Nordic Journal of Criminology | Scandinavian University Press

RESEARCH PUBLICATION

Volume 25, no. 2-2024, pp. 1–19
ISSN online: 2578-9821
DOI: https://doi.org/10.18261/njc.25.2.5

Access to – or avoidance of – accountability?

A case study of a decade-long struggle for exoneration

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Abstract
In Sweden, individuals who claim they have been wrongfully convicted can apply for post-conviction review. However, researchers have argued that the path towards exoneration is filled with barriers that some may overcome, while others do not, regardless of the actual merits of the wrongful conviction claim. In this study, I explore the tension between the intuitively reasonable tendency of applicants to blame the criminal justice system for causing the wrongful conviction and the potential limitations in the structure and application of the post-conviction review remedy regarding the accountability of the justice system itself. This is achieved by means of a case study focused on a decade-long struggle that resulted in an individual (NN) being exonerated after serving 13 years of his lifetime imprisonment sentence. NN claimed that he had been wrongly convicted of murder due to failings and errors within the justice system, but was eventually exonerated on grounds that had nothing to do with the criminal justice process or the actions of the legal actors involved. I also discuss the support NN received from lawyers and journalists, something that few other applicants have access to, which enabled him to present the type of evidence that resulted in his exoneration.

Keywords
Wrongful conviction, post-conviction review, accountability, exoneration

The Blackstone ratio, which states that it is better that 10 guilty persons escape than that one innocent suffers, is a deeply rooted principle in western rule-of-law discourse (de Keijser et al., 2014; Huff et al., 1986). Despite this, we know that wrongful convictions happen and that many of those who are wrongfully convicted are only exonerated after serving many years in prison. International (mostly Anglo-American) research has also shown that the number of individuals who are wrongfully convicted is likely to be subject to a dark figure (Ramsey & Frank, 2007; Gross, 2013; Loeffler et al., 2019), and studies have indicated that this may also be the case in Sweden (Gräns, 2023; Lidén et al., 2018a, 2018b; Stridbeck, 2020). The fact that it often takes a long time for individuals who have been wrongfully convicted to be exonerated, and that some remain part of a dark figure and will never be exonerated, stresses the importance of studying the legal path that wrongful conviction claimants need to take in order to have a chance of being exonerated, i.e., the post-conviction review (PCR) process. However, knowledge about how this legal area functions in practice is scarce. Rafail and Mahoney (2019) have described a lack of knowledge regarding the American PCR process in a way that could equally be applied to the Swedish context:

> The sequence of events taking place between conviction and exoneration is largely a black box in the existing literature, but one that may shed valuable insight on exoneration as a distributional process working to the advantage of some social groups and to the detriment of others. (p. 538)

More has certainly been written on the causes of wrongful convictions, at least in an Anglo-American context, based on known exoneration cases and the criminal justice system's own description of the events leading up to its decisions to overturn these convictions. However, looking only at the final stage fails to provide the full picture. As Rafail and Mahoney (2019) have noted, the path towards exoneration may be filled with barriers that some may overcome, while others do not, regardless of the actual merits of the wrongful conviction claim, resulting in the aforementioned dark figure of wrongful convictions. In addition, the way a case is depicted by a claimant may well differ from the picture provided by the criminal justice system. Indeed, having a wrongful conviction application granted does not automatically mean that the court in question has confirmed all of the claims made by the claimant. In this regard, Naughton (2013) has raised the concern that the criminal justice system is often reluctant to portray wrongful convictions as wrongful, instead viewing them as a "a phenomenon that is unintended and unavoidable and one in which no one is to blame" (p. 28). This risks leading to exonerated individuals not receiving proper redress, and opportunities for the justice system to improve by learning from its mistakes being lost.

Against this background, the focus of the present study is directed at one individual's – here called NN – decade-long struggle for exoneration, which resulted in him being released from prison after he had served 13 years of a life sentence for murder and robbery. A more detailed case description will follow, but for now the relevant point is that NN insisted that he had been wrongly convicted as a result of errors and failings that happened during the criminal justice process and the way the legal actors involved had handled the case, as is the case with most applicants (Hellqvist, 2021; Lidén, 2018). This appears intuitively reasonable, since there are probably few convicted people who would argue that they were innocent but had nonetheless been treated correctly throughout the justice process. However, NN was eventually granted the opportunity to have his case reopened on grounds that had nothing to do with the possible wrongdoings of the criminal justice system. The NN case is highly relevant because it raises the question of the space that the post-conviction review remedy opens – or does not open – for the accountability of the justice system itself, and what consequences this may have for wrongful conviction claimants trying to navigate this arena. In this article, this question is explored by means of a case study of NN's struggle for exoneration, in which I examine the post-conviction court documents from this case through the lens of accountability theory. Because NN filed multiple applications over the course of a decade, and because his case is both similar to (attributing blame to the criminal justice system) and different from other wrongful conviction claim cases (NN received help from lawyers and journalists, and was eventually exonerated), the case provides a unique opportunity to examine a process that is often shrouded in obscurity.

The disposition of the article is as follows: I start by situating the current study in the context of an overview of the topic of wrongful convictions in the Nordic countries and studies of this phenomenon, followed by a description of elements from accountability theory and its relevance for post-conviction review studies. I continue with an explanation of the legal provisions that govern the Swedish PCR process, and then provide an overview of NN's case and a description of the court documents and how they were analysed. I then present the study's results, showing how NN took what I refer to as an *evidential detour*, in which he presented evidence that did not directly attribute any blame to the criminal

justice system, which seems to have been a successful application strategy for reaching the approval threshold, since it allowed the Supreme Court to create a narrative of the sequence of events as involving an *accumulation of doubts*, but where the doubts about NN's guilt had nothing to do with the justice system's own potential wrongdoings; as such the Supreme Court's narrative may be viewed as an avoidance of accountability. I then discuss how this evidential detour was made possible by lawyers and journalists. In the concluding part of the article, I discuss how the alternative ways of reviewing wrongful conviction claims have the potential to reduce the risk for bias and, as a result, increase the space for accountability.

Wrongful convictions studies in the Nordic countries

Wrongful convictions and issues related to this topic cannot be considered an established area of research in the Nordic countries in the sense that the existing studies in this field have produced a base of accumulated knowledge, as is the case in the Anglo-American countries. This makes sense, considering the links between expansive legislation, repressive crime policy and a high prevalence of wrongful convictions (Norris, 2017). The Nordic justice systems have a number of intrinsic safety mechanisms that are specifically intended to avoid wrongful convictions, and the Nordic countries are counted among the top nations in the world with regard to adherence to rule-of-law standards in criminal justice proceedings (The World Justice Project Rule of Law Index, 2022). As a result, the issue of wrongful convictions has not emerged as such a major or alarming issue as in the United States or the United Kingdom, for example, and academic interest has therefore been limited. However, this does not mean that wrongful convictions as a research object is irrelevant in the Nordic setting. Interestingly, although all of the Nordic countries have had several high-profile cases of convicted individuals being exonerated after serving many years in prison, it is only Norway, and to some degree Iceland, who have radically reformed their PCR systems as a result of these cases and the way they were viewed as symptoms of a serious problem that required attention and intervention (Ingadottir & Haraldsdóttir, 2021; Stridbeck & Brennen, 2023). In addition, considering that Swedish crime policy has taken a punitive turn (Tham, 2022), it is not unlikely that rule-of-law standards are at risk of being compromised, with an increase in wrongful convictions one of the many consequences.

The relatively few Nordic studies conducted on this topic have for the most part focused on describing the PCR system, discussing areas of concern with their respective jurisdictions and providing comparisons with other countries' systems (e.g. Gräns, 2023; Johnson, 2011; Martinsson, 2021; Stridbeck & Brennen, 2023. See Hellqvist, 2023 for an overview of Nordic publications). There are also studies examining the relationship between false confessions and wrongful convictions (Gudjonsson, 2021; Stridbeck, 2020), and confirmation bias and wrongful convictions (Lidén, 2018). Previous Swedish studies have also compiled statistics on the incidence, characteristics and outcomes of PCR applications, since there are no court statistics on post-conviction review cases in Sweden (Gräns, 2023; Lidén, 2018, 2021; Hellqvist, 2017). In this respect, the figures compiled by Gräns (2023) are the most recent. For example, between 2010 and 2020, 15 individuals were exonerated after wrongful convictions for murder, and most of these wrongful convictions were based on circumstantial evidence. Gräns (2023) also states that the discovery of new evidence by journalists played a central role in overturning these convictions. Altogether, many of these studies point to the importance of looking beneath the surface, and imply that there may be a significant number of wrongful convictions which are never identified as such, mostly as a result of barriers to claimants, such as a lack of legal aid, difficulties with obtaining new evidence, and issues of transparency and independence when applications are being assessed

within the court system as opposed to by an independent review body (e.g. Martinsson, 2021; Lidén, 2018). Based on my interpretation of the literature, many of the raised concerns fundamentally relate to issues of – and navigation around – justice system accountability, albeit the concept of accountability is not used in a theoretical or analytical sense. In this light, the current study considers what new insights into the PCR remedy can be gained if it is analysed within the framework of accountability theory. An especially pertinent issue in this regard is the struggle of persons claiming wrongful conviction who need to navigate a legal reality that is often at odds with their own experience (Hernandez, 2023; Roberts & Weathered, 2009).

Taking accountability into account

Before I started analysing NN's case, I already knew from reading through the documents that alleged failings and errors within the justice system were central to NN's applications. The preparatory legal texts (*travaux préparatoires*) state that the PCR remedy should work as a safeguard for those who are innocent, allowing them to obtain justice, and that the immutability of court judgements and the protection of court authority must not be given more weight (Cars, 1959; SOU, 1926:32; 1938:44). It is clear that NN is calling for accountability regarding claimed legal wrongdoings, but although his conviction was eventually overturned, the Supreme Court confirmed very few of his claims about wrongdoings. This made me wonder about the space that the PCR remedy opens – or does not open – for justice system accountability, and consequently, to what extent NN actually received justice. In an opinion piece on another infamous exoneration case, the then secretary general of the Swedish Bar Association pinpointed the complexity of the PCR situation when she wrote: "The court's conviction may very well have been correct, even though he may be innocent" (Ramberg, 2009), and described that a post-conviction review and subsequent exoneration need not necessarily mean that any errors had been made in the justice system's handling of the original case (see also Gräns, 2023). This is a description that I recognised from the decisions made by the Supreme Court in NN's case. While it may be true that certain wrongful convictions are the result of legal procedures which were correct at the time that they were used, this particular narrative can also be understood as a means by which the criminal justice system can protect itself from being held responsible (see Naughton, 2013). This alternative interpretation raises the issue of the role of justice system accountability in the PCR process and lies at the heart of what I attempt to explore in this study. While scholars have argued that accountability is an essential feature of the PCR process, at least in a normative sense (Prenzler, 2021; Rego, 2021), the PCR remedy is not explicitly defined as a forum of accountability, but rather as a mechanism to obtain justice for innocent people (SOU, 1926:32; 1938:44). However, the specific meaning of justice is not operationalised in the legal texts. As in the case of NN, it is clear that many PCR applicants are calling for accountability (Hoyle, 2016), and it is not far-fetched to assume that these applicants equate justice with accountability, making the concept important to examine in this context.

In order to explore the role of justice system accountability in the PCR process, I make use of the definition by Bovens (2010), who defines accountability as a social relationship "between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences" (p. 450). The court is an institution that often is mentioned as an accountability forum (Bovens, 2007; Bovens & Wille, 2021), and the specific arrangement of the PCR remedy corresponds to a large extent with Bovens' (2010) definition of accountability (see next section, "The legal rules", for a more detailed description of the

PCR arrangements). There are three types of questions that are usually attended to when examining accountability arrangements: accountability *for what*, accountability *to whom*, and accountability *of whom* (Bovens, 2007). In the current context, this would mean asking what the claimed wrongdoing is about, to whom the responsible actors need to answer, and who the responsible actor/s are. With these questions in mind, and viewed from a power dynamic perspective, accountability is in the present context used in a traditional vertical form: by using the post-conviction review remedy (account-holder), convicted citizens are calling for accountability in relation to claimed wrongdoings committed during the legal process and the involved actors (accounters) (Campbell 2019; Prenzler, 2021). From the claimant's perspective then, the quest for accountability through the use of the review remedy seems quite straightforward. However, a more complicated picture emerges when accountability is looked at from the point of view of the criminal justice system. Given that the Swedish PCR process is not conducted by an independent organ, the process fundamentally entails a situation of self-assessment, with both the account-holder (an Appeal Court or the Supreme Court) and the accounter (for example, the lower court or the prosecutor) representing the criminal justice system. As a consequence, there is a risk for system-level confirmation bias (Lidén, 2018), which can result in an avoidance of accountability since an overturned conviction puts the justice system in a conflicted position in relation to its own legitimacy (Campbell 2019; Naughton, 2013).

Clearly, a wrongful conviction can be seen as "evidence of the failings of the criminal justice system" (Campbell 2019, p. 249). As a result, and as Prenzler writes, "A culture of denial and defensiveness has contributed to resistance to reform and failure to remedy mistakes" (2021 p. 94). At the same time, a legal history containing zero exonerations is not optimal from a legitimacy point of view either, since no system is immune to wrongful convictions (Lidén, 2018; Prenzler, 2021). For this reason, the criminal justice system needs to overturn a few convictions from time to time. In such instances, exonerations may be seen as evidence of a functioning system that takes responsibility in those rare cases that wrongful convictions happen. According to Naughton (2013), the emphasis of the criminal justice system is then on depicting the wrongful convictions as a rarity that does not reflect badly on the system as a whole. This can be done, for example, by providing individualistic case-by-case explanations and by pointing the finger at the bad apples (Aguirre, 2017; Bonventre, 2021). The consequence of these approaches is that the convicted person risks not receiving proper redress in the sense that the full impact of the damage caused by the criminal justice system, and by extension the state, is not acknowledged. Thus, the wrongfully convicted person is not considered a victim of state harm, which is of great importance for reasons concerning financial compensation, psychological healing and sense of restoration of justice (Hoyle, 2016; Madrigal & Norris, 2022). In addition, it can be argued that a key aspect of accountability forums is to provide feedback that produces reflection and learning (Bovens, 2010). As a result, avoidance of accountability creates a situation in which opportunities for the justice system to improve by learning from potential mistakes are lost.

The legal rules

The PCR process constitutes what is known as an extraordinary legal remedy that may under certain circumstances be used to nullify court judgements that have obtained legal force (Ekelöf & Edelstam 2008). If the verdict was issued by one of the 48 Swedish District Courts, the review application is assessed and the decision to approve or deny the PCR application is made by one of the country's six Appeal Courts. If the verdict was issued by one of the Appeal Courts or the Supreme Court, the application is assessed and the decision

made by the Supreme Court. An approved application either means that the charges are immediately dismissed or – as was the case with NN – that a new trial will be held in the same court which imposed the original verdict.

The rules governing the PCR process are determined by five grounds, which comprise a number of conditions that must be met for an application to be approved. These grounds are listed in the Swedish Code of Judicial Procedure (Chapter 58, Section 2). The first three state that applications for review may be approved if any actor within the justice system has (1) been guilty of criminal conduct or neglect of duty or (2) been subject to a conflict of interest, or (3) if any evidence or statement has been forged or false, and this (ground 1, 2 or 3) may be deemed to have affected the outcome of the case. The fifth ground (5) states that post-conviction review may be granted if the application of the law on which the conviction was based was clearly unlawful. The fourth ground (4) has been described as being the most important in practice (Cars, 1959; Welamson & Munck, 2016; see e.g. NJA, 2010 p. 295), and refers to the emergence of new circumstances or evidence – hereafter referred to as the new evidence ground. This states that an application for post-conviction review may be approved:

> if a circumstance or item of evidence that was not presented previously is invoked and its presentation probably would have led to the defendant's acquittal or that the offence would have been linked to a sanction provision milder than that applied, or if in view of the new matter and other circumstances, extraordinary reasons warrant a new trial on the issue of whether the defendant committed the offence for which he was sentenced. (Official translation of Chapter 58, Section 2, number 4, p. 336)

I have not been able to find a clear explanation for why the new evidence ground is viewed as the most important in practice, but it may be interpreted as potentially covering a wider range of situations. The other grounds (grounds 1–3 and 5) instead focus on very specific circumstances related to the conduct of the trial and the legal actors who played a central role in the case. These grounds acknowledge that various errors and failings may have occurred during the criminal justice process, but at the same time the bar is set high. They require evidence of e.g. criminal conduct or a conflict of interests, and it is not sufficient simply to claim that such violations have occurred. Further, these other grounds do not explicitly include a requirement for new information, as is the case with ground no. 4, but nonetheless relate to information that has emerged subsequent to the conviction. For example, if it had been shown during the trial that the judge was subject to a conflict of interest, it may be assumed that measures would have been taken at the time. The requirement that information has emerged subsequent to the conviction has been motivated by saying that the post-conviction review remedy should not function as an additional appeal procedure, since this would risk undermining the status of court judgements (Cars, 1959; SOU, 1938:44).

The case

On April 14, 2004, a man was assaulted in his home on a farm in northern Sweden. His brother was attacked outside a barn located next to the house while on his way to feed the animals. The two brothers, who lived together on the property, were found two days later by home-help staff. The younger brother was still alive but had suffered serious injuries and was found with his hands and feet bound. The older brother had died as a result of repeated

violent head trauma. His body was found inside the barn, taped and covered by heavy sacks. NN was quickly identified as the perpetrator by a witness who claimed he had heard NN talking about breaking into the brothers' home because they kept money in the house. This witness, who would become the principal witness in the case, said that on April 13, the day before the murder, he had attempted to dissuade NN from going through with his plan by taking him on a car journey. His idea with this journey was to show NN that he also knew where the brothers lived, in case anything should happen to them. Under interrogation, NN acknowledged that he had previously been to the brothers' farm and sold them a safe, but stated that he had then never returned, and that the witness's statements about both the planned burglary and what would come to be known as the 'dissuasion journey' were lies. NN said that he had indeed met the witness on the day before the murder to discuss business, but that he had quickly broken off the meeting because he perceived the witness to be under the influence of drugs.

The District Court passed judgement in the case on December 20 of the same year, and NN was sentenced to life imprisonment for murder and aggravated robbery. There was no technical evidence or eyewitness testimony tying NN to either the crime or the crime scene, but the unanimous assessment of the District Court was that the testimony of the principal witness was credible and that, in combination with other supporting evidence, this testimony was sufficient for a conviction. NN appealed his conviction, and the case was heard by the Court of Appeal, which confirmed the judgement of the District Court. NN applied to appeal the judgement to the Supreme Court, but his application was denied. After 13 years in prison, and three failed applications for post-conviction review, however, NN's fourth application was approved. NN was released in 2016 after a new trial found him not guilty, becoming the longest-serving inmate to be exonerated in modern Swedish legal history.

Methods

In this case study, I examine the court documentation from NN's post-conviction review case by means of thematic analysis. The aim of a case study is to conduct "[a]n empirical inquiry about a contemporary phenomenon set within its real-world context" (Yin, 2009, p. 18). The data comprise NN's four applications together with the corresponding decisions, and their motivations, made by the Supreme Court. The decision to focus on the written court record is based on the view that institutional logics can be studied and understood on the basis of what an institution chooses to exclude or include, and thereby to accept (van Dijk, 1993). A focus of this kind thus opens the door to analysing the consequences of an institution's practices for those individuals who come into contact with it, which is in line with the article's aim of exploring the role of accountability within the PCR process and its consequences for wrongful conviction claimants trying to navigate this arena. The material was thematically analysed following the pattern-based reflexive approach formulated by Braun & Clarke (2013, p. 223–245, see also Byrne, 2021).

In the first step of the analysis, the focus was directed at the applications submitted by NN, which were used to thematically examine how NN argued for his case and the information he invoked to support his arguments. Table 1 displays the central pieces of information invoked by NN in applications 1–4, by whether these pieces involved new evidence that was not critical of the justice system's handling of his case or information that was critical of the justice system. An important perspective when analysing NN's applications has been to study the difference between each of them. This allowed me to see how NN adapted his argumentation and the information he invoked in response to the decisions

and motivations he received from the Supreme Court. After analysing each application, I focused on the related decision from the Supreme Court and how the Court motivated its decision, examining what aspects of the information invoked by NN were not accepted and led to the Court denying NN's three applications, and what aspects of the information were accepted and resulted in the Supreme Court granting NN's fourth application. Having obtained a detailed understanding of the main themes in NN's applications in relation to the Supreme Court's responses, the material was re-examined from a focused accountability perspective by specifically looking at the role of accountability within the identified themes found in NN's claims-making, and in the Supreme Court's dismissal or acceptance of these claims, which was done on the basis of the three questions formulated by Bovens (2007; 2010). While studying the characteristics of NN's claims, I simultaneously examined the processual context by attending to the type of access to support that NN had while preparing and filing his applications, in what specific areas he received help, and how this help was related to the information that led to the final decision to approve his PCR application.

Table 1. The central pieces of information in NN's applications, by whether these pieces involved new uncritical evidence or information that was critical of the justice system.

Application	1 (2006)	2 (2009)	3 (2011)	4 (2015)
New uncritical information				
Credibility of PW	PW mobile phone data.*	PW mobile phone data.*		PW statement 1, 2, & 3.*
Alternative perpetrator		Reconstruction, barn entry hatch. * Statement by cave researcher.* Two types of tape.		Analysis of phone listings.* Comparative analysis.*
Other/alibi	Phone that had disappeared. Trousers that had been found. Driving speed analysis.*			
Critical information				
Credibility of PW				
Alternative perpetrator	No investigation of alternative perpetrator. Perpetrator's car. Identification of perpetrator. Fingerprints. Location of safe.	False police statement. DNA-traces, snus.		
Other/alibi	NN's unwillingness to come forward. Wounds. Lack of witness interviews. PW's general credibility.	Critical analysis.	Erroneous decision by Supreme Court. Unfair trial.	

Note: See appendix for a description of the information referred to in the table.

PW = Principal witness.

* = New uncritical circumstances/evidence produced by lawyers and journalists.

Results

In the presentation of the study's results, I go into detail about two theoretically meaningful themes: "The evidential detour as an application strategy" and "The accumulation-of-doubts narrative". The first theme refers to the seemingly successful strategy that NN employed

in his application process, in which he argued that new information primarily about the principal witness's lack of credibility showed that there is no evidence of him having committed the crimes. I call this a detour because the core claim of NN's applications was that the wrongful conviction had been due to failings and errors within the justice system. The information about the witness, on the other hand, represents an external area of evidence that was both new and not critical of the justice system. The other significant, and related, finding is "the accumulation-of-doubts narrative", which constitutes the Supreme Court's description of the events leading up to its decision to approve NN's PCR application. The Court more or less discarded information that was of a more critical nature and primarily took note of the information about the principal witness. Within this narrative, all four applications were necessary and added to the weight of evidence (i.e. doubts) that was required to pass the approval threshold. Importantly, it appears to have been only the external circumstances – mostly related to the principal witness's credibility – that created that type of doubt that the Court considered to be relevant. In my interpretation of the material, the evidential detour and the accumulation-of-doubts narrative enabled a compromise between NN and the Supreme Court: NN received an approval decision but the decision did not reflect badly on the justice system.

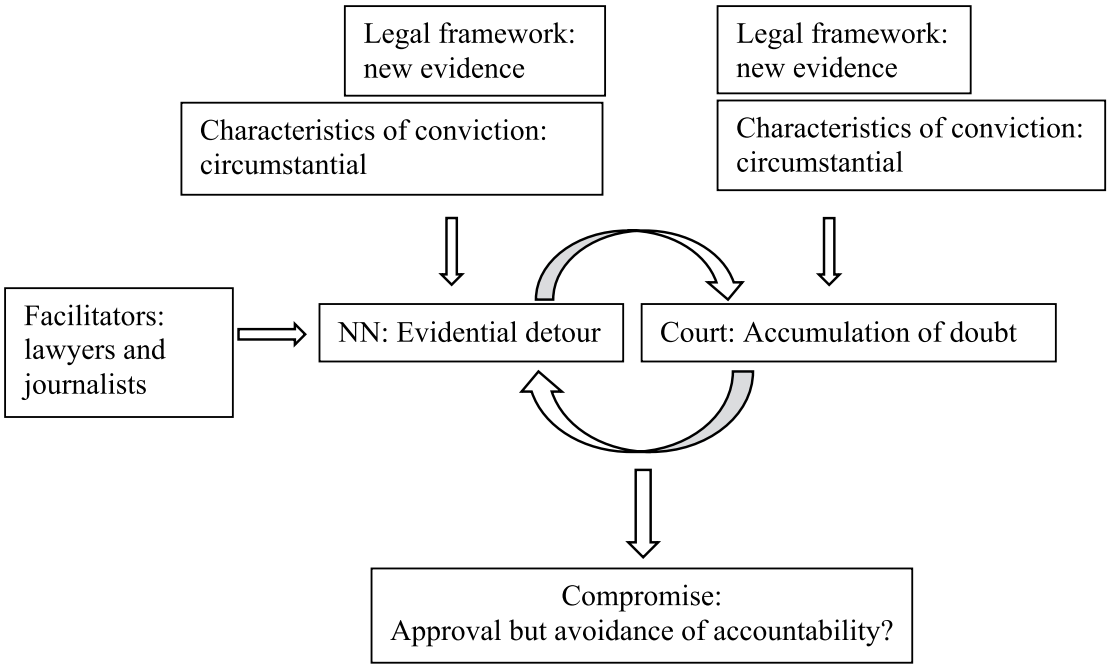

Figure 1. Illustration of the factors that enabled a compromise between NN and the Supreme Court: NN received an approval decision but the decision did not reflect badly on the justice system.

NN's application strategy: the evidential detour

In his four applications, NN presented various pieces of information in support of his central argument, which was that he had been wrongfully convicted and that the wrongful conviction had been due to failings and errors within the justice system. In his applications, NN consistently expressed criticism of the fact that the police investigation had immediately become exclusively focused on him. He also presented several concrete circumstances, which according to NN pointed to an alternative perpetrator, but which had not received sufficient attention – for example, the fact that a police officer had not reported the results of a DNA analysis relating to tobacco found at the murder scene from an unknown person.

Moreover, NN's third application was formulated exclusively in terms of an explicit criticism focused on the Supreme Court's decision to dismiss his previous application. Since this application had been dismissed, NN argued that he had been denied a fair trial in accordance with Article 6 of the European Convention on Human Rights.

It is clear that NN was trying to call to account the alleged fact that he had been wrongfully convicted as a result of wrongdoings that were committed in the name of criminal justice. Moreover, NN was trying to hold the justice system, as a system, to account for these wrongdoings. In part his applications focused on individual legal actors, such as the prosecutor and the police investigators, but not in the sense of painting them as bad apples (Aguirre, 2017; Bonventre, 2021). Instead, NN appeared to be quite clear about his belief that these actors were representatives of a larger system that allowed them to commit these wrongful acts, and also that the same system was now reluctant to acknowledge and redress these wrongs subsequent to his conviction. Doyle (2013) writes that "The right answer to the question 'Who is responsible for this wrongful conviction?' is almost invariably 'Everyone involved, to one degree or another,' if not by making a mistake, then by failing to catch one" (p. 58). This view closely follows NN's arguments.

However, even though NN's applications were in essence clearly focused on criticising the justice system for how the case had been handled and for convicting him in the first place, he also put a lot of effort into obtaining and presenting new evidence, which did not directly involve any attribution of blame to the criminal justice system. Within this category of evidence, the principal witness's lack of credibility constituted a prominent theme in NN's applications. Analysing the Supreme Court documents, it becomes clear that the Court did not take any specific notice of the more critical aspects of NN's applications and the information related to these aspects, but rather reacted primarily to the information regarding the principal witness. I call it an evidential detour because my interpretation is that even though NN did not agree with the view that the reason his conviction should have been torn up was *the emergence of new information*, new evidence about the principal witness's lack of credibility became a necessary evil in his review application process. This new evidence represented an unavoidable detour on the road to exoneration, which NN thus used at the same time as he was presenting his essential argument, which was that the wrongful conviction had been due to failings and errors within the justice system.

The crucial but uncritical piece of evidence: the principal witness's lack of credibility

During the trial, a major issue of debate was the so-called 'dissuasion journey', which was important because the witness claimed that they had driven around in the area of the brothers' home for two hours. During this period, the witness's mobile phone had been used. An expert analysis presented in NN's first application showed that it was "extremely unlikely and bordering on impossible" that a call made from a mobile phone located in the community where the brothers lived would have connected to the phone masts which had registered the witness's phone use. In his application, NN argued that this analysis showed that the dissuasion journey had not taken place. In its decision to deny NN's first application, the Supreme Court did acknowledge the importance of the witness, and wrote explicitly that "The judgement of the Court of Appeal is in substantial part based on [the principal witness's] testimony", but the Supreme Court did not consider the information invoked by NN to be either new or relevant.

The mobile phone connection also constituted the central argument in NN's second application. NN had now asked the expert to specify his analysis further. The expert clarified that the mobile phone of the principal witness had been located within 1000m of a

specific phone mast, and NN argued that this clarification constituted a new circumstance which further proved that the witness had been unreliable regarding the dissuasion journey. The Supreme Court did not regard these supplementary details as adding anything new to the case. The application was denied, but two of the five Supreme Court justices were of a dissenting opinion. These two justices argued that the new analysis showed that it was "out of the question – and not merely extremely unlikely – that [the principal witness] could have been in or near [the community in which the brothers lived] at the time these phone calls were made", and since the "credence given to the information provided by [the principal witness] had been of such significance to the Appeal Court's decision, our view is that the circumstances now described mean that there are exceptional grounds for retrying whether NN has committed the offences for which he has been convicted". Thus, the dissenting justices were of the view that the mobile phone analysis was both new and of relevance, but since they were in the minority, their opinion did not affect the Court's decision to dismiss the application.

In NN's final application, the information that would turn out to be crucial came from an investigative journalist and a filmmaker. This information related to things the witness had said to them, and which they had recorded on two separate occasions. The Supreme Court approved this application and wrote, "The outcome of the case stood or fell on how credible and reliable the [principal witness's] statements were deemed to be." Despite the fact that the information the witness had now given to the journalists was not directly related to the conduct of the offence – no such information had ever existed – it nonetheless differed from the information that he had presented previously. In line with this, the Supreme Court wrote that the information did not in itself constitute grounds for granting review, but the Supreme Court stated that "The circumstances are nonetheless special", since NN in his earlier applications had invoked factors focused on raising doubts about the accuracy of the information provided by the witness, and this should be viewed in combination with the fact that NN had been sentenced to life imprisonment. The Supreme Court also wrote that "[the second] application for post-conviction review was very close to being approved". For this reason, the Supreme Court argued, "even a small amount of additional information must be sufficient for [the Supreme Court] to change its position". Below, I describe in more detail how this specific area of evidence can be seen as crucial to enabling a compromise between NN and the Court.

The Supreme Court's narrative of an accumulation of doubts: an avoidance of accountability?

Based on the Supreme Court's formulations in the approval decision, the shift in the Supreme Court's position can be interpreted as being the result of an *accumulation of doubts*, with the fourth application including the final straws that were sufficient to break the camel's back. This is particularly so given the Supreme Court's statement that "[the second] application for post-conviction review was very close to being approved", which referred to the dissenting opinions of two justices. Importantly, these doubts primarily related to the credibility of the principal witness and the information provided by NN regarding the witness's mobile phone connection and the witness's inconsistent statements when interviewed by journalists. From this *accumulation-of-doubts* perspective, it was not one single piece of information that made the Court change its position, but rather that doubts had been accumulating over the years, and that NN's conviction could not have been overturned at an earlier point. This is clearly a description that is in contrast to NN's viewpoint, who argued that he should never have been convicted in the first place, that there was enough evidence showing the

unsafety of his conviction as early as his first application, and that it was obvious from the beginning that the principal witness was unreliable. Tetlock (1996) has stated that "The primary concern of decision-makers will be to portray earlier actions in the best possible light" which he goes on to describe as a "backward-looking rationality – a defensive search for ways of rationalizing past conduct" (p. 25). In line with this reasoning, it can be argued that it is in the Court's best interests to describe the sequence of events as a situation in which doubts have been accumulating over the years, since this legitimises the Court's dismissal of NN's previous applications while at the same time avoiding ascribing the work of the journalists and the evidence they presented in the fourth application any pivotal significance. It can also be argued that it is in the Court's best interest to direct the focus onto the unreliability of the principal witness because this represents an area of evidence that does not call into question the potential wrongdoings of the criminal justice system.

Although NN did provide the Court with the information about the unreliability of the principal witness, my interpretation of NN's arguments is that the essential problem was not that the witness had lied, but that his false statements had been ascribed so much weight in the criminal investigation and at trial, once again directing criticism at the criminal justice system and its actors. However, this was not discussed by the Court. Instead, the Court's judgement can be perceived as describing the principal witness as the main problem in the situation, which represents both a case-specific and an external factor, which does not therefore jeopardise the legitimacy of the justice system nor exert any pressure for introspection (Aguirre, 2017; Bonventre, 2021). Bovens (2007) writes that the question of who is accountable, and to what degree, is a complicated question when it comes to public organisations. He refers to this problem as "the problem of many hands", an issue also identified by Doyle (2013) when stating that almost invariably, everyone involved is to one degree or another responsible for a wrongful conviction. In this situation, the complexity of identifying the responsible actor/s in-house is avoided by focusing on the principal witness. Related to this is clearly the issue of self-assessment, which becomes very evident in relation to NN's third application (focused on the Supreme Court's decision to dismiss his previous application). In the other applications, it was the Supreme Court that conducted the assessment, and it was the Appeal Court that was alleged to be the actor responsible for NN's wrongful conviction. Although this could certainly be perceived as a situation that entails a conflict of interest, since both the Appeal Court and the Supreme Court are part of the court system, the third application literally produces a situation in which the Supreme Court was both the account-holder and the accounter, thus producing an even higher risk of system-level confirmation bias in the decision-making process (Lidén, 2018).

A related issue within this accumulation-of-doubt narrative has to do with the importance of presenting new evidence when applying for post-conviction review, with the present study illustrating the challenges associated with this. The new evidence ground is described in the legal literature as being the most important in practice (Cars, 1959; Welamson & Munck, 2011; see also e.g. NJA, 2010, p. 295), and it is therefore not strange that this ground is invoked by the applicants. However, the application of a more critical layer of analysis opens the door to a more complex interpretation, and in this context, power and the right of definition are central concepts to which the importance of the new evidence argument should be related (see e.g. Quinney, 1969). In theory, because the new evidence ground is so broadly formulated (see p. 8), it can thus be interpreted as containing a form of legal flexibility that is not found in relation to the other, much more strictly constructed grounds where it is clear which actor is called to account. However, Bovens (2007) writes

that inadequacies can "take the form of accountability deficits—a lack of accountability arrangements" (p. 462) and it is quite clear that the new evidence ground does not contain any specific accountability arrangements. As a result, at the same time as the vagueness of the new evidence ground formulation may provide more leeway for applicants, it also gives the courts a greater degree of freedom to choose what will qualify as relevant evidence. Such freedom may be used by courts to distance the justice system from its own potential contribution to a wrongful conviction.

The consequences of the compromise

It can be discussed whether or not the approval decision in NN's case allows for any form of accountability to take place. The Court never used the words "wrongful conviction" in relation to its decision to overturn NN's conviction, which makes sense within the accumulation-of-doubts narrative. From this point of view, the conviction is not regarded as wrongful, since no wrongful acts relating to the conviction itself were acknowledged. Instead, this narrative paints a picture of a correct conviction, where everything had been in order until new information surfaced subsequent to the conviction, which had nothing to do with the justice system. It appears as though the sequence of events was "unintended and unavoidable", as Naughton (2013) would put it, with no one being to blame except perhaps the principal witness.

Although the Court never officially confirmed NN's wrongful conviction claim, his conviction was overturned and a new trial was held in which he was found not guilty. Subsequently, NN filed an application for compensation with the Chancellor of Justice, which represents a separate accountability forum. In this application, NN then wrote that, besides the financial and psychological damage resulting from his years in prison:

> [T]he legal catastrophe could have been avoided. […]. If the investigation had checked the witness's statement from the start in relation to the objective conditions based on the available masts, his statement could have been called into question from the beginning, possibly leading to a different outcome. The above mentioned is invoked as negligence on the part of the state.

The Chancellor of Justice granted NN financial compensation in the amount of 18 Million SEK. Exactly how the Chancellor of Justice responded to NN's claims is unknown, since the compensation issue was discussed in a private meeting between the two parties. At the end of the day, the financial compensation clearly symbolises some form of accountability on the part of the state in relation to NN. However, exactly what or who was held to account cannot be deduced from either the Court's approval decision or the compensation decision made by Chancellor of Justice. This may be seen as problematic, since an important aspect of accountability is learning from non-desirable outcomes in order to do better in the future (Bovens, 2007). It also highlights the important relationship between transparency and accountability, with transparency being instrumental for accountability (Bovens, 2007; Rego, 2021).

In addition, the support that NN was given by lawyers and journalists raises questions about the level of access to resources needed by an applicant in order to obtain the kind of evidence that will be considered relevant by the Court, in this case new evidence that is not critical of the justice system. Throughout NN's decade-long struggle to obtain post-conviction relief, he had been assisted by prominent lawyers and journalists who had become interested in his case, and who on occasion worked without receiving any financial compensation. NN's case is similar to other post-conviction review cases in the sense that

NN consistently claimed that he had been wrongfully convicted as a result of errors and failings in the criminal justice process. However, the support he received from others – who persisted in working to obtain new evidence of the principal witness's unreliability (see Table 1 on p.11) – is something that few other post-conviction review applicants have access to. The crucial, final straws of doubt that led to the case passing the threshold for approval were produced by interviews conducted by investigative journalists, in combination with evidence that had previously been invoked and formulated with the help of journalists and lawyers. This is in line with international research showing how applicants' access to influential actors such as lawyers and journalists may play an important role, and that certain crimes often attract more attention and engagement within these professional groups (Gies, 2017; Jenkins, 2013; Rafail & Mahoney, 2019; Savage, Grieve & Poyser, 2007). This raises the important question of what would have happened if there were no media interest, and if the journalists in this case had not chosen to investigate and interview the principal witness. And above all, how compatible with rule-of-law standards can the post-conviction review remedy be said to be if its functioning is dependent on lawyers and journalists having an interest in providing applicants with support?

Conclusions

This article has attempted to explore the role of justice system accountability in the post-conviction review process by means of a case study of the longest-serving inmate (NN) to be exonerated in modern Swedish legal history. Although NN's core claim was that the wrongful conviction was due to failings and errors within the justice system, the results show how NN took what I refer to as an *evidential detour*, in which he – with help from lawyers and journalists – presented evidence that did not directly attribute any blame to the criminal justice system. This seems to have been a successful strategy, since it allowed the Supreme Court to create a narrative of *accumulation of doubts*, which stated that doubts regarding the safety of NN's conviction had accumulated over the years and had nothing to do with the justice system's own wrongdoings. Although the study's findings are not generalisable, they point to circumstances in the construction and application of the PCR provisions that tend towards an avoidance of accountability rather than its promotion, which can lead to disproportionately high barriers being placed in the path of applicants who apply for review as a result of failings and errors within the justice system.

I want to conclude by emphasising the intentions of the PCR remedy outlined in the preparatory legal texts, which emphasise that the remedy was created to obtain justice for those who are convicted but innocent and that this is more important than the protection of court authority (SOU, 1926:32; 1938:44). This study suggests that accountability has an important role to play in realising these intentions. Relevant to this issue is the discussion of whether Sweden should establish an independent PCR commission, inter alia with the objective of reducing the risk for bias and increasing accountability, since the assessment of the case would then be conducted outside the court system (see e.g. Martinsson, 2021; Liden, 2018). We can of course only speculate as to whether such a system would have led to NN being granted a review as early as his first or second application and being released from prison many years earlier. Savage et al. (2007) have addressed the issue of double victimisation of the wrongly convicted through the criminal justice system's unwillingness to acknowledge its responsibility for this failing. The worst-case scenario in the context under study would be that avoidance of accountability makes the path towards exoneration overly difficult to navigate, and that this may lead to individuals who have been wrongfully convicted either never being granted a review or having to undergo an excessively long and difficult process

to pass the threshold for approval. In addition, for the few persons whose convictions are overturned, avoidance of accountability means that the full impact of the damage potentially caused by the justice system and the state is not addressed. Besides leading to additional harm for the exonerated person, this may increase the risk of wrongful convictions since the justice system has not learnt from its previous wrongdoings.

Data availability

The data are not publicly available due to ethical and privacy regulations in Sweden. However, the author can provide the court case reference number upon request.

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Appendix

Description of information contained in Table 1.

1.

New uncritical information

Mobile phone data	Analysis showing that it was extremely unlikely, and bordering on impossible, that a phone call made from the area in which the brothers lived could have connected to specific telephone masts. PW could therefore not have made the dissuasion journey as described.
Phone that had disappeared	E-mail correspondence showing that NN had been open about the fact that his phone had disappeared, which showed that he had not deliberately disposed of it. Further, the SIM card had never disappeared, and this contained the information that the police had already analysed.
Trousers that had been found	Trousers owned by NN, which were similar to those a witness had seen the perpetrator wearing, had been found at the home of another witness (having been there the whole time).
Driving speed analysis	A test of driving speed and distance showing that it was possible for NN to have been at home at a certain time, despite a phone call having been registered in another area.

Critical information

No investigation of alternative	No investigation of an alternative perpetrator because the police perpetrator investigation was exclusively focused on NN.
Perpetrator's car	The perpetrator had a white car; NN's car is red. The prosecutor had not succeeded in linking NN to a white car.
Identification of perpetrator	The surviving victim described a person whose body and voice differed from those of NN.
Fingerprints	Unidentified fingerprints on a fishing tackle box that belonged to neither the victims nor NN.
Location of safe	According to the surviving victim, the perpetrator did not know where the safe was located; NN knew where it was because he was the one who had installed it.
NN's unwillingness to come	NN did not come forward when the police publicised wanting to speak to forward him because he had already been identified as the perpetrator by the police and the media.
Wounds	NN had a wound on his big toe; this was a graze and was not linked to the crime. No investigation of this wound was ever conducted.
Lack of witness interviews	Despite witnesses repeatedly contacting police and the prosecutor, these witness statements had neither been documented nor included in the criminal investigation protocol.
PW's general credibility	PW had deliberately presented false, unclear, inconsistent and belated information.

2.

New uncritical information

Mobile phone data	Further specification of the phone data analysis showed that PW must have been located within 1000m of a specific phone mast, itself located at a long distance from area in which the dissuasion journey was claimed to have taken place.
Reconstruction: barn entry hatch	A reconstruction with a wooden frame showed that someone larger than NN would be able to gain entry through a hatch at the crime scene. This contradicted the reconstruction of the Prosecutor General.

Statement by cave researcher	This statement discussed the significance of clothing, age, determination etc. for a larger person to pass through the hatch mentioned above.
Two types of tape	The victims were bound with two types of tape, suggesting that two perpetrators were involved.
Critical information	
False police statement	A police officer had made a false statement by failing to report the results of a DNA analysis relating to a portion of snus found at the crime scene.
DNA-traces, snus	Analysis showing that the snus came from an unknown person and had not been presented in the police investigation.
Critical analysis	A general critical analysis of the reasons given for the appeal court judgement.

3.

Critical information	
Erroneous Supreme Court decision	The Supreme Court's decision to dismiss NN's second application was in error in its view that the analysis of phone data did not contain anything new.
Unfair trial	The dismissal of NN's second application meant that NN had been denied his right to a fair trial in accordance with Article 6 of the European Convention on Human Rights.

4.

New uncritical information	
PW statement 1	PW had told journalists that he and NN had spoken about burgling the brothers' home several years earlier.
PW statement 2	PW had told journalists that his reason for the car journey on the day before the murder had been to buy drugs.
PW statement 3	PW had told journalists that he had visited the victims' home twice, not only once.
Analysis of phone lists	Analysis of phone call data, which weakened the alibi of an alternative perpetrator.
Comparative analysis	Expert statement on behavioural consistency between this murder and another robbery-murder, which suggested it may have been committed by another perpetrator.