to the discovery of exculpatory evidence

2. Crown or police

- The Crown or police discovered and brought forward exculpatory evidence

3. Neutral body

- A third, independent party initiated a reinvestigation (e.g., an appointed task force) that led to the discovery of exculpatory evidence

4. Witness or perpetrator

- A witness or the true perpetrator came forward on their own with exculpatory evidence

3

Key findings

Overview of sample characteristics



97% of cases involved convictions for violent crimes

- e.g., homicide, sexual assault, aggravated assault



Convictions occurred between 1970 and 2013

- Exonerations occurred between 1972 and 2016



Each case involved an average of 1-2 pieces of fresh evidence

- Range: 1–6 pieces of exculpatory evidence per case

Pt. 1: Characteristics of all exoneration cases

1

What was the availability of the exculpatory evidence?

- Discovered after conviction
- Known but not considered
- New interpretation

2

What were the features of the exculpatory evidence?

- Evidence type

3

Who was responsible for initiating the reinvestigation based on this evidence?

- The catalyst who brought attention to the evidence that ultimately led to exoneration

Availability of the exculpatory evidence

Based on all 109 pieces of evidence from 59 cases

DISCOVERED AFTER CONVICTION **44%**

NOT CONSIDERED **31%**

NEW INTERPRETATION **25%**

Based on at least one piece of evidence from 59 cases

DISCOVERED AFTER CONVICTION

Unavailable at trial



58%

NOT CONSIDERED

Available at trial



39%

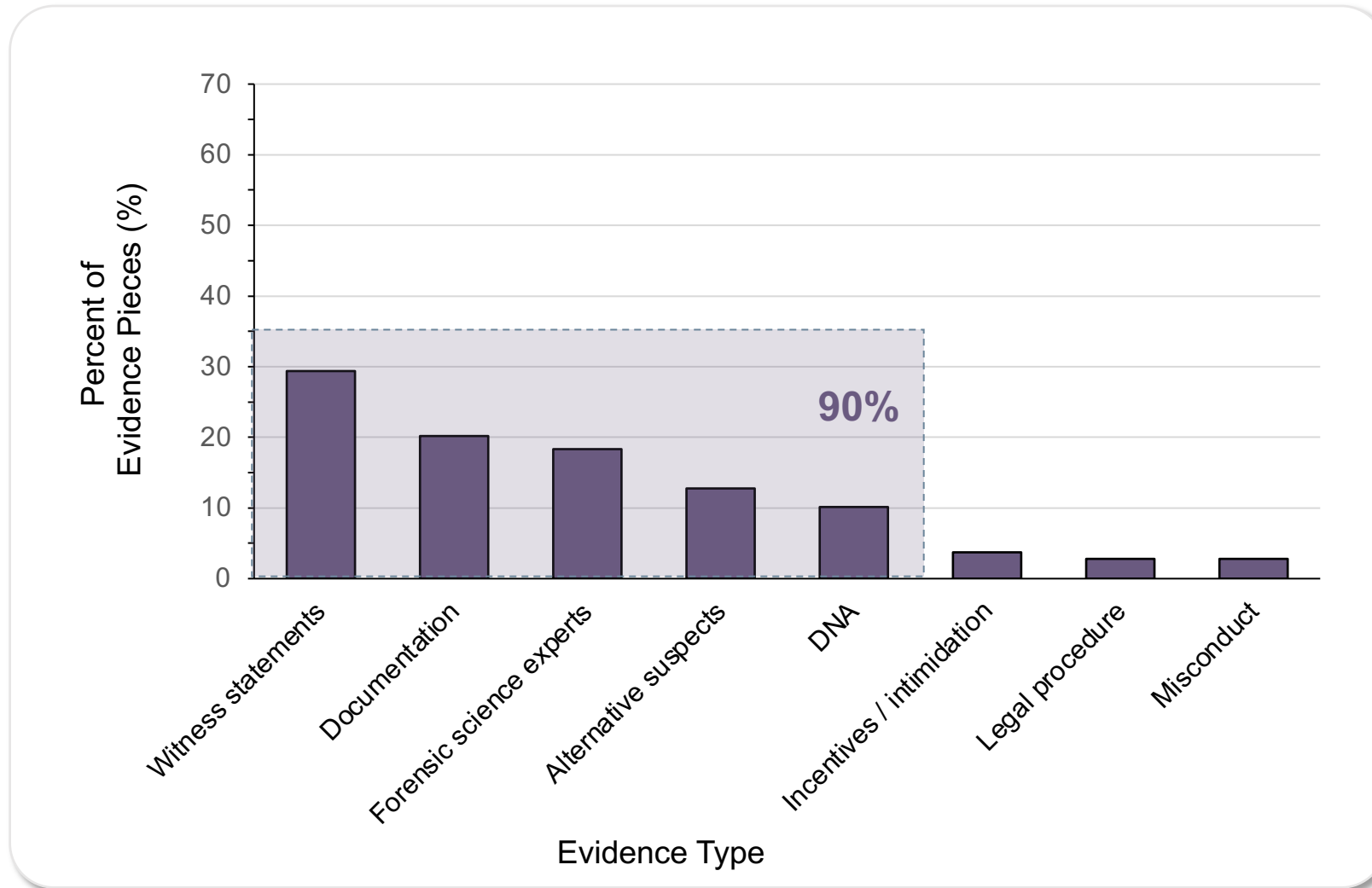
NEW INTERPRETATION

Available but not properly understood



39%

Distribution of evidence types across all cases



1. New witness statements (29%)

- Post-conviction evidence directly from a witness (e.g., new or changed witness testimony, recantations)

2. Documentation (20%)

- Records / evidence that had been preserved (e.g., notes, reports, wiretaps)

3. Forensic science experts (18%)

- Forensic science other than DNA requiring expert opinion in order to interpret the evidence (e.g., pathology, handwriting, blood spatter)

4. Alternative suspects (13%)

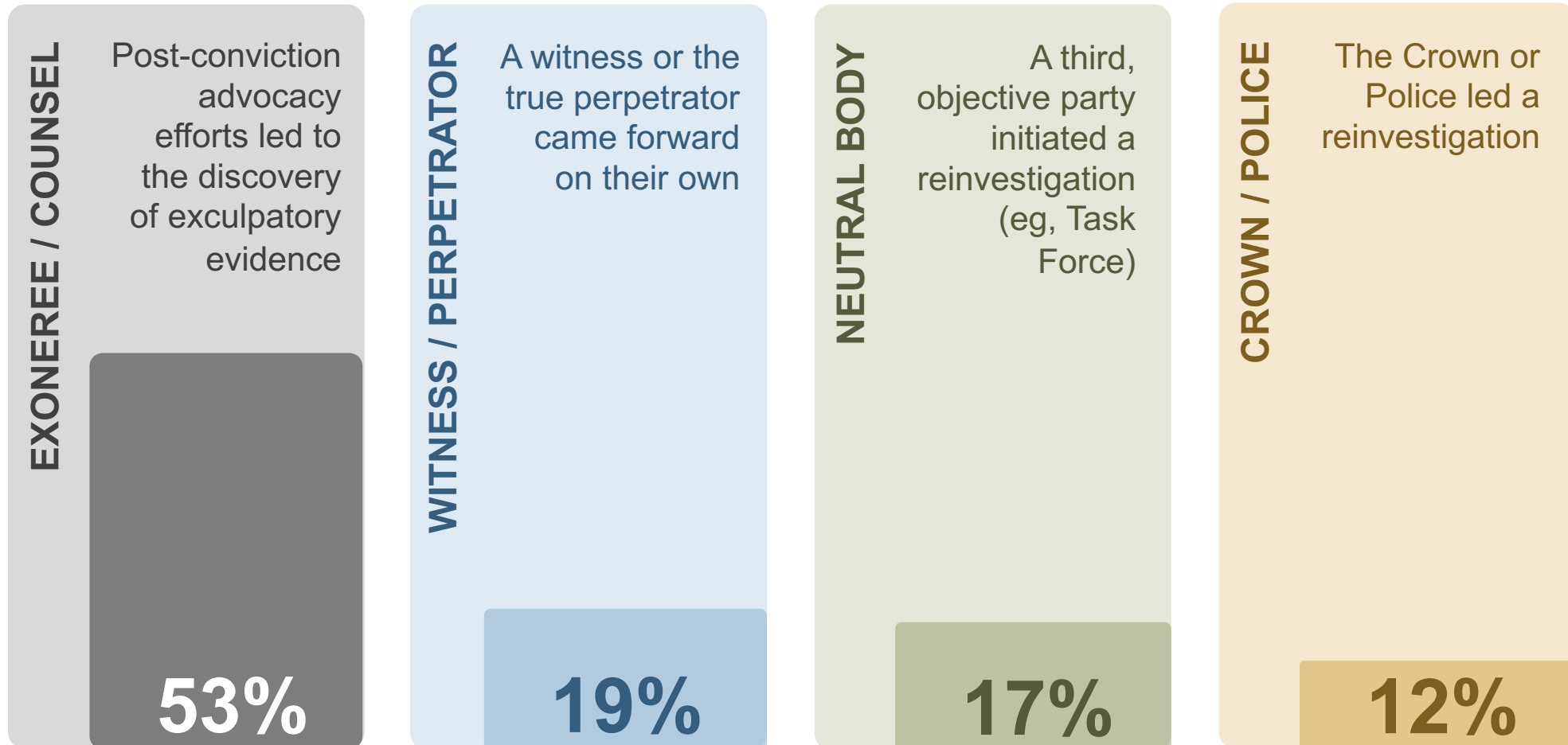
- Guilt attributed to another person (e.g., confession made by true perpetrator, new arrest, charge, or conviction of the crime originally attributed to the wrongly convicted individual)

5. DNA (10%)

- Forensic science evidence specifically involving DNA

Catalyst responsible for initiating the reinvestigation

Based on
59 exonerated cases



Pt. 2: Characteristics of cases involving *evidence not previously considered*



1

When did the wrongful convictions occur?

- Timeline

2

What were the features of the exculpatory evidence?

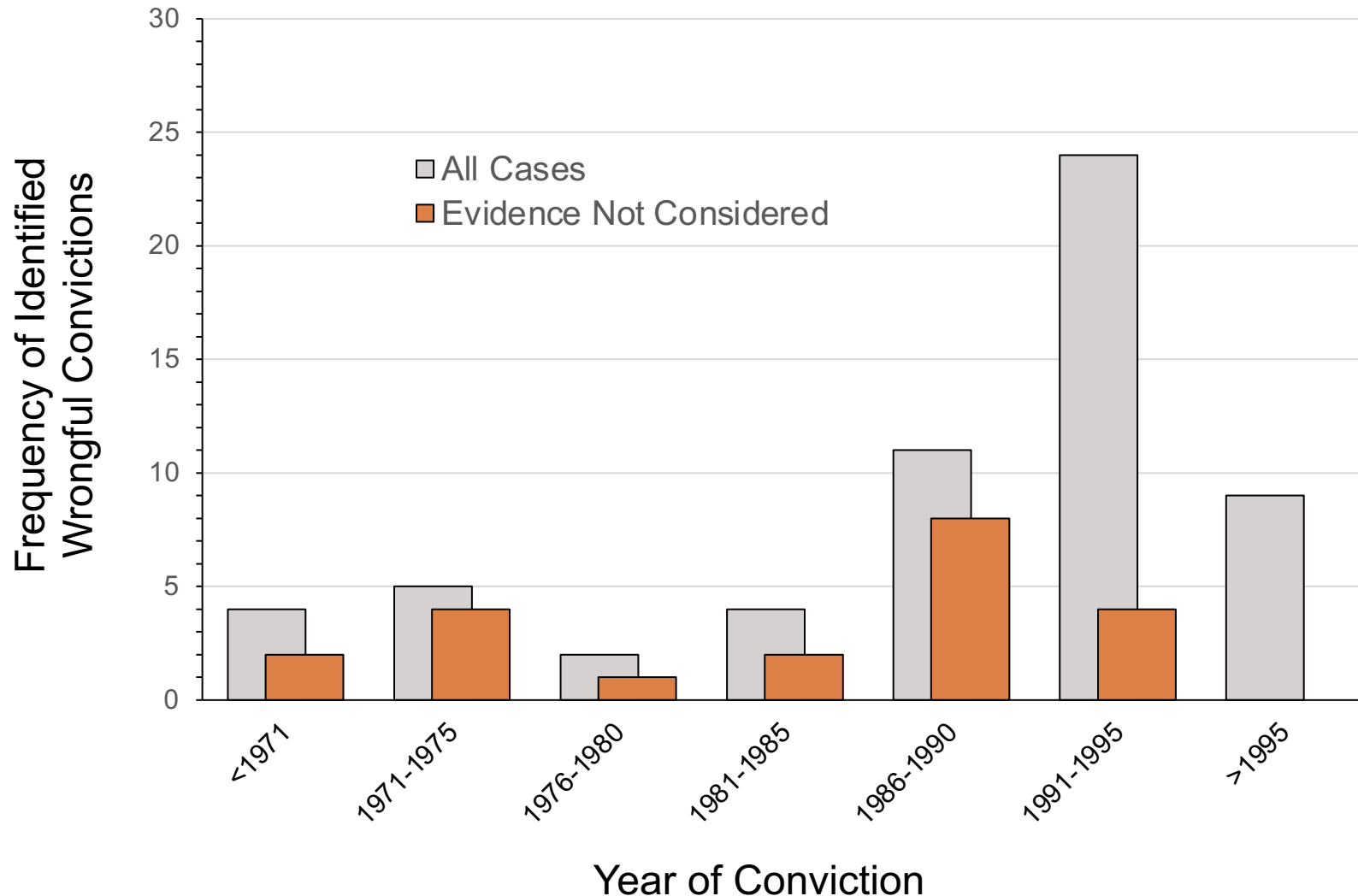
- Evidence type

3

Who brought attention to the exculpatory evidence?

- Catalyst

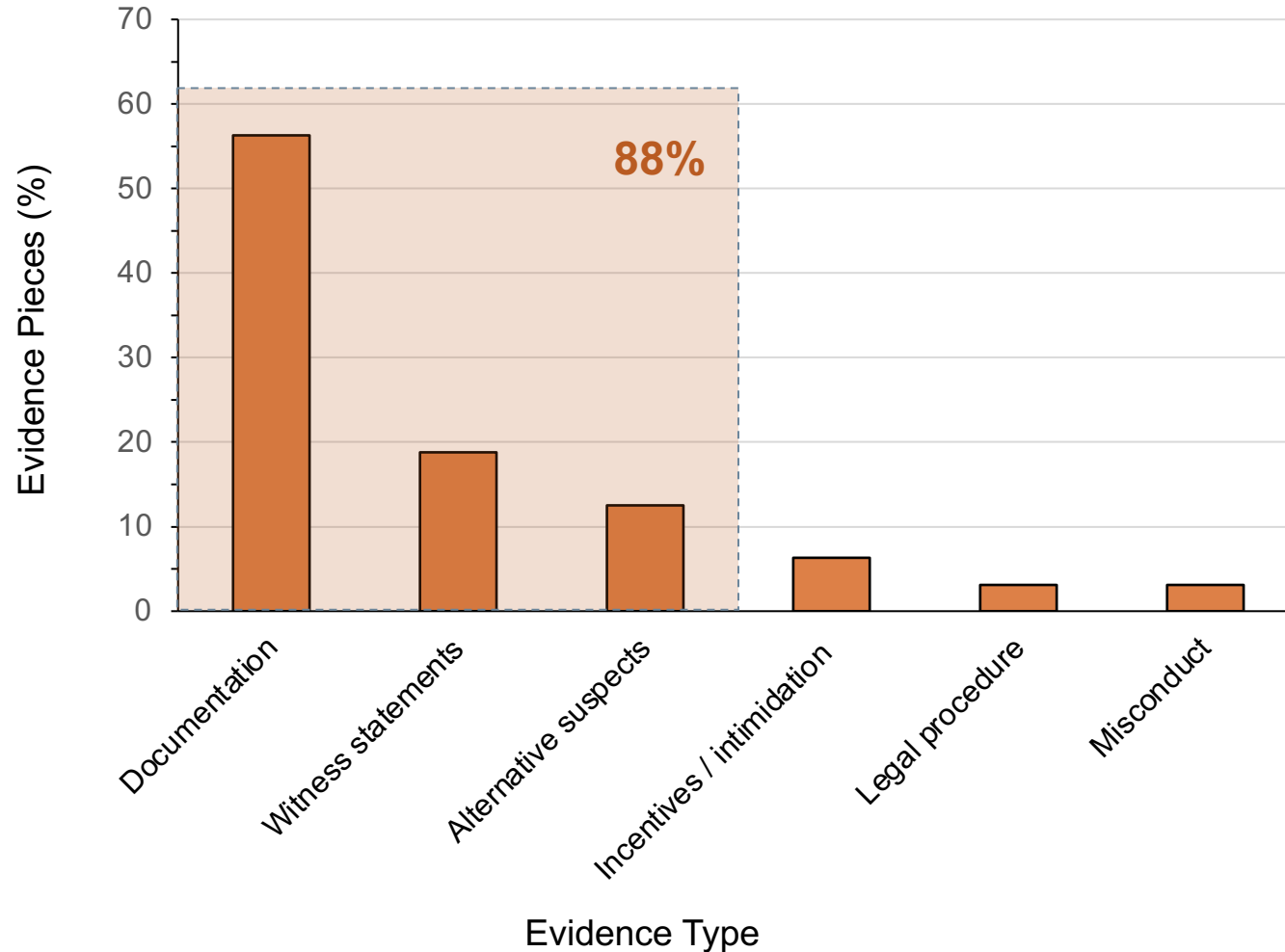
Cases containing **non-considered evidence** vs. *all cases* by year of conviction



NOTABLE FINDINGS:

- The greatest decrease in the proportion of wrongful convictions where the exculpatory evidence was not considered occurred **after 1990**
 - This corresponds to *Stinchcombe* (1991): the landmark case on disclosure obligations
- For convictions that occurred before 1991, there may be a **greater risk that the case involves non-disclosed evidence**
 - Access to case files will be especially important

Proportion of each type of evidence among cases **where the exculpatory evidence was not previously considered**

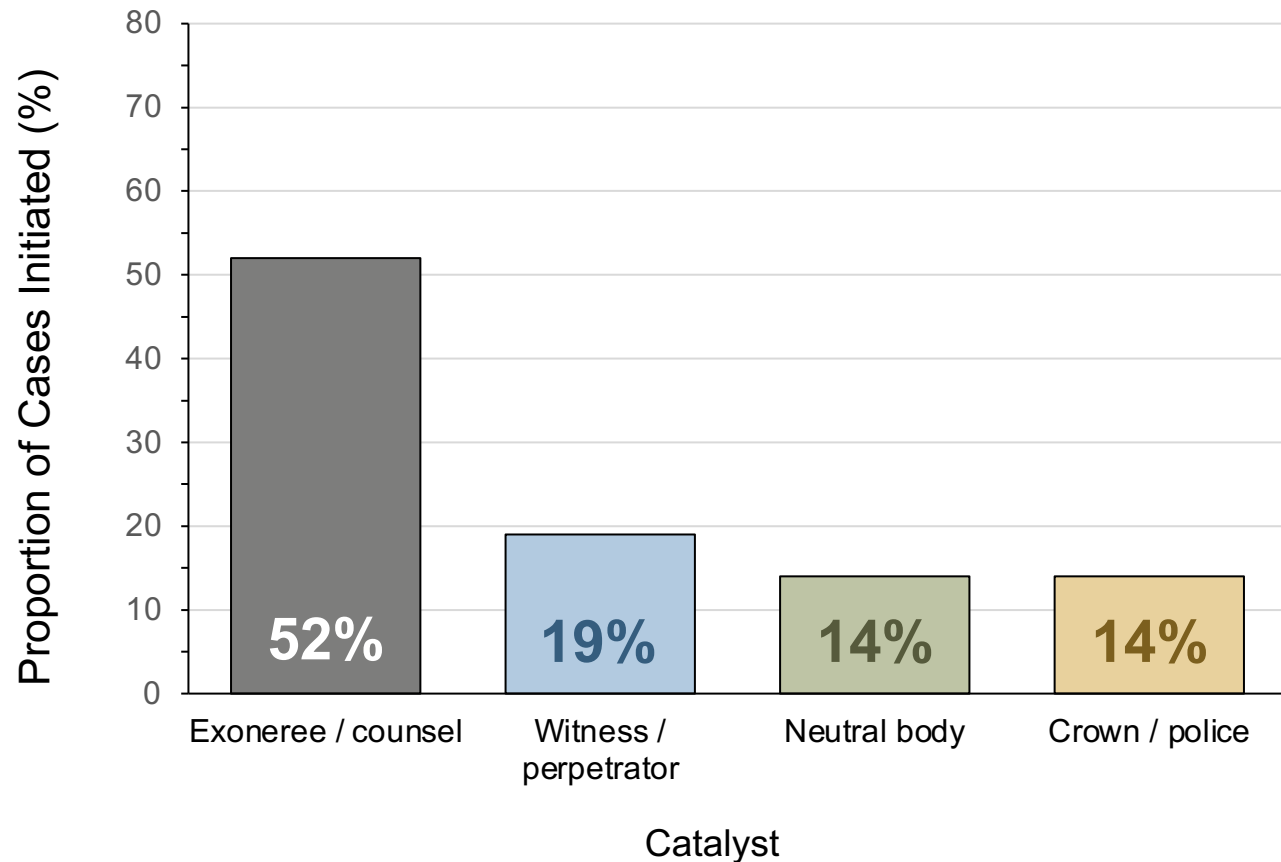


NOTABLE COMPARISONS VS. ALL CASES:

- **Documentation *not previously considered*** overwhelmingly involved **records of witness statements** made at the time of the original trial / investigation
- Upon post-conviction review, it is imperative that counsel have **access to case files that may contain witness evidence that was not previously considered**
- Here, we do not see **forensic science** as an evidence type
 - This makes sense given the requirement of an expert to offer opinion on the evidence in court, necessitating that the evidence be considered

Proportion of cases where the exculpatory evidence was not considered that were initiated by catalyst type

Based on 23 exonerated cases



NOTABLE FINDINGS:

- **More than half of reinvestigations** that ultimately led to exoneration were initiated by an **exoneree and their counsel** through post-conviction review efforts
 - Similar pattern across **all exonerations vs. cases where the evidence was not presented / considered**

4

Summary & insights

Key findings

1 What was the availability of the evidence at the time of exoneration?

In 78% of all cases, the wrongful conviction was entirely avoidable

The evidence needed for an acquittal existed at the time of the original trial: it just had not been found (**discovered after conviction**), or was found but was **not considered**—either because it was not disclosed, or simply was not used

2 What was the nature of the exculpatory evidence?

~ 30% of all exculpatory evidence came directly from witnesses

The vast majority of documentation evidence that accounted for nearly **60% of evidence that was not considered** was related to **witness statements** made at the time of the original investigation and trial

3 Who was the catalyst that initiated the reinvestigation?

>50% of reinvestigations were initiated as a result of post-conviction review efforts

Post-conviction advocacy efforts on behalf of the exoneree accounted for **~ 4x as many exonerations** as any of the other three catalysts

Key insights

Preventing Wrongful Convictions

- This research points to areas in which investigation and trial practices can be strengthened in order to **prevent wrongful convictions from occurring**
- For instance, knowing that **witnesses** make up the primary type of exculpatory evidence that is either **discovered after conviction** or **not considered** by the Courts can help guide investigators on where to look for that evidence so that it is **discovered but also used**



Correcting Wrongful Convictions

- In remedying wrongful convictions that have already occurred, this research speaks to the **importance of transparency** in the case file
- A substantial proportion of the wrongful convictions we know about contained evidence in the case file that led to exoneration—this is especially concerning when working with cases in which the conviction occurred before 1991

Thank you!



Questions

Invited to email:
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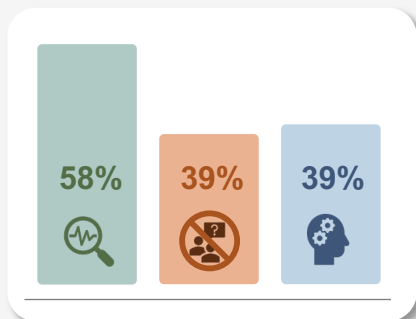
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