

# CRIME LAB REPORT

Media and public policy analysis for the forensic science community

## *New study 'exonerates' forensic science*

July 16, 2008

*"It's just one disaster after another involving bad forensic science."*

*Professor William Thompson  
University of California, Irvine*

Forensic science malpractice accounts for less than 11% of all systemic failures leading to wrongful convictions in the United States. In fact, the percentage is likely much lower.

That's the verdict from a groundbreaking study just released by *Crime Lab Report* titled, "The Wrongful Conviction of Forensic Science." The sixteen-page report and its supporting data can be viewed or printed at the *Crime Lab Report* website at [www.crimelabreport.com](http://www.crimelabreport.com).

The authors have been invited to publish their work in a peer-reviewed journal, which they hope to announce later this year. Additional research is also expected to commence in 2009.

John Collins and Jay Jarvis, the managing editors of *Crime Lab Report*, spent thirteen months studying case profiles and media reports surrounding the first 200 post-conviction DNA exonerations in the United States, all of which occurred between 1989 and 2007.

The exoneration of Mr. Jerry Brown in Chicago marked the 200th conviction overturned as a result of DNA testing. The event was proudly announced on April 27, 2007 by the *Innocence Project*, the powerful post-conviction litigation team in Manhattan, which was founded by O.J. Simpson defense attorney Barry Scheck and his colleague, Peter Neufeld, in 1992.

The *Innocence Project* is the flagship of a large network of innocence-advocacy organizations throughout the United States who oppose the death penalty and seek to free wrongfully convicted prisoners mainly through DNA testing.

Collins and Jarvis studied the first 200 exoneration profiles published by the *Innocence Project* and tabulated the number of systemic failures likely to have contributed to each wrongful conviction. A total of 283 instances of failure were identified and ranked as follows:

<u>Rank</u>	<u>Percent</u>	<u>Number</u>	<u>Description</u>
1	54%	153	Eyewitness misidentifications
2	15%	43	False confessions
<b>3</b>	<b>11%</b>	<b>32</b>	<b>Forensic science malpractice</b>
4	10%	27	Government misconduct
5	9%	25	Informant snitches
6	1%	3	Bad lawyering
	<b>100%</b>	<b>283</b>	

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The methodology employed in this study differed significantly from highly publicized research previously conducted by Brandon Garrett, a professor of law at the University of Virginia with very close ties to the *Innocence Project*.

Garrett's work, titled "Judging Innocence," was published in the *Columbia Law Review* in early 2008 and was hailed by innocence-advocates as a final confirmation that forensic science, indeed, was a leading cause of wrongful convictions.

The reason for their enthusiasm was the fact that Professor Garrett identified 113 (57%) of the first 200 overturned convictions as involving the presentation of forensic evidence against defendants during their original trials. And to accentuate the significance of his finding, Garrett concluded that governmental oversight of crime laboratories would likely have prevented many wrongful convictions.

The problem is that Garrett's finding was not worthy of being accentuated. Claiming that forensic science is a leading cause of wrongful convictions, and therefore that government oversight of crime laboratories is a defensible public-policy position, presupposes that reliable research established the percent of all systemic failures attributable to faulty forensic science.

Unfortunately, neither Professor Garrett nor his colleagues at the *Innocence Project* were ever justified in making this assumption. And their lack of diligence likely caused several media outlets, including the *New York Times*, to carelessly report that 57% of wrongful convictions were caused by faulty forensic science.

Thankfully, *Crime Lab Report's* study went a long way to clarify the true impact of forensic science in wrongful convictions. But even its authors were shocked by the unexpected revelations they would uncover later.

First, in 36 out of 200 cases (18%), forensic evidence favoring the defendant was shown to be available prior to trial. Astonishingly, for many of those cases, the *Innocence Project* chose to blame the conviction on unreliable/limited science despite the existence of exculpatory forensic evidence.

Second, Collins and Jarvis made note of the curiously low number of cases that were blamed by both the *Innocence Project* and Brandon Garrett on bad lawyering. Despite overwhelming evidence that bad lawyering may be the single-most pervasive cause of wrongful convictions, it was only cited in a miniscule 3 out of 200 overturned convictions. This creates a massive statistical vacuum that has allowed forensic science to bear a disproportionate share of the blame.

The significance of the problem, however, was most disturbing in the 1991 conviction of Ray Krone.

Krone, a veteran of the United States Air Force, was convicted by an Arizona jury for the kidnapping, rape, and murder of a waitress at a bar Krone was known to frequent. The

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conviction hinged on the testimony of an inexperienced prosecution expert who identified Krone as leaving a bite-mark on the victim's breast. Krone would eventually be sentenced to death.

At their website, the *Innocence Project* blamed Krone's conviction on two systemic failures: unreliable science and forensic-science misconduct. No other cause was cited.

But what the *Innocence Project* omitted from its summary of Krone's case, whether intentionally or not, was the fact that several forensic tests reported prior to trial pointed to another perpetrator.

In fact, an October 2007 *MSNBC* documentary showcased Krone's conviction and revealed that a reputable bite-mark expert hired prior to trial voiced his belief that police and prosecutors had the wrong guy.

Fingerprint and footwear evidence also failed to link Krone to the murder.

So as Collins and Jarvis wrote in their report, "In a case that has been touted as the quintessential example of faulty forensic science, it was forensic science that got it right from the start."

Clearly, Ray Krone was railroaded by a rogue prosecutor who ignored critical evidence. He was also the victim of incompetent legal counsel.

But why would the *Innocence Project* misrepresent the obvious role of bad lawyering, and even prosecutorial misconduct, in their case profiles?

We have a pretty good idea.

First, many of the legislators that the *Innocence Project* seeks to influence on an almost daily basis are practicing lawyers themselves. Therefore, the *Innocence Project's* agenda to establish government oversight of crime laboratories would quickly lose momentum in Washington, D.C. and many state capitals if it's centerpiece was an attack on the legal profession.

Second, blaming lawyers is boring. As Collins and Jarvis explain in their study, "The *Innocence Project* needs attention and money to drive its public policy agenda. In the age of *CSI*, *New Detectives*, *Cold Case Files*, and *Crossing Jordan*, taking on crime laboratories will turn heads more quickly than esoteric procedural debates among litigators."

Reputable forensic scientists should breathe a sigh of relief when they read "The Wrongful Conviction of Forensic Science." Some, for a moment, may even feel a sense of satisfaction knowing that such aggressive and relentless critics of their profession have finally been challenged.

But we would encourage our readers to exercise caution. This, after all, is not a happy story.

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The *Innocence Project* is an important and promising organization that many people depend on. Prison inmates with a legitimate claim of innocence are harmed when the *Innocence Project* trades-in its credibility for public-policy leverage. Volunteer law students eager to involve themselves in a worthy and admirable cause are more likely to lose their ethical focus if they are taught to use exaggerations and distortions as a way to achieve their goals.

The *Innocence Project's* leaders should be politely reminded of their Code of Professional Responsibility published by the New York State Bar Association:

*"A lawyer should avoid bias and condescension toward, and treat with dignity and respect, all parties, witnesses, lawyers, court employees, and other persons involved in the legal process."*

Such basic courtesies have not been extended to the forensic science community.

Former Attorney General and member of the *Innocence Project's* board of directors, Janet Reno, was invited to speak at the October 2007 gathering of the American Society of Crime Laboratory Directors in Orlando, Florida. The focus of her message was simple. We must seek the truth.

How right she was.

The truth is that the overwhelming majority of forensic scientists are ethical, thoughtful, and competent practitioners who increasingly subject themselves to rigorous professional oversight through accreditation and certification. Most are underpaid and overworked with very little experience in dealing with public-policy issues. This leaves them vulnerable to being bullied.

*Crime Lab Report* believes that many activists in the innocence movement understandably harbor a deeply-seated rage and frustration over the prosecutorial afflictions suffered by their clients and their clients' families. At the same time, while forensic science is frequently used by prosecutors to support their cases, crime laboratory scientists have become increasingly influential in America's courtrooms.

We have always maintained that this influence warrants increased accountability, and that crime laboratory accreditation must continue to evolve so as to address the root causes of forensic science malpractice, however rare it may be. But we strongly disagree that rigorous accreditation backed-up by careful judicial scrutiny and better training of lawyers are incapable of providing the checks and balances that are needed to protect the innocent. Indeed they are.

If you listened to the rhetoric of the *Innocence Project* long enough, you would think that crime lab scientists are the only experts that testify in criminal trials. In fact, crime labs employ only a small subset of experts that our courts must scrutinize every day.

Fighting to establish expensive and burdensome forensic oversight commissions, however honorable such intentions may be, does nothing to support our lawyers and judges in meeting

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one of their fundamental responsibilities - to evaluate the testimony of all subject-matter experts whether they are forensic scientists, psychologists, psychiatrists, anthropologists, odontologists, doctors, nurses, engineers, accountants, and so forth.

It is true that mistakes and misjudgments do happen in crime laboratories, mainly because forensic scientists are human beings and all professions struggle with some instances of malpractice. Doctors make mistakes. Lawyers and judges make mistakes. And sometimes forensic scientists make mistakes. But there is no basis to suggest that forensic science is inherently more susceptible to failure than other professions of equal significance and criticality.

Sadly, as so many leaders in the innocence movement have demonstrated, it doesn't matter. They will simply exploit and exaggerate isolated and rare instances of forensic malpractice to convince journalists and elected officials that such occurrences are more frequent than they actually are. By doing so, they can deflate the public's confidence in our justice system and pave the way for the many reforms they seek to implement.

While this approach may be effective in the short term, it is dishonest and fails to nurture the kind of environment from which wise and constructive public policies are most likely to emerge.

Lawyers like Barry Scheck, Brandon Garrett, and Peter Neufeld have demonstrated that they are quite eager and able to review forensic results and scientific testimony after a conviction has already taken place. Maybe their time and money would be better spent teaching their colleagues around the country how to do so during a trial.

We guarantee that many practitioners in the forensic science community would be willing to help them. In the long run, this kind of proactive partnership would prevent more wrongful convictions than any oversight commission could ever hope to. \* \* \* \* \*

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