

***Not guilty: are the acquitted innocent?***

**By Daniel Givelber and Amy Farrell**

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**Ross Kleinstuber**

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The central research question of Givelber and Farrell's important new book is, "[T]o what extent do the *acquitted* overlap with the *innocent*?" (p. 18). This is an intriguing and vital question because, as they state, "Acquittals are essentially invisible. We know very little about why juries or judges conclude that defendants are not guilty. ...[A]cquittals have remained unexamined... Rather, they are treated as random events 'signifying nothing' about the actual guilt or innocence of those prosecuted for crime" (p. 3). Both because defendants are considered innocent until proven guilty and because we claim that we would rather acquit the guilty than convict the innocent, acquittals are often treated as an artifact of a system that errs on the side of acquittal, resulting in numerous guilty people retaining their freedom after a trial. Yet, thanks to the work of groups like the Innocence Project, there has been an increasing realization that it is often far too easy to convict the innocent, which raises the troubling implication that our justice system may be erring in the wrong direction. If this is the case, then those who are acquitted are probably factually innocent, and with clear, concise, and compelling evidence, Givelber and Farrell demonstrate that actual innocence is the most likely reason for jury acquittals. This realization forces us to reconsider the way we think about, perceive, and treat acquittals.

Couching their analysis as a pseudo-replication of Kalven and Ziesel's classic *The American Jury* [9], Givelber and Farrell use data collected by the National Center for State Courts (NCSC) in four large urban court districts to bring into question the central assumption of Kalven and Ziesel's work: that *judges'* opinions should be the baseline against which we measure the accuracy of jury decisions. On the contrary, their analysis suggests that juries might be better decision makers than judges. In the process, they add to the growing academic literature that affirms the superiority of the *jury* as fact-finder and suggest that acquittals may be the result of factual innocence rather than some other explanation. The first three chapters of their book introduce their study, describe the existing empirical literature on jury decision making, and

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R. Kleinstuber (✉)

Division of Social Services, University of Pittsburgh at Johnstown, Johnstown, PA, USA  
e-mail: rkleins@pitt.edu