Professors Leo and Gould reply:

We are longtime fans of Sam Gross’s important empirical research on wrongful convictions. In 1987, Gross published an empirical study of real world eyewitness misidentification cases that was ahead of its time for legal scholarship. In 1996, he published an insightful analysis of why, counter-intuitively, the risk of erroneous conviction is likely far higher in capital cases. And in 2005, Gross and his colleagues published an important analysis of 340 exonerations from 1989–2003. These are only some of Gross’s (and his colleagues’) many valuable contributions to the empirical study of the wrongful conviction of the innocent. Recognizing these contributions, we have written, in an article forthcoming in The Journal of Criminal Law and Criminology, that, "Gross is a leading, perhaps even the leading, scholar in the field [of wrongful convictions] at the moment."

Our few mild and minor criticisms of Gross and O’Brien in our recent article in the Ohio State Journal of Criminal Law—most of which were so minor that they were relegated to two footnotes—were not intended to give offense. While nothing in Gross and O’Brien’s letter directly bears on the main ideas, arguments, or recommendations in our article, we stand by what little we wrote that was critical of Gross and O’Brien. First, their literature review was not as thorough as it should have been, as they agree. Second, regression analysis generally offers more informative inferential statistics than chi-square tests when trying to tease out the relationship between

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4 See also Samuel R. Gross & Barbara O’Brien, Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases, 5 J. EMPIRICAL LEGAL STUD. 927 (2008).
7 Id. at 10 n.26, 24 n.94.
9 Id. ("[W]e failed to cite several published studies by criminologists. This is true.").
correlated case characteristics and dependent case outcomes. Finally, Gross and O’Brien’s statement that “Leo and Gould’s central criticism focuses on our general outlook” is incorrect because we did not express a central criticism of Gross and O’Brien—our article was not about Gross and O’Brien—but instead merely disagreed with their empirical assertion that “We do not know much about false convictions, and it will be difficult to learn more.” As we explained in the article, scholars today know a great deal about the wrongful conviction of the innocent in the American criminal justice system, and it will not be difficult to learn more. We did not “insist” on this point so much as note that this academic knowledge has important policy implications.

While we welcome thoughtful and constructive criticism, Gross and O’Brien’s reply diverts attention from what our article was actually about. Our article was invited by guest editors David Harris and Joshua Dressler as part of a symposium on “What Criminal Law and Procedure Can Learn from Criminology.” Professor Harris succinctly summarized what our article is actually about in his introduction to the symposium:

Professors Leo and Gould begin by observing the upsurge of legal scholarship on wrongful convictions over the past ten years, but they note that very little of this work has reflected collaboration between legal scholars and criminologists. They then show the potential for such collaboration by using the empirical study of wrongful convictions as an example, arguing that the methods of criminology (and social science generally) will allow us to understand the causes of wrongful convictions because of the capacity of these approaches to give us more precise and accurate descriptions of how things happen. According to Leo and Gould, using these techniques will help scholars of criminal law and procedure to attain a clearer understanding of “the causes,

10 Leo & Gould, supra note 6, at 25.
11 Gross & O’Brien, supra note 8, at 274.
12 Gross & O’Brien, supra note 4, at 958.
13 Leo & Gould, supra note 6, at 28–30.
14 Id.
characteristics, and consequences" of wrongful convictions than
does the usual narrative approach utilized in legal scholarship.\(^\text{16}\)

We hope those who are interested in the dialogue between criminal
law/procedure and criminology, as well as those interested more generally
in what legal scholars can learn—methodologically and substantively—
from social science, will read the symposium essays.\(^\text{17}\) Sam Gross and
Barbara O'Brien are talented legal scholars from whom anyone interested in
the empirical study of wrongful convictions has much to learn, and so we
hope they too will be part of this dialogue.

Richard A. Leo\
Jon B. Gould\(^*\)\

\(^*\) Associate Professor, University of San Francisco School of Law, rleo@usfca.edu.
\(^**\) Professor and Director, Center for Justice, Law and Society, George Mason University,
jbould@gmu.edu.

\(^{16}\) David A. Harris, *What Criminal Law and Procedure Can Learn from Criminology*, 7 OHIO

\(^{17}\) Symposium, supra note 15.