

Maintaining Identity within Prisons: Resistance and
Repercussions Experienced by the Wrongly Imprisoned

by

Katie Ka-Yan Tam

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Abstract

The current study extends the scope of the literature by including the perspectives of individuals who have been wrongly charged and imprisoned, and examining how the wrongly imprisoned negotiate, resist, and maintain their identities within prisons. Through in-depth, semi-structured interviews with six participants who self-identify as being wrongly convicted or charged, it was found that identity can be interpreted as a constant negotiation within the prison environment. Through the mechanisms of resistance, the participants were able to exercise resistance and limit the effects of power from opposing sources, thereby maintaining their identity. Although the participants were able to reverse the direction of power, even within prisons – a site of power inequalities and coercion, the benefits of maintaining identity were often accompanied by immediate and future consequences. This research strengthens the need for appropriate avenues to address prisoners who maintain their innocence and their identity within prisons.

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1 CHAPTER 1: INTRODUCTION

1.1 Justification for the Study

Wrongful convictions should no longer be considered to be a rarity within Canadian society. Leighton Hay, Frank Ostrowski, and Glen Eugene Assoun are only some of the individuals who had their wrongful conviction recently come to light. Hay spent more than 12 years in prison before the Supreme Court of Canada quashed his first degree murder conviction and ordered a new trial.¹ In November 2014, he was released after the Crown withdrew the murder charge against him.² Ostrowski, who spent 23 years in prison, had his first degree murder conviction referred to the Manitoba Court of Appeal at the end of 2014, and Assoun, who has spent more than 16 years in prison for the murder of his girlfriend, was recently released on bail pending the results of the federal Department of Justice review into his conviction.³ Wrongful convictions can be described as “the product of multiple system failures...each presents its own constellation of factors that contribute to the miscarriage of justice.”⁴

Previous research in the area of wrongful convictions have often addressed the myriad of factors that contribute to or result in wrongful convictions, such as jailhouse informants, police misconducts, prosecutorial misconducts, mistaken eyewitness, false

¹ R v Hay, 2013 SCC 61, [2013] 3 SCR 694.

² Allan Maki, “Twelve years wrongfully served: Court renders rare apology to Leighton Hay, free after serving a dozen years for first-degree murder”, *The Globe and Mail* (29 November 2014) A 16.

³ Allan Maki, “Was this man’s murder conviction ‘a terrible miscarriage of justice’?: After he spent 23 years in prison, Winnipeg man’s case is referred to appeal court by federal Justice Minister”, *The Globe and Mail* (26 November 2014) A3; R v Assoun, 2014 NSSC 419.

⁴ Melvyn Green, “Crown culture and wrongful convictions: A beginning” (2005) 29 CR (6th) 262 at 263.

confessions, and tunnel vision.⁵ The actual number of wrongful convictions is unknown, especially because of the increased numbers of wrongful convictions found to have resulted from guilty pleas in recent years.⁶ This dark figure of the rate of wrongful convictions is troubling since only some of the most serious cases are uncovered, making what are “known” wrongful conviction cases the tip of the iceberg. Given that research has yet to uncover the actual rate of wrongful convictions, it is imperative that researchers not only examine the causes of the miscarriages of justices, but what occurs to the wrongly imprisoned before they are exonerated.

Research has also examined the attitudes towards wrongful convictions, with findings that the public views wrongful convictions as a problem that occurs occasionally or frequently.⁷ Ricciardelli and Clow examine the perception of wrongful convictions through Goffman’s conception of stigma.⁸ A stigma develops when attributes that have been shaped by stereotypes is applied to an individual or groups of individuals, which results in the subject(s) of that attribute being viewed negatively or as inferior. Stigma

⁵ See George Catelle & Elizabeth F. Loftus, “Misinformation and wrongful conviction” in Sandra D. Westervelt & John A. Humphrey, eds, *Wrongly convicted: Perspective on failed justice* (New Brunswick: Rutgers University Press, 2008) 17; Brian L. Cutler, Keith A. Findley, & Timothy E. Moore, “Interrogations and false confessions: A psychological perspective” (2014) 18 Can Crim L Rev 153; Bruce MacFarlane, “Convicting the innocent: A triple failure of the justice system” (2005) 31 Manitoba Law Journal 403; Dianne L. Martin, “The Police Role in Wrongful Convictions: An International Comparative Study” in Sandra D. Westervelt & John A. Humphrey, eds, *Wrongly convicted: Perspective on failed justice* (New Brunswick: Rutgers University Press, 2008) 77; Jeffrey S. Neuchatz, Deah S. Lawson, Jessica K. Swanner, Christian A. Meissner, & Joseph S. Neuchatz, “The effects of accomplice witnesses and jailhouse informants on jury decision making” (2008) 32 Law and Human Behavior 137; Myrna S. Raeder, “See No Evil: Wrongful convictions and the prosecutorial ethics of offering testimony by jailhouse informants and dishonest experts” (2007) 76 Fordham Law Review 1413; Gary T. Trotter, “False confessions and wrongful convictions” (2004) 35 Ottawa L Rev 179.

⁶ Kent Roach, “Wrongful Convictions in Canada” (2013) 80 U Cin Law Rev 1465.

⁷ See Marvin Zalman, Matthew J. Larson, & Brad Smith, “Citizen’s Attitudes Toward Wrongful Convictions” (2012) 37 Criminal Justice Review 51; Rosemary Ricciardelli & Kimberley A. Clow, “The Impact of an Exoneree’s Guest Lecture on Students’ Attitudes toward Wrongly Convicted Persons” (2012) 23 Journal of Criminal Justice Education 127.

⁸ Ricciardelli & Clow, *ibid.*

has the ability to transform into a “primary identifying attribute,” to a point where others question the integrity of the stigmatized individual.⁹ While Ricciardelli and Clow investigate the impact of stigma on the wrongly convicted in post exoneration, this study examines the effects of the “criminal” label on the wrongly imprisoned and whether the individuals can maintain their true identity within the prison environment.

1.2 Structure of the Research

Considering the breadth of existing research on the causes of wrongful convictions, this research extends the scope of the literature in two ways. Firstly, the current study includes individuals who have been wrongly charged and imprisoned. The inclusion of individuals wrongly charged within the overall category of individuals wrongly imprisoned (which also includes the wrongly convicted) serves to acquire the perspective of those who are factually innocent and have experienced imprisonment. Secondly, this study examines how the wrongly imprisoned negotiate, resist, and maintain their identities within prisons – a topic that has yet to be examined. Through in-depth semi-structured interviews with participants who have been wrongly imprisoned, rich knowledge was amassed on how identity can be maintained within the prison environment. The purpose of this research is to determine the effects of wrongful imprisonment on personal identity and how can identities be maintained within the prison.

In the introductory chapter, I provided the objective of the study and an overview of the thesis. The following chapter is a review of the literature on the experience of wrongful conviction and maintenance of identity in prison, and provides a conceptual

⁹ Ricciardelli & Clow, *ibid* at 128.

framework for the study. The third chapter describes the methodology of the current study, the study procedure, and how the collected data was analyzed. The fourth chapter reports on the findings of the analysis and an overview of the main concepts. The fifth chapter discusses the findings of the main concepts related to participants' experience of imprisonment, and the final chapter concludes the thesis, highlights the limitations of the study, and provides suggestions for future research.

2 CHAPTER 2: LITERATURE REVIEW

Existing research in the study of wrongful convictions focuses on the causes, effects, and perception of wrongful conviction. Currently, there is little to no research on how the wrongly charged or convicted adjust to wrongful imprisonment or the effects of wrongful charges or convictions on identity within prisons. Drawing upon Michel Foucault's theory of power and resistance and Erving Goffman's theory on total institutions, this research focuses on how individuals who have been wrongly charged or convicted maintain identity in a space where the deterioration of that same identity occurs. This chapter locates the focus of the current research among the existing literature on the experience of wrongful conviction. In addition, this chapter outlines the existing literature on related topics such as identity, effects of imprisonment, declaration of innocence, perceptions of risk and resistance, as well as the conceptual framework used to examine the effects of identity within the prison environment.

2.1 Contribution to the Literature on the Experience of Wrongful Conviction

The literature on the experiences of the wrongly convicted falls into two main categories: the effects of wrongful imprisonment (e.g., psychological and social harm), and the consequences of maintaining innocence. Denov and Campbell examine the losses experienced by the wrongly convicted, including the loss of their family, freedom, and dignity.¹⁰ Their participants also reported a change in attitude, noting that they felt more angry and aggressive than prior to their wrongful imprisonment. Other research on the experience of wrongful conviction and imprisonment is a study conducted by Grounds to

¹⁰ Myriam Denov & Kathryn Campbell, "Criminal injustice: Understanding the causes, effects and responses to wrongful conviction in Canada" (2005) 21 *Journal of Contemporary Criminal Justice* 224.

examine the psychological effects.¹¹ The assessments of the participants revealed issues with psychological and social adjustment, including personality change and posttraumatic stress disorder. In another study by Grounds on the effects of wrongful imprisonment revealed similar findings, such as issues with post release adjustment.¹² Similarly, Wildeman, Costelloe, & Schehr found a substantial number of exonerees experience anxiety, depression, PTSD, or a combination of the three psychological disorders.¹³

Within the literature on the experiences of the wrongly convicted, research on the pressure to admit guilt and the consequences of maintaining innocence is another main focus. Medwed examines the issue of inmates who are factually innocent but are motivated to “admit” guilt and responsibility in order to be considered for parole.¹⁴ He observed cases where parole hearings were the most suitable option for release, and in some cases, inmates are unable to resist the pressure to admit guilt, which justifies limiting the weight of the acknowledgement of guilt in parole decisions. Furthermore, Medwed applied his analysis of the pressure to admit guilt on convicted sex offenders that are factually innocent, and noting “parole boards rely heavily on “admission of guilt” as a precondition for release.”¹⁵ Similarly, Weisman examines cases where the lack of remorse affected the character of the wrongly convicted and briefly discussed the

¹¹ Adrian T. Grounds, “Psychological consequences of wrongful conviction and imprisonment” (2004) 46(2) *Canadian Journal of Criminology and Criminal Justice* 165 [Grounds, “Psychological consequences”].

¹² Adrian T. Grounds, “Understanding the effects of wrongful imprisonment” (2005) 35 *Crime and Justice* 1 [Grounds, “Understanding the effects”].

¹³ Jennifer Wildeman, Michael Costelloe, & Robert Schehr, “Experiencing wrongful and unlawful conviction” (2011) 50 *Journal of Offender Rehabilitation* 411.

¹⁴ Daniel Medwed, “The innocent prisoner’s dilemma: Consequences of failing to admit guilt at parole hearing” (2008) 93 *Iowa Law Review* 591 [Medwed, “The innocent prisoner’s dilemma”].

¹⁵ Daniel S. Medwed, “Under Pressure: The Hazards of Maintaining Innocence after Conviction” in Ros Burnett, ed, *Vilified: Wrongful Allegations of Sexual and Child Abuse*, Oxford University Press [forthcoming] at 14 [Medwed, “Under Pressure”].

individual resources used to resist the institutional pressures to express remorse.¹⁶ Some examples of resistance include a man wrongly convicted of sexual assault who attended sexual therapy sessions designed for sex offenders but refused to sign a document to admit guilt, and another individual who did not assert his innocence but did not admit responsibility of the crime he was wrongly convicted of. While Campbell and Denov examined the coping strategies of imprisonment for the wrongly convicted, their research also briefly covered the repercussions of maintaining innocence in prison, including the perception of higher risk by prison administrators and the denial of institutional incentives (e.g., transfer to a lower security prison and prison socials).¹⁷

The current study combines the research by Medwed, Weisman, and Campbell and Denov, and builds upon their understanding of resistance and maintaining innocence. While Medwed focuses on the admission of guilt as a precondition for parole, this study seeks to determine whether other factors related to maintaining identity are also involved in the consideration for parole. Further, the research by Weisman provided three examples of resistance to institutional pressure to admit guilt, however, two of the examples are based on cases from the United States.¹⁸ Building upon his research on the resistance to admit guilt and the study by Campbell and Denov on the perceptions of risk when maintaining innocence in prison, this current study extends the focus to how the wrongly charged or convicted negotiate their identity within prisons by examining the penal reliance on the discourses of risk and responsibility. The next section presents the

¹⁶ Richard Weisman, "Showing remorse: Reflections on the gap between expression and attribution in cases of wrongful conviction" (2004) 46 *Canadian Journal of Criminology and Criminal Justice* 121.

¹⁷ Kathryn Campbell & Myriam Denov, "The burden of innocence: Coping with a wrongful imprisonment" (2004) 46 *Canadian Journal of Criminology and Criminal Justice* 139.

¹⁸ Medwed, "The innocent prisoner's dilemma", *supra* note 14.

existing literature on the concepts related to the maintenance of identity for the wrongly imprisoned.

2.2 Existing Literature on the Maintenance of Identity in Prison

2.2.1 Identity

Identity formation is a reflexive process that involves not only self-identification, but also the “categorization of others,” meaning that the treatment of an individual depends on how others identify the individual.¹⁹ Identity work involves attaching meaning to the individual through social interactions and social forces.²⁰ Burks and Stets note that the formation of identity can occur beyond the control of the individual. Associations are attached once the individual occupies a certain role in society.²¹ If identity can be formed through self-identification as well as external forces, it can be argued that conflicting identities could clash. In cases of wrongful conviction where a “criminal” identity is imposed, former identity may be in a state of struggle, especially within the prison context.

The “criminal” label can be applied to the wrongly convicted even though they may self-identify as a “law-abiding citizen.” There are many opportunities for the “criminal” identity to be imposed and subsequently internalized in prison. Former identities, as someone who is factually innocent and did not commit the alleged offence, can be challenged in what Goffman refers to as “total institutions” – residences where a large number of individuals are separated from the wider society for a period of time until

¹⁹ Richard Jenkins, *Social Identity*, 3d ed (New York: Routledge, 2008).

²⁰ Peter J. Burke & Jan E. Stets, *Identity Theory* (New York: Oxford University Press, 2009).

²¹ Burke & Stets, *ibid.*

deemed acceptable for reintegration into society.²² The staff within total institutions operates under the same overarching authority, dictating the scheduled movements and activities of prisoners in all aspects of life (i.e., sleep, work, play). Goffman notes that the “sequence of activities being imposed from above by a system of explicit formal rulings and a body of officials...are brought together into a single rational plan purportedly designed to fulfill the official aims of the institution.”²³ In order for an institution to fulfill official aims, cooperation must be obtained from the inmates that are perceived as less pliant by the staff through what is referred to as the “obedience test.” The obedience test involves visibly punishing defiant inmates “until he openly ‘cries uncle’ and humbles himself.”²⁴ The obedience test is a process of “mortification.”

The process of mortification involves the stripping of former identity from the individual, first through the physical separation from the wider society, and subsequently breaking down social roles and forcing the individual to adopt to an institutional one.²⁵ The overarching authority directs the prisoners on matters of dress, social interactions, and behaviours through the confiscation of personal clothing and possessions, and the issuing of identification numbers – further separating the individual from their previous self. Similarly, Cohen and Taylor found that “consciousness had to be monitored and guarded against the insidious processes which attacked personal identity” within institutions.²⁶ Often symbols or displays that represent individual identity are prohibited within total institutions, making resistance to the “criminal” label more difficult.

²² Erving Goffman, *Asylums: Essay on the social situation of mental patients and other inmates* (New York: Anchor Books, 1961).

²³ Goffman, *ibid* at 6.

²⁴ Goffman, *ibid* at 17.

²⁵ Goffman, *ibid*.

²⁶ Stanley Cohen & Laurie Taylor, *Escape Attempts: The theory and practice of resistance in everyday life*, 2d ed (New York: Routledge, 1992) at 34.

Although it can be argued that the deconstruction of personal identity within total institutions serves as a rehabilitative process and one of the consequences of committing a criminal offence, it can be troubling for the factually innocent to be imposed the “criminal” identity.

In a study on the experiences of the wrongly convicted, Campbell and Devon found that correctional officers and prison administrators imposed the “criminal” identity upon the participants.²⁷ Indeed, a participant who was wrongly convicted of a sexual offence reported that the prison guard would treat him as if he were “garbage.”²⁸ This is similar to the indignities of treatment described by Goffman, where the ultimate goal is to humiliate the individual and enforce compliancy.²⁹ Other participants were also pressured by prison administrators to admit guilt or to participate in correctional treatment programming in order to be considered for parole.³⁰ As well, Goffman observed how inmates within total institutions are forced to engage in activities that are “incompatible with his conception of self.”³¹ Comparatively, the wrongly convicted were also forced to participate in activities that were in conflict with their personal identity. Indeed, it was found that privileges were removed for non-participation or the declaration of innocence, such as a family visit or participation in prison social activities.³²

The abovementioned research described the similar effects of total institutions on prisoners and the wrongly convicted. Within total institutions, the “criminal” label is imposed through external forces that also seek to eliminate former identities. Former

²⁷ Campbell & Denov, *supra* note 17.

²⁸ Campbell & Denov, *ibid.*

²⁹ Goffman, *supra* note 22.

³⁰ Campbell & Denov, *supra* note 17.

³¹ Goffman, *Supra* note 22 at 23.

³² Campbell & Denov, *supra* note 17.

identities can be stripped away, and instead, an institutional identity is imposed through humiliation and authority. Opposing the “criminal” label is followed with negative consequences (i.e., removal of incentives). Furthermore, not only do former identities deteriorate within total institutions, prisoners often experience detrimental psychological effects that have been reported to impair the individual from forming and maintaining social relationships, and expressing emotions – a common effect of imprisonment.

2.2.2 Effects of Imprisonment

There is substantial research on the effects of imprisonment.³³ In a review of the literature on the “pains of imprisonment,” Bonta and Gendreau critically examined correlational or quasiexperimental research on the negative effects of prison crowding, long-term imprisonment, short-term detention, solitary confinement, and death row.³⁴ Overall, the review of the literature by Bonta and Gendreau found little evidence to support long lasting, psychological harm of long-term imprisonment or solitary confinement. Nonetheless, it was also reported that personal differences (e.g., age, coping capabilities) contribute to prisoners’ experience of prison crowding. Furthermore, other research has demonstrated that prisoners who are awaiting trial and sentencing within prisons experience a considerable amount of anxiety.³⁵ The anxiety experienced by the

³³ See James Bonta & Paul Gendreau, “Re-examining the cruel and unusual punishment of prison life” (1990) 14 *Law & Human Behaviour* 347; Yvonne Jewkes, “Loss, liminality and the life sentence: Managing identity through a disrupted lifecourse” in Alison Liebling & Shadd Maruna, eds, *The effects of imprisonment* (Devon: Willan Publishing, 2005) 366; Lorna A. Rhodes, “Psychological effects of the supermax prison” (2005) 95 *American Journal of Public Health* 1692; A. J. W. Taylor, “Effects of imprisonment” (1960) 1 *British Journal of Criminology* 64.

³⁴ Bonta & Gendreau, *ibid* (Bonta and Gendreau characterized negative effects as “behaviors that threatened the physical welfare of the offender (e.g., aggressive behavior, suicide) and indicators of physiological stress levels (e.g., elevated blood pressure) and psychological distress (e.g., depression)” at 349).

³⁵ Sheldon Cholst, “The effects of long-term detention” (1979) 23 *International Journal of Offender Therapy and Comparative Criminology* 210; M. A. Schneider, “Problems in short-term

prisoners in detention is related to the uncertainty of the impending criminal trial, and if found guilty, the severity of the sentence. In fact, Oleski found that the anxiety levels of 60 male inmates awaiting trial in a Boston city jail were higher at week eight than the result on the initial tests that were administered one week after admission.³⁶ Although skeptical of the negative effects of imprisonment, Bonta and Gendreau note that studies have demonstrated long-term imprisonment can result in “increases in hostility and social introversion...and decreases in self-evaluation and evaluations of work.”³⁷ Similarly, Jewkes argues work identity and the identity as a father/mother can be lost through a disruption in “lifecourse.”³⁸

Lifecourse theory describes the rites of passages or events in one’s life (e.g., graduation, attaining employment, marriage, raising a family), which provides meaning to and constructs self-identity.³⁹ Negative effects can arise from a disruption in lifecourse such as a challenge to the individual’s self-identity. Jewkes explains that the most common lifecourse event for women is motherhood. Since life-sentenced women are incapacitated within prisons, the opportunity for child-bearing and child-rearing may be permanently lost. Furthermore, Jewkes refers to the existent literature that suggests that women who are unable to bear children frequently mourn and grieve for children and grandchildren that they never conceived. As for life-sentenced men, the opportunity to work or gain employment can be lost. For men who have had experience working in a trade or profession prior to their imprisonment, their work identity may be disrupted

correctional settings” (1979) 23 *International Journal of Offender Therapy and Comparative Criminology* 164.

³⁶ Merritt S. Oleski, “The effect of indefinite pretrial incarceration on the anxiety level of an urban jail population” (1977) 33 *Journal of Clinical Psychology* 1066.

³⁷ Bonta & Gendreau, *supra* note 33 at 357.

³⁸ Jewkes, *supra* note 33.

³⁹ Jewkes, *ibid.*

within the institution. Furthermore, incarcerated women are not only limited to the lifecourse event of motherhood, but they can also experience the loss of work identity, while incarcerated men can also be stripped of their identity as a father. There are various lifecourse events that provide self-identity to individuals, which can be disrupted or lost through imprisonment.

Rather than examining the disruption of life events or the “most extreme or clinically-diagnosable effects of imprisonment”⁴⁰ as Bonta and Gendreau have examined in their research, Haney focuses instead on the effects of “institutionalization.”⁴¹ Institutionalization is defined as the “process by which inmates are shaped and transformed by the institutional environment in which they live.”⁴² He examines more subtle changes within prisoners’ span of prison life, specifically their consciousness, feelings, and actions. Haney notes that prisoners are forced to conform to the rules and structure within penal institutions and that eventually, “prisoners may adjust to the muting of self-initiative and independence that prison requires and becomes increasingly dependent on institution contingencies that they once resisted.”⁴³ Prisoners often relinquish control over their consciousness and some may even depend on prison administrators to make decisions for them. Moreover, in order for prisoners to shield their identity within the institution, they often develop a “prison mask” in order to create distance between themselves and the rest of the prison population and the events that occur within the prison. This mask becomes so effective to the point that the prisoner that

⁴⁰ Bonta & Gendreau, *supra* note 33 at 5.

⁴¹ Craig Haney, “The psychological impact of incarceration: Implication for post-prison adjustment” (From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities, delivered at the National Policy Conference, 30-31 January, 2002) online: <<http://aspe.hhs.gov/hsp/prison2home02/haney.htm>>.

⁴² Haney, *ibid* at 5.

⁴³ Haney, *ibid* at 7.

bears the mask disengages from open communication with others who are not associated with the prison environment.

In exploring the subtle social and psychological impacts of institutionalization, Haney stresses the importance of the transition from prison to home. A particular concern are incarcerated parents who “return from periods of incarceration still dependent on institutional structures and routines” and who “cannot be expected to effectively organize the lives of their children or exercise the initiative and autonomous decisionmaking that parenting requires.”⁴⁴ Often, released prisoners have the tendency to socially withdraw, creating stress within family and intimate relationships. In order to adequately respond to effects of imprisonment in post-release, Haney notes that prisoners should be provided with “decompression programs in which they are re-acclimated to the nature and norms of the freeworld,” be advised of the changes that might have been bought on due to their incarceration, and be provided with specialized services that can facilitate prisoners who have expressed signs or symptoms of mental illness.⁴⁵

Although the abovementioned research indicates that correlational or quasiexperimental studies cannot demonstrate long lasting, psychological harm on the effects of imprisonment, research has found that prisoners often experience subtle changes due to institutionalization. Even though these changes cannot be clinically measured, it has been reported that prisoners are forced to surrender their independence and autonomy, and creating a mask that emotionally shields themselves from the institution environment. Research that specially examines the effects of wrongful imprisonment has not only demonstrated that wrongly convicted individuals experience

⁴⁴ Haney, *ibid* at 15.

⁴⁵ Haney, *ibid* at 17-18.

imprisonment differently, the experience can be more traumatic as well.⁴⁶ Denov and Campbell note that the negative effects experienced by the wrongly convicted are “likely exacerbated by their victimization at the hands of the criminal justice system.”⁴⁷

In the research on the psychological effects of the wrongful imprisonment, Grounds found that “most men were described by their families and others as changed in personality, and features of post-traumatic stress disorder and additional depressive disorders were common.”⁴⁸ Through psychiatric interviews with each of the 18 men in the study by Grounds, he found that nearly 74% of the participants (n=14) met the ICD-10 (*ICD-10 Classification of Mental and Behavioral Disorders: Clinical Descriptions and Diagnostic Guidelines*, developed from chapter 5 of the *Tenth Revision of the International Statistical Classification of Diseases and Related Health Problems*) diagnostic criteria for “enduring personality change after catastrophic experience,” meaning that the individual possessed an enduring personality change not previously seen.⁴⁹ Reported personality changes included hostility, mistrust, social withdrawal, emptiness, hopelessness, constant feeling of threat, and estrangement. Furthermore, Grounds found that 67% of participants met the ICD-10 diagnostic criteria for posttraumatic stress disorder (PTSD⁵⁰). Both PTSD and enduring personality change are

⁴⁶ Campbell & Denov, *supra* note 17; Denov & Campbell, *supra* note 10; Grounds, “Psychological consequences”, *supra* note 11; Grounds, “Understanding the effects”, *supra* note 12.

⁴⁷ Denov & Campbell, *ibid* at 233.

⁴⁸ Grounds, “Understanding the effects”, *supra* note 12 at 2.

⁴⁹ Grounds, “Understanding the effects”, *ibid* at 2.

⁵⁰ Grounds, “Understanding the effects”, *ibid* (Both the American Psychiatric Association (APA) and the ICD-10 agree that the features of PTSD include the “reexperiencing of traumatic event, avoidance of circumstances associated with the event, and increased physiological arousal,” however, the ICD-10 “specifies that the person must have experienced an event or situation of an exceptionally threatening or catastrophic nature, likely to cause pervasive distress in almost anyone” at 13-14).

diagnosed following an exceptionally traumatic event. Similarly, Wildeman, Costelloe, and Schehr reported that 27% of exonerees met the diagnosis for PTSD, and nearly 44% were symptomatic of clinical depression.⁵¹ Furthermore, 22% had scores that indicate the concurrent experience of depression, anxiety, and PTSD.

PTSD can negatively alter social interactions and occupational functioning. In fact, the families and friends reported that exonerees were perceived to have experienced personality changes and the inability to express emotions.⁵² Many reported that the men were total strangers from their former selves. Grounds also found that all of the participants have experienced difficulties with family and other relationships. Some reported estrangement and a lack of closeness with loved ones, even after their exoneration.⁵³ The psychological disorders that have developed through the course of their wrongful conviction can exert strain on their self-identities. Former roles such as a father, son, and husband can be constrained or lost through PTSD and clinical depression.

The abovementioned literature on the “pains of imprisonment” has demonstrated that most prisoners, regardless of whether they were wrongly imprisoned or not, often experience changes in personality and their ability to socially interact with others. Campbell and Denov argue that the effects of imprisonment are often more traumatizing for the wrongly convicted.⁵⁴ The loss of credibility, the “preprison identity and sense of self” were reported to have deeply affected the exonerees, with one participant reporting the need to create an alternative personality in order to protect oneself and to ultimately

⁵¹ Wildeman, Costelloe, & Schehr, *supra* note 13.

⁵² Wildeman, Costelloe, & Schehr, *ibid.*

⁵³ Grounds, “Psychological consequences”, *supra* note 11.

⁵⁴ Campbell & Denov, *supra* note 17.

survive within the prison environment.⁵⁵ Furthermore, participants reported being constantly alert and defensive by carrying a weapon or by wearing self-made protective gear in order to respond to impending prison violence.

Certain coping skills also had to be developed, such as cooperation, either with other prisoners who needed to cope or with prisoners whose ideals were incompatible with their own. For example, a participant in the study by Campbell and Denov reported joining a white supremacist organization in order to be protected from prison violence and conflict, and as a way to survive the prison environment.⁵⁶ Furthermore, they found that the “mortification process,” described by Goffman, applied to wrongly convicted sex offenders. Sex offenders are often considered as the lowest class of prisoners within the prison hierarchy. A participant wrongly convicted of a sexual offence reported having the label “rapist” revealed by either a guard or an inmate, which subsequently resulted in the participant being physically assaulted by other inmates. This example demonstrates how the “criminal” label is constantly reinforced within the prison environment, stripping away any previous identities prior to wrongful imprisonment.

The “criminal” label not only exists within the prison environment, it continues to follow the individual in post release. Participants reported being unable to escape the imposed “criminal” identity, despite changing their appearances by dyeing their hair or growing/shaving their facial hair.⁵⁷ Individuals who have been wrongly convicted also reported feelings of loss, anger, aggression, and imprisonment even long after their release. Participants felt a sense of loss for family, either by separation or the perceived lack of credibility. All of the participants in the study reported that their wrongful

⁵⁵ Denov & Campbell, *supra* note 10 at 234.

⁵⁶ Campbell & Denov, *supra* note 17 at 147-158.

⁵⁷ Denov & Campbell, *supra* note 10.

imprisonment impacted their level of temperament and aggression, in that they were more angry, impulsive, and aggressive than they were prior to imprisonment. One participant reported being more easily angered, whereas he was more patient and calm before his wrongful conviction.

Another difference between those who were “rightly” and wrongly imprisoned is the difficulty obtaining assistance in post-release. Certain community services are geared towards prisoners to provide assistance in finding employment post-release. Nonetheless, an exoneree reported being turned down by four different community services that were designed to assist ex-offenders solely on the grounds that he did not actually commit the sexual offence that he was wrongly convicted of.⁵⁸ Further, in a study on the effects of imprisonment on the wrongly convicted, Jamieson and Grounds found that all of their participants were released without preparation or assistance from services that are typically provided for inmates that are released from prisons.⁵⁹ Most were taken to Appeal Court straight from the institution and were released with only a small amount of money and their possessions. The lack of post release assistance provided to the wrongly convicted is an additional barrier from reentering society.⁶⁰

The abovementioned literature demonstrates that the wrongly convicted experience the effects of imprisonment differently than those who were “rightly” imprisoned. Often, the label “rapists” is reinforced by prisoners and guards, and continues to follow the wrongly convicted after release. In post release, many participants

⁵⁸ Barry Scheck, Peter Neufeld, & Jim Dwyer, *Actual Innocence: When justice goes wrong and how to make it right* (New York: Doubleday, 2003) at 289.

⁵⁹ Ruth Jamieson & Adrian Grounds, “Release and adjustment: Perspective from studies of wrongly convicted and politically motivated prisoners” in Alison Liebling & Shadd Maruna, eds, *The Effects of Imprisonment* (Portland: Willan Publishing, 2005) 33.

⁶⁰ Wildeman et al., *supra* note 13.

were reported as being more angry, aggressive, and impulsive. In most cases, assistance in post-release was not provided by institutions or probations services to transition the individual from the institution back into the community. This section of the chapter considers the effects of imprisonment on identity, highlighting the emotional, psychological, and social changes experienced by individuals who have been wrongly imprisoned.

2.2.3 Expression of Innocence

A dichotomy exists between expressions of guilt and expressions of innocence. Jurors, judges, and the media tend to perceive the accused who expresses guilt as more deserving and worthy of compassion and entitled to mitigation, then those who maintain their innocence.⁶¹ Campbell and Denov describe the maintenance of innocence within the judicial process as a “burden.”⁶² Falsely accused individuals who declare their innocence are perceived at trial to be lacking in shame and sorrow, and are “differentiated from those characterized as having remorse.”⁶³ In fact, expressions of remorse play a role in determining whether an individual receives a conditional sentence. Furthermore, maintaining innocence while incarcerated hinders the ability for early parole because prison administrators, parole board members, and case managers perceive the claim of innocence as high risk for recidivism.⁶⁴ Moreover, research has found that when parole decision makers are faced with uncertainty in the conditional release of offenders, they

⁶¹ Weisman, *supra* note 16.

⁶² Campbell & Denov, *supra* note 17.

⁶³ Weisman, *supra* note 16 at 122.

⁶⁴ Campbell & Denov, *supra* note 17.

rely on cues in reaching their decisions.⁶⁵ Two persistent cues that are often considered are acknowledgement of culpability and expression of remorse.⁶⁶

Martel notes that “although parole boards discursively acknowledge that it is prohibited to deny release on the grounds that an offender denies guilt or is remorseless, they tend to work with the postulate that denial or remorselessness are adequate risk markers.”⁶⁷ When expression of remorse is privileged, and the maintenance of innocence is considered as a hindrance to rehabilitation, wrongly convicted individuals are left with constrained choices when confronting prison administrators and parole board members. Medwed described this situation as a “prisoner’s dilemma” where the prisoner is either presented with “Choice A” which “consists of proclaiming innocence and consequently hindering the possibility of parole” or “Choice B” which “involves taking responsibility for a crime the prospective parolee did not commit and bolstering the chances for parole, albeit with dire effects for any post-conviction litigation involving the underlying innocence claim.”⁶⁸

In a study on Robert Latimer, Martel found that Latimer, the Saskatchewan farmer who compassionately kill his 12-year-old daughter who had cerebral palsy, was denied day parole solely based on the insufficient insight and the understanding of his crime even though his psychological and risk assessment reports indicated that his risk of reoffending would be very minimal.⁶⁹ Nonetheless, the parole decision was overturned by the Appeal Division of the Parole Board of Canada (PBC), and ordered Latimer to be

⁶⁵ Carolyn Turpin-Petrosino, “Are limiting enactments effective? An experimental test of decision making in a presumptive parole state” (1999) 27 *Journal of Criminal Justice* 321.

⁶⁶ Medwed, “The innocent prisoner’s dilemma”, *supra* note 14.

⁶⁷ Joane Martel, “Remorse and the production of truth” (2010) 12 *Punishment & Society* 424 at 430.

⁶⁸ Medwed, “The innocent prisoner’s dilemma”, *supra* note 14 at 497.

⁶⁹ Martel, *supra* note 67.

released immediately on day parole. The Appeal Division stated that the circumstances surrounding Latimer's action were "unique" and "situational" and that he has been in full compliance with the law, regulations, and conditions. Even though the Appeal Division recognized that he lacked insight into his actions, when weighed with other relevant factors, he was not considered to be an undue risk to society. This is a unique case since Latimer was not wrongfully convicted. In fact, he confessed to the compassionate killing of his daughter and maintained his belief that it was his moral duty to save his daughter from intolerable pain. When compared to wrongly convicted individuals who did not commit an offence, and, therefore, will not demonstrate remorse nor admit guilt to the crime, they are considered as a risk to society and likely to reoffend. This demonstrates that the criminal justice system privilege certain scripts, such as confessions.

Martel describes confessions as "procedural ritual" and what is considered to be a script that marks offenders as "reintegratable."⁷⁰ Confessions are often deemed as the gold standard of evidence. In a study of judges' perception of confessions, judges tend to perceive confessions as powerful evidence even though they were told that the confessions were obtained through high-pressured interviews, where the defendant was interrogated for 15 hours in which his interrogators screamed and threatened him.⁷¹ Confessions are not only privileged within the criminal trial process, it is a necessary script for criminal justice administrators to promote and preserve the "ideological objectives of dominant theories of punishment."⁷²

2.2.4 Perceptions of Risk

⁷⁰ Martel, *ibid* at 415.

⁷¹ Saul M. Kassin, "Why confessions trump innocence" (2012) 67 *American Psychology* 431.

⁷² Martel, *supra* note 67 at 429.

Existing literature has found several influential factors that are considered in predicting the post-release outcomes. Heinz, Heinz, Senderowitz, and Vance found that the factors that were considered for the release of offenders included the severity of the offence, criminal history, and participation in correctional treatment.⁷³ Furthermore, Feder (1994) highlighted that prior imprisonment and institutional misconduct as the factors that are considered for making parole decisions.⁷⁴

Existing literature on the relationship between risk and the criminal justice system have highlighted the prominence of risk in preventative frameworks.⁷⁵ O'Malley argues that "risk has expanded from being a technique for governing parole to include sentencing, and with that had come a refocusing of justice onto protection of the community rather than reform of the offender."⁷⁶ In other words, social and judicial expertise have been pushed aside rehabilitation in favour of technical, scientific, statistical knowledges of risk assessment.

Eligibility for day or full parole is determined by an examination of a standardized set of factors, including actuarial tools that predict future risk of reoffending. While Kemshall and Maguire explain that only some jurisdictions use actuarial risk assessment as one of the factors in order to determine post-release outcomes, with the final decision based on case records, it is problematic for wrongly convicted individuals who might have refused to take sex offender treatment, admit guilt,

⁷³ Anne M. Heinz, John P. Heinz, Stephen J. Senderowitz, & Mary A. Vance, "Sentencing by parole board: An evaluation" (1976) 67 *Journal of Criminal Law and Criminology* 1.

⁷⁴ Lynette Feder, "Psychiatric hospitalization history and parole decisions" (1994) 18 *Law and Human Behavior* 395.

⁷⁵ Malcolm M. Feeley & Jonathan Simon, "The new penology: Notes on the emerging strategy of corrections and its implications" (1992) 30 *Criminology* 449; Patrick O'Malley, "Risk, power and crime prevention" (1992) 21 *Economy and Society* 252.

⁷⁶ O'Malley, *ibid* at 45.

or express remorse.⁷⁷ Institutional behaviour is one of the factors examined when considering the conditional release of an offender. The extent of institutional adjustment and behaviour could be related to the inmate's perception of fairness (i.e., treatment within the institution). Liebling examined inmates and staff's perception of fairness within prison. Important dimensions reported by the participants were grouped into three factors: staff fairness, clarity, and formal or procedural justice.⁷⁸ Liebling observed a relationship between cooperation and the perception of treatment when observing a protest that occurred in one of the wings of the prison. The protest occurred following an increase in the offender population and activities within the prison became restricted. Perceptions of fairness within prison may explain why resistance occurs and how it is considered as a risk by staff members. Liebling notes:

Being treated unfairly leads to negative consequences – non-compliance and, importantly, distress. We need just institutions of criminal justice if we are to avoid hypocrisy, disaffection and further damage. But second, we need to be clear about what fairness is and what it is not. This means we need to talk about it more, investigate it further and reflect regularly on how far real criminal justice practices approximate, deliver or depart from clearly articulated principles of fairness.⁷⁹

Attrill and Liell explored prisoners' perception of the meaning of risk assessment.⁸⁰ Offenders understood risk as being determined by whether the individual denies or minimizes the offence, the lack of remorse, the belief that the offence was right, and the belief of whether other options were available. There was a general consensus

⁷⁷ Hazel Kemshall & Mike Maguire, "Public protection, 'partnership' and risk penalty" (2001) 3 *Punishment and Society* 237.

⁷⁸ Alison Liebling, "Why fairness matters in criminal justice" in Nicola Padfield, ed, *Who to release? Parole, fairness and criminal justice* (New York: Routledge, 2014) 63.

⁷⁹ Liebling, *ibid* at 78.

⁸⁰ Gill Attrill & Glenda Liell, "Offenders views on risk assessment" in Nicola Padfield, ed, *Who to release? Parole, fairness and criminal justice* (New York: Routledge, 2014) 191.

that risk of reoffending is difficult to assess, but that risk assessment can also be fairly accurate. One participant acknowledged that offenders might not provide an accurate and full account of their circumstances since the truth might prevent them from being released. As Attrill and Liell note, “offenders are more likely to share their views of the world if they feel the process is credible and collaborative and that through participating they gain useful information about how they can process, reduce and manage their risk.”⁸¹

2.2.5 Resistance

Acts of resistance are small acts of deviance that “attempts to shift the dynamics or openly challenge the givenness of situational power relations.”⁸² Ewick and Silbey explain that although these acts cannot, in that moment, bring about institutional change, it provides the individual with the temporary opportunity to reverse the trajectory of power. Although these acts of resistance might not be necessarily politically or historically significant, as would a class-action lawsuit or a strike, it still warrants the study by social scientists because it represents the way in which individuals without power can “accommodate to power while simultaneously protecting their interests and identities.”⁸³

Using the stories of individuals and their experience of the law, Ewick and Silbey capture the legal consciousness of ordinary people – that is, how individuals “understand and make sense of the law.”⁸⁴ Millie Simpson, a case study discussed by Ewick and

⁸¹ Attrill & Liell, *ibid* at 195.

⁸² Patricia Ewick & Susan Silbey, “Narrating Social Structures: Stories of Resistance to Legal Authority” (2003) 108 *American Journal of Sociology* 1328 at 1331 [Ewick & Silbey, “Narrating social structures”].

⁸³ Ewick & Silbey, “Narrating social structures”, *ibid* at 1329.

⁸⁴ Patricia Ewick & Susan Silbey, “Conformity, contestation, and resistance: An account of legal consciousness” (1992) 26 *New England Law Review* 731 at 731 [Ewick & Silbey, “Conformity”].

Silbey is one that contextualizes the legal consciousness of individuals.⁸⁵ Millie, a lower-class African American woman who worked as a domestic housekeeper for an upper class family was wrongly charged for leaving the scene of an accident and driving uninsured. When the police served her with summonses, Millie explained that she had not been using the car, but her claim was not investigated. She later found out that her son's friend had driven her car without permission, hit a parked car that was behind it, and returned the car in the original spot where Millie had previously parked.

The judge who presided over her case had asked her whether she wished to plead guilty, in which Millie replied "no" and explained that although her car was in fact uninsured, she was not driving the car and therefore, could not have been involved in an accident. She explained that it was her son's friend who had driven the car. The judge marked her as "not guilty" and set another date for a hearing. Ewick and Silbey explained that there was a disagreement between Millie's account and the official records since it indicates that Millie had pleaded guilty instead. A few weeks later, Millie appeared in court without a public defender, even though she was assigned one. She did not repeat her explanation a second time to the judge since she assumed that the first judge would have recorded the information from her first court appearance. Millie claimed that the judge had found her guilty and that her licence was suspended for a year, without any discussion. The public defender finally appeared after the judge also sentenced Millie to pay a \$300 fine and 15 hours of community service. Millie's story was relayed to her employers who decided to find an attorney for her case.

The attorney met with Millie and found that according to the public records, she had pleaded guilty. The case was petitioned to be reopened and for the plea to be

⁸⁵ Ewick & Silbey, "Conformity", *ibid* at 731-749.

withdrawn. The attorney testified that Millie was in court a few weeks ago, but did not understand what was going on in the proceedings, and the seriousness and implications of the charges. A few weeks later, Millie and the attorney appeared in court again under the same judge but this time, the attorney explained the exact same facts that Millie had reported during her first court appearance. The court found her not guilty, dismissed her charges, reinstated her license, and repaid Millie the fine that was already paid. The significance of this story presented by Ewick and Silbey is that while her employer's attorney did, in the end, relieve Millie of her charges, she participated in acts of resistance in order to retain her identity as an employee, a churchgoer, a mother, a victim of crime, and most importantly, a law-abiding citizen.

As Ewick and Silbey note, "it is out of the play of strategy and tactic, of power and resistance, that Millie's legal consciousness emerges."⁸⁶ Although Millie was innocent of the charges brought against her, she continued to accept the obligations of the summonses, appeared in court, paid her fines, and participated in community service. For her community service, as part of the penalty for her two charges, she suggested to the court officer to arrange her volunteer hours at the church where she has volunteered for over a number of years, which he allowed. In this way, she fulfilled her legal obligation while also "reversed for a moment the trajectory of power."⁸⁷ Another act of resistance taken on by Millie was when she purposely left the courtroom with her license when the court officer failed to ask for the return of her license. Through this experience, Millie was able to deflect power relations through small acts of resistance.

⁸⁶ Ewick & Silbey, "Conformity", *ibid* at 743.

⁸⁷ Ewick & Silbey, "Conformity", *ibid* at 745.

Stories and situations, as the one about Millie Simpson and her experience of resistance would not have been known to the public since these acts are a part of everyday social interactions. It is because these acts of resistance are common that they are not brought to the public view. Ewick and Silbey argue that by flushing out these hidden accounts of contestation and resistance, attention is brought to the way ordinary individuals can intersect and deflect power relations while forging individual identity, though there are two major criticisms towards this form of resistance. First, these small acts of resistance are often ambiguous, even to the practitioners themselves. It is unclear whether the actors understand what has actually transpired. Secondly, these acts of resistance lack the “vision of transformative politics” by relying on individual and trivial acts that are rarely able to bring about change within institutions.⁸⁸ Ewick and Silbey argue that these criticisms rely on the concept that power occurs before resistance and that resistance is only a response to power, when in fact, practitioners of resistance rely on their knowledge and familiarity of the organization in order to recognize flaws and vulnerabilities.

Cohen and Taylor found that prisoners often strive to avoid the deterioration of consciousness and identity either through thought or action.⁸⁹ Prisoners often focus on work in order to pass the time, but would not fully devote themselves within the task. As Cohen and Taylor noted, “it allowed them to stand back from what they did, to preserve their identity from any contamination which might result from taking such absurd matters seriously.”⁹⁰ Others would dedicate their time to work in order to suspend their self-consciousness. Cohen and Taylor argue that resistance against everyday life is an

⁸⁸ Ewick & Silbey, “Narrating social structures”, *supra* note 82 at 1330.

⁸⁹ Cohen & Taylor, *supra* note 26.

⁹⁰ Cohen & Taylor, *ibid* at 35.

impossible endeavour. Individuals are born within time, place, context, and it is inescapable. “To base a resistance plan against everyday life on the invulnerability of the individual self must fail because of the ways that self is located in time and history and rooted to specific sets of social relationships.”⁹¹ Although the individuals in the quote from Cohen and Taylor are not referring to prisoners, but rather everyday individuals within Western society who attempt to escape the routines of everyday life in the goal of achieving individuality and distancing themselves from reality, it speaks volumes to the power of social structures that prevent us from resistance.

Acts of resistance has also been studied by Goffman, which he calls “secondary adjustments.”⁹² Secondary adjustments are practices that do not directly challenge staff but allow inmates to obtain forbidden satisfactions or to obtain permitted ones by forbidden means. These practices are variously referred to as “the angles,” “knowing the ropes,” “conniving,” “gimmicks,” “deals,” or “ins.”⁹³ Secondary practices provide the inmate with important evidence that he is still his own man, with some control of his environment; sometimes a secondary adjustment becomes almost a kind of lodgement for the self. Similarly, Grounds found that some of the exonerees in his study were on hunger strikes in order to maintain their innocence, while another “adopted a defiant and resentful stance that prison rules and regulations did not apply to him because he was innocent.”⁹⁴ One reported to have been offered parole but had refused it; “his attitude was

⁹¹ Cohen & Taylor, *ibid* at 236.

⁹² Goffman, *supra* note 22 at 54.

⁹³ Goffman, *ibid* at 54-55.

⁹⁴ Grounds, “Understanding the effects”, *supra* note 12 at 26.

that he would rather either get out with his name cleared or die in prison without parole.”⁹⁵

Participants from the study by Campbell and Denov reported that the refusal to admit guilt or the non-participation in treatment programs resulted in various negative consequences, such as the denial of parole or the refusal for a placement in a medium or minimum security institution by prison administrators.⁹⁶ Even though the participant was pressured by prison administrators to complete the sexual behaviour program, he refused to participate because he was familiar with how the program works. He understood that within two weeks of that six-month program, he would have to admit to the crime that he did not commit. This demonstrates the temporary challenge to power relations using knowledge of the organization.

2.3 Conceptual Framework

Building upon Foucault’s analysis of power and resistance, the study is based on the notion that power is relational and, therefore, when power exists, the direction of power can be reversed through resistance. Foucault begins his analysis by conceptualizing the way in which power relations can be examined.⁹⁷ The examination of power and power effects “consists of taking the forms of resistance against different forms of power as a starting point. To use another metaphor, it consists of using this resistance as a chemical catalyst so as to bring to light power relations, locate their position, and find out their point of application and the methods used.”⁹⁸ Applying this

⁹⁵ Grounds, “Understanding the effects”, *ibid* at 27.

⁹⁶ Campbell & Denov, *supra* note 17.

⁹⁷ Michel Foucault, “The Subject and Power” (1982) 8 *Critical Inquiry* 777.

⁹⁸ Foucault, *ibid* at 780.

conceptualization to the current study, the first step is to locate the acts of resistance that maintain identity in order to determine the power relations that exists within the prison. Further, Foucault notes that there are commonalities within the opposition of power, 1) the opposition to power is “transversal” – meaning that it exist across space, with certain locales that experience the opposition of power to a higher degree than others; 2) the goal of the opposition is the limit the exercise of power and the power effects; 3) the opposition of power is an immediate struggle, in terms of the source of power and the timing of the opposition; 4) the opposition of power challenges the individual’s status; 5) the opposition of power entails the conflict against the “privileges of knowledge”; and 6) the struggles in the opposition of power “revolves around the question: who we are?”⁹⁹

Defined in this way, the opposition of power experienced by the wrongly convicted is apparent. The struggles among the wrongly convicted can be considered as transversal. Opposing power allows individuals to focus on limiting power effects, which in this case is the power over liberty, life, and their sense of self. Maintaining identity is not only an immediate resistance towards power, but also a way to solidify their individuality. In illustrating the commonalities in the opposition of power, Foucault asserts, “the main objective of these struggles is to attack not so much “such or such” an institution of power, or group, or elite, or class but rather a technique, a form of power.”¹⁰⁰ In this sense, power struggles and resistance is a technique of power that “applies itself to immediate everyday life which categorizes the individual, marks him by

⁹⁹ Foucault, *ibid* at 780-781.

¹⁰⁰ Foucault, *ibid* at 781.

his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize him.”¹⁰¹

The existing literature found that former identities can be deconstructed and the “criminal” label imposed. In applying this conceptual framework and examining the small acts of resistance to maintain identity, the power relations inherent in the penal regime can be examined, especially the “privileges of knowledge” as in the penal discourses that emphasizes risk, engagement, and responsibility of prisoners. These discourses demand prisoners to accept responsibility, demonstrated through compliance in all aspects of prison life, including participation in programming, “good” institutional behaviour, and demonstration of guilt and victim empathy.

This chapter locates the current study among the research on the experience of wrongful conviction, identifies the existing literature on the concepts related to the maintenance of identity, and provides the conceptual framework to examine the question of whether and how the wrongly imprisoned maintains identity in prison. The next chapter provides the methodology to examine the research questions.

¹⁰¹ Foucault, *ibid.*

3 CHAPTER 3: METHODOLOGY

3.1 Research Design

Given the focus of the research question at hand, qualitative research methods in general, and interviews specifically, would be the most suitable method in providing rich knowledge. The limited number of interview participants was a source of concern when the research first began, particularly in terms of determining whether the findings of the research would be representative of the experiences of individuals who have been wrongly imprisoned. Many researchers have shifted the focus from a predetermined number of participants within a sample, to determining the number of participants based on the research process itself and its suitability to the research focus.¹⁰²

The shift reflects the movement away from the rigidity that exists within quantitative methods and the notion that research should contain a sample that would be representative of the general population. For example, in conducting phenomenological research, Thomas and Pollio suggested that 6 to 12 participants would be sufficient, given that the participants would provide enough information to answer the research question.¹⁰³ Previous studies^{104,105} on the experiences of wrongful convictions in Canada have used a small sample size of five participants, with the justification that the wrongly

¹⁰² Ben K. Beitin, "Interview and Sampling: How Many and Whom" in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 243 at 243.

¹⁰³ Sandra P. Thomas & Howard R. Pollio, *Listening to patients: A phenomenological approach to nursing research and practice* (New York: Springer, 2002), cited in *Ibid* at 243-244.

¹⁰⁴ Campbell & Denov, *supra* note 17.

¹⁰⁵ Denov & Campbell, *supra* note 10.

convicted are an “under-researched group”¹⁰⁶ and that “the findings of the research cannot be generalized to the larger Canadian population of wrongly convicted individuals.”¹⁰⁷

Although there was no predetermined number of participants selected for the study when the research plan was first developed, it was decided that there should be enough participants to provide multiple perspectives on the research topic. Beitin explains that research can be strengthened through data triangulation, which is the use of multiple perspectives through a variety of sources¹⁰⁸, and argues that the narratives of the multiple roles on the research of interest is as crucial as the number of participants in the sample.¹⁰⁹

While acknowledging that it would be difficult to recruit participants who have been wrongly imprisoned, the research questions could be answered if the sample of participants, albeit small, was able to provide rich responses related to the research topic. The purpose of the research is not to provide general claims applicable to individuals who have been wrongly charged or convicted on how they maintained their identity. Rather, this research explores whether identities can be maintained within prisons, an area notably absent in the literature on wrongful charges and convictions.

3.2 Procedure

In order to conduct the research, ethics clearance had to be obtained from the Carleton University Research Ethics Board (REB) through a research ethics protocol application. The REB found that the research project met appropriate ethical standards and clearance was granted on October 10, 2013. Following ethics clearance, participants

¹⁰⁶ Campbell & Denov, *supra* note 17 at 141.

¹⁰⁷ Denov & Campbell, *supra* note 10 at 234.

¹⁰⁸ Beitin, *supra* note 102 at 248.

¹⁰⁹ Beitin, *ibid* at 249.

were recruited in one of three ways: 1) in person; 2) contact through an organization; or 3) contact through a social media website (i.e., Facebook). The original recruitment process involved recruiting individuals who have been wrongly convicted and imprisoned, with their convictions overturned, to participate in the study. Due to the limited number of participants available and interested, the recruitment criteria was extended to include individuals who identify as being wrongly convicted or charged, including cases that are in the process of being or applying to be reviewed, which resulted in a request for changes to the research protocol. The REB approved the change to the recruitment method on April 14, 2014. The difficulty of recruiting individuals who have been wrongly convicted with overturned convictions as participants was recognized as a limitation for this study.

Letters were sent to organizations that provide legal support to wrongly convicted individuals in order to request assistance in the recruitment process (see attached Appendix A). A Letter of Invitation (see attached Appendix B) was provided to the organizations that expressed interest in providing assistance for the study. The Letter of Invitation and the researcher's contact information were then forwarded to the clients of the organizations, with the intent that interested participants would contact the researcher directly in order to ensure the confidentiality of their clients.

The data for this study was gathered through in-depth semi-structured interviews with the participants. Participants were also asked if documents from the Correctional Service of Canada and/or the Parole Board of Canada could be provided to further develop an understanding of institutionalization discussed in the literature. Interviews were held between November 23, 2013 and May 21, 2014, with interviews lasting from

five minutes to approximately two hours in length. With the permission from the participants, documented by the Informed Consent Form (see attached Appendix C), the interviews were recorded using a digital recording device. Since there were no limitations on the geographic location of the participants, except that they must be located within Canada, internet teleconferencing (i.e., Skype) allowed participants to remain relatively anonymous while also allowing the researcher to collect data from across the country. Participants were asked on their experiences of being wrongly charged, convicted, or imprisoned, social roles prior to and post imprisonment, coping strategies, institutional incidents, relationship with correctional staff, family/friends, and other inmates (see attached list of interview questions in Appendix D).

Open-ended questions were used to allow for more rich responses while providing participants with the opportunity to claim authority and voice over the content, even though the interviewer ultimately holds control over the direction of the interview and what information is relevant.¹¹⁰ Questions were formed in a manner without presupposition to ensure that the responses provided are free from assumptions and preconceptions.¹¹¹ Although the purpose of the research is to explore identity maintenance of individuals who have been wrongly charged or convicted, the questions did not specially ask about their identity. The REB vetted sample interview questions as part of an institutionalized ethical safeguard to protect vulnerable participants against power inequalities that may occur during the interview process.

3.3 Participants

¹¹⁰ Jinjun Want & Ying Yan, “The Interview Question” in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 231 at 238-239, 241.

¹¹¹ Want & Yan, *ibid* at 239.

The study consisted of six participants who self-identify as being wrongly convicted or charged. One of the participants was approached in person following a conference where he was a guest speaker. Three others were recruited at a conference that was held in support of individuals who were wrongly convicted. Another was recruited with the assistance from an association that provides legal support to those who have been wrongly convicted. The remaining participant was recruited through the assistance of an organization that provides support and assistance to individuals who are currently or have been in conflict with the law. The organization posted a study recruitment poster on their social media page. All six participants were provided with a package containing a Letter of Invitation, an Informed Consent Form that details the specifics of the study, and the researcher's contact information. Only one participant was able to provide documents received during their term of imprisonment.

There were one female and five male participants, and they range in age from 34 to 52 years old. The least amount of time spent imprisoned was 38 days, and the most amount of time was approximately 23 years. Three of the participants were incarcerated in a federal institution, and one participant was imprisoned under provincial custody. One of the participants was imprisoned in a foreign country and was later transferred to a federal institution, and the remaining participant was held in remand in two different institutions. To date, four of the six participants have had their convictions overturned, with one participant currently requesting assistance to have their case reviewed. The remaining participant was wrongly charged and imprisoned for a short term, but the charges have been dismissed. This sample of participants is able to provide multiple

perspectives, as the study included both male and female participants with a wide range in age, experience with imprisonment, and length of time imprisoned.

3.4 Data Analysis

This study employs strategies from a grounded theory approach, which recognizes that social phenomena are dynamic and continue to evolve.¹¹² Grounded theory research is “a systematic method for constructing a theoretical analysis from data, with explicit analytic strategies and implicit guidelines for data collection.”¹¹³ This methodology was selected to simultaneously collect data on how wrongly convicted or charged individuals maintain identity and at the same time, produce theories that have not previously been examined within the literature. Researchers using grounded theory approach tend to begin their research with an area of interest and formulate preliminary interview questions in order to examine it.¹¹⁴

Using Charmaz and Belgrave’s approach to grounded theory, which combines symbolic interactionist theoretical perspective with constructivist methods, the research provides “an *interpretive* portrayal of the studied world, not an exact picture of it.”¹¹⁵ This approach to grounded theory makes three main assumptions: a) the existence of multiple realities, b) the data reflects the construction of both the researcher and the research

¹¹² Juliet Corbin & Anselm Strauss, “Grounded theory research: Procedures, canons and evaluative criteria” (1990) 13 *Qualitative Sociology* 3.

¹¹³ Kathy Charmaz & Linda Liska Belgrave, “Qualitative interviewing and grounded theory analysis” in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 347 at 347.

¹¹⁴ Charmaz & Belgrave, *ibid* at 348.

¹¹⁵ *Ibid* at 349.

participants, and c) through the data, the researcher is able to partially grasp the participant's lived experiences.¹¹⁶

The first principle of grounded theory research is to recognize changes and build upon it where data collection and analysis inform each other as an iterative process. This was true within the initial recruitment process where the number of participants were limited due to the strict eligibility criteria of including just individuals who have been wrongly convicted and imprisoned, with their convictions overturned. In recognizing that the sample of participants could be increased, the criteria were extended to include individuals who self-identify as being wrongly convicted, charged, or imprisoned. Further, following the first principle of grounded theory in recognizing and incorporating changes throughout the research process, interview questions were added to include questions that were considered to be relevant following an initial analysis and previously excluded participants were included.

The second principle of grounded theory is the recognition that participants within the research are able to choose whether to act depending on their perception of the situation and the changing conditions.¹¹⁷ Within grounded theory, researchers observe and analyze the actions and the reactions to the changes in conditions experienced by the subject.

All of the interviews were transcribed and coded manually in three stages: initial/open, axial, and selective coding. Open coding within grounded theory research involves breaking down the data analytically, where “conceptually similar

¹¹⁶ *Ibid.*

¹¹⁷ Corbin & Strauss, *supra* note 112.

events/actions/interactions are compared with others for similarities and differences.”¹¹⁸

Charmaz and Belgrave suggest the use of action codes in order to remain specific and not rush into theoretical assumptions during initial/open coding.¹¹⁹ The context surrounding each event, action, and interaction were also noted at this stage. Typically, initial coding and analysis should occur after every interview in order to inform and improve for the next set of interviews, hence the reason why this type of research is described as an iterative approach.

After the first set of interviews, several changes to the interview questions were made, including the addition of follow-up questions to clarify responses and asking participants to describe details of their wrongful conviction. By the fifth interview, new questions were added since the sample of participants now included individuals who identify themselves as being wrongly charged or convicted. A rudimentary review of the interviews revealed similarities in the experiences of the participants, though any findings at this stage can only be considered as preliminary, however, this initial coding stage allowed the researcher to be familiarized with the data and to prepare for axial coding, the next stage of data analysis.

Codes assigned at the beginning of the axial coding stage were not premeditated. Axial coding involved noting every event, action, and inaction considered as relevant to the two research questions and indexing the codes in a separate document. Corbin and Strauss points out that a hypothesis deduced from the analysis cannot be confirmed based on one incident and that the relationship formed from the analysis must be demonstrated

¹¹⁸ *Ibid* at 12.

¹¹⁹ Charmaz & Belgrave, *supra* note 113 at 357.

several times within the data.¹²⁰ Codes were then scrutinized to determine the actions and the reactions prior to and after, and the context that surrounds the event, action, or inaction that was coded. A coding manual was then created to describe the codes, along with when a specific code should be used and an example of where the code was used (see attached Appendix E). As more interviews are coded at this stage, similar codes are used to describe certain events, actions, or inactions.

Lastly, selective coding occurs in the latter part of the research and involves gathering initial codes to form focused codes, which are more abstract and general, but also more incisive than initial codes.¹²¹ In order to refine the coding manual, some codes were combined, eliminated, or fine-tuned to form core concepts, which are integrated to form analytic frameworks.¹²² In order to uncover any blind spots within the data analysis in manual coding, selective coding was conducted through NVIVO. NVIVO, a qualitative data analysis software, can retrieve “text segments that have been categorized as examples of some analytic concept.”¹²³ Interview data was uploaded into the NVIVO and the data was again coded using the concepts in the coding manual. An advantage to this software is that it allows researchers to retrieve key words within the uploaded data by making a list of words most frequently used.

In order to gather richer data, public television interviews with individuals who have been wrongly charged or convicted were also analyzed. A search of television interviews with individuals who identify themselves as wrongly charged or convicted

¹²⁰ Corbin & Strauss, *supra* note 112.

¹²¹ Charmaz & Belgrave, *supra* note 112 at 357.

¹²² *Ibid.*

¹²³ Clive Seale & Carol Rivas, “Using software to analyze qualitative interviews” in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 427 at 428.

yielded 13 results. Transcripts from the television interviews were readily available online and were included in the thesis to further enrich the findings.

The final analysis involved locating and gathering all of the information in relation to each concept and their surrounding context. The results of the data analysis, along with a list of the concepts and the number of references related to each concept will be presented in the chapter on findings.

3.5 Ethical Protection of Participants

The ethical protection of participants involves “caring about their general welfare, supporting their causes, being interested in their empowerment, and considering the potential benefits to them of participation in the research.”¹²⁴ In order to prevent any potential distress produced by the interview questions, all participants, except for one were provided with a list of available community resources and their contact information. The remaining participant expressed that a list of resources was not necessary as they work in the social services field.

Potential benefits of participation in the study were also examined as the participants were asked about their motivation for participating, in order to consider possible alignment of research results with potential benefits. For example, one participant expressed the importance of getting the message out about their experience with wrongful conviction. The potential benefit of participation for that individual could be that their interview contributes to the existing research on wrongful convictions, which in turn could also empower the participants.

¹²⁴ Marco Marzano, “Informed consent” in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 443 at 451.

In order to protect the identity of the participants, pseudonyms have been used. Any information or identifying characteristics that can be attributed to the participants, such as occupation and location, were redacted or changed, as promised within the informed consent signed by both the participant and the researcher. Publishing participants' accounts of their wrongful charge or conviction without protecting their identity and subsequently their privacy could potentially lead to negative consequences (e.g., stigma, relationship strain).

3.6 Role of the Researcher

As the researcher, I am required to examine the research from an impartial perspective while also acknowledging that my assumptions and preconceptions may interplay with the data. Finlay explains that “the reflexive interviewer looks through a critical lens at the process, context, and outcomes of research and interrogates the construction of knowledge.”¹²⁵ Reflexivity within research prompts the researcher to constantly engage in self-reflection in order to define and explain what is happening with the data, in terms of construction and interpretation.¹²⁶

Foley discusses how participants are often constructed as learners, vulnerable, or same/other by researchers.¹²⁷ “Learners” are participants who are cast as someone who can learn or benefit from participation in the research¹²⁸, which can create a power imbalance between the researcher and respondent. “Vulnerable” are participants who are

¹²⁵ Linda Finlay, “Five lenses for the reflexive interviewer” in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 317 at 317.

¹²⁶ Charmaz & Belgrave, *supra* note 113 at 355.

¹²⁷ Lara J. Foley, “Constructing the respondent” in Jaber F. Gubrium, James A. Holstein, Amir B. Marvasti, & Karyn D. McKinney, eds, *The SAGE Handbook of Interview Research: The Complexity of the Craft*, 2d ed (California: SAGE Publications, 2012) 305 at 308-310.

¹²⁸ *Ibid.*

cast as someone who is vulnerable as a result of harm without realizing that not everyone has similar responses to trauma, while “same/other” are participants who are conceptualized dichotomously without acknowledging that participants are subjects that have multiple or complex standpoints.¹²⁹ During the interview process, I was guilty of casting the participants as vulnerable individuals, especially when providing a list of available resources in the case that the interview created potential undue stress, only to be thrown off when the participant declined the list and reminded me that offering community services was part of their job.

In order to understand the impact of the research, Finlay suggests the use of key questions when conducting research: “What am I trying to do? Why am I carrying out the interview this way? How is my approach affecting the research?”¹³⁰ Throughout the research process, reflexivity was undertaken to ensure not only that the construction of knowledge was gained using a critical lens, but also to provide ethical protection of the participants.

¹²⁹ *Ibid.*

¹³⁰ Finlay, *supra* note 125.

4 CHAPTER 4: FINDINGS

4.1 Identified Concepts

Analysis of the data from the study interviews yielded 29 concepts which were grouped into main four categories: 1) security; 2) effects of wrongful charges or convictions; 3) struggles outside of prison; and 4) factors that detract or contribute to identity maintenance. The categories were formed by grouping similar concepts. For example, the category of “security” includes concepts that are related to security decisions and tactics of prisons that emerged out of the interviews. These concepts were also discussed as events, actions, or inactions that the participants had no personal control over. As for the “effects of wrongful charge or conviction”, the category includes the repercussions resulting from their wrongful charges or convictions upon the participants and the interviewees, and their families. The category, “struggles outside of prison” was formed by grouping several concepts related to issues of adjustment, steps taken to prepare for life outside of prison, and their current situation. The last category, “factors that detract/contribute to identity” was formed by grouping concepts that have emerged which are related to the maintenance of identity. This category also includes perceptions of self, the prison, their treatment, and prison staff. The use of metaphors was also tracked as part of the data analysis as it was found that participants often used specialized languages to describe their experiences.

The table (*Table 1*) below provides the frequency in which each concept was discussed and the total number of sources (i.e., participants) that made references to that concept. A short description of the participants in this study and a summary of the findings on key concepts are presented below in the section on general findings.

Table 1 - Frequency of the Concepts in the Interview Data

Categories	Concepts	Sources	References	
Security	Decisions	3	13	
	Disciplinary tactic	3	9	
	Protective custody	3	7	
	Reaction to upholding	4	10	
	Security (level, institution, tactic)	6	41	
Effects of wrongful charge or conviction	Harm	5	36	
	Harm – Others	3	9	
Struggles outside the prison	Adjustment	5	20	
	Current situation	5	27	
	Media	3	12	
Factors that detract/contribute to identity	Conflict	5	16	
	Confession	6	13	
	Coping Strategies	– Positive	5	34
		– Negative	4	9
	Errors	3	7	
	Hierarchy	5	8	
	Inmates' perception	3	6	
	Institutional jobs	3	11	
	Perception of the prison	2	2	
	Perception of prison staff	4	20	
	Perception of self	5	20	
	Perception of treatment	4	27	
	Power	5	31	
	Programs	4	19	
	Response to decisions	2	2	
Shift in focus	2	5		
Upholding	6	25		
Other	Metaphors	5	16	

Note: Sources refers to the participants interviewed for this study. References refer to the number of times a concept has been discussed by the sources.

4.2 General Findings

4.2.1 Participants

The participants spent an average of nine years in prison, with the length of imprisonment ranging from 0.11 to more than 20 years. Alex was wrongly convicted of murdering his girlfriend and served eight years in prison before his conviction was quashed on appeal. A new trial was ordered and he was subsequently acquitted. Blair was wrongly convicted of murdering a family member and served 12 years in prison before he was acquitted on appeal. Cameron was wrongly charged with sexual assault but plead guilty in exchange for a lesser sentence of less than two years. He was acquitted on appeal. Devon was wrongly convicted of the rape and murder of a young woman and served more than 20 years in prison before he was exonerated. Edie was arrested and imprisoned on a drug charge in a foreign country before being transferred to a prison in Canada. She served more than 8 years in prison and is currently trying to overturn her conviction. Francis was wrongly charged for accessory to murder after the fact and accessory to attempted murder after the fact and spent a total of 38 days in prison before his charges were dropped.

4.2.2 Key Concepts

Key concepts were determined by selecting the concepts with at least 20 references from all of the sources combined. The key concepts that had the least number of references were the perception of prison staff, the perception of self, and adjustment, whereas coping strategies (negative and positive) was the key concept that was most referenced, with over 40 references from all of the sources. The purpose of this chapter is to provide a summary of the key concepts and to familiarize readers on the participants'

experience with wrongful charge or conviction and the different concepts that emerged from the interview in preparation for the discussion part of the thesis.

Adjustment

A total of five participants discussed issues with adjustment to their life after imprisonment. Problems include the number of parole conditions in the community, other people's doubt of their factual innocence, and the effects of institutionalization. A common theme that emerged was the trouble with attaining employment, in terms of the hesitation from employers to hire individuals with the label of "prisoner" or "ex-offender" even though they have been exonerated or have been found not guilty. Two participants reported the Internet as a potential related factor that barred them from being employed. Alex describes his perception of how the Internet has affected the hiring decision of employers:

Pre 2000, you applied for a job, people look at your resume and maybe they look at your references and that's it. But all of a sudden, we're in a world now everybody's digital imprint is in everything they do. So if I applied a job with you and if I applied under my given name, you would probably type my name into Google and you would find out all these things that maybe you would be able to look past it, maybe you're not. But for a lot of people, to err on the side of caution, they're probably going to say, "You know what? I'll just pass over this candidate and move on to the next." (Alex)

Coping

Out of the six participants that were interviewed in this study, five discussed positive coping strategies, and four of whom also described negative coping strategies. There were nine reoccurring positive coping strategies discussed by the participants, some of which include reading, maintaining relationships with friends/family, keeping busy, writing grievances, being assertive, and reframing situations. Negative coping strategies are considered to be short-term strategies that can reduce symptoms but can

also maintain and strengthen the disorder. Negative coping strategies include drugs and alcohol, self-harm/mutilation, and withdrawal from others. Data from public television interviews found two individuals who have been wrongly convicted also using similar positive coping strategies such as being assertive, in terms of knowing who they are and the events that occurred on the day the victim was murdered, and staying positive that scientific evidence would be able to one day overturn their conviction.¹³¹

Harm

Five of the six participants interviewed in this study reported experiencing physical, psychological, economic, social, or other types of harm as a result of their wrongful charge or conviction. Further, data from television interviews also found the experience of harm following a wrongful charge or conviction. Some of the harm experienced includes the deterioration of family relationships, issues with trust, and the loss of their home and their time. Interest and passion were mentioned several times as something that was lost after a wrongful charge or conviction. In a television interview, Ludmila Ilina, a woman who identifies herself as someone who is wrongly convicted of murdering her husband, mentioned the ability to conduct her scientific work as something she no longer had the opportunity to pursue.¹³² Data from another television interview found that Guy-Paul Morin had an interest in a musical instrument but has since lost interest after the instrument was used in an interrogation by police officers to mislead the

¹³¹ Interview of Guy-Paul Morin by Linden Macintyre (24 January 1995) on *The Fifth Estate*, CBC Television [Interview with Guy-Paul Morin on Fifth Estate], Toronto; Interview of Ludmila Ilina by Linden Macintyre (1 April 2011) on *The Fifth Estate*, CBC Television [Interview with Ludmila Ilina on Fifth Estate], Toronto.

¹³² Interview with Ludmila Ilina on Fifth Estate, *ibid.*

individual into confessing to a murder that he did not commit.¹³³ Here, Francis also describes his loss:

I'm passionate about it. I love the work. You can just imagine just knowing...well, after just speaking to me and how I felt when they said you can never work in this industry again. I almost....a part of me died inside. I loved this work. (Francis)

Perception of prison staff

Participants expressed both positive and negative perceptions of prison staff. Most negative experiences were related to the participants' perception of the abuse of authority on the part of the prison staff and decisions made by prison staff based on the staff's own subjective views. Although Blair acknowledges the decade-long confrontation he had with a prison staff at a minimum-security prison, he alleges that he has never been involved in a physical altercation while imprisoned. Blair describes his relationship with that prison staff as a "total conflict" and because of that conflict with staff he was not allowed to work while imprisoned. Another participant who had a negative experience with a member of the prison staff was Francis, who had experience working in a correctional institution. Francis describe his negative experience:

There was a lady, everyday she would go into my cell and she would tell me that I'm not special and that she wasn't going to be treating me any differently. For the first two days, I can be honest with you, she came to the food slot and she gave me my stuff and she said, "you're not special" and I thought she was speaking to somebody else. And the second day, she did it again and I thought she was speaking to somebody else. By the third time she did it, I realize, "Oh my god, she's talking to me." [Laugh] I never even said I was special and because she was talking to me in that nature, her and I did not get along well and she wouldn't even give me anything.... She wouldn't do anything for me. She wouldn't even give me a cloth so that I can have water on it. I didn't even know that they had cloths there until I had been there for a full week. (Francis)

¹³³ Interview with Guy-Paul Morin on Fifth Estate, *supra* note 131.

Out of the four participants who recounted their perception of prison staff, only Alex had a positive experience with the staff during his imprisonment. Although Alex described interactions with prison staff as fair and respectful, he recounted an experience when he was disappointed by a decision made by the prison staff when he applied for a conjugal visit with a friend and was refused. The prison staff told Alex that “he personally did not feel that it was morally acceptable” for him to have a conjugal visit with a female that he was not married to. Even though Alex felt that it was inappropriate for that prison staff to use his own personal perspective on morality to make decisions on conjugal visits, he conceded that there was nothing he could do since the prison staff had the authority to deny his request.

Perception of self

Most of the participants either had a positive perception of self (e.g., noting their education, their knowledge, their assertiveness) or made references about their experience dealing with a wrongful charge or conviction as a source of strength. Two of the six participants mentioned taking social positions inside the prison, such as vice president of the literacy council and president of the prison, in order to improve the place and to “clean the place up.” A common theme that emerged from this concept was resiliency and the reliance on one’s self. Here Edie describes her perception of self:

Just to go through what I’ve been though, I know I’m tough. I’m probably tougher than anyone. I probably live what people won’t in 100 lives. I don’t have anything to prove. I made it back and I think that speaks for itself. I think it also speaks for my way of thinking. If I had been stupid or did stupid things, I’d be dead. (Edie)

A participant from the study as well as an individual who appeared on a television interview both mentioned their previous criminal convictions. The

participant admitted to feeling ashamed at the time of his previous robbery trial and decided to plead guilty, while the other admitted to having a criminal history prior to his wrongful conviction for murder:

I paid a very severe penalty for a crime I didn't commit, and, you know, I have committed crimes, and I'm not an innocent person in terms of being, you know, some boy scout. If did I wrong, you know, it was up to me to step up to the plate and pay the penalty, and I never had no problem doing that.¹³⁴ (Erin Walsh)

Both cases demonstrate that although some individuals who have been wrongly charged or convicted have previous criminal histories that they may not be proud of, they are willing to admit and accept their criminal past.

Perception of treatment

Four of the six participants discussed the treatment of inmates in prison in some fashion. Only Alex described his treatment as fair:

I mean I think what happens in that environment is that how you're treated really still depends on how you treat other people. I mean, I wasn't out to give the guards a hard time. And I think once they sensed that, once they sensed that here's a guy who's basically here rightly or wrongly but he's here as the saying goes "doing his own time," for the most part, they didn't trouble me, I didn't trouble them. (Alex)

Blair notes the poor treatment of Aboriginal inmates in prison and the low literacy level of prisoners, while Devon believed that a different approach should be taken in correcting criminality. He advocates for a restorative justice approach where the community is involved in dealing with the offender. Francis' perception of treatment relies upon his own experience and knowledge as a prison staffer. While he was in remand at a RCMP barracks, he was never let outside his cell and was denied a shower for the first six days, and a change of clothes for 10 days. The explanation for not providing any clothes was

¹³⁴ Interview of Erin Michael Walsh by Linden Macintyre (17 October 2007) on *The Fifth Estate*, CBC Television, Toronto.

that the RCMP barracks did not have any clothes available. Drawing upon his own experience as a prison staff, he wrote a letter to the Staff Sargent at the head of the RCMP barracks and explained that he could phone a nearby correctional facility to bring over clothes worn in the institution when the correctional facility dropped off inmates at the RCMP barracks, which Francis knows happens frequently. Francis eventually received a set of clothes after 16 days.

Power

Of the six participants, five made references to asserting power in their own way. Alex and Francis relied on their assertiveness and educational backgrounds to reclaim power and control over their lives following their wrongful charge or conviction. Four participants made references to helping others in similar situations, two of which made specific references to using the law as an avenue to provide assistance. Here Blair discusses his experience in using the law to improve the institution for Aboriginal prisoners:

I wrote so many grievances in there, after a while I bogged down the system for a bit. I wrote so many that eventually I had to take it out of the institution and I went to Aboriginal legal service here in Toronto and they helped me win a human rights complaint for what they're doing to the Aboriginal people in prison. It wasn't a personal grievance, it was what they were doing to us and I won it. (Blair)

Additionally, two participants made references to their addiction to drugs or alcohol while in prison or after imprisonment but quitting those behaviours in order to regain control over their lives. Devon explains that relinquishing control to a drug is a concern for individuals who have been wrongly convicted, especially when they're trying to get their lives back in control when coming back into mainstream society.

Current situation

Out of the five participants that discussed their current situation, only one participant thought his current position is where he was prior to his wrongful conviction. After his conviction was quashed, he enrolled at a college and worked full-time in his occupational field. Later on, he completed in a Master's program and is now successfully working full-time with the provincial government. He attributed his transition to the computer skills he acquired while he was imprisoned and working as a senior clerk in the institution library. Other participants expressed dissatisfaction with their current situation, including Blair, who explains that he has little motivation to pursue the interest that he had prior to his wrongful conviction:

I don't want to pursue anything. Maybe that's one of my downfalls right now but I got no goals. Maybe that's one of my downfalls but I got no interest to be all I could be, so to speak. I got no interest about that. Maybe I do need a goal, maybe I need something to strive for but that's really nothing I see that I want to aspire to. I see corruption everywhere. I do. I see corruption everywhere and I'd be damned if I going to be a part of it. (Blair)

The feeling of unrest and having “unfinished business” resonates for Edie who is still currently trying to overturn her conviction and for Francis who is still dealing with the after effects of his wrongful charge after four years. Here he explains the twist in his situation:

You know, in my case, being wrongfully accused of such a huge and just...that to me is horrendous, what had happened. Just to be accused of something like that and have it prolonged and really, I'm still dealing with it today. It's been 4 freaking years later and it's still not over with and done. And what bothers me, and you'll find this really ironic is, the guy that was actually sentenced to manslaughter, like my co-accused, he was sentenced to 9 years, he's going to be out on freaking day parole soon and my stuff is not going be resolved. I guess people just need to be more aware. I wish the public would be aware of the impact of our criminal justice system whether they be founded in court or unfounded, do you know what I mean? Those impacts can be devastating. (Francis)

Security

Security was a concept that was discussed by all of the participants in the study. Some described their experience with security in relation to the security level they were assessed as, while others discussed security in relation to the security level of the prison in which they were placed following their wrongful charge or conviction. A common theme was the tactics employed by the prison to ensure security, for example, the placement of the participants in segregation. While some have deemed it necessary to be placed in segregation to ensure their safety from the other prisoners, others expressed doubts whether alternatives to segregation could be considered. Francis explains his experience with segregation:

Again, I was put in the maximum security unit but not because I had done anything wrong. I was in Administrative Segregation... They could say it was for my protection, I would say it was because they didn't have control of the institution but that's between me and them. (Francis)

Upholding

All of the participants in the study discussed the concept of upholding – meaning that the participants defended their identity or their innocence following their wrongful charge or conviction. In many cases, there would be ramifications when a participant maintained their identity in front of a prison staff, including being denied a transfer to a lower security prison or a visit from family members. The maintenance of identity can be expressed in multiple ways. For example, Blair maintained his innocence by refusing to take a sexual behavioural program in prison and was denied a family visit with his mother when he refused to participate. Devon also maintained his identity in prison when he stood up to other prisoners who thought he was guilty of rape and murder. He

explained that other prisoners often beat up or set fires in the cells of prisoners that commit crimes against women or children. In order for Devon to maintain his identity as an innocent person, he would often stand up and fight to garner the respect of other prisoners. This type of behaviour eventually led to the denial of parole for Devon. Similarly, data from a public television interview found that Donald Marshall fought in order to stand up for himself and to have others prisoners back him up:

You're not naive when you're in prison. You got no other choice when you're put there. It's just a matter of fighting back. Getting people to believe in what you're really fighting for and if people know what you're fighting for is, you're going to get a lot of people backing you up. But if you're just going to walk around, saying nothing about it, it's a hard battle.¹³⁵ (Donald Marshall Jr.)

This chapter on findings provides a brief description of the participants in the study and a summary of the key concepts that were referenced most by the participants. The next chapter discusses the concepts in relation to how identities are maintained within prisons and how these concepts relate to the existing literature on wrongful charges or convictions and the prison environment. Only the concepts related to participants' experience of imprisonment was analyzed in order to determine the effects of imprisonment on identity.¹³⁶

¹³⁵ Interview with Rubin Carter, Donald Marshall, Guy Paul Morin, & David Milgaard by Tina Srebotnjak (20 February 1995) on CBC Television, Toronto [Interview with Carter, Marshall, Morin, & Milgaard].

¹³⁶ Two key concepts (adjustment and current situation) were excluded in the analysis as those concepts pertain to their experience post exoneration.

5 CHAPTER 5: DISCUSSION

In order to locate the study findings within the literature on wrongful charges or convictions, research on the prison environment and identity will be drawn upon in order to provide context in understanding whether and how the wrongly charged or convicted maintain their identity in prisons. Whether or not an individual is wrongly imprisoned – that is, whether they are *factually innocent*, the prison conditions and the relationship between prison authorities and inmates continues to exist outside of these individuals. What is of interest is what occurs when an individual, who does not identify as an offender, is placed in a prison environment where almost all of the prisoners have the commonality of having committed and been convicted of an offence¹³⁷.

This study bridges the gap between the literature on the experience of wrongful charges or convictions and the prison environment in examining the experiences of the wrongly imprisoned during their incarceration, specifically how these individuals maintain identity within a space where institutionalization occurs. The first section of the chapter discusses the mechanisms for maintaining identity in prison. The following section describes the relationship between maintaining identity and resistance, and the last section outlines potential issues that can arise while maintaining identity.

5.1 Mechanisms for Maintaining Identity

Similar to previous research on prison environments and its effect on the inhabitants, the participants in this study experienced interactions with staff that can be

¹³⁷ See Roach, *supra* note 6 (The number of wrongful convictions in Canada, in reality, is a dark figure. The indefinite number of wrongful convictions may be larger than previously speculated as more light has been shed on cases where the factually innocent individuals plead guilty).

perceived as what Goffman refers to as mortification.¹³⁸ The intent of mortification is to break down the individual upon entering the prison, which forces them to adopt an institution identity. For example, Francis experienced mortification when the staff constantly reminded him that he was not “special.” Although Francis acknowledged that he was remanded in the RCMP barracks under unusual circumstances, as individuals awaiting trial or bail are typically remanded to a correctional institution, it was a decision that was thought to be in his best interest as he was previously employed as a prison guard and there was concern that the other staff at the correctional institution would question him.

The research on masculinity in prisons found that the prison environment forces inmates to adopt hyper-masculine attitudes, values, and behaviours in order to adjust to prison life.¹³⁹ Prison writers often paint a vivid experience of life in prison. Here prison writer, Michael Hodge wrote about his change in behaviour: “I’m not a violent person by nature, but Guelph Reformatory was not a normal environment... The violence was a common, everyday occurrence. In time you built up a psychological immunity to it.”¹⁴⁰ Furthermore, Jewkes argues that male prisoners often have the desire to prove their manhood, prior to and during imprisonment.¹⁴¹ This desire creates an environment where a hierarchy of power exists. Inmates that have committed criminal acts that are perceived positively by other inmates, such as armed robberies, murder, and organized crimes are

¹³⁸ Goffman, *supra* note 22.

¹³⁹ Nick de Viggiani, “Trying to be Something You are Not: Masculine Performances within a Prison Setting” (2012) 15 *Men and Masculinities* 271 at 276-294.

¹⁴⁰ Michael Hodge, “The Criminal Factory” (1991) 11 *Words from Inside* 7 at 10.

¹⁴¹ Yvonne Jewkes, “Men Behind Bars: “Doing” Masculinity as an Adaptation to Imprisonment” (2005) 8 *Men and Masculinities* 44.

considered as top tiered.¹⁴² Inmates who have committed a sexual offence against women or children are considered to be the bottom rung of the hierarchy. Jewkes argues that pedophiles and rapists are subordinate to those at the top of the hierarchy because sexual offences, especially against children “deviate from conventional heterosexual masculine norms,” thereby providing legitimacy for offenders at the top of the hierarchy to commit physical violence against those inmates.¹⁴³ Having prior experience of imprisonment, Blair knew what prison would be like for those who have been convicted of an offence against women and children.

When Blair first arrived at the prison following his wrongful conviction, two prisoners approached and warned Blair that if he was still in prison the next day, five of them (the prisoners) would kill him. Blair explains his experience with other inmates’ perception of good and bad crime:

Well, I've done time before and I know what goes on in prison, how convicts behave and the hierarchy of crime. What's perceived as good crime/bad crime and my crime was, I was scum of the scum. The scum wanted to kill me. You know, the scum wanted to kill me, that was how low I was on that totem pole. And I knew it because I did that before and I know what that life is like. I know how people behave and how people's perceptions are...I was surprised when I got to the federal system. I'm surprised I lasted two months. (Blair)

Unfortunately, the sex offender label is used in prison as a form of informal social control by prison staff. The disclosure of a prisoner’s charges could have potential dangerous impacts, especially if that offence was sexual.¹⁴⁴ Similar to what Goffman refers to as the “obedience test,”¹⁴⁵ Ricciardelli and Spencer found that prison staff would threaten to

¹⁴² Rosemary Ricciardelli & Mackenzie Moir, “Stigmatized among the Stigmatized: Sex Offenders in Canadian Penitentiaries” (2013) 15 *Canadian Journal of Criminology and Criminal Justice* 353 at 366.

¹⁴³ Jewkes, *Supra* note 141 at 52.

¹⁴⁴ de Viggiani, *supra* note 139 at 281.

¹⁴⁵ Goffman, *supra* note 22 at 17.

expose prisoners as sex offenders in order to secure compliance, even for the offenders that did not commit a sexual offence.¹⁴⁶ Blair had this experience when a prison staff, who he had a poor relationship with, placed his life at risk when the staff bought up his charges in front of other prisoners. As Blair attests, “It’s illegal. It’s not that you don’t do it in a matter of politeness. It’s illegal to do that. It’s illegal to do that because it puts that person’s life at risk immediately.” Considering the prison culture and attitudes of staff and inmates, not only do individuals who have been wrongly charged or convicted have to develop mechanisms to survive the prison environment, these individuals also have to maintain identity in a way that reverses the direction of power through acts of resistance. Still, these mechanisms are often followed by immediate or future repercussions.

5.1.1 The Mechanisms

The present study found that individuals who have been wrongly charged or convicted continue to negotiate their identity within the prison in various ways, though the mechanisms varied from person to person. While the mechanisms differ among the participants, a similarity in the maintenance of identity is that it is often an instinctive act, similar to Foucault’s conceptualization of power and resistance where the opposition of power is an immediate struggle, in terms of the source opposed and the timing of the opposition.¹⁴⁷ In other words, the individuals demonstrate an automatic behaviour that can be considered as resistance against the closest source of power in order to preserve their identity. Francis’ wrongful charge and imprisonment provides an example of the immediate resistance that occurs in the course of maintaining identity.

¹⁴⁶ Rose Ricciardelli & Dale Spencer, “Exposing ‘Sex’ Offenders: Precarity, Abjection and Violence in the Canadian Federal Prison System” (2014) 54 Br J Criminol 428 at 440.

¹⁴⁷ Foucault, *supra* note 97 at 780-781.

When Francis was in custody, his co-accused, Mike was placed across from his cell, which was located in the back of the courthouse. Francis was charged with accessory to murder after the fact and accessory to attempted murder after the fact when Mike, an ex-offender, stabbed and killed a man and injured another in self-defence and fled with Francis in the car. Still, Francis had no knowledge of the incident before Mike got into the car since Francis was in his car during the time of the incident. While Francis and Mike were in custody, they were instructed not to speak to each other. Here Francis describes his anger at not knowing the reason why he was still arrested:

Well, at that point I was quite angry because again, I didn't know what had happened. When I knew he had been placed across from me I was quite angry and I was saying things that was probably not appropriate. There was a lot of swearing and I wanted to know what had happened. I kept on telling everybody, you tell the truth because I had nothing to do with this. I didn't think anybody was telling the truth because if everybody told the truth, why am I sitting here? So I got charged with caught having communication with him and...I don't know, I got into an argument with them as well because I said, "Well, if we're supposed to have no contact with each other, then why would you place me right across from him." That may have been a set up, right? (Francis)

The interaction above demonstrates that Francis' instinctive and immediate reaction to being wrongly charged. Not only did he voice his innocence in the involvement of murder, it was also his strategy to obtain answers from Mike. Even though his attempt at finding the reason why he was still charged was not successful, he was able to exert resistance and maintain true to his identity but not without repercussions. Francis received three additional charges for the violation of court orders for contacting his co-accused, however, his initial charges were stayed when Mike pleaded guilty to manslaughter and aggravated assault when he accepted a plea bargain to lesser charges.

Subsequently, Francis received an absolute discharge on his charges for violating a court order.

Another example of a mechanism to maintain identity is when the wrongly charged or convicted voiced and opposed errors in their correctional file. Alex discovered an error in his correctional file when he applied for an escorted temporary absence – a temporary pass outside the prison accompanied by prison staff, to attend his mother’s funeral. His request was initially rejected because his file indicated that he had attempted to contact witnesses during the investigation stage of the charge he was later convicted of. After he proved to the prison staff that the claim was false, he was allowed to attend his mother’s funeral escorted by prison staff.

Similarly, Blair also had an error on his file that prevented him from a visit with his mother. The prison staff did not allow a family visit until Blair had completed sexual behaviour programming. Although sexual assault was speculated as the cause of the death of the victim, sexual assault was never proven in court. After he was denied a family visit with his mother due to his non-participation of the sexual behaviour program, he directed the prison staff to show him where on his file did it state that a sexual assault was committed, to which the staff responded that it was not in his file¹⁴⁸. Even though the prison staff admitted that sexual assault was not on his correctional file, Blair never had a visit with his mother, the only person in the family who did not ostracize him after his wrongful conviction.

Unfortunately, errors in correctional files were a common occurrence for the wrongly imprisoned participants in this study. Edie, who was convicted of drug charges

¹⁴⁸ Blair was arrested and charged for the murder and sexual assault of one of his family members. Even though he was convicted of first degree murder, there was no physical evidence that linked him to the death.

in a foreign country, was mistaken for her sister who had a lengthy criminal history including possession of narcotics for the purpose of trafficking, trafficking, possession of a concealed weapon, theft over \$1,000, use of a firearm during the commission of an offence, and robbery.¹⁴⁹ The authorities in the foreign country where Edie was arrested had mistakenly taken her sister's criminal record into consideration. Before being permitted for a transfer back to Canada under the *International Transfer of Offenders Act*¹⁵⁰, Edie had to sign an agreement with the terms and conditions of the transfer, which included the details of "her" criminal record. If Edie declined to sign the agreement, she would not have been allowed to transfer back to Canada. After she arrived to the prison in Quebec, they realized that Edie's fingerprints did not match with the prints the prison had on file since it belonged to Edie's sister. Still, it was a detail that the prison administrators were not concerned with. As Edie explains "I had to sign it if I wanted to come back here. So, it's like I had to admit I had all of these convictions cause otherwise..." As Edie's voice trails off, it demonstrates her limited choices in that particular situation.

The examples with Francis, Alex, Blair, and Edie illustrated the mechanisms to maintain identity, as well as the results of applying that mechanism, vary from individual to individual. Nonetheless, all of the mechanisms were employed instinctively when faced with opposing forces. In the case of Alex and Blair, maintaining identity meant indicating the errors on the file to prison staff right away, however, as demonstrated, mechanisms can lead to mixed results. Blair's example reflects one of the commonalities in "anti-authority struggles" in Foucault's concepts of power and resistance in that "they are struggles which question the status of the individual: on the one hand, they assert the

¹⁴⁹ As indicated in the transfer agreement provided by the participant.

¹⁵⁰ *International Transfer of Offenders Act*, SC 2004, c 21.

right to be different, and they underline everything which makes individuals truly individual. On the other hand, they attack everything which separates the individual, breaks his links with others, splits up community life, forces the individual back to himself, and ties him to his own identity in a constraining way.”¹⁵¹

One of key themes in the Correctional Service of Canada’s Transformation Agenda to increase public safety is enhancing offender accountability by providing inmates with the opportunity to participate in rehabilitative programs and motivational support.¹⁵² The refusal for Blair to have a family visit with his mother demonstrates that he is provided with the opportunity to be involved in rehabilitation and motivational support, only when he does seek the support of his mother he is punished for not completing sexual offender programming. Under Commissioner’s Directive 559, visits are “a mechanism for inmates to develop and maintain positive community for family relationships, to assist in meeting the objectives of their Correctional Plan and facilitate their timely reintegration, while contributing to the protection of society.”¹⁵³ Visits are available to all inmates unless the security of the prison is in jeopardy or if their eligibility for visits has been suspended as part of the disciplinary sanction(s) imposed on inmates that have committed a disciplinary offence.

Under section 40 of the *Corrections and Conditional Release Act* (CCRA) are the prison misconducts considered as disciplinary offences, some including disobeying a justifiable order from a prison staff, committing theft, possessing stolen property,

¹⁵¹ Foucault, *supra* note 97 at 781.

¹⁵² Correctional Service of Canada, *Transformation* (Ottawa: Correctional Service of Canada, 2012), online: Correctional Service of Canada <<http://www.csc-scc.gc.ca/about-us/006-0009-eng.shtml>>.

¹⁵³ Correctional Service of Canada, *Commissioner’s Directive 559* (Ottawa: Correctional Service of Canada, 2012), online: Correctional Service of Canada <<http://www.csc-scc.gc.ca/text/plcy/cdshtm/559-cd-eng.shtml>>.

possessing or dealing contraband, and fighting or threatening to assault another person.¹⁵⁴ Despite the fact that non-participation of correctional programming is not considered as a disciplinary offence, Blair was denied his visit with his mother. Still, refusal to participate in correctional programs could be considered as disobeying a “justifiable order” from a prison staff. Although, what is considered as “justifiable” is not clearly defined. Kabuni explains that the lack of a clear definition “makes interpreting this prohibited behaviour vague and variable, and subject to the circumstances and the witness to the misconduct.”¹⁵⁵

Given that the participation in rehabilitative programs for educational, work, and personal development has been found to reduce criminal behaviour and improve positive behaviour in prison, it provides a rationale for the penal regime to exert means to alter the behaviours considered to be negative.¹⁵⁶ Nonetheless, the lack of a clear definition of what is considered to be “justifiable” inhibits the ability for inmates to interpret what is considered as “approved” behaviours under the penal regime. As such, it allows the prison authorities to exercise power over offenders by the imposition of disciplinary sanctions. Here, Blair’s denial of visits with his mother becomes a power interaction in which the identity struggles between the penal regime’s determination of Blair as an “offender” and his insistence of his own innocence.

As for Edie, she understood that a transfer back to Canada meant that she would have to sign an agreement that included the details of her sister’s criminal record.

¹⁵⁴ *Corrections and Conditional Release Act*, SC 1992, c 20, s 40.

¹⁵⁵ Marcel Kabundi, “Canadian Prisoner’s Right to a Fair and Impartial Disciplinary Proceedings”, online: (2006) 3 Penal Field at para 11, <<http://champpenal.revues.org/612>>.

¹⁵⁶ Laurence L. Motiuk, *The effectiveness, efficiency and relevancy of correctional programs: A system’s perspective* (Tokyo: The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offender, 2012), online: UNAFEI <<http://www.unafei.or.jp>>.

Although she had to continue her prison sentence in Canada, she had control over her situation when she decided that she did not want to continue serving her sentence in a foreign country. These examples demonstrate that identity is a constant negotiation where the wrongly imprisoned do not always succeed in the power struggles that exist within the prison environment, however, the mechanisms of resistance that are employed provides the individuals with at least some traction allowing them to continue their struggle towards freedom. The next section of this chapter demonstrates how participants maintain identity through acts of resistance in wrongful charge or conviction cases.

5.1.2 Relationship between Maintaining Identity & Resistance

Participants, Alex and Blair, both mentioned CORCAN during the interview. The Correctional Service of Canada (CSC) promotes CORCAN as a rehabilitation program that provides inmates with “employment and employability skills training while incarcerated in federal penitentiaries.”¹⁵⁷ There has been some research on CSC’s prison labour program. Research conducted by CSC found that CORCAN participants were more likely to be granted day parole than inmates employed through prison work and unemployed prisoners.¹⁵⁸ Yet Rymhs’ study on the prison writings of Canadian inmates found that prisoners often present a counter-narrative of prison labour that acknowledges their own institutionalization through the production that only serves to benefit the prison.¹⁵⁹ Even though CORCAN workers get paid more and receive training onsite, and

¹⁵⁷ Correctional Service of Canada, *CORCAN* (Ottawa: Correctional Service of Canada, 2013), online: Correctional Service of Canada <<http://www.csc-ccc.gc.ca/corcan/index-eng.shtml>>.

¹⁵⁸ Correctional Service of Canada, *Outcomes for Offender Employment Programs: Assessment of CORCAN Participation* by Amanda Nolan, Geoff Wilton, Colette Cousineau, & Lynn Stewart (Ottawa: Correctional Service of Canada, 2013).

¹⁵⁹ Deena Rymhs, “‘Docile bodies shuffling in unison’: The Prisoner as Worker in Canadian Prison Writing” (2009) 6 *Life Writing* 313 at 317-324.

in rare cases, acquire certification for trades, there is resistance in becoming part of the prison industry, a sentiment that resonates with Blair.

Blair refers to CORCAN as “slave labour” based on the amount of pay that workers in the program receive.

It's fucking slavery that goes on in there. That's why I would not work CORCAN. Guys tried to get me to work CORCAN, you go be a slave, I'm not gonna. You go bust your fucking asses for a buck an hour. I'm not gonna. I'll sit in my cell and sleep. I'll let the guards bring me my food. I'm not being paid to be here, I'm being forced to be here. (Blair)

Blair’s statement represents his refusal of the “institutionalization” of prison and his stance against becoming part of the prison industry in which the institution benefits.

While acknowledging that he is a prisoner against his will, Blair wittingly demonstrates resistance by reversing the power roles in prison when he makes the remark about the prison guards serving his meal, effectively challenging his own status as an “offender” and casting the guard in a role reversal. Alex, however, had a different perspective of the CORCAN program.

Alex was arrested for the murder of his girlfriend. Unlike the other participants, he made the decision to take advantage of his time in prison as much as he could, even though he did not deserve to be there. He felt that he improved his computer skills, a skill he did not have when he was first admitted into the prison. Other than working in the institutional library, he also worked at CORCAN for two years as a payroll clerk which ultimately, indirectly benefited his appeal.

I worked for CORCAN for two years. So I was able to save a little bit more money. The problem, of course, not that it was a huge problem, was that there were some experts that my lawyers wanted to hire and in an effort to get me out of prison, like on appeal. So I had to contribute a little bit more money there. (Alex)

Alex claims power by recognizing that although he is wrongly imprisoned, he acquired skills in the prison that he did not have prior to his conviction. Working in the institutional library made him realize how much he enjoyed the field. In fact, after he was released, he pursued further education in a field related to his position in the library, thereby maintaining his identity. Alex's example also demonstrates an act of resistance to institutionalization and his wrongful conviction by using the money acquired by working in a position in which he benefitted (e.g., economically and training) and using the money towards hiring an expert for his appeal, effectively limiting the power effects on his liberty.¹⁶⁰

Grievances were mentioned in the interviews with two of the participants. Blair recalled writing many grievances while he was in prison, to the point that "after a while [he] bogged down the system for a bit." He explained that the grievances were for the treatment of Aboriginal people in prisons, particularly the overrepresentation of Aboriginal people in federal custody, their high security ratings, and the limited amount of programs offered to Aboriginal prisoners. Through his grievances, he eventually won a human rights complaint for the treatment of Aboriginal prisoners. Although he cannot talk about the grievance specifically, he noted that the settlement was never fulfilled. Here, the resistance against the penal regime is immediate, however, the results of the opposition of power is not. Even though Blair did not have his settlement carried out, submitting a grievance and having the treatment of Aboriginal offenders in prison acknowledged, he limited the power effects of the penal regime.

¹⁶⁰ See Foucault, *supra* note 97 (Foucault uses the medical profession as an example of power effects as the profession "exercises an uncontrolled power over people's bodies, their health, and their life and death" at 780).

Francis reported writing grievances as well, not when he was in prison, but after his charges were dismissed. His example was included because even though he was released from prison with his charges stayed, he still had to grieve for his job. Francis was fired from his job as a prison guard after his accessory charges. Even after his accessory charges were stayed and he received an absolute discharge on the breach charges, his union declined to pursue the termination of his employment on his behalf. He then filed an application to the Labour Relations Board, alleging that his union failed to provide him with fair representation. The Board ultimately decided that the union's decision would not be reviewed since his employment was terminated based on a violation of the code of professional conduct with respect to the relationship policy on relationships with offenders or ex-offenders. Francis was in a relationship with an ex-convict at the time but had taken the steps to e-mail his supervisor about the existing policy on relationships. His supervisor replied that he himself was not clear on the policy and advised Francis to check the policy books at the office. Since Francis was on vacation at the time, he did not return to work to check the policy before the charges were laid. Even with evidence that he had attempted to clarify the policy on relationships with his supervisor, he was still not able to return to his position as a prison guard.

In the interview with Francis, he expressed tremendous passion towards his position and the meaning behind his uniform:

Even today, I mean I miss wearing my uniform. I miss being a part of justice in a way that I felt I could make a difference and that uniform was something else. I mean I truly miss wearing that uniform but I don't know why. I don't respect the people that wear it to this day but for me, I think it meant something to me. It was like a badge of honour. (Francis)

To Francis, working as a prison guard meant making a difference in the lives of prisoners. Growing up, Francis' life was turbulent as a result of being raised in foster care and living on the streets. He takes pride in knowing where he came from and that he lived with very little prior to receiving a degree and becoming a prison guard. Francis started his position with the attitude of empowering inmates and believing that they could do the same. Currently, Francis continues to work with prisoners in federal prisons through a non-government agency that provides support to those who have been in conflict with the law, although he had some difficulties obtaining security clearance at first. He explained that in his province, the ex-offender label is applied to anyone who has been charged or have been remanded in an institution within the last five years, regardless of whether they had been convicted or not. Even though his charges were stayed, he was charged and remanded at one point within a correctional institution, thus giving grounds to deny him access to a prison position.¹⁶¹ Although he continues to have access to work in a federal jail, he is still not permitted to work in a provincial jail. Francis' case demonstrates that although he was not able to return to his previous position as a prison guard, he resisted his status as an "ex-offender" by working in a position where he continues to have access to the prison while also being able to provide support to inmates as he had done before, thereby maintaining his identity.

Another example of a mechanism to maintain identity was contradicting the perception held by a prison staff. After Edie returned to Canada to complete the remainder of the sentence, she met with a psychologist at the prison who asked about her plans following release. She replied that, first, she was going to find work within a couple

¹⁶¹ Francis was initially remanded to the RCMP barracks but was later transferred into administrative segregation in a correctional institution.

of days, then start writing her book within weeks, and eventually work to get her book published. The prison psychologist replied that she was out of touch with reality and that she was only a dreamer. Here, Edie's opposition to power is immediate in that she resisted the psychologists' determination of who he thinks she is. In response to the psychologist's characterization of her ambition as unrealistic, Eddie boasted of having found work as soon as she was released from prison. Foucault notes, "in such struggles people criticize instances of power which are the closest to them, those which exercise their action on individuals. They do not look for the "chief enemy" but for the immediate enemy."¹⁶²

In all of the examples discussed above, the participants were able to exercise resistance and limit the effects of power from opposing sources, thereby maintaining their identity. Although the participants were able to reverse the direction of power, even within prisons – a site of power inequalities and coercion¹⁶³, the benefits of maintaining identity were often accompanied by immediate repercussions. Using the example with Blair, he experienced a small gain by questioning the prison staff where on his file did it indicate the evidence linking him to the sexual assault of his victim when the prison administration directed Blair to complete a sexual behaviour program. However, it led to the denial of a visit with his mother. The next section discusses the different types of repercussions and explores the penal environment that leads the wrongly charged or convicted to employ mechanisms to maintain identity that can be identified as behavioural misconduct in prison.

5.1.3 Immediate Repercussions

¹⁶² Foucault, *supra* note 97 at 780.

¹⁶³ Mary Bosworth & Eamonn Carrabine, "Reassessing resistance: Race, gender and sexuality in prison" (2001) 3 *Punishment & Society* 501.

As previously discussed, prisoners often “perform” masculinity which could lead some prisoners to direct hostile attitudes towards other prisoners that commit offences against the social norm, such as sexual offences, especially towards children. When Blair was being threatened with death, he requested a placement in protective custody in another prison. Protective custody is a structure within the institution where at-risk prisoners are placed when separated from the general prison population.¹⁶⁴ Blair was eventually transferred to another institution but not before spending four months in administrative segregation, also known as the hole or “checking in.”

Administrative segregation can be voluntary or involuntarily. Involuntary administrative segregation is when inmates are placed in segregation because they are considered as “a danger to staff, other inmates, or the security of the institution,” whereas voluntary administrative segregation involves inmates requesting to be placed in segregation for fear that their lives are in jeopardy.¹⁶⁵ Under the *Corrections and Conditional Release Act*, “the purpose of administrative segregation is to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates.”¹⁶⁶ Despite the fact that the purpose of protective custody and administrative segregation is for the protection of at-risk inmates from the general offender population, segregated inmates can spend months or even years in isolation with

¹⁶⁴ Rose Ricciardelli, *Surviving Incarceration: Inside Canadian Prisons* (Waterloo: Wilfrid Laurier University Press, 2014) at 153.

¹⁶⁵ Correctional Service of Canada, *Profile of Offenders in Administrative Segregation: A Review of the Literature* by Shauna Bottos (Ottawa: Correctional Service of Canada, 2008) at 4; Correctional Service of Canada, *Moderating segregation as a means to reintegration* by Cherami Wichmann & Mark Nafekh (Ottawa: Correctional Service of Canada, 2001).

¹⁶⁶ *Corrections and Conditional Release Act*, *supra* note 154 at s 31(1).

restrictions to movement beyond regular incarceration experienced by the general population of inmates.¹⁶⁷

In the *Annual Report of the Office of the Correctional Investigator* from 2011-2012, it was found that “while the law requires that segregation be used as a last resort and for the shortest period possible, it has become a standard tool of population management and to maintain the safety and security of the institution.”¹⁶⁸ Although Blair recognized that the placement in segregation was for his own safety, it questions the amount of control the prison administration has over the institution considering that the only avenue to protect at-risk inmates is segregation. Francis, who was also placed in administrative segregation when remanded in a correctional institution, doubted the prison authority’s justification for the placement as protection. Alternatively, drawing upon his own experience as a prison guard, Francis concedes that the actual reason is the authority’s lack of control over the prison. If segregation is a “devastating experience, particularly when its duration is unknown at the outset,” an alternatives should be considered to protect at-risk inmates against prison violence without isolation.¹⁶⁹ This questions how the wrongly imprisoned should negotiate with the possibility of prison violence when maintaining identity, especially since there only a few choices available. Devon’s experience demonstrates the intricacies of the prison environment for the wrongly charged or convicted.

¹⁶⁷ Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston, (Ottawa: Solicitor General of Canada, 1995) [Arbour Report] at 102; Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2011-2012* (Ottawa: Office of the Correctional Investigator, 2012) at 29.

¹⁶⁸ Office of the Correctional Investigator, *ibid.*

¹⁶⁹ Arbour Report, *supra* note 167 at 103.

In order to resist the sex offender label in prison, Devon reported being involved in physical fights with other inmates. He characterized fighting as something that he had to do in order to stand up to those who threatened him and he sensed that over time, by not requesting a transfer to protective custody, and maintaining his innocence by standing his ground and fighting, he garnered the respect of other prisoners. Other wrongly convicted individuals have reported similar experiences. A participant in this study, Edie, as well as Donald Marshall Jr., a man wrongly convicted of murder, spoke about fighting with other inmates in prison. Marshall's confrontation could be interpreted as an inclination or an instinctive act, with the reference to the fighting as his only choice in order to get other inmates to back him up.¹⁷⁰ There are options available for at-risk inmates in prison other than segregation, such as protective custody – a part of the prison that has been deemed to protect certain inmates from the rest of the general offender population; however, it is an option that has an attached stigma. During the interview, Devon was adamant about not being placed in protective custody, perceiving those that request to be transfer into protective custody as “real shit” and a place where terrible people, responsible for committing crimes against women and children go. He would rather stand up and fight rather than be with the inmates in protective custody, which meant he would sometimes be placed in disciplinary segregation. Indeed, a stigma exists for inmates placed in protective custody.

Inmates in protective custody are often regarded with hostility and negativity. Blair claimed it as a place “reserved for people with sex charges, rats, and weak-spirited, weak-minded people that could be taken advantage of” while ultimately recognizing that it is his last stop. In her research on protective custody, Ricciardelli found that once an

¹⁷⁰ Interview with Carter, Marshall, Morin, & Milgaard, *supra* note 135.

inmate is placed under protective custody, he is perceived by other prisoners as either a rat, in debt, or a sex offender, and that once an inmate is transferred to protective custody, he could not return safely back into the general prison population.¹⁷¹ Given the negative association of protective custody and the limited protection offered by the prison to protect inmates in protective custody, the resistance to the sex offender label through prison misconducts, such as fighting with other inmates may be perceived as a rational choice. Still, the decision for the wrongly charged or convicted can seem like being stuck (or imprisoned) between a rock and a hard place.

During the interview, Devon conveyed his state of mind being imprisoned as a young person in a maximum security prison. After being charged with escaping custody, he was placed in segregation and received a higher security rating. Despite knowing the repercussions, such as a higher security rating, placement in the “hole,” and transfer to another high security prison, he maintained his identity as an individual who did not commit the offences for which he was convicted. Considering the participants’ perspective of protective custody and the incidents of fights and escapes, what other prison misconducts are associated with the mechanism in which the wrongly charged or convicted seek to maintain their identity?

CSC categorizes prison misconducts on two levels. Homicide, assault, sexual assault, fighting, possession of drugs, possession of weapons, and escape/attempts are some of the offences considered as major misconducts, while being in an area that is restricted, damaging/destroying property, and disrespecting/being abusive toward staff, and disobeying an order/rule are some of the offences considered as minor misconducts

¹⁷¹ Ricciardelli, *supra* note 164 at 153.

in Canadian federal institutions.¹⁷² The frequency of institutional misconducts, measured through the number of warnings, charges, and/or amount of time spent in segregation are considered when assessing a prisoner's "institutional adjustment."¹⁷³ In this regard, an inmate's involvement with prison misconducts are reflective of personal factors – their inability to "adjust" to the prison environment, rather than the factors within the institution that may be inductive to minor or major misconducts, such as the "pains of institutionalization" or the prison environment itself.

The initial security level and prison placement of an inmate is based on the results of the Custody Rating Scale (CRS), as well as an assessment by a parole officer, along with a number of other psychological assessment scales, if applicable.¹⁷⁴ CSC considers the CRS as a measure of institutional adjustment and security risk.¹⁷⁵ The CRS considers two dimensions: institutional adjustment and security risk. The institutional adjustment dimension takes into account behaviour in prison (i.e., involvement in institution incidents and escapes in any period of incarceration including prior periods), street stability (i.e., employment/education, marital/family adjustment, interpersonal relationships, and living arrangements of the inmate at the time the offence was committed), alcohol/drug use, and age at sentencing; while the security risk dimension considers the number of prior convictions, the most severe outstanding charge, the

¹⁷² Correctional Service of Canada, *A Descriptive Profile of Older Women Offenders* by Leigh Greiner & Kim Allenby (Ottawa: Correctional Service of Canada, 2010) [Greiner & Allenby]; Ahmad Saleem Alhijili, *An Examination of Misconducts in Canadian Prisons* (MA Thesis, University of Regina, 2013).

¹⁷³ Greiner & Allenby, *ibid.*

¹⁷⁴ Correctional Service of Canada, *Commissioner's Directive 705-7* (Ottawa: Correctional Service of Canada, 2014), online: Correctional Service of Canada <<http://www.csc-scc.gc.ca/acts-and-regulations/705-7-cd-eng.shtml>>; Correctional Service of Canada, *Use of the Custody Rating Scale with male offenders* by Renée Gobeil (Ottawa: Correctional Service of Canada, 2011).

¹⁷⁵ Gobeil, *ibid.*

severity of the current offence, sentence length, street stability, prior history of parole or statutory release, and age at first federal admission.

Prisoners can be classified as minimum, medium, or maximum security risk based on the CRS scores. A score of 95 or more on the institutional adjustment dimension or 134 or more on the security risk dimension would classify as a maximum security level. For an individual entering a federal prison for the first time, only street stability, alcohol/drug use, age at sentencing, number of prior convictions, most severe outstanding charge, severity of current offence, sentence length, and age at first federal admission would be considered. Since the measure was developed in 1987, Gobeil conducted a study to revalidate the CRS to ensure that it is a valid measure to predict institutional adjustment and security risk.¹⁷⁶ Revalidation of the CRS found that inmates classified as higher security risk were less likely to be granted parole, less motivated, have lower reintegration potential, and more participated in institutional misconduct more frequently.

Participants, Alex, Blair, and Devon were all wrongly convicted of murder at a young age. Alex and Blair were placed in a high-medium security prison following their security classification whereas Devon was initially placed in an institution with minimum, medium, and maximum units and was later transferred to a minimum and medium security prison. After Devon's escape, he received a higher security rating in a higher security prison. Nonetheless, all three participants would have been automatically classified as high risk on the security level rating for at least two years based on the severity of the offence and the sentence length alone if their security classification were conducted after the policy amendments in 2001. Prior to the amendments, many individuals convicted of murder with no prior criminal convictions were assessed as

¹⁷⁶ Gobeil, *ibid.*

medium security and would not be considered as a high risk for escape or a prisoner requiring a high degree of supervision.¹⁷⁷ Considering the findings of the CRS on high security inmates, rationale is provided for placing these inmates in an environment suitable to their security risk. Yet for the wrongly charged or convicted, the placement in high or medium security institutions may be the catalyst for their involvement in prison misconducts.

There is much research on the relationship between security level rating and prison misconducts.¹⁷⁸ Worrall and Morris found that not only a relationship between security level and prison misconducts exists, but that the two variables simultaneously affect each other.¹⁷⁹ In other words, increased security level is positively associated with increased prison misconducts and increased misconducts are positively associated with increased security level. Ricciardelli explains that violent behaviours are common within institutions with high security ratings since “prisoners are more threatened, less safe, and felt less protected (e.g., correctional officers are not physically present). The coercive controls (e.g., lack of direct supervision, constant video monitoring, highly regulated movements) combined with the absence of officers may actually amplify the violence in these institutions by facilitating a need for self-policing and regulation among prisoners.”¹⁸⁰ Moreover, Sorensen and Davis suggests that “heavily weighting classification decisions on the basis of crime of conviction could produce a large number

¹⁷⁷ Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prison* (Vancouver: Douglas & McIntyre, 2002).

¹⁷⁸ Ricciardelli, *supra* note 164; John L. Worrall & Robert G. Morris, “Inmate Custody Levels and Prison Rule Violations” (2011) 91 *The Prison Journal* 131; John E. Berecochea & Joel B. Gibbs, “Inmate Classification: A Correctional Program that Works? (1991) 1 *Evaluation Review* 333.

¹⁷⁹ Worrall & Morris, *ibid.*

¹⁸⁰ Ricciardelli, *supra* note 164 at 99.

of false positives, those predicted to be violent and thus classified to higher security levels than necessary to adequately control their potential risk of committing such acts.”¹⁸¹ This finding is based on their study that found inmates convicted of homicide were not more likely to participate in dangerous rule violations than inmates convicted of property crimes.¹⁸²

Accounting for the research on the relationship between high security ratings and subsequent placement in an institution with inmates with similar security ratings, the question remains whether the environment within prisons, or at least prisons that house inmates classified as high-risk, generates situations where the wrongly charged or convicted are more inclined to maintain identity through mechanisms considered as prison misconducts. Furthermore, initial security classification has considerable implications. Motiuk explains that “the lower the initial security placement the greater the probability of discretionary release and the shorter the period of incarceration prior to release” and “eliminating the time consuming and sometimes questionable practice of security transfer reviews.”¹⁸³ Mechanisms to maintain identity could have immediate repercussions such as segregation, reclassification of a higher security level, and transfer to a higher security prison. These disciplinary tactics could have implications for the parole decisions of the wrongly convicted.

5.1.4 Future Repercussions and Implications

¹⁸¹ Jon Sorensen & Jaya Davis, “Violent criminals locked up: Examining the effect of incarceration on behavioral continuity” (2011) 39 *Journal of Criminal Justice* 151 at 156.

¹⁸² Sorensen & Davis, *ibid* at 154 (dangerous rule violations is defined by the authors as prison rule violations that have the potential to result in violence outcomes).

¹⁸³ Larry Motiuk, “The Safe Return of Offenders through selection, intervention and supervision” (2001) 13 *Forum on Corrections Research* 3.

Prior to this study, maintaining innocence was considered to be a contributing, if not one of the main factors in the reason why wrongly convicted individuals were denied parole.¹⁸⁴ In a study that examines the parole grant rates of life prisoners and other long-term prisoners who maintain their innocence, Naughton found that in cases where the prisoner maintained their innocence, 24% were granted parole, compared to 51% of all parole applications granted.¹⁸⁵ Campbell and Denov also suggested the non-participation in programs evidenced greater security risk as prison administrators and parole board members perceive it as a lack of responsibility.¹⁸⁶ If an inmate did not accept responsibility for the offence for which they were convicted, they were also less likely to be approved for transfers to lower security prisons, an administrative decision that signifies as higher risk. This was the case for Alex.

Upon entering the prison, Alex decided that he would not take any programming since his case was under appeal. He explained, “I had made it clear from the beginning to my lawyers that I was not going participate in any type of "rehabilitative programs" because it would've been inappropriate for someone who was appealing their conviction.” After he spent a few years in a medium security prison, he heard that there was a new low security prison being built. He was initially approved for the transfer to a lower security prison until his parole officer decided that in not participating in any correctional programming, he was not taking “responsibility” for his crimes. Alex’s experience is consistent with the research by Weisman, who found that “the wrongfully convicted who steadfastly maintain their innocence tend to accumulate a record that attests not only to

¹⁸⁴ Medwed, “The innocent prisoner’s dilemma”, *supra* note 14; Medwed, “Under Pressure”, *supra* note 15; Campbell & Devon, *supra* note 17 at 152-153.

¹⁸⁵ Michael Naughton, “Why the Failure of the Prison Service and the Parole Board to Acknowledge Wrongful Imprisonment is Untenable” (2005) 44 *The Howard Journal* 1 at 1-11.

¹⁸⁶ Campbell & Denov, *supra* note 17 at 152-153.

their denial of guilt but to their non-participation in programs designed to make them safe to return to community.”¹⁸⁷

Devon was the only participant who had interactions with the parole board. He reported appearing before the parole board on several occasions. However, he was never been granted day or full parole. He explained that the rationale for being denied parole was maintaining innocence, not demonstrating remorse for what crime he was convicted of, and his behaviour inside the prison. Given Devon’s experience with prison, his non-participation in programs, prison misconducts (i.e., fighting and escaping prison), the insistence of innocence for his current conviction, and the fact that “factual questions of guilt and innocence ordinarily stand outside the scope of parole commissioners’ delegated duties,”¹⁸⁸ the denial of parole to minimize the risk to public safety is justifiable. Nonetheless, considering that the wrongly convicted might not participate in programs, maintain their innocence, and employ mechanisms to maintain identity that can be interpreted as risk factors, navigating through the “moral career of the wrongfully convicted” proves to be more unpredictable than previously examined.¹⁸⁹

According to the decision-making policy manual, parole board members take into consideration a variety of factors when deciding the conditional release of a prisoner.¹⁹⁰ Information of the prisoner’s past, present, and future is scrutinized in order for board members to decide whether the release would pose a risk to society. The type of

¹⁸⁷ Weisman, *supra* note 16 at 129.

¹⁸⁸ Medwed, “The innocent prisoner’s dilemma”, *supra* note 14 at 593-594.

¹⁸⁹ Weisman, *supra* note 16 at 126-132, referred to the “moral career of the wrongfully convicted” as the dilemmas and pressures that those who claim innocence encounter and the efforts to overcome it.

¹⁹⁰ Parole Board of Canada, *Decision-Making Policy Manual for Board Members* (Ottawa: Parole Board of Canada, 2014), online: Parole Board of Canada <<http://www.pbc-clcc.gc.ca/infocntr/policym/polman-eng.shtml#p1>>.

information considered includes information that provides details of the prisoner's change in behaviour and attitude in prison and the community, self-reported information provided by the prisoner, information on factors that would aggravate or mitigate risk, and the prisoner's release plan. More specifically, information on the prisoner's social and criminal history (i.e., the reasons why the individual committed previous offences, if any, and their current offence), their participation in programs, their behaviour in prison, their previous experience with conditional release, victim's statements, and any information from the police, courts, mental health professionals, and prison can be considered by board members in order to assess risk.¹⁹¹ Furthermore, researchers have found a high concordance rate between the recommendations for parole from institutional staff and parole board's actual decisions.¹⁹²

Indeed, findings on the parole process in Nebraska indicates that if institutional staff recommend the denial of a parole hearing, the parole board denies the hearing in 78% of the cases.¹⁹³ Similarly, Zinger found a concordance rate of 90% between CSC recommendations and PBC actual decisions for full parole, and 83% for day parole in fiscal year 2009-2010.¹⁹⁴ Zinger explains that the high concordance rate between CSC recommendations and PBC decisions could be interpreted in two ways. First, high agreement between these two authorities might indicate the PBC's reliance on the

¹⁹¹ Parole Board of Canada, *Parole Board of Canada: Contributing to Public Safety*, (Ottawa: Parole Board of Canada, 2011), online: Parole Board of Canada <<http://www.pbc-clcc.gc.ca/infocntr/parolec/2011-08-02/intro-eng.shtml>>.

¹⁹² Jon L. Proctor, "The "New Parole": An analysis of parole board decisions making as a function of eligibility" (1999) 22 *Journal of Crime & Justice* 193; Ivan Zinger, "Conditional Release and Human Rights in Canada: A Commentary" (2012) 54 *Canadian Journal of Criminology and Criminal Justice* 117; Kathryn Morgan & Brent Smith, "Parole release decision revisited: An analysis of parole release decision for violent inmates in a south eastern state" (2005) 33 *Journal of Criminal Justice* 277.

¹⁹³ Proctor, *ibid* at 207.

¹⁹⁴ Zinger, *supra* note 192 at 122.

expertise and knowledge of risk assessments from CSC, and both authorities might arrive at the same conclusion following an offender file review. Another interpretation of the high accordance rate is that the “PBC may appear to have only a “quality control” function – if not a rubberstamping role – of ensuring that the recommendations of the CSC are sound.”¹⁹⁵ Zinger questions the legitimacy and weight of CSC’s recommendations for parole, as there is an absence of legal requirement to do so. This promotes limiting the role of CSC in parole board decision by only accepting available documentations when reaching a parole decision and not rely on the recommendations of prison staff. By restricting CSC’s role in parole decisions, it might provide the wrongly imprisoned, who might have been involved in prison misconducts, a fair opportunity to present their case for release in front of the parole board.

Alex did not appear in front of the parole board during his wrongful imprisonment; appearing in front of the parole board was an issue of concern.

In my case, I mean that is one of the things that frighten me after I had been in for six or seven years as well. I mean, if my appeals fail, I mean there might come a point where I actually have to appeal before the parole board and they're going to want me to say I did it and I can't say I did it because a) I didn't, and b) because the person I've alleged to have been killed has never been found and I have no idea where they are and I don't think anyone really needs to have that on their mind. Jail is tough enough and having worried about confessing to something you didn't do is even worse. (Alex).

Alex’s fear demonstrates the constant negotiation of identity experienced by the wrongly imprisoned. Francis, however, draws upon his own experience as a prison guard and recommends individuals in that situation to demonstrate remorse in an alternative way, which is to be remorseful to the situation while still maintaining innocence, if the goal is to be released from the institution when the prisoner becomes eligible to do so.

¹⁹⁵ Zinger, *ibid* at123.

In terms of parole, I would never instruct anybody to say that their guilty of anything that they're not. I mean, if you're innocent, you're innocent. I would say this, for them to say, "Listen, I am innocent. I did not commit this but I did take the courses required to get out of here" because if you don't, then you're allowing yourself to suffer. You're actually making things worse for yourself. You're not admitting to being guilty by going into those programs. What you're doing is you're telling yourself that you need to get out of here at the earliest point, right? I would instruct them to do that and in front of the parole board, I would allow them to say, "I am innocent and I did this programming because I need to get out of here for me. Like for my own sanity," so just to be real in those moments. And in front of the parole board, no, it's not going to be good that you don't admit to being guilty. I mean, they want everyone to admit they're guilty but if you're not, you're not and don't ever admit that. (Francis)

It is important to note that the CSC and PBC are not responsible for wrongful imprisonment, however, once the wrongly convicted enters into the institution, CSC and PBC policies and the prison environment play a significant role in how the individual negotiate their “moral career.” Considering the challenging aspects of life in prison experienced by the wrongly imprisoned, the possibility of wrongful conviction should be acknowledged at every stage of the criminal justice system, even at the correctional and parole phase. Reports on preventing wrongful convictions are readily available online on the Public Prosecution Service of Canada website, while the Department of Justice also publishes information on the effects of wrongful imprisonment and how an individual may apply for a conviction review.¹⁹⁶

¹⁹⁶ Public Prosecution Service of Canada, *The Path to Justice: Preventing Wrongful Convictions – Report of the Federal/Provincial/Territorial Heads of Prosecutions Subcommittee on the Prevention of Wrongful Convictions* (Ottawa: Public Prosecution Service of Canada, 2011), online: Public Prosecution Service of Canada <<http://www.ppsc-sppc.gc.ca/eng/pub/ptj-spj/>>; Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook* (Ottawa: Public Prosecution Service of Canada, 2014), online: Public Prosecution Service of Canada <<http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p2/ch04.html>>; Department of Justice, *Miscarriages of Justice: The Impact of Wrongful Imprisonment* by Kathryn Campbell & Myriam Denov (Ottawa: Department of Justice, 2005), online: Department of Justice <<http://www.justice.gc.ca/eng/rp-pr/jr/jr13/p5a.html#profile>>; Department of Justice, *Conviction*

While CSC does make reference to the existence of wrongful convictions on their website, it is in the context of promoting the memorandum of understanding (MOU) on offender-related information sharing with police services and other government departments and agencies.¹⁹⁷ Under the MOU, the Criminal Conviction Review Group, a sector of the Department of Justice that reviews applications for the Minister of Justice to review possible wrongful convictions, can request access to the Offender Management System, a database operated by CSC that contains information on every federally sentenced offender.

Similarly, Naughton found contradicting positions on wrongful convictions, specifically in the information booklet provided by the HM Prison Service and distributed to life-sentenced prisoners.¹⁹⁸ The booklet, which contains frequently asked questions (FAQ), included answers that “does not allow for the possibility that some life prisoners might be innocent of the crimes for which they were convicted,” even though the booklet contains the question, “What if I say I am innocent?”¹⁹⁹ The inclusion of this question in the FAQ booklet indicates that life-sentenced prisoners do frequently inquire about possible solutions for wrongful imprisonment. The answer to the above-mentioned question provided by the Prison Service attempts to rationalize their mandate to identify and reduce “offender behaviour” even though the individual identifies themselves as innocent. The Prison Service explains that the prison staff “must accept the verdict of the

Review (Ottawa: Department of Justice, 2013), online: Department of Justice <<http://www.justice.gc.ca/eng/cj-jp/ccr-rc/rev.html>>.

¹⁹⁷ Correctional Service of Canada, *Information Sharing with Partners from the Criminal Justice System* (Ottawa: Correctional Service of Canada, 2013), online: Correctional Service of Canada <<http://www.csc-scc.gc.ca/oms/004003-0001-eng.shtml>>.

¹⁹⁸ Naughton, *supra* note 185 at 1-11.

¹⁹⁹ Naughton, *ibid* at 2.

court, even if you say that you did not commit the offence in which you are in prison.”²⁰⁰

The purpose of the correctional system is to contribute to public safety by carrying out the sentences imposed by the courts cannot be denied – in other words, it is understood that the correctional system cannot overturn the verdict handed down by the judicial system; however, CSC is mandated to carry out sentences “through the safe and human custody and supervision of offenders.”²⁰¹ Simply acknowledging the existence of wrongful convictions in one part of the criminal justice system is insufficient, in that if one part of a larger system is to blame for the miscarriages of justice (i.e., prosecutorial failures, police misconducts), then it can be assumed that other parts of that system would oversee individuals affected by those misconducts. CSC and PBC must recognize the existence of wrongful convictions and the nuances within the prison environment that may affect the behaviour of the wrongly convicted. Naughton advocates for more avenues to adequately respond to prisoners who maintain their innocence and recognizes that the failure to do so may exacerbate the harm experienced by the wrongly imprisoned.²⁰²

The manner in which the wrongly imprisoned maintain identity in prison can be interpreted as instinctive – a reaction to the prison environment. Although these mechanisms allow the individuals a sense of agency, power, and control over the situation in which they were subjected to, these acts of resistance are followed with immediate and future consequences, such as disciplinary sanctions and subsequently, the denial of parole. The case studies of these wrongly imprisoned individuals demonstrate

²⁰⁰ The Prison Reform Trust and HM Prison Service, *Life Sentenced Prisoners ‘Lifers’* (London: Prison Reform Trust, 1998) at 9, cited in Naughton, *ibid* at 2.

²⁰¹ *Corrections and Conditional Release Act*, *supra* note 154 at s 3.

²⁰² Naughton, *supra* note 185 at 10.

the constant negotiations that occur within the prison where limited choices are often presented. This thesis illustrates how the wrongly imprisoned navigate through the prison environment and strengthens the need for appropriate avenues to address prisoners who maintain their innocence and their identity within prisons.

6 CHAPTER 6: CONCLUSION

Previous research in the area of wrongful convictions has often focused on the causes that lead to the miscarriage of justice. Since the actual rate of wrongful convictions continues to be a dark figure, the scope of research should not only be expanded on the systemic failures that contribute to wrongful convictions, but also on how the wrongly imprisoned manage to negotiate their identity within prison environments. Research on the effects of imprisonment found that prisoners often experience what Goffman refers to as “mortification,” where the prisoner is broken down upon entering the prison and is forced to adopt an institutional identity. Other research has found that prisoners often change their behaviours and personalities in order to build immunity and adjust to the prison environment, which may ultimately affect their ability to socially interact with others after they’re released.

Drawing upon Foucault’s conception of power and resistance, this research focused on how the wrongly charged or convicted maintain identity in a space where the deterioration of that same identity occurs. Through in-depth interviews, it was found that these individuals often negotiated their identity within prison – a site of power inequalities and coercion, using different mechanisms to exercise resistance, limiting the effects of power from opposing sources, thereby maintaining their identity. Yet the maintenance of identity was often followed by immediate repercussions. The participants in the study reported repercussions such as segregation, reclassification to a higher security level, and transfer to a higher security prison when maintaining their identity. Furthermore, if an inmate maintains their innocence and denies responsibility for the offence in which they were convicted, they were less likely to be approved for the

transfer to a lower security prison, which may ultimately affect their chance of being granted parole if all other avenues, such as appeals, are exhausted. Although the Correctional Service of Canada and the Parole Board of Canada are not responsible for wrongful imprisonment, both institutions play a significant role in how the wrongly imprisoned manage their “moral career.” Acknowledgement of the existence of wrongful convictions and the nuances within the prison environment that may affect the behaviour of the wrongly convicted is only the first step in potential policy changes, and the failure to act may exacerbate the harm experienced by the wrongly imprisoned. It is unreasonable to simply acknowledging the existence of wrongful convictions in one part of the criminal justice system (especially if one part of that larger system may be blamed for the misconducts that lead to the miscarriage of justice), since other parts of the criminal justice system would also be affected by those misconducts.

Further research should focus on individuals who have been wrongly charged. The interview with Francis exposed the damaging repercussions following his wrongful charges including the loss of his employment, his home, and temporary custody of his children.²⁰³ Although those repercussions were not discussed as part of this thesis, it is imperative to note that not only those who have been wrongly imprisoned experience a miscarriage of justice through the criminal justice system.

²⁰³ Following Francis’ arrest, his home insurance company revoked the insurance on his house and sent him a refund. When Francis inquired as to the reason why the insurance was revoked, the company wrote in a letter explaining that by the nature of what was printed in the media during the period in which Francis was charged and arrested, the company believed there was a change in Francis’ material circumstances. As it was necessary to have home insurance in order to maintain a mortgage on his home, he tried over 20 different companies in order to reinstate his home insurance but was declined. The bank later revoked his mortgage and Francis had to sell his home.

6.1 Study Limitations

The limited number of participants was recognized as a limitation for this study. Recruiting participants to participate in the study was more difficult than initially anticipated, however, the findings from the six participants did provide multiple perspectives and rich data. It is important to note that the purpose of this research is not to provide a general claim applicable to all individuals who have been wrongly imprisoned, but rather to explore how identities of the wrongly charged and convicted can be maintained within the prison environment. Furthermore, the findings and analysis for this study is based on this researcher's subjectivity, as the results were based on both the researcher's and the participants' construction of reality. The methodology of this research rests on the notion that multiple realities exists and that researchers can only partially grasp the participants' lived experiences.

Appendices

Appendix A Letter to the Organizations



Canada's Capital University

Title of research project: Maintaining Identity within Wrongful Conviction Cases

Date of ethics clearance: 14 April 2014

Ethics Clearance for the Collection of Data Expires: 31 May 2015

Dear Sir or Madam,

My name is Katie Tam and I am a Master of Arts student in the Legal Studies Program at Carleton University. I am conducting research on the experiences of wrongly convicted individuals in prison. Specifically, I am interested in how such individuals maintain their innocence following a wrongful conviction. Through in-depth interviews, I would also like to know the effects of wrongful conviction on the individual.

The purpose of this letter is to request assistance from your organization in recruiting potential participants who have been wrongly convicted to interview for this project. To clarify, I am not requesting a list of your contacts or their contact information. However, if you could forward the Recruitment Poster and the Letter of Invitation to potential participants, it would be much appreciated. The main challenge I foresee for this research is the possible difficulties in recruiting participants who might want to remain out of the public eye. If you have any questions or concerns regarding this research project, please do not hesitate to contact me.

Thank you for your time.

Sincerely,

Katie Tam
Department of Law and Legal Studies
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-3690 E-mail: katie_tam@carleton.ca

Appendix B Letter of Invitation



Canada's Capital University

Title of research project: Maintaining Identity within Wrongful Conviction Cases

Date of ethics clearance: 14 April 2014

Ethics Clearance for the Collection of Data Expires: 31 May 2015

Dear Sir or Madam,

My name is Katie Tam and I am a Master of Arts student in the Legal Studies Program at Carleton University. I am conducting research on the experiences of the wrongly convicted. Specifically, I am interested in how such individuals maintain identity following a wrongful conviction. Through in-depth interviews, I would also like to know the effects of wrongful conviction on the individual. This project is under the supervision of Professor Diana Young, an Associate Professor at Carleton University.

The interview will take place in a public location of your choice. I will travel to an agreed upon location at your convenience. If you choose to accept and participate in this project, you will be asked a series of questions on your experience of being wrongly convicted. The interview will be recorded using a digital recording device or program on a laptop computer. My supervisor and I will be the only people who will have access to any of the research data. The interview from the digital recording will then be transcribed. The process of transcription will involve the researcher listening to the interview and typing out the questions asked by the researcher and the answers provided by the participant, word for word.

Using the transcripts of the interview and any documents provided, I will analyze and determine whether any themes exist within the responses that you and other participants have provided. The transcripts will be used as part of the data for the research project, which is part of the requirements of a Master of Arts degree in Legal Studies. Results from the research might be disseminated in journal articles, book chapters, conferences, and presentations.

Participants may request a review of the interview by contacting the researcher at katie.tam@carleton.ca by May 31, 2015, as the digital recordings and any documents provided will be destroyed after that date. Transcripts of the interview will be available upon request. Interview transcripts produced from the audio recordings will be password-protected and encrypted, and will be stored in a password-protected folder on an electronic storage device for ten years should related project on the same topic be conducted by the researcher in the future.

The interview might trigger a flashback of an adverse experience that occurred during your wrongful conviction. In this case, the interview will be terminated immediately. A list of community resources will also be provided. You may decline to answer any questions during the

interview. You may also withdraw from the project at any time during the interview and information that was provided will be destroyed. Participants can withdraw from the study up to one month after the interview by telephone or email. Contact information of the researcher is provided below. If any harm is witnessed during the interview, I have a duty to report and disclose the participants involved.

This project may also provide benefits to potential participants such as the opportunity to share their personal experience of being wrongly convicted and dispelling the myths that wrongful convictions are rare and avoidable. Please email me at katie.tam@carleton.ca if you are interested in participating in this project.

If you would like to contact the supervisor of this project, Professor Diana Young, her contact information are as follows:

Professor Diana Young
Department of Law and Legal Studies
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-2600 ext. 1981 E-mail: diana_young@carleton.ca

This project was reviewed and received ethics review and clearance by the Carleton University Research Ethics Board (REB). If you have any concerns or questions regarding your involvement in the project, feel free to contact the REB chair. The chair's name and contact information are as follows:

Professor Andy Adler, Chair
Research Ethics Board
Carleton University Research Office
Carleton University
1125 Colonel By Drive
1325 Dunton Tower
Ottawa, Ontario K1S 5B6
Tel: 613-520-2517 E-mail: ethics@carleton.ca

Thank you,

Katie Tam
Department of Law and Legal Studies
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-3690 E-mail: katie.tam@carleton.ca

Appendix C Consent Form



Canada's Capital University

Title of research project: Maintaining Identity within Wrongful Conviction Cases

Date of ethics clearance: 14 April 2014

Ethics Clearance for the Collection of Data Expires: 31 May 2015

The purpose of the research project is to understand the experiences and effects of wrongful conviction on the individual. Specifically, how such individuals maintain their innocence. Participants will participate in a 1 to 2 hour in-depth interview where they will be asked questions on their experience of wrongful conviction. The interview will be recorded using a digital recording device or program on a laptop computer. Using the audio recording, the researcher, Katie Tam will transcribe the interview. Katie Tam and her supervisor, Professor Diana Young will be the only ones who will have access to the digital recording of the interview and the transcripts of the interview.

Using the responses from the interview, the researcher will write and submit a research project or thesis to her supervisor as part of the requirements for the Master of Arts Degree in Legal Studies. Results from the research might be disseminated in journal articles, book chapters, conferences, and presentations.

The interview might trigger a flashback of an adverse experience that occurred during the wrongful conviction. In this case, the interview will be terminated immediately. A list of community resources will also be provided. This project may also provide benefits to potential participants, such as the opportunity to share their personal experience of being wrongly convicted and dispelling the myth that wrongful convictions are rare and avoidable. If any harm is witnessed during the interview, the researcher has a duty to report and disclose the participants involved.

Participants may decline to answer any questions during the interview. Participants may also withdraw from the project at any time during the interview. Participants can withdraw from the study up to one month after the interview by telephone or email. Contact information of the researcher is provided below.

Participants may request a review of the interview or transcripts of the interview by contacting the researcher at katie_tam@carleton.ca by May 31, 2015, as the digital recordings will be destroyed after that date. Interview transcripts produced from the audio recordings will be password-protected and encrypted and will be stored in a password-protected folder on an electronic storage device for ten years should related project on the same topic be conducted by the researcher in the future.

If the participant would like to contact the supervisor of this project, Professor Diana Young, her contact information are as follows:

Professor Diana Young
Department of Law and Legal Studies
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-2600 ext. 1981 E-mail: diana_young@carleton.ca

This project was reviewed and received ethics review and clearance by the Carleton University Research Ethics Board (REB). If you have any concerns or questions regarding your involvement in the project, feel free to contact the REB chair. The chair's name and contact information are as follows:

Professor Andy Adler, Chair
Research Ethics Board
Carleton University Research Office
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-2517 E-mail: ethics@carleton.ca

If there are any question or concerns regarding this project, the contact information of researcher are as follows:

Katie Tam
Department of Law and Legal Studies
Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
Tel: 613-520-3690 E-mail: katie_tam@carleton.ca

I, _____ agree to volunteer to participate in an interview conducted by Katie Tam, a Master of Arts student in the Legal Studies Program at Carleton University, regarding my experiences of wrongful conviction. I understand that this project is under the supervision of Diana Young, an Associate Professor at Carleton University and that the purpose of this project is to understand if wrongly convicted individuals can maintain their identity as an innocent person. I understand the procedures described above and I have been given a copy of this form.

I agree to be audio recorded: Yes No.

Signature of participant

Date

Signature of researcher

Date

Appendix D Interview Questions

Pre-wrongful conviction:

1. Prior to your wrongful conviction, what kind of social roles (i.e., father, employer, son, husband, volunteer) did you have?

2. Can you provide the details of your wrongful conviction?

3. During the trial, did you plead not guilty? Did you maintain your innocence?

4. Do you think maintaining your innocence affected the judge's perception of you?

Within the Institution:

5. What was your security level provided by the institution (i.e., maximum, medium, minimum)? Were reasons provided for why you were rated at that level?

6. Was there a change in your security level throughout your sentence?

7. Were you provided with a correctional plan (i.e., correctional programming, sexual offender treatment)?

8. Did you participate in correctional programming or treatment?

9. As an individual who was wrongly convicted, how did you feel about correctional programming or treatment?

10. Was there a time where an incentive was removed (i.e., family visit, institution socials)?

11. Were there any institutional incidents involving you as a victim or you as a perpetrator?

12. Have you ever been placed in segregation? Why?

13. Were you ever released on Escorted Temporary Absences or Unescorted Temporary Absences?

14. What were some of your coping strategies?

15. Did you maintain your innocence within the institution? Was there pressure to admit guilt or to the crimes by correctional officers? By corrections administrators? By other inmates?

16. As an individual who was wrongly convicted, did you feel that you were treated the same as the other offenders by corrections officers? By corrections administrators? By other inmates?

17. Did you feel like you maintained the occupational status/skills that you had prior to your wrongful conviction?

18. How did you maintain a relationship with your family? Your friends?

Parole Board:

19. As an individual who was wrongly convicted, did you feel that you were treated the same as the other offenders by members of the parole board?

20. Were you ever granted day parole? What was the reasoning behind the decision by the Parole Board of Canada?

21. Were you granted conditional release? What was the reasoning behind the decision by the Parole Board of Canada?

Post-exoneration/acquittal:

22. After being released from the institution, were you provided any assistance to transition back into the community? Were there any factors barring you from a steady transition?

23. Did you reestablish the roles you had in the community?

24. After being released from the institution, how was your relationship with your family members? Friends?

25. After released, how were you perceived in the community?

26. After released, did you have any problems with finding/obtaining employment? If so, was the reason related to your wrongful conviction?

27. If you choose to speak to the public/students about your experience, why did you decide to do so?

28. Why did you choose to participate in this study?

29. How would your life have been likely to progress if not for your wrongful conviction?

30. How did the experience and outcome of imprisonment differ from this expected life course?

31. How did your prearrest world changed during the period of imprisonment?
(i.e., family, work, social setting)

Appendix E Coding Manual

Concepts	Description	When to use	Examples
“Adjustment”	Participants’ adjustment in post imprisonment.	When a participant discusses their experience with adjustment to society post imprisonment.	“The teachers all know who I am but it has taken me such a long time for me to be comfortable with that. Like that’s only been within the last I would say school year where I’ve actually been comfortable enough to take part and volunteer my time in the school. Before that I was there but I tried not to get involved.”
“Confession”	Participants’ experience with situations where confession to the crime they were wrongly convicted or charged of was a factor.	When a participant was suggested to admit to the crime they were wrongly convicted or charged of and their thoughts/decision in that exact moment.	“If I try to communicate my innocence, they would say, ‘we have so much evidence against you, it’s you’. That’s an eye opener and when you especially don’t do it at the time, how do you prove something, to something that is impossible.”
“Conflict”	Participants’ struggle or disagreement with other inmates or prison guards/individuals in a position of authority.	When a participant explains a situation where a conflict has arise with another inmate or prison guard/individual in a position of authority, and the context surrounding that conflict. Conflict includes verbal and physical.	“And that’s the mindset I don’t want anyone to get into but that’s the mindset I had to get onto from day one. Defend my life at the cost of somebody else’s.”

<p>“Coping” - positive - negative</p>	<p>Participants’ approach to alleviate the effects or the aftermath of their wrongful conviction or charge (i.e., stressor). The coping strategy/skill/technique could either be positive or negative. Positive strategies are proactive and can diminish the amount of stress. Negative strategies are maladaptive and are quick fixes to simply disrupt the association between the stressor and the symptoms of anxiety. Maladaptive coping strategies do not manage or abate stress.</p>	<p>When a participant describes strategies, skills, or techniques to cope with their wrongful conviction or charge.</p> <p>Discussion of coping strategies could be subtle. In order for text segments to be coded as “Coping,” the participant does not necessarily have to indicate that this particular event/action/interaction is their approach to coping.</p>	<p>“I believe in my heart that my innocence was ultimately going to be acknowledged so I tried to stay positive, try to stay busy. I think I’m an optimistic person in general, so that made it a little bit easier...” B47 – “I still smoke and I smoke heavy because of being in there. My use increase when I was in. There wasn’t a day I wasn’t stoned on something, on weed...hash. I got into pills a little bit. Anything to numb the experience is what I did.”</p>
<p>“Current situation”</p>	<p>Participants’ preparation for the future before wrongly convicted or charged, and participants’ preparation for the future after. Includes but not limited to the participant’s current state.</p>	<p>When a participant discusses the steps taken to prepare for the future prior to and during their wrongful conviction or charge. This code includes their situation upon release or overturned conviction/dropped charges.</p>	<p>“I was employed at one place and they employed me right to three months till one day and then they let me go. On the three months, like that day, they let me go that day and it was because they learned of my charges. I was already found innocent but that was why they let me go.”</p>
<p>“Decisions” - positive -negative - neutral</p>	<p>Specific decisions made by prison guards or individuals in a position of authority that have affected the participant.</p>	<p>When a participant provides specific examples where a decision has been made by a prison guard or an individual in a position of authority that directed affected them (in a way that it is worth discussing in the interview).</p>	<p>“My correctional plan was to take certain programs, specified programs. Some of them I would not take.”</p>

<p>“Disciplinary tactics”</p>	<p>Manoeuvres by prison guards or individuals in a position of authority to exert their authority or discipline the participant.</p>	<p>When a participant discusses different tactics of prison guards or individuals in a position of authority to discipline inmates.</p>	<p>“Just the opportunity sometimes to go out and visit my family on a temporary absence. Different things when they felt whatever problem they might have was an institutional offence, maybe for making some homemade wine inside the prison, they would take you privileges and say you can’t have what you were working towards.”</p>
<p>“Errors” - corrected - ignored</p>	<p>Errors noted by the participants on their file or in their case following the initial error(s) that led to their wrongful conviction or charge. Errors could either be corrected or ignored.</p>	<p>When a participant indicates an error/mistake/misconducts on their correctional file. This code could include events that the participants perceive as unfair or unwarranted but this code cannot be used for initial errors/mistakes/misconducts during the investigation or trial in which the individual was wrongly convicted or charged.</p>	<p>“I had to have a background check. Until I came back to Canada, even in Canada, they still believe that I was my twin brother. [Shows records] See here, they’re talking about all my criminal record but it didn’t belong to me.”</p>
<p>“Harm” - physical - psychological - economic - social - other</p>	<p>Physical, psychological, economic, social, or other types of harm experienced by the participants as a result of their wrongful conviction or charge.</p>	<p>When a participant discusses the repercussions of their wrongful conviction or charge on their own lives, not others.</p> <p>Discussion of repercussions could be subtle. In order for text segments to be coded as “Harm,” the participant does not necessarily have to indicate that this particular event/action/interaction is the result of their wrongful conviction or charge.</p>	<p>“I had trouble being a young person in there. It was pretty hard for me when I first started doing my life sentence in Prince Albert Penitentiary.”</p>

<p>“Harm - Others” - physical - psychological - economic - social - other</p>	<p>Physical, psychological, economic, social, or other types of harm experienced by others close to the participants as a result of the participant’s wrongful conviction or charge. Highlights the ripple effects of harm on others after the primary harm has occurred.</p>	<p>When a participant reports the repercussion of their wrongful conviction or charge on the lives of others around them.</p> <p>Discussion of repercussions could be subtle. In order for text segments to be coded as “Harm – Others,” the participant does not necessarily have to indicate that this particular event/action/interaction is the result of their wrongful conviction or charge.</p>	<p>“He increased his drinking when I was in. He got right out of control when I was in. His life...my sister-in-law left him, so he lost her too. Lost her too. Also, he dealt with more lost than I ever did.”</p>
<p>“Hierarchy”</p>	<p>Participants’ description or experience of the range of ranks within a prison and the experience or interaction with others in relation to their ranks.</p>	<p>When a participant locates their status within the prison, Both inmates and prison staff could be included when coding for “Hierarchy.”</p>	<p>“Well, I’ve done time before and I know what goes on in prison, how convicts behave and the hierarchy of crime. What’s perceived as good crime/bad crime and my crime was, I was scum of the scum. The scum wanted to kill me. You know, the scum wanted to kill me. That was how low I was on that totem pole.”</p>
<p>“Inmates’ Perception”</p>	<p>Participants’ sense of the perception of other inmates. This might be based on the participants’ interpretation of previous interaction/experience with other inmates while imprisoned.</p>	<p>When a participant discusses the views/mindset/outlook/attitude of other inmates.</p>	<p>“They feel that people that are committing crimes against women, or crimes against children, are people that are shitty people.”</p>
<p>“Institutional Jobs”</p>	<p>Specific task/position/job occupied by the participants while imprisoned.</p>	<p>When a participant mentions a task/position/job occupied while imprisoned.</p>	<p>“In that sense, having a job in the institutional library, haven’t a lack of a better term for it, a prestigious job probably helped me quite a bit.”</p>

<p>“Media”</p>	<p>Participants’ perception of mass media, which includes but not limited to broadcast (e.g., television), print (e.g., newspaper), and digital media (e.g., internet).</p>	<p>When a participant mentions any form of mass media coverage in relation to their wrongful conviction or charge.</p>	<p>“Sometimes the media attention can actually be counterproductive because the more you’re in the media, the more...now my case is somewhat unique in the sense that...I have an education...Any publicity really is really bad publicity for me.”</p>
<p>“Metaphors” - battle</p>	<p>Figure of speech used by the participants that identifies one thing as being closely similar as some unrelated other thing, therefore implying the similarities between the two.</p>	<p>When a participant use metaphors in the interviews.</p>	<p>“Bigger battles to fight.” “I was the scum of the scum. The scum wanted to kill me.”</p>
<p>“Perception of prison staff” - positive attitudes - negative attitudes - neutral attitudes</p>	<p>Participants’ perception/experience with prison staff or individuals in a position of authority (e.g., members of the parole board, correctional officers, parole officers) while imprisoned.</p>	<p>When a participant discusses their interaction/perception/relationship with prison staff or individuals in a position of authority while they were imprisoned.</p>	<p>“I would challenge this man. Like all cowards within the prison, they’re all cowards in there, every one of them. Every jail guard that I’ve come across I would not describe anything less than a coward. Every one of them. But he would not take it man to man. He hid behind his job, manipulate.”</p>
<p>“Perception of the prison” - positive attitudes - negative attitudes</p>	<p>Participants’ perception/experience with the prison and its environment.</p>	<p>When a participant mentions their perception of the prison, its environment and its purpose.</p>	<p>“That’s why it’s internalization, that’s why it’s internal. The structure, the physical buildings are built to keep things in. And the non-physical part of it is also designed to keep things in.”</p>

<p>“Perception of self”</p>	<p>Participants’ perception of self. Perception leads to attitudes, which determines behaviour.</p>	<p>When a participant locates himself or herself within the prison/environment. This includes their perception of self in relation to other inmates or prison staff/individuals in a position of authority.</p>	<p>“So when I got out, I was pretty well positioned to get a job in the digital economy in a way that a lot of other inmates might not have been able to.”</p>
<p>“Perception of treatment as an inmate” - positive attitudes - negative attitudes - neutral attitudes</p>	<p>Participants’ perception of justice in the context of crime. Includes how society should react to criminality and the treatment of individuals who commit crimes.</p>	<p>When a participant discusses justice and how justice should be carried out. This code could include how offenders should be treated and whether the current treatment of offenders rehabilitates them.</p>	<p>“Their justice model, it’s ludicrous as far as I’m concern, not as a prison, but as a person who has more than a layman’s understanding of what takes place and being able to provide someone with an environment with lots of love and lots of care and surround them with that kind of stuff and rather than lock them up and put them inside cages and expect them to get better.”</p>
<p>“Power” - asserted - denied</p>	<p>Authority, ability, or control asserted or denied by the participant.</p>	<p>When a participant mentions an event/action/interaction with other prisoners or prison staff where it can be perceived that power has been asserted or denied.</p> <p>Discussion of power could be subtle. The participant does not necessarily have to acknowledge the exchange/existence of power in order to be coded as that.</p>	<p>Participant chooses to stay off welfare following release from prison. He did not want to belong to an institution and to get out the routine.</p>

<p>“Programs” - participant - non-participant</p>	<p>Participants’ view of programs delivered within the prison that is aimed to provide treatment to offenders in order to rehabilitate and reintegrate them in society upon release.</p>	<p>When a participant mentions programs and correctional plan, and the aims of programs, which includes but not limited to topics such as responsibility, rehabilitation, engagement, and release.</p>	<p>“It didn’t do nothing for me because whether it’s provincial or federal, rehabilitation, in the way people like to understand it, it doesn’t exist. It’s a fucking lie. The only rehabilitation that goes on within the prison is to rehabilitate the conflict from the street to the prison life to the point where the prisoner only thinks he can survive in prison.”</p>
<p>“Protective custody”</p>	<p>Participants’ experience with protective custody – a prison to protect vulnerable prisoners from violence committed by other prisoners. It is sometimes called PC.</p>	<p>When a participant discusses their experience with protective custody. An example of a protective custody prison is Warkworth institution.</p>	<p>“People like that are considered as real shit and usually they run away to a place called Protective Custody. They are protected from the mainstream population. You know, people will just burn their cells out or set their cells on fire, beat them up, throw blankets over them, they’ll do all sorts of terrible things to those people because they just don’t see them as being worth anything.”</p>
<p>“Reaction to upholding”</p>	<p>Reactions of prison guards or individuals in a position of authority to participants’ maintenance of identity/innocence.</p>	<p>When a participant discusses the repercussions of maintaining their identity/innocence.</p>	<p>“Well, I think it did in the sense that at my first trial in 1992, the judge claimed that because I maintained my innocence throughout that I was actually showing a lack of remorse, which seems kind of odd to me because if you are innocent, it kind of goes without saying it’s pretty difficult to show remorse.”</p>

“Responses”	Participants’ responses to the decision made by prison guards or individuals a position of authority.	When a participant provides context to the decisions made by a prison guard or individual in a position of authority and the participant’s response to that decision.	“Just the sexual program and that wasn’t even on my correctional plan until I wanted to have a visit with my mother. Then they put that only my correctional plan and then, fuck you, I won’t take it.”
“Security” - level - tactics - institutions	Participants’ experience with security within the prison, which includes their own security level, transfers to different prisons based on their security level, and tactics undertaken by prison guards to ensure security within the prison.	When a participant notes the changes of security levels and movement between prisons based on their security levels. Text can be coded as “Security” when participants discuss tactics used by prison guards to prevent risk to security within a prison.	“Again, I was put in the maximum security unit but not because I had done anything wrong.”
“Shift in focus” - positive - negative	Participations’ sudden realization that there’s been a shift in his/her situation.	When a participant notes a time when they realize a sudden shift in their present situation. The code includes but not limited to changes within their environment, belief, etc.	“I realized that I really did have a problem and decided at that point I was going to do something about my problem.”
“Upholding”	Participants’ persistence in maintaining his/her identity and/or innocence following their wrongful conviction or charge.	When a participant reveals a particular experience where their identity and/or innocence was upheld. Discussion of identity/innocence maintenance could be subtle. Maintenance can be demonstrated through an event/action/interaction.	“I always stood my ground. I think in some ways, as a result of that over a period of time, it took some time though, I somehow garnered the respect of the other prisoners for willing to say that I wasn’t guilty and standing up and fighting if I had to.”

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