



E21 Exonerations From Death Row: A Mass Disaster for the Criminal Justice System

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After attending this presentation, attendees will understand the advantages of applying the model of public safety commissions to the analysis and understanding of the causes of wrongful convictions in capital cases.

This presentation will demonstrate why forensic scientists should lead the demand for thorough, objective review of the causes of wrongful convictions, modeled on the response to mass disasters such as train or airplane crashes by the National Transportation Safety Board.

In the past 16 years, primarily because of 159 DNA exonerations, it has become clear that wrongful convictions are far too common to be acceptable in the criminal justice system. There is no reason to assume that the rate of DNA exonerations would not hold true in the majority of cases where there is no testable biological evidence which is indicative of guilt or innocence. Since 1973, 119 people have been released from Death Row with evidence of innocence; 14 of these cases involved DNA evidence of innocence. In several capital exonerations, DNA testing led to the identification of the real perpetrator.

Exonerations in capital cases complete the conclusion that there is an unacceptable risk of executing the innocent; it is a certainty that innocents have spent hundreds of years condemned to die for a crime another committed. The numbers are sufficient to give rise to the label of “mass disaster.” The damage done by these wrongful capital convictions is not confined to the suffering of the innocent alone, but includes the loss of faith in the judicial system as an institution capable, for the most part, of getting it right, and a growth in public mistrust of the actors in that system, including forensic scientists. The response to this crisis should be similar to those triggered by plane crashes and train derailments. An independent commission should be empanelled and permitted sufficient time and tools to uncover the causes and remedies of specific wrongful convictions. The commissions should have subpoena powers, appropriate experts as members and consultants, and access to all relevant information. The commission report should be public, and include specific legislative and judicial reforms uncover and redress existing wrongful convictions and to prevent wrongful convictions in the future.

The Innocence Project’s work in the DNA felony exonerations has produced a now-familiar list of causes, and a growing literature on the remedies which now has wide, if not unanimous, acceptance in the forensic community. Among the cause of wrongful convictions are: suggestive eye-witness identification, (and a misunderstanding of the nature of memory and facial recognition); improper interrogation techniques leading to false confessions; inadequate defense resources and poor quality of lawyers for indigent clients; police and prosecutorial misconduct. In addition, the DNA exonerations in serious felonies have exposed significant problems with the quality of some crime labs, with the training, practices, and bias of some forensic scientists, and with the applicability of dubious or novel forensic theories to criminal cases. Important evidence has been contaminated, misinterpreted, lost or purposely hidden; experts have lied about their credentials, misled juries and courts about their results, exaggerated conclusions or statistical probabilities, and testified to the results of tests never conducted.

The exonerations from death row should trigger review in every capital jurisdiction along the lines of the mass traffic fatality commissions. It is now a principle established under federal law that even-handed audits of crime labs are required for serious acts of misconduct or serious negligence. Wrongful conviction in capital cases should trigger an independent audit of all aspects of the case for any sort of misconduct or negligence that brought about the condemnation of an innocent person. Forensic scientists, in particular, should take the lead in insisting on a review process in cases of wrongful conviction that is both retroactive and proactive, concentrating on what went wrong, the likelihood that there are other wrongful convictions caused by the same errors, and prevention of future cases. Nothing less will restore confidence in the objectivity and fairness of forensic scientists, particularly in capital cases.

Death Penalty, Commissions, Exoneration