

DNA Exonerations in the United States

OHCHR Global Panel: “Moving away from the death penalty – Wrongful convictions”

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In no country other than the United States has there been such a large group of people whose innocence has been so clearly proven by DNA tests. There have now been over 300 DNA exonerations in the U.S. These wrongful convictions were the product of practices that criminal courts rely on every day, and not just in the U.S. These errors could have happened anywhere in the world. It just so happened that in the U.S., they came to light. When DNA testing became common in the 1990s, there were pioneering lawyers who sought DNA tests, and enough jurisdictions had saved the evidence so that tests could be done. What these exonerations provide to those concerned with improving accuracy of criminal justice in the U.S. and the world is a unique opportunity to learn from what can go wrong in even the most serious criminal cases.

It is a real honor and pleasure to speak to you today. I have spent years studying these DNA exonerations and I have written a book about the first 250 such cases. I would like to begin by highlighting three of the most important lessons to be learned.

First, cases that result in exonerations represent the tip of a very large iceberg. What is an exoneration? The word exoneration refers to an official decision to reverse a conviction based on new evidence of innocence. Of the first 300 DNA exonerations in the U.S., 171 were convicted of a rape, 52 of both a rape and a murder, and 22 of murder. Eighteen had been sentenced to death. But the most haunting feature of these wrongful convictions is that these cases often came to light by sheer luck. Very few cases can be tested using DNA. We will never know how many other innocent people have been convicted, even for serious crimes like murder.

Second, what I found disturbing when reading so many trials of DNA exonerees is that a case against an innocent person may not seem weak at the time: it may seem uncannily strong. Take just the eighteen who had been sentenced to death. Eight involved false confessions. In each of those cases, the person was said to have confessed in detail. Those false confessions were presented as statements that included details that supposedly only the true culprit could have known. The jury thought they were hearing the words of the actual killer.

Ten of those eighteen death penalty cases involved testimony by informants. The informants may have been unsavory characters trying to earn leniency, but they claimed to have overheard confessions with details that only the culprit could have known. Eight of the death

penalty cases involved eyewitness identifications – and so did two-thirds of the entire group of exonerations. We all know that it can be hard to remember the faces of complete strangers. But the eyewitnesses without exception told jurors that they were completely certain that the defendant was the person they saw. Fourteen cases involved forensic evidence, including cases with unreliable forensics. But that forensic evidence was often presented in an unscientific and exaggerated way that made it seem very powerful to jurors.

Third, once such central evidence is contaminated early during the investigation, it may be very difficult for subsequent trial, appeals, and post-conviction courts to detect, much less correct, the errors. It is rare in the U.S. for a conviction to be reversed on appeal or post-conviction. During their appeals and post-conviction litigation, exonerees rarely challenged faulty evidence that caused their wrongful convictions, and when they did try, they failed. They were innocent, but none had any success raising innocence claims until they happened to get DNA tests.

The state of Maryland recently abolished the death penalty, in part because of lessons learned from the case of Kirk Bloodsworth, who had been on death row in Maryland but was one of those exonerated by DNA. We should not impose irreversible sentences when terrible errors may be so well disguised. Instead, we need to safeguard the accuracy of criminal investigations, by carefully documenting evidence, videotaping interrogations, using sound forensics, using best practices for eyewitness identifications, and improving post-conviction review of claims of innocence. Some of those important reforms have been adopted in response to wrongful conviction. We must all act to prevent wrongful convictions before it is too late.