



Questioning Convictions



Barry C. Scheck

Over the past two decades, no criminal defense lawyer in America has done more to advance the rights of the convicted than Barry C. Scheck. In 1992, when DNA testing was still in its infancy, Scheck, along with colleague Peter J. Neufeld, founded the Innocence Project, which has since figured prominently in the release of hundreds of wrongfully convicted inmates. Scheck also achieved lasting fame for defending O. J. Simpson, the former football star charged with murder in 1994. In March, Scheck spoke with *California Lawyer* contributing editor Martin Lasden about his extraordinary career and the controversies surrounding it. Here are edited excerpts from that videotaped discussion.

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Q: You're known throughout the world as a brilliant attorney who's helped so many people get out of prison after being convicted of crimes they had absolutely nothing to do with. But you're also widely thought of as the guy who back in 1995 essentially helped O. J. Simpson get away with murder. Do you see any tension between those two aspects of your reputation?

Well, when you say tension, maybe in some people's minds. But there's a clear, intellectually consistent path here. When I joined O. J. Simpson's defense team, a DNA test hadn't even been done yet, and they were just analyzing all kinds of biological evidence. However, by the end of the trial the prosecutors essentially agreed with us that the Los Angeles Police Department crime lab had grossly mishandled the crime-scene evidence.

When I use the word *tension*, what I'm referring to is your relationship to the truth. I mean, let's face it, as an Innocence Project lawyer your stock-in-trade is the truth. However, when you're

discrediting an expert witness's testimony, as you so brilliantly did in the Simpson trial, that's not the same thing as proving factual innocence, is it?

It can be. But the point I'm making to you is that the critique of the evidence in the O. J. Simpson case was correct. You don't pick up bloodstains, put them wet into a plastic bag, and then put them into a hot truck. And when the criminologist at the LAPD lab said, "I don't think I necessarily changed my gloves" when he was handling the crime-scene evidence, I mean that's a disaster.

So when people ask you now whether you think O. J. Simpson was factually innocent, what do you tell them?

My first answer is the answer you would expect from any lawyer, and that is I have a duty to my client, and this particular client insisted from beginning to end that he was innocent. ... But let's get this straight: The Simpson trial was in so many ways a disaster for the American criminal justice system. First of all, the coverage of legal proceedings was, I think, irreparably dam-

aged. Now we have the era of Nancy Grace and tabloid TV in the coverage of high-profile trials. I also think the trial had racial consequences that really set us back. But the one good thing that did come out of it was that it absolutely transformed the way forensic scientists deal with crime-scene evidence.

Since you cofounded the Innocence Project in 1992, how many people have been released from prison as a result of your efforts and the efforts of other Innocence Project lawyers?

As we sit here today, there are 312 people who have been exonerated with post-conviction DNA testing. Now there's another list called the Registry of Exonerations. If you go to their website you'll find that, since 1989, there have been more than 1,500 convictions vacated based on new evidence—both DNA- and non-DNA-related. And we keep finding more cases, for all the reasons you'd expect—unreliable forensic science, eyewitness misidentification, false confessions, jailhouse snitches, prosecutorial misconduct, and, of

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course, race. The system has always been riddled with error.

Compared to the guilty, the innocent stuck in prison would, I imagine, experience a sense of rage that is much more difficult to cope with. So how is it, do you think, that the wrongfully convicted are able to remain in prison for years—perhaps even decades—without losing their minds?

I think we have to understand that as a spiritual matter; so many of the wrongfully convicted find a kind of transcendence that takes them beyond their anger. And to me, what is truly extraordinary is how many of them will go before parole boards again and again, knowing that they can get out of prison five or ten years earlier if they'll just say they're guilty and show some remorse—but they refuse to do so. These are people from ordinary circumstances with not a lot to prepare them for showing that kind of moral courage.

But, really, how common is that?

Among the wrongfully convicted it's extremely common.

I'm not at all sure I would be so principled in that situation. Are you? I mean, let's suppose for a moment that you were in prison for ten years and they offered you a shot at getting out by confessing to a crime you didn't commit. Wouldn't you take it?

As I sit here today, I can't imagine not doing it. But I think that for so many of the wrongfully convicted, being innocent becomes such a strong part of their identity that they can't possibly deny it. It would be like negating themselves. And if that happens, they feel they would never be able to respect themselves again. 🗣️

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