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Claiming Innocence

Brandon L. Garrett University of Virginia School of Law

The advent of DNA testing technology almost two decades ago transformed how courts review claims of innocence. Our system has discarded many of the rules of finality that traditionally barred most post-conviction motions claims of innocence; in recent years almost all states enacted post-conviction DNA testing and actual innocence statutes, which I survey here. Yet our criminal system still remains at a crossroads and meritorious claims of innocence continue to face great obstacles. State statutes typically exclude entire categories of convicts who might convincingly prove their innocence and often impose stringent evidentiary burdens just to obtain the DNA testing itself. Meanwhile, the Supreme Court has yet to adopt a constitutional innocence claim, though advances in technology upended the Court's reasons for failing to do so. Further, wrongful convictions will continue to place pressure on our system. Using empirical analysis of post-conviction DNA exonerations over time, I show that a quarter occurred in cases in which DNA testing was available at trial, with causes including technological advances and fraud and error relating to the DNA testing itself. I argue that our criminal justice system still lacks sufficient procedures to ensure full access to evidence of innocence at the time of trial, and then fails to properly assess claims of innocence brought during appeals. Absent those protections, DNA exonerations may persist for decades to come.