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## Barry Scheck JD: Innocent but convicted

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In 1992, Barry Scheck founded the "Innocence Project" at Cardoza Law School, the mission of which is to utilize DNA evidence to overturn false convictions. In his luncheon address, entitled "Innocent But Convicted: Some Observations About the Psychology of Those Who Survive," Attorney Scheck wasted no time in inviting the audience of forensic psychiatrists to join in the work of this project and/or contribute money to the cause.

There are a larger than expected number of such false convictions, based on the evidence to date. For example, 95 individuals have so far been exonerated with DNA evidence, 11 of whom were sentenced to death. The Innocence Project was responsible for 53 of those overturned convictions. Since the death penalty was reinstated in 1974, 96 defendants have been sentenced to death and ultimately exonerated, 11 through the use of DNA evidence. What is perhaps most startling is that the innocence of these individuals is now disputed by no one.

This data begs the question of how many other individuals might have their innocence proven through DNA evidence. There is some data

available about this issue. For example, the FBI started DNA testing in 1988. As of 1996, the FBI had excluded the primary suspect in 26% of cases based on DNA testing. This is out of a total population of more than 7,000 cases, so it represents a robust figure. Further, in 1996, the National Institute of Justice reported an exclusion rate based on DNA testing of 1/3 of cases. This means that in a system of justice that prides itself on due process, accuracy and fairness, thousands of people have been wrongfully incarcerated.

The project receives thousands of letters asking for assistance in proving the innocence of a convicted individual. The staff begin by sorting through these letters, searching for cases in which biological evidence would be determinative. In more than 75% of cases, evidence has been lost or destroyed. However, more than half of the time when data is available, the evidence supports innocence. This is consistent with reports from credible DNA laboratories that in 40% of cases in which DNA testing is performed, the suspect is proven not guilty.

Since 1994, more cases are benefiting from DNA testing

pre-trial. The project thus faces the task of sorting through a bolus of thousands of pre-1994 cases, and doing so before potentially available evidence is lost or destroyed.

While the sheer volume of these cases is interesting itself, the next segment of Attorney Scheck's talk was even more interesting to an audience of mental health professionals. Since he has worked closely with many of these individuals, Attorney Scheck has come to understand much about their psychological reactions to their wrongful convictions. Many of them refuse to admit guilt even if it would mean an increased likelihood of being paroled. They refuse anger management or sex offender treatment programs and do not wish to see prison psychiatrists. They try to hide within the prison in doing their time.

Initially, these individuals are intensely angry and bitter, but after 2-3 years in prison, they generally realize that they will destroy themselves in staying that way. So they manage to achieve some transcendence, although continuing their legal efforts. Mentally retarded individuals are not good at such self-advocacy, so the few cases the project has discovered have been the product

of luck in hearing about them.

In Attorney Scheck's experience, all of these individuals suffer from sleep disorders and nightmares, and many have PTSD. They all witness continued violence in prison, and suffer distress as a result.

Despite the certainty of the results when these cases are overturned, there is currently little compensation available for those wrongfully imprisoned. Federal civil rights cases are very hard to pursue due to numerous immunities and protections afforded the government. The best route is through compensation statutes. New York has the best statute, one that is not based on fault. The law requires clear and convincing proof that the convicted individual was actually innocent, and makes available past and future lost wages and compensation for pain and suffering.

Attorney Scheck gave several examples of recent cases overturned by DNA evidence.

One of these was a Florida case, in which the news of the DNA testing was announced on the day Al Gore conceded the election, so it received little attention. The convicted individual suffered from schizophrenia and had been imprisoned for rape/homicide. He had unfortunately died of cancer in prison in 1999. The man who actually committed the crime was also responsible for 7 other murders to which yet another man – who was mentally retarded - had pled guilty in order to avoid the death penalty.

Many of these stories are detailed in the book Attorney Scheck wrote with Jim Dwyer: *Actual Innocence: 5 Days to Execution and Other Dispatches From the Wrongly Convicted*. (New York, Penguin and Putnam, 2001) The format of the book is that each chapter illustrates a different cause of wrongful convictions and offers solutions. Examples of these causes include mistaken eyewitness identification

and false confessions/admissions. Remedies offered for these two causes are sequential presentation of subjects for identification and videotaped interrogations, respectively.

Twenty-seven U.S. law schools now have Innocence Projects. There is a distance-learning course called "Wrongful Convictions – Causes and Remedies." The reforms sought by these projects have broad appeal, because as Attorney Scheck pointed out, they promote law enforcement in addition to individual justice. For each wrongly convicted individual, a dangerous criminal is still free to commit further crimes.

As one might expect, the presentation inspired a lively audience discussion. Attorney Scheck's talk was unnerving and even frightening, but the message was moving and inspiring in its hopefulness, rational direction and potential for meaningful change.