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First Vice President
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ONE HUNDRED DNA EXONERATIONS ARE A CLARION CALL FOR REFORM

One hundred persons have been exonerated by DNA testing since 1989. Some of the exonerated had plead guilty to the offense for which they were ultimately and definitively cleared, demonstrating that false confessions are a reality. Serology testing, mistaken eyewitness identification, jail house informant testimony and unaccountable forensic lab work also produced these wrongful convictions.

No one has an interest in imprisoning the innocent, least of all the prosecutors charged with upholding such convictions. By doing so they victimize the innocent convicted person and the offense’s victim. Imagine how Jeannette Popp felt. For twelve years she was confident that her child’s rapists and murders were in prison. Then she learned that the real culprit had roamed free to rape and victimize two more women while two innocent men were wrongly imprisoned because an Austin Police Officer coerced a false confession from one of them. The other innocent person convicted for this

offense was totally disabled by a beating he received while in prison. Knowing that when the guilty go free everyone is victimized, enlightened and professional prosecutors are receptive to re-examining convictions. But the more common reaction to a challenge is incredulity and resistance. Whether this reticence is due to political expediency or an interest in promoting the finality of criminal trials, the advent of DNA testing provides us a definitive method of proving when convictions involving biological evidence are wrongful. But the exoneration of one hundred persons since 1989 also provides ample evidence that our system is inadequate. Although finality is important in business disputes and quarrels over money, when the consequence of error is that the state victimizes innocent persons and unleashes violent offenders to hurt and kill again, finality loses importance.

THIS IS TEXAS' PROBLEM

Of the one hundred persons exonerated by DNA, twelve of them are from Texas. All but one of the lawyers I could identify who assisted these innocent men in obtaining their freedom were members of TCDLA. The honor roll includes, in chronological order, Emmit Harris, Karyl Krug and David Schulman, Randy Schaffer, Bill Allison, Mike Charlton, and Walter Reeves.

In almost every case the Innocence Project was involved under the leadership of Barry Scheck and Peter Neufeld. They are **Gilbert Alejandro**, convicted in 1990 of aggravated sexual assault and released in 1994. Bexar County Serologist, Fred Zain, secured Alejandro's conviction by testifying that his DNA conclusively matched the semen recovered from the victim.

Ben Salazar was convicted in Austin, Texas of rape in 1992 and exonerated in 1997. **Kevin Byrd** was convicted of raping a eight month pregnant woman in Houston in 1985 and was exonerated after twelve years imprisonment. The prosecutor, judge and sheriff asked reluctant former governor Bush to pardon Byrd after DNA evidence cleared him. **A.B.**

Butler was freed after serving seventeen years for a rape and kidnaping in Smith County, Texas that he did not commit. Centurion ministries paid for Mr. Butler's DNA testing. Ten years after being convicted for the rape and murder of a sixteen old girl in Livingston, Texas, **Roy Criner** was pardoned because mitochondrial DNA evidence proved he was not the girl's assailant.

According to a Houston press investigation, police had suppressed this evidence for years. **Anthony Robinson** also served ten years and was on parole before he cleared himself of a crime he did not commit, the rape of a University of Houston college co-ed. He was convicted by virtue of the mistaken eye witness testimony of the victim who had previously given police a description of her attacker that did not match Robinson. After he was placed on parole, Robinson earned the money for the DNA testing that exonerated him. **Carlos Lavernia**, a Cuban national, was convicted in 1985 and sentenced to 99 years for the rape of an Austin, Texas woman. Calling him the Barton Creek rapist, Austin police said that Lavernia was responsible for seven rapes. DNA testing established in 2000 that he was not involved in any of them. **David Pope** was convicted in Garland, Texas of an 1986 rape.

While the victim identified him as her attacker, DNA evidence proved his innocence in 2001 after he had served fifteen years. **Richard Danziger** and

Chris Ochoa were freed in 2001 for the rape and murder of Jeanette Popp's daughter in Austin. As mentioned earlier, their conviction was secured by a false confession coerced by an Austin police officer. The real killer, Achin Marino, wrote several letters admitting his guilt to prosecutors, police, newspapers and the ACLU before any action was taken. Mr. Marino has since been sentenced to life for the killing. **Victor Thomas** served fifteen years for the rape, robbery and kidnaping of a Waxahachie woman. The victim identified him as her attacker while DNA evidence proved she was wrong. His case gained attention because Thomas engaged in a letter writing campaign protesting his innocence. **Calvin Washington** was released after serving thirteen years for a rape and murder he did not commit. The real killer of the Waco, Texas victim had raped and killed again before taking his own life. Waco police, following evidence the prosecution had rejected, were able to identify Bennie Carroll as the true culprit in the rape/murder of which Washington was convicted. A New York Times magazine reporter, Fredrick Dannen, paid for DNA test that freed Washington.

A common theme in many of these cases is that the innocent imprisoned person and lay people in the media and in education have remedied the wrong. While our judicial process ensures one tolerably fair trial, it provides no current failsafe. It provides no court appointed attorney for clemency work and our board of pardons and paroles often cites court review as a reason not to re-examine a conviction. The solution must come from reforms within the system.

DNA TESTING AND THE INNOCENCE PROTECTION ACT A START

It is hard to quantify how many other convictions in Texas are wrongful. DNA testing is like the canary in the mine shaft. Miners always brought caged canaries to work so that by the birds' deaths they would be warned about the presence of poisonous gases before they were affected by them. The one hundred exonerations by DNA evidence demonstrate that coerced confessions, mistaken eye witness identification, compromised forensic science, suspect jail house informant testimony, and pressure from the community for swift resolution of crimes does not assure us of justice. Although the Innocence Protection Act Codified at Article 64.01 et seq. of the Texas Code of Criminal Procedure. that provides for DNA testing and the preservation of evidence is an important step toward assuring ourselves that we are correcting wrongful convictions that are remediable, our organization must pursue additional reforms including the recording of interrogation sessions and non-suggestive identification procedures. Texas' Accomplice Witness rule Codified at Article 38.14 of the Texas Code of Criminal Procedure. provides some protection from suspect testimony by those with something to gain but does not currently extend to jail house informant testimony. Since jail house informants have as much to gain from false testimony that incriminates the prosecution suspect, the accomplice witness rule should be extended to jail house informants. Other sensible

reforms should include independent audits of crime lab personnel, procedures and proficiency and the creation of a simple new rule of evidence, first proposed by Keith Hampton at our last legislative session: Evidence of innocence is always relevant. Through these efforts we may not achieve perfection. But in the striving we can seek absolution for our own failings.

It is not the critic that counts; not the man who points out how the strong man stumbles. Or where the doer of deeds could have done better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at best knows in the end the triumph of high achievement. And at worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."—— President Theodore Roosevelt, "The Man in the Arena"Paris, 1910

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