

Convicting the Innocent

**WHERE CRIMINAL PROSECUTIONS
GO WRONG**

Brandon L. Garrett

Harvard University Press
Cambridge, Massachusetts · London, England

2011

dence from this crime scene was totally inconclusive. Nothing at all could be said about the blood type of the rapist.

The 250 Exonerees

In retrospect, Ronald Jones's case provides a stunning example of how our system can convict the innocent. If his case were the only case like this, we might call it a tragic accident, but nothing more. But his case is far from unique. Since DNA testing became available in the late 1980s, more than 250 innocent people have been exonerated by postconviction DNA testing.

Who were these innocent people? The first 250 DNA exonerees were convicted chiefly of rape, in 68% of the cases (171), with 9% convicted of murder (22), 21% convicted of both murder and rape (52), and 2% convicted of other crimes like robbery (5).¹⁴ Seventeen were sentenced to death. Eighty were sentenced to life in prison. They served an average of thirteen years in prison. These people were typically in their twenties when they were convicted. Twenty-four were juveniles. All but four were male. At least eighteen were mentally disabled. Far more DNA exonerees were minorities (70%) than is typical among the already racially skewed populations of rape and murder convicts. Of the 250 exonerees, 155 were black, 20 Latino, 74 white, and 1 Asian.¹⁵

DNA testing did more—it also identified the guilty. In 45% of the 250 postconviction DNA exonerations (112 cases), the test results identified the culprit. This most often occurred through a “cold hit” or a match in growing law enforcement DNA data banks. The damage caused by these wrongful convictions extends far beyond the suffering of the innocent. Dozens of criminals continued to commit rapes and murders for years until DNA testing identified them.

Before the invention of DNA testing, the problem of convicting the innocent remained largely out of sight. Many doubted that a wrongful conviction could ever occur. Justice Sandra Day O'Connor touted how “our society has a high degree of confidence in its criminal trials, in no small part because the Constitution offers unparalleled protections against convicting the innocent.”¹⁶ Judge Learned Hand famously called “the ghost of the innocent man convicted” an “unreal dream.” Prosecutors