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## Errors of Justice

In this book, Brian Forst takes a fresh new perspective on the assessment of criminal justice policy, examining the prospect of assessing policies based on their impact on errors of justice: the error of failing to bring offenders to justice, on the one hand, and the error of imposing costs on innocent people and excessive costs on offenders, on the other. Noting that we have sophisticated systems for managing errors in statistical inference and quality control processes and no parallel system for managing errors of a more socially costly variety – on matters of guilt and innocence – the author first lays the foundation for a commonsense approach to the management of errors in the criminal justice system, from policing and prosecution to sentencing and corrections, then examines the sources of error in each sector, the harms they impose on society, and frameworks for analyzing and reducing them.

Brian Forst is Professor of Justice, Law and Society at the School of Public Affairs American University, in Washington, DC. He is the author of several books, including *The Privatization of Policing: Two Views* with Peter Manning.

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*To Eric and Laura*

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## Preface

Requiring students of criminal justice to learn the fundamentals of statistical inference may or may not be good for them, but it surely can enlighten the instructor. In searching for a way to motivate my students to learn about Type I and II errors and the logic of statistical inference, I have asked them whether they are concerned about errors of inference made by police, prosecutors, juries, and sentencing judges. It has struck me, in discussing these metaphors, that we have a coherent, sophisticated, effective framework for managing errors in statistical inference, but no such framework for managing errors in the criminal justice system. The errors are not identical, to be sure, but they are parallel. In both domains, some procedures tend to shift errors, others either reduce or increase both sets of errors. We can examine the shifts in errors of inference in hypothesis testing that derive from changes in the alpha level, but haven't a clue as to the effect of a change in the standard of evidence on corresponding errors of justice. We haven't attempted even to ask. We know precisely how increases in sample size reduce both Type I and II errors for given parameter values, but we have no idea the extent to which DNA evidence simultaneously reduces the rate of erroneous convictions in homicide or rape cases and increases the rate at which such crimes are solved. This has to do largely with our inability to establish factual guilt, but inability to know the truth has not prevented statisticians from developing power functions and operating characteristic curves, tolerance tests, and all the other useful components of our widely accepted system for managing errors in statistical inference.

This book describes an inquiry into the prospect of developing a parallel system for error management in the criminal justice system, in a spirit akin to Walter Lippmann's observation, "The study of error is not only in the highest degree prophylactic, but it serves as a stimulating introduction to the study of truth."<sup>1</sup> At the very least, we should be able to catalogue more systematically the nature and sources of errors on both sides of the scale of justice and consider how they may be affected by changes in rules and laws, policies and procedures. We should be able also to examine more thoroughly than we have prospects for borrowing from systems for managing errors in other domains involving risk with often high stakes, including not only statistical inference, but quality control management, epidemiology and health care systems, and financial portfolio analysis, so that we may be able to better manage errors of justice.

Some of the more technical material in the text is likely to have the approximate effect on the reader that discussions of Type I and Type II errors have on my students. I wish to assure the reader who has difficulty with this material that it is not necessary to understand all the specifics. I have attempted to present the essentials in a manner that will leave all readers with a basic appreciation for and understanding of the nature and sources of errors of justice and approaches to minimizing their harmful effects on society. The technical material is intended for the more technically oriented reader and is included to deal with issues that are important to scholars and others who care about certain details. I have attempted to speak to both audiences in a single volume in a way that minimizes pain and suffering for all who take the journey.

Errors of justice harm us all. They undermine trust, drain our resources, create inequities, and restrict our freedom. They diminish the quality of our lives. They warrant more coherent treatment than we have given them.

<sup>1</sup> Lippmann, *Public Opinion* (1922, reissued by Touchstone Books, 1997), p. 256.

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My colleagues and friends Jim Fyfe, Jim Lynch, and Joan Petersilia gave the manuscript particularly thorough reviews and offered comments that were extremely perceptive and helpful. I am grateful also for astute readings and constructive suggestions provided by Dick Bennett, Tom Brady, Phil Cook, Heather Davies, Ron Huff, Rob Kane, Alisa Kramer, Laura Langbein, Jennifer Segal, and Peter von zur Muehlen. My research assistant, Lakera Tompkins, provided extraordinary support – accurately, comprehensively, quickly, and cheerfully – whenever I asked for it. These discerning and generous people are in no way responsible for errors of omission or commission, due process or impunity, Type I or Type II, or any other sort, random or systematic, that may be found on the pages that follow.

My publisher, Cambridge University Press, lived every bit up to the reputation that drew me to them in the first place. Acquisitions editor Mary Child, Humanities and Social Sciences editor Alia Winters, production and copy editor Laura Lawrie, project manager Anoop Chaturvedi, production controller Susanna Fry, and production

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contact Shari Chappell were thoroughly professional and helpful throughout in moving the project from proposal to finished product, and Cambridge Criminology Series editors Al Blumstein and David Farrington gave the levels of superior support for which they are both so renowned and respected among criminologists worldwide.

Many of the basic ideas that provide the core material for this book were set forth in the article “Toward an Understanding of the Effect of Changes in Standards of Proof on Errors of Justice,” published in the Summer 2001 issue of *Jurimetrics* (Volume 41). I thank the editors of *Jurimetrics* and reviewers of the draft manuscript of that article for their thoughtful comments.

I wish, finally, to acknowledge my mentor in the quantitative aspects of justice, Hans Zeisel. He was the perfect model in so many ways. Incisive yet graceful, he understood complexity – in the law, in human behavior, and in public policy – and managed always to find a way to express it simply and elegantly in prose and say it even more clearly with figures. Hans managed always to find a way to maintain his twinkling sense of humor and goodwill even when confronted with boorish grandstanding and pettiness. He was a living testament to the idea that one’s ceaseless commitment to the highest standard of scholarly integrity can faithfully serve one’s passion for justice. He left an indelible impression, one that has inspired me now for some 25 years and will continue to do so for as long as I do this work.