Social science scholarship has tended to focus more on the causes than the consequences of miscarriages of justice. Within the literature on consequences, the overwhelming emphasis has been on individual consequences: psychological and material impacts on the wrongly convicted individual and, in some cases, other indirectly impacted individuals such as family members of the wrongly convicted and victims of the true perpetrator’s future crimes. Some attention has been devoted to social harms, the impact of miscarriages of justice on the broader society within which they are situated, such as the undermining of the legitimacy of the criminal justice system. This paper focuses on what are called here cultural consequences of miscarriages of justice: the way in which some high-profile miscarriages of justice can shape the public’s beliefs about some of the most basic “facts” about crime, such as the nature, prevalence, or even existence of certain categories of crime and the types of individual who tend to perpetrate particular types of crime. In this way, the paper argues, miscarriages of justice may have hitherto underexplored consequences: reshaping, based on false premises, the public’s belief about the very nature of crime itself. This paper discusses three cases studies of miscarriages of justice that for varying periods of time created widespread false beliefs about the nature of crime in large segments of the public. The paper concludes by noting that the “righting” of these false beliefs was in most cases fortuitous. This suggests that unexposed miscarriages of justice may still be shaping popular beliefs about the nature of crime, and aspects of the public’s current conception of crime may yet be based on false premises. Copyright © 2009 John Wiley & Sons, Ltd.

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INTRODUCTION

Social scientists have long noted that most lay people’s beliefs about crime are derived largely from the media (Surette, 1998). The media portrayal of crime has been widely and variously criticized both for overstating the prevalence of crime generally and for misrepresenting the nature of crime (see, e.g., Bandes, 2004; Greene, 1990, pp. 444–445; Haney, 2005, p. 31; Manning, 2003; Simon, 2006; Sparks, 1992). The thrust of such arguments has generally focused on the way the media supposedly skews, biases, or otherwise distorts the information that emanates from the criminal justice system. However, it has generally been assumed that criminal justice system information is relatively accurate. But what if the information that emanates from the criminal justice system is false? What if what is represented as justice is, in fact, a miscarriage of justice? What impact might this have on the public understanding of crime?

Far more scholarly attention has been devoted to the causes of miscarriages of justice than to their consequences (Campbell & Denov, 2004; Grounds, 2004, p. 167). Naughton (2007, p. 161) offers perhaps the most comprehensive discussion of the consequences of miscarriages of justice, under the heading of “zemiology,” the study of harms. Naughton discusses social, psychological, physical, and financial harms. Within what discussion of consequences there has been, the focus has been overwhelmingly on what I shall call here “individual consequences.” The most obvious of these, of course, is the direct pain and injustice of punishment for a crime that one has not committed on the falsely accused individual. The punishment of the innocent can also have devastating consequences on family members and other loved ones (Grounds, 2004; Naughton, 2007, p. 167). Families can deplete their savings fighting for exoneration. Some wrongfully accused persons have pled guilty in order to spare their families the pain of wrongful conviction. This may be especially the case when the crime is a highly stigmatized one, such as sexual assault, and fighting the accusation or conviction will generate additional publicity. The extreme negative consequences of imprisonment for family members, even of the guilty, have been well documented (Wakefield, unpublished Ph.D. dissertation). They are presumably equally great or greater for the innocent.

In addition to the direct pain and injustice of wrongful conviction, it has also been noted that wrongful conviction appears to generate significant psychological trauma (Grounds, 2004; Westervelt & Cook, 2008). Moreover, it has been noted that these effects are not necessarily remedied by exoneration. Grounds has documented numerous and severe consequences of wrongful conviction even after exoneration on both the falsely accused and family members. Among a sample of British exonerees, Grounds found evidence of post-traumatic stress disorder (PTSD), enduring personality changes, panic disorder, substance abuse, paranoia, and lasting anger. These were conditions that did not exist prior to incarceration. Not surprisingly PTSD was particularly pronounced, appearing in two-thirds of the sample. Grounds also found significant psychological impacts on family members. Grounds’s conclusion is chilling:

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1 Penal systems also impose severe sanctions, such as deprivation of conditional release, on prisoners who refuse to admit guilt and show remorse for their crimes (Campbell & Denov, 2004; Medwed, 2008).
when families confide that the time since the man’s release has been worse than the years in prison, and when the men admit that sometimes they wish they were back inside, it is a measure of how intense the burdens can be after release. . . . I was left with a strong clinical impression of irreversible damage that could not be substantially remedied.

Grounds’ conclusions are also supported by anecdotal evidence gathered by the Innocence Project and other organizations devoted to assisting the exonerated and by journalists (Bikel, 2003; Flynn, 2003; Santos, 2007).

In addition to psychological consequences, many, if not most, exonerees also suffer from devastating financial consequences. They have great difficulty finding employment due to a combination of the stigmatizing effects of their criminal records, many of which are not expunged despite their exoneration; their lack of meaningful job training while incarcerated; and the aforementioned psychological consequences, which may make them less than ideal employees (Santos, 2007). Few exonerees receive significant financial compensation for their experiences of wrongful conviction (Bernhard, 1999; Campbell & Denov, 2004; Westervelt & Cook, 2008). Exonerees also experience severe difficulties re-integrating into society.

Beyond the impact on the falsely accused and their families, it has also been argued that miscarriages of justice impose costs on victims and their families, who undergo the trauma of discovering the wrong person has been punished for the crime or, in some cases, have to defend their continued belief that the conviction was rightful (Givelber, 1997, p. 1394).

In addition to those individual consequences discussed above, there are also additional “social costs” imposed by miscarriages of justice (Forst, 2004, pp. 46–52), and there have been some preliminary efforts to calculate them (Koppl, forthcoming). It has often been noted that wrongful convictions allow true perpetrators to go unpunished (Givelber, 1997, p. 1394). All the subsequent crimes committed by the true perpetrators while the falsely accused were serving time for the crimes they committed must be counted among the costs of wrongful conviction. In one study, the Innocence Project reported that 9 of 10 true perpetrators had committed other crimes while the falsely accused was in serving time for their crime (Weinberg, 2008). Even this accounting is necessarily incomplete for several reasons. First, the apprehended true perpetrators may be guilty of more crimes than the legal system is aware of. Second, for many miscarriages of justice, more than 60% according to one estimate, the true perpetrator has not been apprehended (Innocence Project, 2007). Third, there are undoubtedly many more miscarriages of justice that have not yet been exposed (Gross, Jacoby, Matheson, Montgomery, & Patel, 2005). In these cases, the true perpetrator may have been apprehended after committing further crimes or may still be at large, possibly committing further crimes.

In addition, there are financial social costs to miscarriages of justice. Some victims of miscarriages of justice sue the state, and some of these suits are successful. Others are entitled to statutory compensation. Compensating victims of miscarriages of justice imposes costs upon society, diverting funds that could be spent on socially useful projects (Naughton, 2007, p. 178). In addition to financial costs, miscarriages of justice clearly impose other, less easily calculable, costs upon society. The social cost that has received the greatest amount of attention is the undermining of the
legitimacy of the criminal justice system. The exposure of wrongful convictions may undermine trust in the legal system among otherwise law abiding citizens and perpetuate cynical views of the justice system (Forst, 2004, pp. 212–219; Naughton, 2007, p. 169). These effects are likely to be especially pronounced among members of groups that are disproportionately the victims of wrongful conviction: racial minorities and the poor (Bright, 1994; Parker, Dewees, & Radelet, 2002). Some American racial minorities call the justice system the “just-us” system; exposure of wrongful convictions may perpetuate such cynical views. Some exposed wrongful convictions expose the animus of components of the justice system against members of such groups. They may draw attention to such documented, disturbing phenomena as the higher sentences meted out by judges to racial minorities (Brown et al., 2003, pp. 135–147) and the higher rates of death sentencing by white jurors against black defendants (Bowers, Steiner, & Sandys, 2001; Lynch & Haney, 2000; Ogletree & Sarat, 2006).

CULTURAL CONSEQUENCES

In this paper, I shall discuss a type of social harm that has not yet been discussed in the miscarriages of justice literature. I shall call these social harms cultural consequences to indicate that they affect our shared cultural understanding of the nature of crime. I draw this notion of cultural consequences from Garland’s (1991) argument that legal and penal practices are not only produced by culture, but also produce culture. They “create social meaning and thus shape social worlds” (p. 191). Following Garland, I shall argue here that some miscarriages of justice shape the social world we inhabit.

Wrongful convictions are public events. While some wrongful convictions take place in relative obscurity, others become public knowledge. In either case, however, a wrongful conviction begins with what appears to be a “rightful” arrest or conviction, a public statement that a particular crime has occurred and that a particular individual or individuals committed that crime. If the conviction turns out to be a miscarriage of justice, one or both of these statements is then deemed to be false (Edmond, 2002; Nobles & Schiff, 2000). Therefore, for the period between the miscarriage of justice and its correction, the public has held false beliefs about either the occurrence of a crime, the author of the crime, or both. Depending on the case, this “public” may be very small, such as the residents of a small town in the case of a homicide that does not generate a great deal of publicity, or very large, such as the inhabitants of an entire nation or even many nations in the case of a major terrorist attack. This temporary holding of false beliefs by the public, therefore, is yet another, hitherto underexplored, cultural consequence of miscarriages of justice. But for the miscarriage of justice, the public would never have held these beliefs. In many cases, these false beliefs are unlikely to extend beyond a small number of directly or indirectly affected individuals. But in rare cases, the consequences of false convictions extend far beyond the falsely accused and their families, to the community at large.

This temporary holding of false beliefs by the public, therefore, is yet another, hitherto underexplored, cultural consequence of miscarriages of justice. But for the miscarriage of justice, the public would never have held these beliefs. In many cases, these false beliefs are unlikely to extend beyond a small number of directly or indirectly affected individuals. It is certainly important to the falsely accused, their family, friends, and supporters, and, in some cases, to the victims, and their family, friends, and supporters, that their community falsely believed that a crime occurred or in the guilt of a particular individual or individuals, but the consequences do not extend to the larger public. In rare cases, however, primarily in what have been called “high-profile crimes” (Chancer, 2005b) or “axial media events” (Manning, 2003, p. 28), the
sphere of false believers may be much greater. In some cases, the false beliefs caused by wrongful convictions have caused the news-consuming publics of entire nations or many nations to believe, falsely, that a particular individual or individuals committed a crime.

However, my interest here is in a still more disturbing phenomenon. In rare cases, miscarriages of justice may cause the news-consuming public of entire nations or many nations may hold false beliefs about the nature of crime itself. In some cases miscarriages of justice may cause the public to falsely believe that particular types of crime exist. In such cases wrongful convictions have an impact on the public’s understanding of what crime is—what sorts of crime are committed, how prevalent various types of crime are, and what sorts of persons commit them. Thus, wrongful convictions can go to the heart of popular beliefs about crime. Our understanding of the phenomenon of “crime” is socially constructed, which is not to say that crime is not real, but rather to say that our notion of it is shaped by many factors other than the brute facts of its occurrence (Rafter, 1990). One of these factors, I suggest here, may be false beliefs about crime based on false beliefs about the occurrence or nature of particular crimes and criminals.

The media has been faulted for disseminating representations of crime that are distorted in numerous ways, such as over-representing specific races and genders as criminals and victims, over-representing sensational crimes, and so on. In miscarriages of justice, however, while the media may still enact its usual biases, the media is also a victim of false information provided by the justice system. Moreover, in some cases, media’s effect may be even more fundamental, going to very heart of the public’s beliefs about crime. Our understanding of the phenomenon of “crime” is socially constructed, which is not to say that crime is not real, but rather to say that our notion of it is shaped by many factors other than the brute facts of its occurrence (Rafter, 1990). One of these factors, I suggest here, may be false beliefs about crime based on false beliefs about the occurrence or nature of particular crimes and criminals.

The media may be especially influential in shaping public beliefs about “emerging forms of crime”—that is new categories of crime such as cybercrime, global crime, and terrorism (Manning, 2003, p. 24). Such “emerging forms” will be crucial in the three case studies I shall discuss below, in which miscarriages of justice created false public beliefs about crime. Public perceptions of crime, true or false, to a large extent drive crime policy (Beckett, 1997; Garland, 2001; Simon, 2006; Zimring, Hawkins, & Kamin, 2001). If miscarriages of justice generate false beliefs about the nature of crime itself, then this is perhaps their most significant consequence of all.

In what follows, I shall discuss three case studies in which miscarriages of justice caused large segments of the public to harbor false beliefs, not merely about the circumstances or perpetrators of particular crimes, but about the nature of crime itself. Each of these case studies illustrates a somewhat different example of the larger phenomenon of cultural consequences of miscarriages of justice. In the first case, the ritual sexual abuse cases of the 1980s and early 1990s, miscarriages of justice were linked to a classic “moral panic,” a widespread popular belief that ritual sexual abuse was far more prevalent that it actually appears to have been (Cohen, 1972; Goode & Ben-Yehuda, 1994; Grometstein, 2008; Jenkins, 1998). In the second case, the Central Park jogger case, large segments of the public came to believe in the existence of an entirely new form of crime, known as “wilding.” The causal arrow in this case is somewhat different. Whereas the ritual sexual abuse miscarriages of justice may reasonably be viewed as having been caused by the ritual sexual abuse moral panic, the jogger case miscarriage of justice may be said to have created the moral panic
surrounding “wilding.” In addition, the wilding moral panic was much shorter lived than the ritual sexual abuse panic, which in some senses is still not over (Best, 1999, pp. 30–33). In the third case study, the false beliefs were the shortest lived of all. Because Brandon Mayfield only suffered wrongful arrest, not wrongful conviction, for the Madrid train bombing, false beliefs were held by the public for only a period of weeks. This case study, unlike the first two, is offered largely in the way of a counterfactual: as a way of imagining the cultural consequences had the wrongful conviction never been exposed.

RITUAL CHILD SEXUAL ABUSE

During the 1980s and through the mid-1990s, numerous cases of organized ritual sexual abuse of children, sometimes satanic abuse, were reported and prosecuted. Child care workers, parents, relatives, and other adults in California, Washington, New Jersey, North Carolina, and various other place in the United States were variously accused of extraordinary acts including child sexual abuse, satanic rituals, cannibalism, and human sacrifice (Ceci, Powell, & Principe, 2002, pp. 330–331; Humes, 1999, pp. 160–176; Jenkins, 1998; Kincaid, 1998; Loftus, 1993; Nathan & Snedeker, 1995; Wright, 1994). In the mid-1980s, there were claims of tens of thousands of satanic murders and 50–60,000 human sacrifices per year (Wright, 1994, p. 86). Nor was this phenomenon confined to the United States. Similar waves of prosecutions occurred in Canada, Europe, Australia, and New Zealand (Grometstein, 2008; Pratt, 2005, p. 273). Over the period between 1984 and 1995, there were at least ten mass prosecutions in the United States of suspected organized child sexual abuse often tied to supposed satanic ritual abuse. During this period, at least 72 individuals were convicted of crimes relating to this alleged sexual abuse (Gross et al., 2005). These prosecutions and convictions received widespread publicity, and this publicity “educated” the public about ritual child sexual abuse (Jenkins, 1998, p. 169). Local governmental organizations, such as the Los Angeles County Commission for Women, published pamphlets informing the public that “Ritual abuse is a serious and growing problem in our community and our nation” and debunking “the mistaken belief that satanic and other cult activity is isolated and rare” (Kincaid, 1998, pp. 178–179). A 1991 survey of California social workers found that half believed in “a national conspiracy of multigenerational abusers and baby-killers” (Wright, 1994, p. 78). Around the same time, it was reported that 90% of Utah residents believed in satanic ritual abuse (Wright, 1994, p. 181). By 1994, 70% of readers of women’s magazines “believed in the existence of sexually abusive satanic cults” (Nathan & Snedeker, 1995, p. 2).

Eventually, however, belief in the reality of organized ritual child sexual abuse began to crumble. A number of influential reports in various countries essentially debunked the claim that organized ritual child sexual abuse was occurring (Pratt, 2005, p. 277). Today, although some skeptics hold out, the convictions for ritual child sexual abuse are generally viewed as miscarriages of justice. However, not only are the individual convictions generally viewed as wrongful: the widespread belief in the very phenomenon of organized ritual child sexual abuse is generally viewed as either false or vastly overstated. The period in which it was widely believed that organized ritual child abuse was widespread has been characterized as a “witch
hunt” (Nathan & Snedeker, 1995; Wright, 1994), a “moral panic” (Jenkins, 1998), or mass hysteria (Showalter, 1997). The chief cause of these miscarriages of justice is thought to be suggestive questioning of young children (Ceci & Bruck, 1995) and widespread belief by clinical psychologists in “the reality of repressed memories”—true memories that can be forgotten and then “recovered” thorough psychotherapy (Loftus, 1993). Today, even scholars with diverging views on the trustworthiness of child interviews agree that the suggestive techniques used in many of the 1980s and early 1990s ritual abuse cases were excessive (Lyon, 2002; Quas, Goodman, Ghetti, & Redlich, 2000). Although miscarriage of justice scholars concede that some of those convicted may have been guilty of some acts (Gross et al., 2005), and other scholars concede that it is possible, even likely, that the most horrific acts of abuse, even of murder, may occur in isolated cases (Hacking, 1995, p. 284n21), most scholars now agree that organized ritual child sexual abuse certainly did not occur at the level alleged by these mass prosecutions.

Nearly all of those accused in the ritual sexual abuse mass prosecutions have now been released from prison, though few have been legally exonerated (Gross et al., 2005).2 Clearly these miscarriages of justice caused many of the individual consequences we have discussed above. It would be difficult to describe the pain a false accusation of child sexual abuse would cause to the affected individuals and their families and supporters. In many cases, the accusations included literally unspeakable acts. Child sexual abuse miscarriages of justice also have special consequences for families. In many cases, the supposed victims were family members. Worse than that, the victims were children who, it is now generally believed, were manipulated into believing that trusted adults, in some cases their own parents, committed these unspeakable acts. Psychologists have documented how suggestive interrogation can implant such belies in vulnerable subjects, such as children (Ceci & Bruck, 1995). Thus, the wrongly convicted suffered not only the pain of wrongful incarceration and physical and emotional separation from their families suffered by all the wrongly convicted, but also in some cases additional physical and emotional separation from their families because their families believed they had visited terrible crimes upon their own children (Humes, 1999). In some cases, the accused themselves came to believe the accusations (Wright, 1994), and, in some cases, these now-grown children still believe the accusations. Few things are as painful as reading about the case of John Stoll. Stoll was convicted in 1984 and sentenced to 40 years in prison for leading a ring of child molesters and child pornographers. He was released after 19 years in prison when four of the six child witnesses, now grown, recanted their testimony. Although he has been freed from prison, the false prosecution of Stoll has lost him his son permanently; his son still believes the accusation (Johnson, 2004).

In addition to these individual consequences, however, the child sexual abuse mass prosecution had profound impacts on the communities in which they occurred. Neighbors began to distrust neighbors (Humes, 1999). The relationship between adults and children in public places in contemporary societies has been profoundly

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2 These cases are not generally included by miscarriages of justice scholars studying the prevalence of wrongful convictions out of an abundance of methodological caution: First, they are not exonerations in the legal sense. Second, scholars do not wish to be accused of inflating the numbers of miscarriages of justice.
altered, not necessarily entirely for the worse, but altered nonetheless. As Hacking (1995, pp. 66–67) notes, the ritual child sexual abuse scandals “wiped out a little of our humanity—no man in his right mind today would help a strange child in a park trying to reach a water fountain.”

The child sexual abuse mass prosecutions were not merely local occurrences, though. When the accusations were believed, they become national media stories, and, as has been well documented, sent into motion a nationwide panic about child sexual abuse (Jenkins, 1998). Media coverage of these stories held that the United States was beset by an epidemic of child sexual abuse. Readers of these stories would be apt to believe that the U.S. was confronted by dangerous new social problem, the ritual abuse of children.

Today, few credible scholars believe that satanic ritual child abuse occurs at all in the United States, and almost no credible scholar believes that it occurs at the scale that it was claimed during the panic or that all the accusations leveled during the panic were true. However, for a period of nearly a decade many Americans believed that such things did occur frequently and constituted a significant social problem. In other words, these miscarriages of justice had more than individual-level consequences. They caused people to believe things about crime, criminals, and their neighbors that were false. They altered the very fabric of what we believe about the nature and prevalence of crime. They caused many Americans to believe that a crime—satanic ritual child abuse—occurs, when in fact we now believe that there is no such crime—at least not at any significant level of prevalence. There were material consequences of these false beliefs, diversions of “energy, money, and concern” to fight phantom crimes, when real crimes demanded attention; for example, the child sexual abuse panic diverted public and official attention from the very real problems of child abuse and neglect in the United States (Kincaid, 1998, p. 292). However, there were also cultural consequences: an entire nation holding false beliefs about crime.

There has been much discussion of the causes of the ritual sexual abuse moral panic. Although explanations are complex, these discussions focus on the confluence of social forces such as the feminist movement, right-wing resistance to permissive culture, and the increasing medicalization of moral issues and the growth of the health care industry (Jenkins, 1998, p. 232). The failings of the justice system are not generally identified as one of these causes. Nonetheless, these miscarriages of justice did help fuel the cultural perception of an epidemic of ritual sexual abuse. In the next case, however, the miscarriage of justice directly created a moral panic.

THE CENTRAL PARK JOGGER CASE & WILDING

In 1989, New York City, a city perhaps jaded by a high level of violence, was shocked by reports that over 30 African-American teenagers had rioted in the city’s emblematic public space, Central Park. Most appallingly, it was reported that seven youths had savagely beaten and raped a female investment banker who had been jogging around the Central Park reservoir. The victim, who was known simply as “the Central Park jogger” but who has now revealed herself as Trisha Meili (Meili, 2003), had been beaten with a lead pipe and left for dead. Miraculously, she survived
and eventually recovered from a coma, though she had no memory of the attack (Sullivan, 1992).

Seven teenagers were arrested for the rape of the central park jogger. Although a semen sample failed to match any of the suspects, eventually five of them confessed to the crime (Schanberg, 2002). Despite the lack of physical evidence tying any of the five to the crime, three were convicted of rape and sentenced to 5–10 years in prison. A fourth was convicted of attempted murder and rape and also sentenced to 5–10 years. A fifth was convicted of assault, riot, and sexual abuse and sentenced to 8–26 years. A sixth pled guilty to an unrelated robbery, and charges against the seventh were dropped (Welch, Price, & Yankey, 2002, p. 6).

The story soon became a national crime story, a “high-profile crime,” generating enormous publicity, and becoming known as the “Central Park jogger case.” Scholars have noted that the designation of such “high-profile crimes” is highly selective. For example, in the week of the Central Park jogger case 28 other rapes or attempted rapes were reported in New York City, including one in which a woman was raped and thrown off a roof in Brooklyn (Chancer, 2005a, p. 39; see also Roberts, 1989). The reason that the Central Park jogger case became a national story and not the Brooklyn one clearly has a lot to do with resonance of the story with widespread national anxieties and fears about urban violence, its high-profile location, the identity of the victim, and, of course, race, class, and gender (Chancer, 2005b, p. 31).

However, the case struck a chord for another reason as well. The Central Park jogger case became known for its association with an entirely new type of crime known as “wilding” (Best, 1999, pp. 28–47). The term first appeared in the New York Times, where it was described as “random, motiveless assaults” engaged in as a “pastime” (Pitt, 1989). The term was supposedly reported to the newspaper by a police officer, who stated that the term was unfamiliar to the police (Welch et al., 2002, p. 5). In their confessions, the suspects supposedly had claimed that they “frequently went wilding and they only ended up in Central Park by happenstance” (Sullivan, 1992, p. 75). It was generally supposed that it was a slang term used among minority youths, and it was hypothesized that it was a contraction of the phrase “wild thing,” a euphemism for sex used in a popular song by the legendary rapper, Tone-Loc. However, there is apparently no support for the claim that “wilding” was a slang term in use prior to the Central Park jogger case. Thus, some have suggested that it was coined, not by minority youth, but by the police (Welch, Price, & Yankey, 2004).

But the term soon took on a meaning beyond the jogger case itself. Despite the term’s obscure origins, it was remarkably easy for the public and the press to believe that inner city minority youths engaged in random, motiveless gang rapes as a pastime. As Hancock (2003) notes, “Almost every member of the white-dominated press accepted without much question that mindless black and Latino adolescents could go from wreaking violent havoc in the park that night to carrying out a vicious gang rape.” Wilding quickly became a new and frightening crime phenomenon, a “new crime” (Best, 1999, p. 29), which was taken seriously as a crime problem. New York City Mayor Edward Koch called for the death penalty for “wilding” (Welch et al., 2002, p. 10). Donald Trump took out a full page advertisement in the New York Times demanding the death penalty for the suspects and claiming that “roving bands of wild criminals roam our neighborhoods, dispensing their own vicious brand of twisted heat on whomever they encountered” (Chancer, 2005a,
Two mayoral candidates, David Dinkins and City Council President Andrew Stein, called for “wilding” to literally become a new crime by creating new statues mandating extra punishment for “wilding” crimes (Stein, 1990; Welch et al., 2002, p. 9). A study found that, among the 406 print and television news items about the case that appeared in the 15 days after the story broke, “the crime was most often presented as a random act, a product of subculture of ‘wild youth’” (Sullivan, 1992, p. 57). Though the term had never appeared in the media prior to the Central Park jogger case, over the next 8 years it appeared in 156 stories in the four major New York City newspapers (Welch et al., 2002, p. 8). Quickly, “wilding” became ensconced in the popular lexicon. By 1990, the term had an entry in the Dictionary of Contemporary Slang (Welch et al., 2002, p. 12), and it had become a topic of scholarly inquiry (Cummings, 1993). In addition to “wilding,” the Central Park jogger case was closely tied to the construction of another novel crime concept: the juvenile “superpredator” (Filler, 2000, pp. 1110–1111).

The emergence of wilding was taken by many to signal a dramatic crisis in American society. One commentator went so far as to suggest that wilding “has sounded a red alert for our survival as a civilized society” (quoted in Welch et al., 2002, pp. 19–20). Perhaps the most comprehensive appropriation of the term “wilding” was by a sociologist who reissued his book Money, Murder, and the American Dream under the new title The Wilding of America (Derber, 2002). Here “wilding” describes almost all crimes, from “street” crimes such as the Central Park jogger case to white-collar crime, and indeed all selfish behavior, such as cheating on college examinations: “a vast spectrum of self-centered and self-aggrandizing behavior that harms others” (p. 8). Derber claimed that “Street wilding and white-collar wilding are racing out of control” (p. xii), that wilding was “one of America’s deepest social crises” (p. 2), and that “Not everyone will become a wilder, but nobody will be untouched by wilding culture” (p. 13). He proposed to “help wake us to the wilding plague spreading among thousands of less extreme wilders who are not killers” (p. 8), and he suggested that America was “becoming a wilding society” (p. 4).

Thirteen years later a convicted rapist named Matias Reyes serving time in prison confessed to the rape of the Central Park jogger, saying he had found religion and wanted to clear his conscience. Reyes stated that he had acted alone. DNA testing found that the unidentified semen sample was consistent with Reyes. The original defendants had already been released, but they promptly sued the city for wrongful conviction. The original prosecutors expressed doubts about Reyes’ account (Hancock, 2003), and some former prosecutors still express doubts, contending that Reyes, “a convicted criminal, in prison for a long stretch, could have a dozen reasons he might take the heat for the others” (Murphy, 2007, p. 34).³ By most observers, however, the Central Park jogger convictions, like the ritual sexual abuse cases, are viewed as miscarriages of justice. In response to the counterfactual suggestion that, had the jogger died, the teenagers could have been executed for murder as he had advocated, Trump answered that “the government would’ve made a tragic mistake” (Roberts, 2002).

³ Murphy does not name any of the dozen reasons, but in a personal conversation with me she suggested that Reyes might have received sexual favors in prison from the convicted Central Park jogger rapists in exchange for his claim to have acted alone. Reyes was co-incarcerated with at least one of the original defendants, Kharey Wise (Wilson, 2002).
Generally speaking, the take-home messages from the astonishing reversal in the jogger case have concerned the seemingly miraculous power of DNA profiling (Lynch, Cole, McNally, & Jordan, 2008, p. 267); the potential for even seemingly proper interrogation procedures to produce false confessions (Kassin, 2002), thus drawing attention to the problem of police interrogation and miscarriages of justice more generally (Leo, 2008); and some admirably self-critical reflection by some journalists about their coverage of the case (Hancock, 2003). Less has been said about what this miscarriage of justice says about the crime of “wilding”; indeed, the debunking of the phenomenon of “wilding” has generated almost no notice at all. But the conclusion is clear: the claims that wilding was a serious social problem, that it was prevalent in the early 1990s, and even that it even existed as a category of crime at all rested upon false premises because the Central Park jogger case was almost certainly not a case of wilding, it was an “ordinary,” if appallingly brutal, rape and attempted murder. This is not to minimize the crime, of course, but merely to note that no new category of crime was necessary to account for it.

Without the Central Park jogger case, there is no longer any crime of wilding. Since the “invention” of the crime rested entirely upon that case, now that the case turns out to almost certainly be a miscarriage of justice, there is nothing left to account for the crime. The crime simply no longer exists. The related notion of the “superpredator” has been largely debunked as well, even to some extent by its own coiner (Muschert, 2007; Becker, 2001). Wilding too, it would appear, was a moral panic (Best, 1999). And, again, as with child sexual abuse, one major material consequence of our culture’s false belief in this crime may have been to distract public attention and resources from “ordinary” crimes of violent sexual assault. However, of course, there are major cultural consequences as well. For nearly a decade, Americans believed that minority youths regularly took pleasure in rampaging through the streets goading one another through peer pressure to committing senseless acts of random, unspeakable violence. These cultural consequences are all the more significant because of the well documented race and class facets of “wilding” discourse (Chancer, 2005b; Welch et al., 2004). Stories about wilding, Haney (2005, p. 41) notes, “contain implicit causal messages about ‘incorrigible,’ ‘wild,’ and ‘dangerous’ young criminals who are intent on mayhem, defy treatment and lack a conscience.”

Certainly it is true that “wilding” had declined of its own accord even before the Central Park jogger convictions turned out to be false. Unlike ritual sexual abuse, “wilding” was a “short-lived social problem” (Best, 1999, pp. 30–33). Nonetheless, it seems likely that wilding would have lived on, albeit in attenuated form, were it not for the fortuitous events that led to its debunking. Similar fortuity was also crucial in exposing my next case. In the next case, however, the cultural consequence cannot be characterized as a moral panic. Instead, the cultural consequence has to do with the cultural perception of the nature and potential dangerousness of terrorism.

THE MADRID TRAIN BOMBING AND ENEMIES WITHIN

On March 11, 2004, a series of ten coordinated bombings of commuter trains in Madrid killed 191 people and injured more than 1,000 more. Although in the initial hours after the attacks it was not clear whether they should be attributed to Al Qaeda...
or to Basque separatists, a consensus soon emerged that the attack was the work of Al Qaeda. The Spanish National Police (SNP) identified numerous suspects, mostly Moroccan. Twelve were jailed, seven blew themselves up during a raid, and others were arrested and eventually freed on bail.

Among the numerous items of evidence recovered in the course of the police investigation was a plastic bag containing detonator equipment. The bag was recovered from a stolen van parked at Alcalá de Henares, a train station through which all of the bombed trains had passed. Two identifiable latent fingerprints were discovered on the outside of the plastic bag. The SNP submitted these to Interpol, requesting that they be searched against databases around the world (Fine, 2006).

By March 20, the U.S. Federal Bureau of Investigation (FBI) believed that it had identified the source of one of the latent prints from the plastic bag at Alcalá de Henares. At least three FBI latent print examiners agreed that the source was Brandon Mayfield, a Portland, OR, attorney. Mayfield’s inked prints were in the FBI database because of an arrest for theft of an automobile in Kansas in 1985, when Mayfield had been a teenager, for which the charges had eventually been dropped. A second set of Mayfield’s prints had been entered into the database through Mayfield’s service in the U.S. Army (Fine, 2006).

Mayfield was placed under 24-hour covert surveillance, on the Visa Lookout list, and entered into the Treasury Enforcement Communications System. Around that time, the Foreign Intelligence Surveillance Act (FISA) court approved an emergency application for a warrant to put Mayfield under FISA surveillance. Unlike ordinary criminal search warrants, FISA warrants permit the government to perform covert searches without notifying the targets of the searches. Under the authority of this warrant, the FBI apparently conducted at least one covert search of Mayfield’s office and at least two of his residence over the next several weeks (Fine, 2006).

Depending on how one interpreted the evidence, Mayfield was at once an implausible and a plausible suspect in the Madrid train bombings (Cole, 2005a). Mayfield did not possess a valid passport, there was no evidence that he had traveled abroad in more than a decade, and there was no evidence of communications between him and co-conspirators in Spain or elsewhere. On the other hand, Mayfield was a Muslim convert. His wife, Mona, was a naturalized citizen who had been born in Egypt. His primary business involved representing Muslims in immigration and family law matters. On one such occasion, he represented a man named Jeffrey Battle, a member of the so-called “Portland Seven,” who were later convicted of conspiracy to wage war against the United States. He had advertised his services in a Muslim business directory, tied, through three degrees of separation, to Osama bin Laden himself. Moreover, there was a call logged from Mayfield’s home telephone to the director of an Islamic foundation that had been designated a terrorist agency by the U.S. Treasury Department.

On May 6, based on the evidence described above, the FBI apprehended Mayfield as a material witness in the Madrid train bombing. Mayfield was held in a county jail. Later, a latent print examiner hired to examine the fingerprint evidence on Mayfield’s behalf would corroborate the FBI’s identification of Mayfield as the

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4 The precise dates have been redacted from the U.S. Department of Justice Office of the Inspector General’s report on the case (Fine, 2006).
source of the print (Fine, 2006). By May 7, the American media was reporting that an American lawyer was being held as a suspect in the Madrid train bombing. The idea that native-born Americans might be sleeper Al Qaeda operatives was soon disseminated by the media. In an editorial, the *New York Post* noted “the possibility that someone like Mayfield—a 37-year-old former Army lieutenant practicing law and seemingly ‘ordinary’—aided an act of terror raises alarming scenarios. Certainly,” it went on, “the idea of a Fifth Column here cannot be discounted, post-9/11. Several cells—the one in Portland; others in Buffalo and elsewhere—have been uncovered in the past few years. And terrorist recruiting in America has been a top priority for al Qaeda & Co.” (“An American terrorist?,” 2004). Another newspaper editorialized that “The detention of Portland lawyer Brandon Mayfield is another reminder that the enemy in the war on terrorism is not just overseas.” After noting that “Almost everybody fears that al-Qaida, encouraged by the election of an anti-war leader in Spain after the Madrid bombings, will mount another attack on America this summer or fall,” the editorial warned, “Having domestic al-Qaida operatives who don’t fit the normal profile could help them succeed.” The editorial further tied the incident to the debate over the curtailment of civil liberties in the war on terror, asserting “Whether Mayfield is guilty or not, obviously it is not the time to weaken measures designed to enhance domestic security. Those who would be among the first to blame the Bush administration if another attack occurs should stop trying to hinder efforts to prevent it from happening” (“Terrorism: No safe place,” 2004).

To be fair, stories such as these were exceptions. The majority of the media reports were far more circumspect, noting that the evidence against Mayfield (other than the fingerprint) was circumstantial and that he had not been formally charged with any crime. The principal reason for the media’s caution was undoubtedly the fact that, as soon as the story was reported, it was also clear that the SNP remained skeptical of the FBI’s identification of Mayfield as the source of the latent print from Alcalá de Henares. By May 20, it turned out that that skepticism had been well founded. The SNP identified Ouhnane Daoud, an Algerian national, who had been jailed for overstaying a visa, as the source of the latent print. Daoud’s name had been discovered on papers in debris after suspects in the Madrid train bombing blew themselves up during a police raid. After viewing the Daoud print, the FBI conceded that it had made an error and released Mayfield with a public apology.

As with the cases discussed above, most discussion of the Mayfield case has focused on what it tells us about the causes, not the consequences, of miscarriages of justice. The Mayfield case has come to serve as the most prominent example of misattribution of latent print evidence, evidence that its advocates had claimed—and still claim—is “infallible.” Although the infallibility claim was obviously false even before Mayfield—latent print misattributions have been known since 1920—Mayfield punctured the infallibility claim particularly effectively because it involved multiple examiners from the vaunted FBI and a highly regarded examiner hired on behalf of the defendant (Cole, 2005b). This, in turn, brought attention to forensic evidence as a cause of miscarriages of justice (Garrett & Neufeld, 2009; Giannelli, 2007; Saks & Koehler, 2005; Scheck, Neufeld, & Dwyer, 2003, pp. 204–221).

Less attention has been paid to the consequences of the miscarriage of justice in the Mayfield case. The Mayfield case differs from the others that we have discussed above in that it was a case of wrongful arrest, not wrongful conviction. Mayfield’s
ordeal, though in his own words “harrowing” (Fine, 2006, p. 264), was far shorter in duration, around two weeks, than that of those convicted in the ritual child sexual abuse mass prosecutions or the Central Park jogger case. Nonetheless, Mayfield and his family certainly suffered many of the individual consequences we have discussed above. Because of the FISA warrant, Mayfield and his family also suffered the additional feeling of violation that would come with knowing that their home had been invaded and searched without their knowledge while they were living in it.

The Mayfield case had cultural consequences as well. However, because of its short duration and the fact that most of the media was appropriately skeptical from the beginning, we can only glimpse the potential cultural consequences that likely would have followed had Mayfield actually been wrongly convicted. The media reports cited above give some idea of what the consequences might have been if Mayfield had been falsely convicted of having orchestrated the Madrid train bombing from Portland, but in order to fully appreciate the potential cultural consequences, we need to engage in a counterfactual.

The Mayfield case is, in a sense, bounded by two counterfactuals. The first concerns the causes of miscarriages of justice. It has been determined that, after having Mayfield under surveillance for several weeks, the FBI arrested Mayfield on May 6 because of a media leak in Europe. Fearing that Mayfield might flee, the FBI felt that they had to arrest him immediately (Fine, 2006). Had that leak not occurred, the SNP would probably have convinced the FBI that the fingerprint evidence was erroneous before they arrested Mayfield. In that case, it seems highly unlikely that the FBI’s misidentification of Mayfield—and the defense expert’s corroboration of that misidentification—would have become known to the public. In that case, the FBI would likely still be publicly claiming—as it had been prior to the Mayfield case—to not be aware of having ever made a latent print misidentification. Thus, as I have argued elsewhere, it is only by happenstance that external observers are able to refute the claim that latent print identification, as practiced at the FBI, is infallible (Cole, 2006, pp. 94–96).

The second counterfactual concerns the consequences of miscarriages of justice. Consider the scenario that the erroneousness of the attribution of the latent print to Mayfield had not been exposed. It is not difficult to imagine. After all, the attribution survived review by at least two additional FBI latent print examiners, reviews that were intended to detect any errors in the original examiner’s analysis. The attribution also survived review by an independent examiner hired on Mayfield’s behalf, an examiner who was free of whatever psychological pressures might be attendant on internal reviews of a laboratory’s work (such as the desire to get along with colleagues) and whose cognitive bias, if any, ought to have been in favor of the defendant (Dror & Charlton, 2006; Dror, Charlton, & Péron, 2006; Risinger, Saks, Thompson, & Rosenthal, 2002). It was only through the dogged persistence of the SNP that the error was exposed. The Department of Justice’s Office of the Inspector General report demonstrates that only when presented with what appeared to be a better match for the latent print did the FBI analysts concede that inconsistencies between the latent print and Mayfield’s print were true inconsistencies and not “explainable” inconsistencies (Fine, 2006). It does not strain plausibility to suggest that not every police agency would necessarily have had the fortitude to stand up to the FBI during the dispute over the attribution of the latent print, especially given the FBI apparent “overconfidence” (Fine, 2006, p. 10) and given that the Spanish
reported that the FBI “relentlessly pressed their case... explaining away stark proof of a flawed link... and seemingly refusing to accept the notion that they were mistaken” (Kershaw, 2004). If we imagine the print being found on American soil, it is not entirely clear that an American law enforcement agency would have stood up to such pressure with equal fortitude.

What would have been the consequences had the attribution of the latent print to Mayfield stood? Even given the circumstantial nature of the evidence, Mayfield likely would have been convicted on the strength of the fingerprint match. His religious identity, Egyptian spouse, and indirect ties to Islamic extremists probably would have only strengthened the perception of guilt. Although Mayfield was never charged, in a court hearing when Mayfield was arrested the judge told him he was facing charges that could result in the death penalty (Fine, 2006, p. 70), and, indeed, he easily could have received a death sentence if the latent print attribution had stood.

So, had the Mayfield miscarriage of justice turned from a wrongful arrest into a wrongful conviction, there would have been dire individual consequences for Mayfield and his loved ones. However, the cultural consequences would have been momentous as well. Even the tentative initial press reports put forward the emerging narrative: Mayfield, either working from inside the U.S. or traveling with false documents, provided the demolitions expertise for a plot involving mainly Moroccan labor. Despite the seeming absurdity of orchestrating a post-9/11 bombing in Spain from inside the United States—why not from Spain itself, or Morocco, or Algeria, or anywhere where the glare of surveillance would be less than it is in the U.S., and why, if Al Qaeda had a sleeper operative in Portland would it have used him to orchestrate an attack in Madrid?—it is difficult to doubt that the vast majority of the American public would have viewed this scenario as plausible. Imagine for a moment the implications of the American public believing in such a plot: the U.S., it turns out, does indeed, as government officials have been claiming, harbor Al Qaeda cells within its body politic, not merely in the form of suspicious-looking recent Middle Eastern immigrants, but even in the form of Caucasian, native-born Muslim attorneys. These cells are so frighteningly sophisticated that they are able to orchestrate massive surprise attacks outside the country.

What would be implications of the Mayfield scenario being “real”? How would the society we live in be different from the one we inhabit today? What differences would have been realized in the debate over the renewal of the U.S.A. Patriot Act? How would we think differently about crime, terrorism, suspect individuals, and suspect populations? This counterfactual demonstrates that entirely alternate realities can be culturally constructed by miscarriages of justice. Which version of reality we live in depends on whether the miscarriage of justice is exposed or remains hidden.

**CONCLUSION**

Perhaps the crucial issue that faces serious social scientific scholarship on miscarriages of justice is the problem of generalizability (Gross, 2008; Leo, 2005, p. 217; Schehr, 2005; Zalman, Smith, & Kiger, 2006, p. 74). Because knowledge about miscarriages of justice is so stubbornly anecdotal, generalizability poses a
serious methodological challenge, whether one is studying general prevalence, specific causes, or individual consequences. The problem of generalizability is no less applicable to the study of cultural consequences of miscarriages of justice. I selected the cases above in order to make my larger point about cultural consequences of miscarriages of justice, but the vast majority of exposed miscarriages of justice were low-profile cases and did not generate the kinds of cultural consequence that I discuss here. Surely, miscarriages of justice with the sorts of cultural consequences that I discuss here are rare instances of already rare events, exceptional cases among exceptional cases. Precisely how rare they are is, of course, difficult to say.

The best counterargument to the problem of generalizability is fortuity: the sheer fortuity of the exposed cases of miscarriages of justice leads us to a strong inference that there is an unknown portion of unexposed miscarriages of justice, the so-called “dark figure,” which simply were not subject to the fortuitous circumstances that might have allowed them to be exposed. Crucially, we shall never be able to identify these cases; they will remain unexposed.

This reasoning applies to cultural consequences as well. Fortuity was responsible for the exposure of two of my three case studies. But for the unsolicited, voluntary, and self-sacrificing confession of Mattias Reyes and the preservation of the DNA evidence, “wilding” would be a dated but nonetheless still “real” concept today. But for the persistence of the Spanish National Police, we might today believe that homegrown Al Qaeda terrorists orchestrate highly synchronized bombings in Europe. The problem of generalizability, however, cuts both ways. Although we cannot infer from these few cases that the number of unexposed miscarriages of justice with cultural consequences is large, we also cannot infer that the number of unexposed miscarriages of justices with cultural consequences is non-existent. This leads to the uncomfortable conclusion that there very well may be miscarriages of justice, unexposed and destined to remain unexposed, that have cultural consequences. However, unlike the cases discussed in this article, the beliefs about crime perpetuated by these unexposed miscarriages of justice may well never be debunked; they will simply become part of culture, part of our social world, and we will live with them as truth.

REFERENCES


