WRONGFUL CONVICTIONS AND THE DNA REVOLUTION

For centuries, most people believed the criminal justice system worked – that only guilty defendants were convicted. DNA technology shattered that belief. DNA has now freed more than 300 innocent prisoners in the United States. This book examines the lessons learned from twenty-five years of DNA exonerations and identifies lingering challenges.

By studying the dataset of DNA exonerations, we know that precise factors lead to wrongful convictions. These include eyewitness misidentifications, false confessions, dishonest informants, poor defense lawyering, weak forensic evidence, and prosecutorial misconduct. In Part I, scholars discuss the efforts of the Innocence Movement over the past quarter-century to expose the phenomenon of wrongful convictions and to implement lasting reforms. In Part II, another set of researchers looks ahead and evaluates what still needs to be done to realize the ideal of a more accurate system.

Daniel S. Medwed’s research revolves around the topic of wrongful convictions. His book, Prosecution Complex: America’s Race to Convict and Its Impact on the Innocent (2012), explores how even well-meaning prosecutors may contribute to wrongful convictions because of cognitive biases and an overly deferential regime of legal and ethical rules. In 2013, he received the Robert D. Klein University Lectureship, which is awarded to a member of the faculty across Northeastern University who has obtained distinction in his or her field of study. He is also a Legal Analyst for WGBH News, Boston’s local NPR and PBS affiliate.
Wrongful Convictions
and the DNA Revolution

TWENTY-FIVE YEARS OF FREEING THE INNOCENT

DANIEL S. MEDWED
Northeastern University School of Law
For my brilliant wife Sharissa Jones, and our two darling daughters, Clementine and Mili, who will always be actually innocent in my eyes

Daniel S. Medwed
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This book has its origins in conversations that I had with Rashmi Dyal Chand, my friend and colleague at Northeastern University School of Law. Several years ago, in her role as research director for our faculty, Rashmi encouraged me to organize a conference on a topic related to my scholarship. With gentle prodding from Rashmi, my idea for the topic took shape, and the concept of turning the conference papers into a book emerged. For that reason, among others, I am in Rashmi’s debt. My dean, Jeremy Paul, deserves credit too. I feel fortunate to have a dean who is committed to research and willing to subsidize it even in an era of unrelenting pressures on legal education.

Needless to say, this book would not exist without the sterling chapters provided by the contributors to this volume, almost all of whom are long-standing friends and comrades in the effort to free the innocent. Words are inadequate to express my appreciation.

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Foreword

As public defenders toiling in New York City’s criminal courts well before the emergence of deoxyribonucleic acid (DNA) technology, we knew the system was deeply flawed: that eyewitnesses made mistakes, that some suspects confessed to crimes they did not commit, that forensic science all too often rested on dubious scientific principles. We soon realized that DNA could offer a window into the magnitude of those flaws. What we did not know at the time, let alone dare to imagine, was that we were part of a new civil rights movement that would transform the traditional understanding of criminal justice and launch worldwide reform efforts.

A few strategic decisions early on proved vital to the growth and success of our work. First, our choice to focus on credible claims of actual innocence (the “wrong man” cases) through law school clinics inspired a sense of idealism and optimism in budding lawyers not yet rendered cynical by the slings and arrows of the adversary system. This passion for justice was infectious – and the legal establishment caught the bug. We often wonder whether our efforts would have succeeded as much had we established a large non-profit organization at the outset and worked exclusively with veteran defense lawyers.

Second, we began to think broadly about the capacity of DNA to expose problems within the criminal justice system. We learned that DNA’s value lay not just in showing singular error in a particular case (e.g., that a serology test failed to identify the actual perpetrator in a rape case) but also in revealing that the rest of the evidence used in that prosecution should be reconsidered as well (e.g., the procedures that led the eyewitness to misidentify the suspect in the rape case to begin with). This allowed for a more holistic attack on the numerous ways in which faulty evidence can produce a wrongful conviction. Indeed, as we accumulated DNA exonerations, we set our sights on several canonical Supreme Court doctrines that had long held sway in the criminal
courts and that, we felt, DNA could prove unreliable. These included doctrines related to eyewitness identifications, police interrogations, ineffective assistance of defense counsel, and the admissibility of forensic evidence. In these challenges, we argued for increased reliability in the procedures used in the criminal justice system. A calculated goal of this approach was to undermine the institutional emphasis placed on finality; through litigating the DNA cases we aimed to improve post-conviction access to courts for any and all criminal defendants whose cases rested on shaky, if not outright unreliable, evidentiary grounds. Simply put, we wanted to eliminate restrictions on the post-conviction right to prove “actual innocence” in the courts.

We have encountered some surprises along the way. As seasoned progressive lawyers, we expected resistance from established quarters of the bar: political conservatives, prosecutors, and judges. But we were shocked by the intensity and vitriol of the initial reaction. During those first few years, we had to go to court almost every time we wanted access to biological evidence in order to undergo post-conviction DNA testing. And judges allowed those proceedings to linger for ages. Over time, however, the resistance faded and we experienced a much more pleasant surprise. The phenomena of truth broke down walls. Prosecutors started consenting to DNA tests in some cases, then half the cases, and now virtually all of them. Judges, in turn, began facilitating access to biological evidence and expressing openness to the idea of actual innocence. The notion of a proactive chief prosecutor taking the initiative to investigate potential wrongful convictions in his office was a pipe dream twenty-five years ago. Now it is a reality in the very neighborhood in which we both live, where the late District Attorney Kenneth Thompson spearheaded a vibrant Conviction Integrity Unit in Brooklyn, New York.

We are grateful that Daniel Medwed, our longtime colleague in the movement, has organized this book, and we appreciate the many insightful chapters contained within it. As we think about the next quarter-century of innocence litigation and activism, we must look beyond DNA and reinforce the duty of the system to (1) correct errors by providing ample post-conviction access to the courts and (2) remedy the root causes of those errors through judicial, legislative, and executive action. Error correction should occur at the micro level (rectifying an individual miscarriage of justice) and at the macro level (conducting mass audits and reviews of convictions tainted by a specific kind of flawed evidence). As for potential remedies, we advocate empirically based reforms proven to have high indicia of reliability. We also endorse reforms designed at tackling overt and covert forms of racial discrimination that pervade the criminal justice system.
Foreword

The criminal justice system is fallible, and inevitably so. But that is no excuse. We should never stop striving to make it as close to perfect as possible—and we will not.

Barry Scheck, co-director
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NOTES