

REMARKS

OF

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AT THE

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NATIONAL SUMMIT ON WRONGFUL CONVICTIONS

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Thank you, Walt [McNeil]. It's great to be here, joined by my colleagues, Denise O'Donnell, John Laub, and Joye Frost, who are helping to sponsor this summit. Their offices – the Bureau of Justice Assistance, the National Institute of Justice, and the Office for Victims of Crime – have invested significant resources in improving our response to wrongful convictions, and I'm glad they could join me today.

I want to thank Walt and the International Association of Chiefs of Police for organizing this summit and for bringing together this stellar assembly of experts. I especially want to commend them for taking ownership of this issue and for leading the law enforcement community in exploring what it can do to help reduce wrongful convictions.

Stories about wrongful convictions – particularly involving DNA exonerations – have been in the news a lot lately, and people want to know, “how could this have happened?” We know, of course, there are any number of reasons: unreliable eyewitness testimony, coerced confessions, investigative or trial-related errors, inadequate counsel. In truth, they aren't simply the result of isolated mistakes, but the culmination of a number of factors.

A disproportionate share of the blame for wrongful convictions is laid at the feet of law enforcement. That's unfortunate, and it's unfair. But you appreciate that wrongful convictions – whatever the cause or causes – reflect on all of us, and however they happen, they compromise the integrity and legitimacy of our justice system. So you're all here, trying to understand how we can reduce the potential for error and how we can correct the mistakes that have already been made, and I applaud you.

But this is a problem you shouldn't have to tackle alone. We all have a stake, and we all have a responsibility – law enforcement, prosecutors, defense counsel, judges, Innocence Projects, victim advocates. We in the federal government have an obligation, as well, to ensure that all credible claims of innocence are investigated and resolved.

When I was with the Department in the 90s working under Janet Reno, the National Institute of Justice published a report, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*. Many of the challenges identified in that report are still with us today. There are still obstacles to the effective collection and preservation of DNA evidence. We're still working to ensure scientific rigor in testing methodology. Questions are still being asked about the credibility of forensic scientists and their results. And although we're learning more about how we can improve the reliability of eyewitness evidence, the fact is that misidentification is a factor in a substantial majority of wrongful convictions.

So here we are, 16 years after that seminal report from NIJ, and we're still wrestling with the problem of wrongful convictions. Nearly 300 people have been exonerated through DNA testing, and almost all states have laws allowing access to post-conviction DNA, but those laws vary widely, and the Supreme Court has ruled that defendants don't have a constitutional right to DNA testing after they've been convicted.

This means we need to work even harder to ensure that our methods for investigating crimes are effective, that our science is sound, and that we're doing everything we can to guard against the technical and procedural errors that lead to these miscarriages of justice.

This is exactly what we're doing at the Office of Justice Programs. Three years ago, our Bureau of Justice Assistance launched its Wrongful Convictions Review Grant Program to provide high quality representation for defendants with credible post-conviction claims of innocence. As we all know, resolving these claims is a lengthy and costly process, and cash-strapped local governments and non-profit groups don't always have the resources to follow these cases through. Since 2009, we've awarded more than \$9.4 million to 34 organizations – non-profits, state and local public defenders' offices, and universities – to support them as they represent individuals with these claims.

We also support training and technical assistance to improve the investigation and litigation of these cases. Our partners at the National Association of Criminal Defense Lawyers, in collaboration with the Innocence Network, have provided three national trainings on cutting-edge forensic techniques and post-conviction litigation strategies. More than 520 people have attended from across the country.

We're also assessing the impact these resources are having, looking not only at case outcomes, but other factors like how to responsibly increase the number of cases that can be accepted and how we can shorten the length of the screening process. The NACDL has conducted a review of the Wrongful Conviction program to look at how federal funding has affected the capacity of organizations to resolve claims of innocence. They've just submitted their report, which we're still reviewing, but what they've found is that these resources are making a difference, particularly in fostering partnerships between law enforcement and Innocence Projects and in helping to keep these projects afloat during difficult economic times.

But the best evidence that this program is working is that it has resulted in an exoneration. This was a heart-rending case. A man by the name of Michael Hansen was accused of killing his three-month-old daughter after she was found unresponsive in his care. The baby's skull had been fractured, and the original medical examiner concluded that the fracture must have been caused by the last person caring for her.

Mr. Hansen maintained his innocence, and with funds from a BJA grant, the Innocence Project of Minnesota was able to provide the expert services of an emergency room physician, a pediatrician specializing in child abuse, a biomechanical engineer, and forensic pathologists. They all testified at a post-conviction hearing, saying the fracture was the result of an earlier fall and that the baby died while she was sleeping. A new trial was granted, and after a series of pre-trial defense motions, the prosecutor decided to dismiss the indictment. So the tragedy of a baby's death wasn't compounded by the travesty of an innocent man's conviction.

The Hansen case demonstrates the complexity of wrongful conviction cases and underscores that, in most cases, claims of innocence must be resolved by applying

rigorous scrutiny to credible theories. DNA evidence is often not available to help us, or, if it is, it will likely need to be bolstered by additional proof or expert testimony.

But the fact is, DNA is the gold standard in forensic options when it comes to demonstrating actual innocence – and, for that matter, when it comes to getting criminals off the street. Advances in DNA technology and testing have greatly enhanced the capacity of the criminal justice system to solve crimes, identify offenders, and clear the wrongfully accused and convicted.

Our National Institute of Justice is working to help criminal justice professionals realize the potential of DNA evidence. Over the last eight years, NIJ has awarded more than \$28 million to 15 states under the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to help defray the costs of post-conviction DNA testing. NIJ has announced another \$3.5 million available this year.

This program is making an impact. Nine people have been exonerated as a result of the funds provided under this program. A Texas man named Johnny Pinchback was exonerated after serving more than 26 years for two sexual assaults he didn't commit. A Kentucky man named Michael VonAllmen was exonerated after serving 11 years in a rape, sodomy, and robbery case. That case took a bizarre turn when an alternative suspect who was charged with a similar crime died in a car chase with police. And last year, Albert Haynesworth was freed from prison after prosecutors and the Virginia Attorney General joined in asking for his release based on DNA evidence. He had served 27 years.

These men paid a terrible price for crimes that someone else committed and for mistakes that others, collectively, had made. And the problem may be even more extensive than we think. A recent study by the Urban Institute looked at post-conviction DNA testing in Virginia and found that the rate of wrongful conviction for sexual assaults committed by strangers may be as high as 8 percent. Now, that study was too limited in scope to allow for generalizations, but it may provide a hint of the extent of the problem.

And while we're considering the terrible impact of wrongful convictions on the accused, we can't forget that others have suffered – and continue to suffer – as well: the victims. They've been twice traumatized, by the original victimization and by the re-opening of old wounds. For them, the long path to justice and healing has become even longer and the end more uncertain. You'll get a first-hand perspective from our luncheon speaker.

Our Office for Victims of Crime is working to explore these issues and to find ways to support these victims in these incredibly trying times. Under a project with the National Center for Victims of Crime, we've helped to make guidance available to those who work with victims in these cases. NIJ is also surveying victim advocates who've provided services to victims following an exoneration and they're looking in-depth at case studies to gauge the victim's experience. Findings from this study will help law

enforcement, judges, attorneys, and victim advocates better understand and meet the needs of these victims.

Of course, when we talk about addressing wrongful convictions, we need to consider, not just how to improve our response, but how to prevent them from happening in the first place. The ability of our criminal justice system to find and convict the guilty and clear the innocent depends on our identifying and understanding the causes of wrongful convictions. Under an NIJ grant, American University is working to isolate the factors that may lead to wrongful convictions, and we hope to have the results available in the fall.

Finally, it's important to bear in mind that, although DNA has been the linchpin in resolving many claims of innocence, it hasn't been the only factor. Most cases, even where DNA is involved, rely on other forms of proof. Other evidence, new leads, and the diligence of investigators were critical, as well. Rarely is a single tool – even one as reliable as DNA – enough to satisfy the demands of these difficult cases. As long as we search for solutions in isolated causes, our hopes for ending wrongful convictions will be frustrated.

The integrity and the legitimacy of the system hinge on our willingness to work together to address the systemic deficiencies that allow these mistakes to happen. No one person is responsible for these errors, and no one person is responsible for correcting them. We all have a stake in preventing wrongful convictions.

I commend you for the work you are doing here today. Together, you are striving to build a more just and a more effective system, one that will inspire the faith and the confidence of the people it serves. Thank you for your work, and thank you for your time.

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