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## The Resource Page

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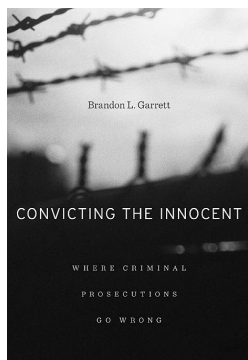


# The Resource Page



## NEW BOOKS

BRANDON L. GARRETT, *CONVICING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG*. Harvard University Press, 2011. (\$18.95 paperback; \$39.95 hardcover).



Surely no judge wants to have an innocent person convicted of a crime he or she didn't commit. Yet with so many criminal cases being tried, any judge who thinks about it knows there must be some errors along the way. After all, no human process has a 0% error rate. The fact that there must be some errors can become just an understood background concept for an experienced judge.

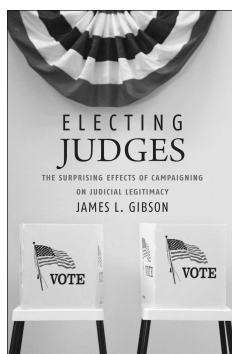
But the advent of DNA exonerations has turned this abstract understanding into a concrete fact. And University of Virginia law professor Brandon Garrett has carefully studied the first 250 DNA-exoneration cases to see what went wrong. Every judge who handles criminal cases or cares about our justice system should read the book. (And, yes, we do hope that this description covers all judges.)

In three-fourths of the cases, there was at least one eyewitness who testified and at least some forensic evidence. In one-fifth there was an informant and in 16% a confession. Yet all of these are proven exoneration cases. Garrett reviews ways in which eyewitness testimony was flawed, how false confessions were obtained, and why much of the forensic testimony was problematic. He also shows how little help was available in these cases from judicial review: in 10% of the cases, appellate

courts labeled the evidence of guilt "overwhelming," and many times—so far as one could tell from the record—the review was at best cursory.

Garrett concludes with suggested reforms; many of them have been suggested before, like recording police interrogations, better lineup procedures, better supervision of crime labs, and greater scrutiny of jailhouse informants. But the value of Garrett's book lies not in the list of proposed remedies but in its full review of 250 known exoneration cases. The flaws Garrett details from these cases led to decades in prison for innocent defendants. It's worth spending some time considering those details.

JAMES L. GIBSON, *ELECTING JUDGES: THE SURPRISING EFFECTS OF CAMPAIGNING ON JUDICIAL LEGITIMACY*. The University of Chicago Press, 2012. 226 pp. (\$27.50 paperback; \$85.00 cloth).



Professor James L. Gibson, a political scientist at Washington University in St. Louis, is one of the leading scholars on judicial politics. This book provides the details for a presentation Professor Gibson made at the American Judges Association's 2012 midyear meeting, which focused on judicial elections.

The book is based on opinion surveys Gibson conducted of a randomly selected group of Kentucky residents before, during, and after the 2006 election, at which four state supreme court justices were elected in contested, nonpartisan races. In one race, the final margin was 52% to 48%; in the others, the losing candidate won from 36% to 40% of the vote. Television advertising was frequent, and Gibson tracked whether each ad was primarily an

attack ad on the opponent, an ad contrasting the two candidates, or an ad promoting one candidate.

What Gibson found was that diffuse, institutional support for the Kentucky Supreme Court was higher after the election than before it. While negative ads had negative effects on support for the judiciary, that negative effect was less than the overall positive impact of the election process. Gibson discusses these and other conclusions in detail.

There are lots of potential caveats to this study—it's just one election, results under Kentucky's election system (non-partisan races by district) may not apply to other types of elections, and other selection systems might produce even better results or have advantages other than increased public support for a state's highest court. But the study presents data suggesting that judicial elections—despite attack ads and negative campaigning—can be a net contributor to greater public support for the courts. In a field with limited data, Professor Gibson's study is worth a look.



## ARTICLES OF NOTE

**Special Issue: Lawyers, Judges, and Money: Evolving Legal Issues Surrounding Spending on Judicial Elections**

60 *Drake Law Review* No. 3 (Spring 2012 issue)

<http://students.law.drake.edu/lawReview/?pageID=lrCurrentPrintIssue>

The *Drake Law Review*, in conjunction with the American Judicature Society, has released an issue devoted to the impact of money on judicial elections. The issue reflects a symposium held in February 2012; it contains seven separate pieces and a foreword by former U.S. Supreme Court Justice Sandra Day O'Connor. The issue includes a discussion of the impact of *Citizens United* on judicial elections, review of spending in retention elections in Illinois and Iowa in 2010, and other issues related to judicial elections.